The Ontario Securities Commission

OSC Bulletin

January 22, 2015

Volume 38, Issue 3

(2015), 38 OSCB

The Ontario Securities Commission administers the
Securities Act of Ontario (R.S.O. 1990, c. S.5) and the
Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

The Ontario Securities Commission
Cadillac Fairview Tower
22nd Floor, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

Published under the authority of the Commission by:
Carswell, a Thomson Reuters business
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

416-609-3800 or 1-800-387-5164

Contact Centre – Inquiries, Complaints:
Fax: 416-593-8122
TTY: 1-866-827-1295

Office of the Secretary:
Fax: 416-593-2318

THOMSON REUTERS

The OSC Bulletin is published weekly by Carswell, a Thomson Reuters business, under the authority of the Ontario Securities Commission.

Subscriptions are available from Carswell at the price of $827 per year.

Subscription prices include first class postage to Canadian addresses. Outside Canada, these airmail postage charges apply on a current subscription:

U.S.	$8 per issue
Outside North America	$12 per issue

Single issues of the printed Bulletin are available at $20 per copy as long as supplies are available.

Carswell also offers every issue of the Bulletin, from 1994 onwards, fully searchable on S*ecuritiesSource*™, Canada's pre-eminent web-based securities resource. *SecuritiesSource*™ also features comprehensive securities legislation, expert analysis, precedents and a weekly Newsletter. For more information on *SecuritiesSource*™, as well as ordering information, please go to:

http://www.westlawecarswell.com/SecuritiesSource/News/default.htm

or call Carswell Customer Relations at 1-800-387-5164 (416-609-3800 Toronto & Outside of Canada).

Claims from *bona fide* subscribers for missing issues will be honoured by Carswell up to one month from publication date.

Space is available in the Ontario Securities Commission Bulletin for advertisements. The publisher will accept advertising aimed at the securities industry or financial community in Canada. Advertisements are limited to tombstone announcements and professional business card announcements by members of, and suppliers to, the financial services industry.

ISSN 0226-9325

THOMSON REUTERS

One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

Customer Relations
Toronto 1-416-609-3800
Elsewhere in Canada/U.S. 1-800-387-5164
Fax 1-416-298-5082
www.carswell.com
Email www.carswell.com/email

Table of Contents

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 CSA Staff Notice 44-305 – 2015 Update – Structured Notes Distributed Under the Shelf Prospectus System

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 44-305
2015 Update – Structured Notes Distributed Under the Shelf Prospectus System

January 22, 2015

Purpose

This notice sets out the views of CSA staff (we) regarding issues in connection with offerings of structured notes under the shelf prospectus system. This notice supplements and should be read together with CSA Staff Notice 44-304 – *Linked Notes Distributed Under Shelf Prospectus System* (SN 44-304). We have used the term "structured notes" instead of "linked notes" in this notice as that seems to be the term most used by the industry.

A structured note, or linked note, is a specified derivative, as defined in NI 44-102 – *Shelf Distributions* (NI 44-102), for which the amount payable is determined by reference to the price, value or level of an underlying interest that is unrelated to the operations or securities of the structured note issuer. Structured notes issued under the shelf prospectus system are generally non-principal protected securities issued by a bank or another financial institution. The underlying interests frequently include one or more stock indices, exchange-traded funds (ETFs), equities or notional reference portfolios.

Background

We discussed structured notes previously in SN 44-304. Since that time, the industry has continued to grow and the shelf prospectus system has evolved as an alternative distribution channel for retail investment products. Also, the Task Force on Unregulated Financial Markets and Products (TFUMP), a multilateral group of staff experts from various members of the International Organization of Securities Commissions (IOSCO), released its final report in December 2013. The TFUMP analyzed trends and developments in the retail structured product market and related regulatory issues encountered by IOSCO members.

We regulate structured notes primarily through our reviews of prospectus supplements filed for pre-clearance pursuant to undertakings that issuers provide under Part 4 of NI 44-102. As the industry continues to evolve, so does our regulatory approach. One of the challenges is to ensure consistency, where appropriate, in how we regulate structured notes and other types of products sold to retail investors, such as investment funds. CSA staff look to investment fund regulatory requirements and developments, where practicable, as a guide in conducting our reviews. Our regulatory approach also considers the guidance provided in the TFUMP report.

This notice updates and supplements SN 44-304 regarding:

- disclosure issuers should consider when preparing prospectus supplements for their structured notes;
- disclosure issuers should consider providing regarding their structured notes on an on-going basis; and
- the filing process to pre-clear novel supplements and for subsequent offerings of pre-cleared products.

1. Disclosure – Prospectus Supplements

The substantive details of structured note offerings are not generally contained in the base shelf prospectus, but rather in the prospectus supplement filed subsequently. Under the securities legislation of each jurisdiction, an issuer's prospectus must provide full, true and plain disclosure of all material facts relating to the securities offered by the prospectus.

1.1 Fees, expenses, product pricing and estimates of fair value

SN 44-304 discusses CSA staff's view that the full, true and plain disclosure requirement requires a clear and full explanation of fees that an investor will be paying. With respect to investment funds, the CSA has focused on initiatives aimed at improving the transparency of mutual fund fees and embedded commissions as a way to enable retail investors to better understand the costs of investing and to make more informed investment decisions.

Structured note issuers should similarly ensure that their disclosure provides sufficient transparency regarding fees including any financial benefits the issuer may embed into the structuring and pricing of the notes. The disclosure should enable an investor to readily assess the costs of investing in the note and the potential financial benefit the issuer and dealer will receive from the sale of the note. The disclosure required will vary depending upon the fee structure and whether the issuer has embedded a profit component into the offering price of the note.

Some structured note issuers charge fees on a basis similar to investment fund managers. These fees may include on-going management or administrative fees, sales commissions and on-going service fees or embedded trailing commissions paid to advisors. For structured notes that charge fees on a similar basis as investment funds, we would expect that the prospectus supplement include a table similar to those typically provided in investment fund prospectuses that clearly summarize all relevant fees in one easy to read section.[1] Issuers should also consider disclosing the dollar value of fees per note an investor can expect to pay on an annual basis and the total dollar value of fees if they hold the note to maturity.

In addition to the above-noted fees, the offering price of a structured note often embeds an estimated profit for the issuer as the offering price will be greater than the issuer's estimated costs to structure, distribute and hedge the note. This applies, in particular, in connection with structured notes that make use of embedded derivatives to provide different returns. It is our understanding that the issuer's estimate of the note's fair value and its potential profit is based on its valuation of the economic components embedded in the note at the time of issuance. Unlike other jurisdictions, such as the U.S. for instance, we have not consistently requested that issuers disclose their estimate of the note's fair value and potential profit.

In our view, this disclosure would provide improved transparency regarding the pricing and structuring of notes that make use of embedded derivatives and help ensure that investors better understand that the offering price of the note embeds an estimated profit margin. Consequently, CSA staff will, going forward, generally ask issuers to include the following in their structured note supplements:

- cover page disclosure of the issuer's estimate of the note's fair value based on its valuation of the economic components that could be combined to provide the same exposure as the structured note;
- a brief explanation that the fair value of the note is based on the issuer's estimate of the value of the note's economic components and a brief description of what those components are;
- explanation regarding why the issuer's estimate of the note's fair value may be different from the offering price including whether the offering price includes an estimated profit for the issuer and what fees, costs or other amounts that the issuer adds to its estimate of the note's fair value; and
- explanation that the issuer's estimate of the note's fair value may differ from the price at which an investor can sell the note in the secondary market and why.

We suggest that, other than the cover page disclosure, the foregoing disclosure regarding the issuer's estimate of the note's fair value appear under its own separate heading and, as appropriate, be included in the risk factor disclosure.

Further, CSA staff will generally ask issuers to include a statement in their base shelf prospectus or in structured note supplements that they have adopted written policies and procedures for determining the fair value of the note which include: (i) the methodologies used for valuing each type of component embedded in the note, (ii) the methods by which the issuer will review and test valuations to assess the quality of the prices obtained as well as the general functioning of the valuation process, and (iii) conflicts of interest. CSA staff may also request, on a confidential basis as part of a pre-clearance review, that issuers provide a description of the valuation models and assumptions used to estimate the fair value of a particular note.

1.2 What type of investor is the note designed for

In SN 44-304, we asked issuers to provide a brief description of the suitability of a structured note, including the characteristics of investors for whom the note may or may not be a suitable investment. This disclosure should provide investors with a quick

[1] See, for instance, Item 3.6 of Form 41-101F2 *Information Required in an Investment Funds Prospectus* and Item 8 Part A of Form 81-101F1 *Contents of Simplified Prospectus*.

overview of the note's key features, economic exposure, return profile, risks and what the issuer views to be the unique value-add of the product.

More recently, we have also been requesting that, in certain instances, issuers disclose relevant factors against which an investor can compare an investment in the note versus holding its underlying interest(s) directly, particularly when the underlying interest(s) is already easily available. Examples of factors that issuers should consider discussing include differences in the return profiles between the note and holding the underlying interest(s), terms to maturity, tax implications, any incremental costs associated with different fee structures between the note and the underlying interest(s), the primary means through which liquidity is provided including any differences in the investor's ability to re-sell the product over a secondary market or investor redemption rights and the relative treatment of any distributions paid out.

1.3 Underlying Interests – Transparency, Quantitative Models, Investment Funds and Fixed Income Securities

Transparency

A structured note's underlying interest or reference asset must be sufficiently publicly transparent to enable the issuer to satisfy the full, true and plain disclosure requirement. Prospectus supplements must provide sufficient information regarding a note's underlying interest or reference asset in order to allow investors to make an informed decision. This is relatively straightforward when the underlying interest or reference asset is a public entity that is subject to some form of continuous disclosure regime.

Underlying interests for which providing full, true and plain disclosure may be particularly difficult include:

- some proprietary indices established by the issuer or an affiliate of the issuer;
- hedge funds and hedge fund replication strategies; and
- reference assets or interests for which there is no information in the public domain such as, for instance, a private discretionary managed account or portfolio of investments.

We will generally not recommend that an acceptance letter be provided in connection with prospectus supplements for notes linked to the foregoing underlying interests.

Quantitative Models

We have pre-cleared notes linked to the performance of quantitative models where the composition of the portfolio is dictated exclusively by the non-discretionary financial criteria of the model, but for the very limited discretion to substitute components of the underlying portfolio in exceptional circumstances. In such instances, we have asked issuers to provide disclosure regarding:

- the quantitative model including its methodology and financial criteria;
- the initial portfolio holdings under the model and the initial portfolio value;
- how transactions in the portfolio will be valued even when the portfolio only exists on a notional basis; and
- how investors may access on-going information regarding the portfolio free of charge.

Investment Funds

Notes linked to publicly offered investment funds that are actively managed and are not index participation units, as defined under National Instrument 81-102 – *Investment Funds*, generally raise significant policy concerns. CSA staff generally consider all such notes to be novel for the purposes of the undertakings provided under NI 44-102. Consequently, an issuer should file all such notes for pre-clearance. Issuers should also be aware that the review period may be longer than normal given the policy issues such notes raise.

Our concerns include:

- whether the note is converging into an investment fund;
- whether the note constitutes an indirect offering of the underlying investment fund;
- the relative benefits of the note, particularly since the underlying investment fund is generally already available to retail investors; and

- potential investor confusion regarding the two different products and in making a decision to invest in the structured note or the investment fund directly.

We suggest that the disclosure provided in prospectus supplements for notes linked to actively managed investment funds that are not index participation units include:

- clear bolded textbox disclosure on the cover page indicating that investors are buying notes, not the underlying investment funds, which carry different risks, have a different fee structure, and are subject to a different regulatory regime than the underlying investment funds. Investors will not receive any ongoing disclosure regarding the underlying investment funds that would be received by investors of the underlying investment funds; and

- a clear explanation of the differences between an investment in the note and a direct investment in the underlying fund. See section 1.2 above for examples of the factors that should be explained to investors.

CSA staff continue to consider whether to recommend that an acceptance letter be provided in these instances. Accordingly, issuers should file for pre-clearance every prospectus supplement for notes linked to investment funds that are not index participation units. We will continue to actively monitor these types of notes.

Fixed income securities

We have pre-cleared notes linked to the performance of fixed income securities, such as government bonds and investment grade corporate bonds, where there is sufficient market interest and publicly available information about the underlying issuer. In these instances, CSA staff will usually request that issuers ensure that adequate information about the underlying security is available to investors throughout the term of the notes including providing investors with access to the market value of the underlying bonds on a daily basis free of charge.[2] One way to accomplish this objective is for the issuer to post daily the bid and offering price for each underlying bond on its website.

If the composition of the portfolio of underlying bonds may change during the term of the note, we also request that issuers ensure that prices used for the purpose of notional sales and purchases are obtained through a process involving independent third parties. One way to accomplish this objective is by requiring the issuer's calculation agent to obtain different quotations from at least three reputable investment dealers independent from the issuer and use, for notional sales, the highest bid price available and, for notional purchases, the lowest ask price available.

In the case of notes linked to investment grade corporate bonds, CSA staff will also consider the liquidity of the market for the underlying bonds. We expect the market for underlying corporate bonds to have a highly liquid secondary market. Underlying bonds that are not used as a component of any benchmark index that provides a broad measure of the bond market will generally not meet staff expectations.

1.4 Subscriptions In-kind or Exchange Offers

In some instances, we have observed issuers providing investors with the option of paying their subscription price for a note in-kind by exchanging any existing holdings they may have in the note's underlying interest. For example, an investor could pay the subscription price for a note linked to an ETF by tendering any units it already holds in the ETF. In such instances, the disclosure described in section 1.2 should explain the factors an investor should consider in making a decision to continue to hold the underlying interest directly or to invest in the note. In the context of equity linked notes, such exchanges may also raise the financing benefit concerns discussed in section 1.10 below.

1.5 Hypothetical or back-tested performance data

We have reviewed some prospectus supplements, for quantitative models in particular, that sought to include hypothetical or back-tested performance data regarding how the model or strategy would have performed had it been in existence over a specified historical performance period. We are concerned that the disclosure of such information in the prospectus supplement has the potential to be overly promotional and misleading. Consequently, we have requested its removal in our pre-clearance reviews.

We continue to review this issue and monitor regulatory developments in other IOSCO jurisdictions. We may also, in some instances, request that issuers provide, for our information only, hypothetical or back-tested performance data along with the mathematical formulas used.

[2] If the market prices for the underlying bonds are available only on paying platforms (e.g. Bloomberg), that information is not considered as available to investors free of charge.

1.6 Index linked notes – pricing versus total return index

In order to satisfy the full, true and plain disclosure requirement, CSA staff generally expect that issuers of notes linked to underlying indices will clearly disclose in the prospectus supplement whether the note is linked to the pricing index or total return index. We ask that this information be prominently disclosed on the cover page of the supplement in bold print. Further, the supplement should explain the expected difference in performance between the price index and the total return index so that an investor will have a better understanding regarding the potential distributions they will be foregoing.

1.7 Disclaimers of liability for third party information

CSA staff have seen disclaimers in prospectus supplements that relate to the accuracy of third party information disclosed in the prospectus that is publicly available. The disclaimers indicate that the issuer is not responsible for, or that the investors have no recourse against the issuer in connection with, information provided by third parties, including information relating to the underlying interests and the underlying interests' issuer. The disclaimers are also sometimes accompanied by cautionary language that investors should not place undue reliance on such information.

We believe that such disclaimers and cautionary language do not reflect the liability for prospectus misrepresentations under securities law. Securities legislation makes an issuer liable for any misrepresentation in a prospectus, even if the misrepresentation in the prospectus is based upon information included from a reliable third party source. The only defence to a misrepresentation claim available to an issuer is that the investor making the claim was aware of the misrepresentation at the time of purchase. As issuers are unable to completely disclaim liability for third party information in a prospectus supplement, we will generally request that such disclaimers and cautionary language regarding undue reliance be removed.

Issuers, however, may include disclosure in prospectus supplements with respect to third party information that clearly identifies the information as third party information and states that the issuer has not verified and makes no representation regarding the accuracy or completeness of such information.

1.8 Clarity that structured notes are not fixed income securities

In order to help ensure that investors understand that structured notes are not fixed income securities, CSA staff ask issuers to include textbox disclosure on the cover page of their prospectus supplements which highlights, as appropriate, that:

- structured notes are not fixed income securities and are not designed to be alternatives to fixed income or money market instruments; and
- the notes are structured products that possess downside risk.

We also may request further disclosure, particularly in connection with notes that offer the potential for fixed return payments contingent on the performance of the note's underlying interest, such as auto-callables and reverse convertibles.

1.9 Use of hypothetical calculation examples

Issuers often provide hypothetical return calculation examples in prospectus supplements to illustrate how payouts for a structured note are calculated under various scenarios. As discussed in SN 44-304, calculation examples should use reasonable and balanced assumptions. We will generally request that issuers provide examples assuming at least three scenarios (negative, neutral and positive) and that issuers disclose the most negative scenario first.

1.10 Disclosure specific to equity linked notes – direct or indirect financing benefit

SN 44-304 discusses our views regarding direct or indirect financing benefits in connection with equity linked notes. Equity linked notes provide a return based on the performance of an underlying security of a single underlying issuer or a static basket of underlying securities of one or more underlying issuer(s).

SN 44-304 provides that to meet the full, true and plain disclosure requirement, the prospectus should disclose whether each underlying issuer will receive a direct or indirect financing benefit from the distribution of the equity linked notes. Whether an underlying issuer receives a direct or indirect financing benefit will depend on the facts and circumstances of a particular distribution. We may consider that an issuer receives a financing benefit if, in addition to any limited purchases made pursuant to its hedging activities in connection with the note, the issuer of the equity linked note has purchased securities of the same type as the underlying security directly from the underlying issuer within a proximate period of time to the distribution of the equity linked notes.

We understand that employees responsible for the issuance of equity linked notes may not be privy to any information regarding the primary market purchases of a security of an underlying issuer made by other employees of the notes issuer. We

understand that as a result of "ethical walls" between different groups of employees within the organizational structure of the notes issuer, consideration of whether the notes issuer has purchased securities of the underlying issuer within a proximate period of time to the distribution of the equity linked notes may be impractical. Our concerns regarding a direct or indirect financing benefit to the underlying issuer may be addressed through disclosure if the notes issuer relies on the existence of "ethical walls" within their organizational structure.

2. On-going Disclosure

The continuous disclosure requirements under securities legislation that apply to structured note issuers do not contemplate the distribution of retail investment products by those issuers. Consequently, potential gaps exist between the information structured note issuers are required to file and the additional information that may be relevant on an on-going basis to structured note investors.

Structured note issuers are subject to the on-going reporting requirements designed for operating businesses under National Instrument 51-102 – *Continuous Disclosure Obligations*. These requirements focus on disclosure regarding the overall financial condition and operating results of the issuer. This can provide useful information regarding the issuer's overall credit quality and its ability to meet its obligations under the note, but somewhat limited information regarding the note itself.

Investment funds are subject to National Instrument 81-106 – *Investment Fund Continuous Disclosure* which requires them to file on-going disclosure tailored specifically to the investment products being sold. Amongst other requirements, investment funds must publish daily net asset values and quarterly portfolio holdings, as well as file regular financial statements and management reports of fund performance for the funds.

SN 44-304 suggests that issuers inform investors how they can obtain additional on-going information regarding structured notes. More recently, issuers have been disclosing in their prospectus supplements a website on which they will publish additional on-going information about the note being offered. The information that is relevant to investors and the frequency with which it should be provided will vary depending on the type of note being offered.

Information that CSA staff expect issuers to consider disclosing on their websites going forward for each structured note during the term of the note and for a reasonable period afterwards, as appropriate, includes:

- composition of the underlying portfolio to which the note is linked;
- initial price or level of the underlying interest;
- the current and historical daily bid prices for the note where the issuer or a related entity of the issuer intends to maintain a secondary market;
- the daily indicative value of the note applying the payment formula under the note to the current value of the underlying interest;
- the daily current value of the underlying interest, obtained from a reliable and independent source;
- the amount of any early trading charge;
- any relevant trigger, barrier level or cap which can impact the return on the note;
- details about any call feature including call price and observation date;
- quarterly portfolio holdings;
- changes to the underlying portfolio or exposure and the prices/levels at which the changes or notional trades were made;
- distributions/coupons/return of capital payments including how they have been calculated;
- product fees that have accrued or been paid, broken down by each component;
- annual compounded rates of return for notes that have reached maturity;
- the existence of any special circumstances, market disruption or extraordinary events;

- where an investor can find more information regarding the underlying interest; and
- links to all of the disclosure documents related to the structured note offering.

The foregoing list is not exhaustive. CSA staff may request that issuers provide additional or different information as part of the pre-clearance process or on-going review of prospectus supplements.

3. Process

3.1 Pre-clearance – filing supplement templates on SEDAR

SN 44-304 describes the pre-clearance process for novel structured notes. Under this process, issuers file pricing supplement templates for review under the same SEDAR project number as the base shelf prospectus. Given the high volume of filings this can create under a single project number, we encourage issuers to notify staff in the principal regulator's jurisdiction via email to alert them that a supplement has been filed for pre-clearance. CSA staff will use its best efforts to review the materials filed for pre-clearance and provide a first comment letter within 10 business days.

In order to facilitate our tracking of multiple pre-clearance requests, we request that issuers not bundle multiple supplements together into the same submission. In instances where an issuer wishes to pre-clear multiple supplements at the same time, please file each supplement as a separate pre-clearance request and submission under the relevant SEDAR project number.

3.2 Pre-clearance – cover letters

In addition to the guidance provided in SN 44-304, CSA staff also request that issuers provide the following information in the cover letter requesting pre-clearance:

- a brief description of what the issuer considers to be novel about the product for the purposes of the undertakings provided under NI 44-102;
- a brief description of the process followed by the issuer to design the product, including the assessment performed to identify investors' needs; and
- additional measures, if any, beyond the issuer's normal policies and procedures that will be taken to ensure that the product is promoted appropriately, including how the dealer's sales representatives will be educated regarding the novel features of this product.

3.3 Subsequent offerings of pre-cleared products

In order to better facilitate the administration and tracking of prospectus supplements filed in connection with subsequent offerings that are based on a pre-cleared prospectus supplement or template of a prospectus supplement, we request that the issuer:

- include a cover letter that refers to the acceptance letter the issuer is relying upon including the SEDAR project number and submission number and that explains why, in its view, pre-clearance of the current prospectus supplement is not required;
- file a copy of the acceptance letter the issuer is relying upon;
- file a black-lined document showing a comparison of the current prospectus supplement against the pre-cleared prospectus supplement or template; and
- please not bundle multiple offerings together into the same submission on SEDAR, but rather file each supplement as a separate submission under the relevant SEDAR project number.

We also remind issuers to pay the requisite filing fees in connection with each subsequent offering.[3]

3.4 Undertaking for notes linked to equity securities that are not listed on a Canadian stock exchange

CSA staff have been requesting that issuers file an undertaking (the Unlisted Issuer Undertaking) in connection with notes qualified under a base prospectus that may be linked to equity securities and that are not listed on a Canadian stock exchange. This undertaking is requested in addition to the undertaking required to be filed under Part 4 of NI 44-102 in connection with

[3] In Ontario, each supplement must be accompanied by a $500 activity fee under OSC Rule 13-502 – *Fees*.

distributions of novel specified derivatives. Pursuant to the Unlisted Issuer Undertaking, issuers commit to not proceed with a distribution of notes linked to equity securities that are not listed on a Canadian stock exchange without first filing a draft prospectus supplement for pre-clearance. The undertakings generally contain carve-outs, subject to certain conditions, for SEC well-known seasoned issuers, other U.S. issuers listed on a national securities exchange registered with the SEC and U.S. 40 Act Companies that issue index participation units.

Next Steps

CSA staff will continue to review structured notes filed for pre-clearance and monitor the development of the structured note industry generally. We will continue to consider what gaps may exist under our regulatory approach to structured notes and whether more formal regulatory requirements may become necessary to ensure we are regulating like products in a consistent way to achieve investor protection and fair and efficient capital markets. In the interim, we will continue to provide updates regarding our views, concerns or initiatives in connection with structured notes as necessary.

Questions

Please refer your questions to any of the following people:

Ontario

Darren McKall – Manager
Investment Funds and Structured Products
Ontario Securities Commission
(416) 593-8118
dmckall@osc.gov.on.ca

Doug Welsh – Senior Legal Counsel
Investment Funds and Structured Products
Ontario Securities Commission
(416) 593-8068
dwelsh@osc.gov.on.ca

Quebec

Marc-Olivier St-Jacques
Securities Analyst, Corporate Finance
(514) 395-0337, ext : 4424
marco.st-jacques@lautorite.qc.ca

Sophie Fournier, CFA
Analyst, Investment Funds
(514) 395-0337, ext : 4426
sophie.fournier@lautorite.qc.ca

1.1.2 OSC Staff Notice 13-705 – Reduced Late Fee for Certain Outside Business Activities Filings

OSC STAFF NOTICE 13-705
REDUCED LATE FEE FOR CERTAIN OUTSIDE BUSINESS ACTIVITIES FILINGS

January 14, 2015

Purpose of this Notice

This notice provides information and guidance for registered firms that sponsor registered individuals or permitted individuals (**Representatives**) to apply for reduced late filing fees relating to outside business activities (**OBAs**) not reported on a timely basis.

A notice of change to a Representative's OBAs previously reported on item 10 of Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (**Form 33-109F4**) is done by submitting a completed Form 33-109F5 *Change of Registration Information* (**Form 33-109F5**) to the regulator in accordance with National Instrument 31-102 *National Registration Database* (**NI 31-102**).

The Canadian Securities Administrators recently published final amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**). These amendments became effective January 11, 2015. Section 13.4 of Companion Policy to NI 31-103 (**CP 31-103**) was amended at the same time to add guidance about conflicts of interest in relation to registered representatives that serve on the boards of reporting issuers or have OBAs. As a result of the changes to CP31-103, CSA Staff Notice 31-326 *Outside Business Activities* issued on July 15, 2011 and Multilateral Policy 34-202 *Registrants Acting as Corporate Directors*, amended effective September 28, 2009, were repealed when the amendments became effective.

Some market participants believe the additional guidance in CP 31-103 is a new requirement that now requires them to submit a completed Form 33-109F5 with respect to previously existing OBAs, some of which have been in place for a number of years. The guidance in CP 31-103 explains an existing requirement for representatives to report any OBA activities.

OSC Rule 13-502 *Fees* (**Fees Rule**) sets out the late fees payable of $100 per business day for the late filing of Form 33-109F5 used to amend Form 33-109F4, subject to a maximum aggregate late fee of $5,000 for all documents required to be filed or delivered by a firm in a calendar year.

In order to enable market participants to "catch up" with these filings, Staff (**Staff**) of the Ontario Securities Commission (**OSC**) believes that late fee relief may be appropriate for certain filings of Form 33-109F5 related to previously existing OBAs.

The eligibility criteria and the late fee relief process, including the process for reporting a change to OBAs, are set out in this staff notice.

Eligibility

The late fee relief application process is available to registered firms if the registered firm's Representatives:

- have amendments to item 10 of Form 33-109F4 relating to OBAs, and
- between October 16, 2014 (the date that NI 31-103 was published in final form) and on or before March 27, 2015 (the **Eligible Period**), submit a completed Form 33-109F5 via the National Registration Database (**NRD**) to report each change to OBAs reported on item 10 of Form 33-109F4.

A registered firm that meets both of these criteria will be considered for a reduced late fee of $100 for each late notice of a change to OBAs, provided the *Procedures for fee relief* set out below are followed and provided that the OBAs, as determined by Staff, have no current impact on ongoing suitability for registration. We will not charge fees for these applications.

Where OBAs are considered by Staff to impact the ongoing suitability for registration, Staff will follow up separately and may consider taking regulatory action, where appropriate.

Registered firms that have Representatives that have amended item 10 of Form 33-109F4 on or after October 16, 2014 and paid the associated late fees may be eligible for a refund should relief be granted.

Procedures for fee relief

To apply for fee relief related to a late OBA filing, a registered firm should complete all of the following steps by no later than March 27, 2015:

1. If applicable, for each OBA reported, complete Form 33-109F5 via the National Registration Database (or https://www.nrd.ca) to report a change to item 10 of Form 33-109F4. Retain a copy of the submission and submission number.

   Firms are encouraged to coordinate with their Representatives to identify all OBAs and submit a completed Form 33-109F5 via NRD for each OBA.

2. Complete Form 13-705F1 *Application for Reduced Late Fee Relief – Outside Business Activities* (**Form 13-705F1**) at http://www.osc.gov.on.ca/documents/en/Securities-Category1/form_13-705f1.pdf

   Registered firms may complete a single Form 13-705F1 provided that a schedule is attached which clearly sets out the name of all Representatives reporting OBAs during the Eligible Period, the Representative's NRD number and the related Form 33-109F5 submission numbers for which the registered firm is seeking fee relief.

   Each Form 33-109F5 submission must be identified in order for the submission to be considered for fee relief. All late OBAs identified for a particular Representative must be included in the same application. However, a registered firm may submit a Form 13-705F1 more than once during the Eligible Period if OBAs are identified for other Representatives and reported subsequent to the initial application.

3. Submit a PDF copy of the completed Form 13-705F1 and any additional schedules via the OSC's Electronic Filing Portal (or https://eforms.osc.gov.on.ca/e-filings/generic/form.do?token=ec7a3cb6-d86d-419d-9c11-f1febe403cb6).

   Invoices (or where appropriate, refund cheques) will be issued and mailed to those registered firms once a decision has been made.

Questions

If you have questions regarding this staff notice or how to apply for fee relief, please refer them to any of the following:

Kelly Everest
Manager, Registration, Compliance and Registrant Regulation
416-595-8914
keverest@osc.gov.on.ca

Jonathan Yeung
Accountant, Registration, Compliance and Registrant Regulation
416-595-8924
jyeung@osc.gov.on.ca

1.1.3 OSC Staff Notice 11-739 (Revised) – Policy Reformulation – Table of Concordance and List of New Instruments

OSC STAFF NOTICE 11-739 (REVISED)

POLICY REFORMULATION
TABLE OF CONCORDANCE AND LIST OF NEW INSTRUMENTS

The following revisions have been made to the Table of Concordance and List of New Instruments. A full version of the Table of Concordance and List of New Instruments as of December 31, 2014 has been posted to the OSC Website at www.osc.gov.on.ca.

Table of Concordance

Item Key
The third digit of each instrument represents the following: 1-National/Multilateral Instrument; 2-National/Multilateral Policy; 3-CSA Notice; 4-CSA Concept Release; 5-Local Rule; 6-Local Policy; 7-Local Notice; 8-Implementing Instrument; 9-Miscellaneous

Reformulation

Instrument	Title	Status
	None	

New Instruments

Instrument	Title	Status
52-108	Auditor Oversight – Repeal and Replacement	***Minister's approval published October 9, 2014***
41-101	General Prospectus Requirements – Amendments (tied to 52-108)	***Minister's approval published October 9, 2014***
51-101	Continuous Disclosure Obligations – Amendments (tied to 52-108)	***Minister's approval published October 9, 2014***
71-102	Continuous Disclosure and Other Exemptions Relating to Foreign Issuers (tied to 52-108)	***Minister's approval published October 9, 2014***
11-739	Policy Reformulation Table of Concordance and List of New Instruments	***Published October 9, 2014***
62-307	Update on Proposed Amendments to Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids, National Instrument 62-103 Early Warning System and Related Issues and National Policy 62-203 Take-Over Bids and Issuer Bids	***Published October 16, 2014***
58-101	Multilateral CSA Notice of Amendments to NI 58-101 Disclosure of Corporate Governance Practices	***Commission approval published October 16, 2014***
31-103	Registration Requirements, Exemptions and Ongoing Registrant Obligations – Amendments	***Commission approval published October 16, 2014***
33-109	Registration Information – Amendments (tied to NI 31-103)	***Commission approval published October 16, 2014***
52-107	Acceptable Accounting Principles and Auditing Standards (tied to NI 31-103)	***Commission approval published October 16, 2014***
33-506	(*Commodity Futures Act*) Registration Information – Amendments (tied to NI 31-103)	***Commission approval published October 16, 2014***

New Instruments

Instrument	Title	Status
23-102	Use of Client Brokerage Commissions – Amendments (tied to NI 31-103)	***Commission approval published October 16, 2014***
24-101	Institutional Trade Matching and Settlement – Amendments (tied to NI 31-103)	***Commission approval published October 16, 2014***
81-107	Independent Review Committee for Investment Funds – Amendments (tied to NI 31-103)	***Commission approval published October 16, 2014***
11-737	(Revised) – Securities Advisory Committee – Vacancies	***Published October 23, 2014***
21-101	Marketplace Operation – Amendments	***Commission approval published October 23, 2014***
24-102	Clearing Agency Requirements and Related Companion Policy 24-102CP	***Request for comment published November 27, 2014***
45-106	Prospectus and Registration Exemptions – Amendments	***Request for comment published November 27, 2014***
41-101	General Prospectus Requirements – Amendments	***Request for comment published November 27, 2014***
44-101	Short Form Prospectus Distributions – Amendments	***Request for comment published November 27, 2014***
45-102	Resale Restrictions – Amendments	***Request for comment published November 27, 2014***
45-101	Rights Offering – Proposed Repeal	***Request for comment published November 27, 2014***
45-501	Ontario Prospectus and Registration Exemptions – Amendments	***Commission approval published November 27, 2014***
13-315	(Revised) Securities Regulatory Authority Closed Dates 2015	***Published December 4, 2014***
51-101	Standards of Disclosure for Oil and Gas Activities and Companion Policy 51-101 Standards of Disclosure Oil and Gas Activities – Amendments	***Commission approval published December 4, 2014***
52-324	Revised Glossary to NI 51-101 Standards of Disclosure for Oil and Gas Activities	***Published December 4, 2014***
51-327	Revised Guidance on Oil and Gas Disclosure	***Published December 4, 2014***
58-101	Disclosure of Corporate Governance Practices and Form 58-101F1 Corporate Governance Disclosure – Amendments	***Minister's approval published December 11, 2014***
81-101	Implementation of the Final Stage of Point of Sale Disclosure for Mutual Funds: Pre-Sale Delivery of Fund Facts – CSA Notice of Amendments to NI 81-101 Mutual Fund Prospectus Disclosure and to Companion Policy 81-101CP Mutual Fund Prospectus Disclosure	***Commission approval published December 11, 2014***
41-101	General Prospectus Requirements – Amendments (Related to Aequitas Neo Exchange Inc.)	***Request for comment published December 11, 2014***
44-101	Short Form Prospectus Distributions – Amendments (Related to Aequitas Neo Exchange Inc.)	***Request for comment published December 11, 2014***
45-106	Prospectus and Registration Exemptions – Amendments (Related to Aequitas Neo Exchange Inc.)	***Request for comment published December 11, 2014***

New Instruments

Instrument	Title	Status
46-201	Escrow for Initial Public Offerings – Amendments (Aequitas Neo Exchange Inc.)	***Request for comment published December 11, 2014***
51-102	Continuous Disclosure Obligations – Amendments (Related to Aequitas Neo Exchange Inc.)	***Request for comment published December 11, 2014***
52-109	Certification of Disclosure in Issuers' Annual and Interim Filings – Amendments (Related to Aequitas Neo Exchange Inc.)	***Request for comment published December 11, 2014***
52-110	Audit Committees – Amendments (Related to Aequitas Neo Exchange Inc.)	***Request for comment published December 11, 2014***
58-101	Disclosure of Corporate Governance Practices – Amendments (Related to Aequitas Neo Exchange Inc.)	***Request for comment published December 11, 2014***
61-101	Protection of Minority Security Holders in Special Transactions – Amendments (Related to Aequitas Neo Exchange Inc.)	***Request for comment published December 11, 2014***
71-102	Continuous Disclosure and Other Exemptions Relating to Foreign Issuers – Amendments (Related to Aequitas Neo Exchange Inc.)	***Request for comment published December 11, 2014***
81-101	Mutual Fund Prospectus Disclosure – Amendments (Related to Aequitas Neo Exchange Inc.)	***Request for comment published December 11, 2014***
81-101	Mutual Fund Prospectus Disclosure – Amendments	***Commission approval published December 11, 2014***
21-101	Marketplace Operation and Companion Policy 21-101CP – Amendments	***Minister's approval published December 30, 2014***
11-742	(Revised) – Securities Advisory Committee	***Published December 30, 2014***

For further information, contact:

Darlene Watson
Project Specialist
Ontario Securities Commission
416-593-8148

January 22, 2015

1.4 Notices from the Office of the Secretary

1.4.1 David M. O'Brien

FOR IMMEDIATE RELEASE
January 13, 2015

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5, AS AMENDED

AND

IN THE MATTER OF
DAVID M. O'BRIEN

TORONTO – The Commission issued an Order in the above named matter which provides that:

1. a confidential pre-hearing conference shall take place on June 16, 2015 at 3:00 p.m.; and

2. the records from the January 12, 2015 confidential pre-hearing conference shall be sealed and treated as confidential pursuant to subsection 9(1) of the SPPA and rule 8.1 and subrule 5.2(1) of the Rules of Procedure.

The pre-hearing conference will be held *in camera*.

A copy of the Order dated January 12, 2015 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.2 Bluestream Capital Corporation et al.

FOR IMMEDIATE RELEASE
January 14, 2015

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
BLUESTREAM CAPITAL CORPORATION,
BLUESTREAM INTERNATIONAL INVESTMENTS INC.,
KROWN CONSULTING CORP., 1859585 ONTARIO LTD.
(operating as SOVEREIGN INTERNATIONAL INVESTMENTS)
and PETER BALAZS

TORONTO – Staff of the Ontario Securities Commission filed an Amended Statement of Allegations dated January 9, 2015 with the Office of the Secretary in the above named matter.

A copy of the Amended Statement of Allegations dated January 9, 2015 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
BLUESTREAM CAPITAL CORPORATION,
BLUESTREAM INTERNATIONAL INVESTMENTS INC.,
KROWN CONSULTING CORP., 1859585 ONTARIO LTD.
(operating as SOVEREIGN INTERNATIONAL INVESTMENTS)
and PETER BALAZS

AMENDED STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission ("Staff") make the following allegations:

I. OVERVIEW

1. This proceeding involves the fraudulent activities of and unregistered trading and an illegal distribution by Bluestream Capital Corporation ("Bluestream Capital"), Bluestream International Investments Inc. ("Bluestream International"), Krown Consulting Corp. ("Krown Consulting"), 1859585 Ontario Ltd. (operating as Sovereign International Investments) ("Sovereign"), under the branding of Bluestream Private Client Services, (collectively, the "Bluestream Companies") and Peter Balazs ("Balazs") (collectively, the "Respondents") in relation to the sale of securities to approximately 63 Ontario investors, from whom the Respondents raised approximately CAD$2,620,815 and USD$907,097.

2. Between August 2008 and May 2012 (the "Material Time"), the Respondents solicited Ontario residents to enter into investment contracts offered by the Bluestream Companies and Balazs. Further, the Respondents engaged in fraudulent conduct by making misleading or untrue statements to investors regarding the use of investor funds, using investor funds for personal expenditures, and using investor funds to pay returns and redemptions to investors.

II. THE RESPONDENTS

3. Bluestream Capital was incorporated in Ontario on November 29, 2002. Bluestream Capital has never been a reporting issuer in Ontario and has never been registered with the Ontario Securities Commission (the "Commission") in any capacity. Bluestream Capital has never filed a prospectus or preliminary prospectus with the Commission.

4. Bluestream International was incorporated in Ontario on November 17, 2008. Bluestream Capital has never been a reporting issuer in Ontario and has never been registered with the Commission in any capacity. Bluestream International has never filed a prospectus or preliminary prospectus with the Commission.

5. Krown Consulting was incorporated in Ontario on March 4, 2010. Krown Consulting has never been a reporting issuer in Ontario and has never been registered with the Commission in any capacity. Krown Consulting has never filed a prospectus or preliminary prospectus with the Commission.

6. Sovereign was incorporated in Ontario on September 29, 2011. Sovereign has never been a reporting issuer in Ontario and has never been registered with the Commission in any capacity. Sovereign has never filed a prospectus or preliminary prospectus with the Commission.

7. Balazs is a resident of Nobleton, Ontario. He is a director or officer of all of the Bluestream Companies. Further, he was the directing mind of all of the Bluestream Companies during the Material Time. He has never been registered with the Commission in any capacity.

III. BACKGROUND

A. Trading in Securities and Illegal Distribution

8. During the Material Time, Balazs held himself out as a successful foreign currency trader. He solicited investments from Ontario residents, purportedly to engage in foreign currency trading (also known as forex trading) using investor funds. Investors entered into either verbal or written agreements with Balazs or one of the Bluestream Companies with respect to these investments.

9. The investment offered by Balazs and the Bluestream Companies was an "investment contract" and therefore a "security" as defined in subsection 1(1) of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") (the "Investment Contracts").

10. Although the Investment Contracts often took the form of promissory notes and loan agreements, Balazs represented to investors that he would use the investor funds to engage in foreign currency trading and that investors would receive a fixed return based on the profits he generated through foreign currency trading. Based on his purported previous trading performance in the foreign currency market, Balazs offered investors a fixed annual percentage that varied based on the amount invested and the duration of the investment. The annual guaranteed returns offered ranged between 10 and 35 percent.

11. Balazs solicited Ontario residents to enter into the Investment Contracts by meeting with potential investors, discussing the nature of the investment, and showing investors statements demonstrating the purported profits he was making from trading foreign currencies. Balazs prepared and signed the Investment Contracts and deposited investor funds into several bank accounts in the names of the Bluestream Companies.

12. As a result of this activity, Balazs and the Bluestream Companies raised at least CAD$2,620,815 and USD$907,097 from 63 Ontario investors during the Material Time.

13. By engaging in the conduct described above, the Respondents traded and engaged in, or held themselves out as engaging in, the business of trading in securities and participated in acts, solicitations, conduct, or negotiations directly or indirectly in furtherance of the sale or disposition of securities for valuable consideration, in circumstances where there were no exemptions available to the Respondents under the Act, contrary to sections 25 and 53 of the Act.

B. Fraudulent Conduct

14. Contrary to the representations made by Balazs to investor, most of the investor funds were not used for foreign currency trading. Rather, a substantial portion of investor funds deposited into the bank accounts of the Bluestream Companies were used by Balazs for personal expenditures and to make return and redemption payments to investors.

15. During the Material Time, CAD$2,620,815 and USD$907,097 of investor funds deposited into the Bluestream bank accounts were dispersed as follows:

(a) Only approximately CAD$100,100 and USD$140,275 was transferred from the Bluestream Companies' bank accounts into foreign currency trading accounts. Approximately CAD$96,500 and US$103,500 was sent via wire transfer through a foreign currency exchange service provider and it is not known where or to whom these wire transfers were directed;

(b) Approximately CAD$1,076,900 and USD$595,430 was paid to investors to satisfy return and redemption payments;

(c) Approximately CAD$277,500 and USD$101,100 was paid out of the Bluestream Companies' bank accounts for personal expenditures, including automobile financing, insurance, fuel and retail purchases;

(d) Approximately CAD$139,500 and USD$69,500 was withdrawn from the Bluestream Companies' bank accounts in cash;

(e) Approximately CAD$36,500 and USD$117,100 was transferred to Balazs' father-in-law and brother-in-law;

(f) Approximately CAD$188,600 and USD$59,400 was transferred to Balazs's mother, who used those funds to make mortgage payments on the property on which Balazs resides.

16. Neither Balazs nor the Bluestream Companies had any significant source of income other than funds generated through sales of securities to investors during the Material Time.

17. During the Material Time, by making misleading or untrue statements to investors regarding the use of investor funds, using investor funds for personal expenditures, and using investor funds to pay returns and redemptions to investors, the Respondents engaged in fraudulent conduct contrary to subsection 126.1(b) of the Act.

IV. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

18. The specific allegations advanced by Staff are:

    (a) During the Material Time, the Respondents traded and engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so and without an available exemption from the registration requirements, contrary to subsection 25(1)(a) of the Act for the period before September 28, 2009 and contrary to subsection 25(a) of the Act for the period on and after September 28, 2009;

    (b) During the Material Time, the Respondents traded in securities when a preliminary prospectus and prospectus had not been filed and receipts had not been issued for them by the Director, contrary to subsection 53(1) of the Act;

    (c) During the Material Time, the Respondents engaged or participated in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies contrary to subsection 126.1(b) of the Act;

    (d) During the Material Time, Balazs, being an officer or director of the Bluestream Companies, authorized, permitted or acquiesced in the Bluestream Companies' non-compliance with Ontario securities law and accordingly failed to comply with Ontario securities law, contrary to section 129.2 of the Act; and

    (e) The Respondents' conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

19. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto, January 9, 2015.

1.4.3 Pro-Financial Asset Management Inc. et al.

FOR IMMEDIATE RELEASE
January 14, 2015

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
PRO-FINANCIAL ASSET MANAGEMENT INC.,
STUART McKINNON and JOHN FARRELL

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing is adjourned to February 25, 2015 at 10:00 a.m. for the purpose of scheduling a date for a confidential pre-hearing conference as may be appropriate.

A copy of the Order dated January 14, 2015 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.4 Pro-Financial Asset Management Inc.

FOR IMMEDIATE RELEASE
January 14, 2015

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
PRO-FINANCIAL ASSET MANAGEMENT INC.

TORONTO – The Commission issued an Order in the above named matter which provides that:

1. The hearing is adjourned to February 25, 2015 at 10:00 a.m.

2. The Temporary Order as amended by previous Commission orders is extended to February 27, 2015.

A copy of the Order dated January 14, 2015 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.5 David Charles Phillips and John Russell Wilson

FOR IMMEDIATE RELEASE
January 15, 2015

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS
and JOHN RUSSELL WILSON

TORONTO – The Commission issued its Reasons and Decision Regarding a Motion for a Stay of the Proceeding following the hearing held in the above named matter.

A copy of the Reasons and Decision Regarding a Motion for a Stay of the Proceeding dated January 14, 2015 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.6 David Charles Phillips and John Russell Wilson

FOR IMMEDIATE RELEASE
January 15, 2015

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS
and JOHN RUSSELL WILSON

TORONTO – Following the hearing on the merits in the above named matter, the Commission issued its Reasons and Decision.

The Commission also issued an Order in the above named matter which provides that the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, 17th floor, Toronto, ON, on May 11, 2015 at 10:00 a.m. or such further or other dates as agreed by the parties and set by the Office of the Secretary.

A copy of the Reasons and Decision dated January 14, 2015 and the Order dated January 14, 2015 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.7 Darren Spears and May Spears

FOR IMMEDIATE RELEASE
January 16, 2015

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
DARREN SPEARS and MAY SPEARS

TORONTO – The Commission issued an Order in the above named matter which provides that the December 18, 2014 Order is varied such that Darren Spears shall be allowed to sell his option contracts for Magna shares that expire on January 17, 2015, and on March 20, 2015, provided that he sell them on the last day prior to their expiry and that any proceeds from such sales shall remain in his trading account in the form of cash unless the Commission consents to the release of the proceeds or until otherwise ordered by the court.

A copy of the Order dated January 15, 2015 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.8 Christopher Reaney

FOR IMMEDIATE RELEASE
January 16, 2015

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
CHRISTOPHER REANEY

TORONTO – The Commission issued an Order in the above named matter with certain provisions. The suspension of the Applicant's registration imposed by the Decision is stayed immediately and this order will continue in force until further order of the Commission and in any event not later than March 31, 2015.

A copy of the Order dated January 14, 2015 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

This page intentionally left blank

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 American Hotel Income Properties REIT LP

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1 – business acquisition report – the applicant requires relief from the requirement to file a business acquisition report – the acquisition is insignificant applying the asset and investment tests but applying the profit or loss test produces an anomalous results because the significance of the acquisition under this test is disproportionate to its significance on an objective basis in comparison to the results of the other significance tests and all other business, commercial, financial and practical factors – the applicant has provided additional measures that demonstrate the insignificance of the property to the applicant and that are generally consistent with the results when applying the asset and investment tests.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1.

January 13, 2015

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA AND ONTARIO
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
AMERICAN HOTEL INCOME PROPERTIES REIT LP
(the Filer)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) granting relief from the requirement in Part 8 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) to file a business acquisition report (BAR) in connection with the Filer's acquisition of a portfolio of four hotel properties in Oklahoma City, Oklahoma (the Oklahoma Portfolio), which was completed on November 3, 2014 (the Exemption Sought).

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

(a) the British Columbia Securities Commission is the principal regulator for this application;

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, 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

2 Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and NI 51-102 have the same meaning if used in this decision, unless otherwise defined in this decision.

Representations

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

The Filer

1. the Filer is an Ontario limited partnership established under the laws of the Province of Ontario pursuant to a declaration of limited partnership and its head office is located in Vancouver, British Columbia;

2. the Filer is a reporting issuer under the securities legislation of each of the provinces and territories of Canada;

3. the limited partnership units of the Filer are listed and posted for trading on the Toronto Stock Exchange under the trading symbol "HOT.UN";

4. the Filer is not in default of securities legislation in any jurisdiction;

5. the Filer completed its initial public offering (the IPO) on February 20, 2013, pursuant to a final long form prospectus dated February 12, 2013 (the IPO Prospectus), of 9,570,000 Units (as defined in the IPO Prospectus), inclusive of 870,000 Units issued pursuant to a partial exercise of the over-allotment option, for total gross proceeds of Cdn$95,700,000;

6. on March 1, 2013, the remaining balance of the over-allotment option associated with the IPO was exercised, resulting in the issuance of an additional 435,000 Units, for additional gross proceeds of Cdn$4,350,000;

7. the net proceeds of the IPO were used by the Filer to, among other things, acquire a portfolio of 32 hotel properties located in 19 U.S. states;

8. the Filer closed a public offering (the October 2013 Offering) on October 31, 2013, pursuant to a short form prospectus dated October 24, 2013 (the October 2013 Prospectus) of 3,967,500 Subscription Receipts (as defined in the October 2013 Prospectus), inclusive of 517,500 Subscription Receipts issued pursuant to a partial exercise of the over-allotment option, for total gross proceeds of Cdn$40,300,000;

9. the net proceeds of the October 2013 Offering were used by the Filer to, among other things, acquire: (i) a portfolio of four hotel properties located in metropolitan Pittsburgh, Pennsylvania; and (ii) a portfolio of four hotel properties located in Virginia;

10. the Filer closed a public offering (the June 2014 Offering) on June 4, 2014, pursuant to a short form prospectus dated May 29, 2014 (the May 2014 Prospectus), of 4,900,000 Offered Units (as defined in the May 2014 Prospectus), inclusive of 552,000 Offered Units issued pursuant to a partial exercise of the over-allotment option, for total gross proceeds of Cdn$50,715,000;

11. the net proceeds of the June 2014 Offering were used by the Filer to, among other things, acquire: (i) a portfolio of four hotel properties located in North Carolina and Georgia; and (ii) a portfolio of three hotel properties located in Amarillo, Texas;

12. the Filer closed a public offering (the October 2014 Offering) on October 28, 2014, pursuant to a short form prospectus dated October 21, 2014 (the October 2014 Prospectus), of 4,810,000 Offered Units (as defined in the October 2014 Prospectus), inclusive of 500,000 Offered Units issued pursuant to a partial exercise of the over-allotment option, for total gross proceeds of Cdn$50,715,000;

13. the net proceeds of the October 2014 Offering were used by the Filer to, among other things, acquire: (i) the Oklahoma Portfolio; and (ii) a portfolio of four hotel properties located in North Carolina and Florida;

The Acquisition

14. on November 3, 2014 the Filer acquired the Oklahoma Portfolio for a total gross purchase price of approximately USD$48.0 million pursuant to a purchase and sale agreement entered into by a direct subsidiary of the Filer;

15. the acquisition of the Oklahoma Portfolio constitutes a "significant acquisition" of the Filer for purposes of Part 8 of NI 51-102, requiring the Filer to file a BAR within 75 days of the acquisition pursuant to section 8.2(1) of NI 51-102;

Significance Tests for the BAR

16. under Part 8 of NI 51-102, the Filer is required to file a BAR for any completed acquisition that is determined to be significant based on the acquisition satisfying any of the three significance tests set out in section 8.3 of NI 51-102;

17. the acquisition of the Oklahoma Portfolio is not a significant acquisition under the optional asset test in section 8.3(4)(a) of NI 51-102 as the value of the Oklahoma Portfolio represented only approximately 14.9% of the consolidated assets of the Filer as of September 30, 2014;

18. the acquisition of the Oklahoma Portfolio is not a significant acquisition under the optional investment test in section 8.3(4)(b) of NI 51-102 as the Filer's acquisition costs represented only approximately 14.9% of the consolidated assets of the Filer as of September 30, 2014;

19. the acquisition of the Oklahoma Portfolio would, however, be a significant acquisition under the optional profit or loss test in section 8.3(4)(c) of NI 51-102; in particular, the Filer's proportionate share of the consolidated specified profit or loss of the Oklahoma Portfolio exceeds 20% of the consolidated specified profit or loss of the Filer calculated using audited annual and unaudited interim financial statements of the Filer and unaudited annual and interim financial information for the Oklahoma Portfolio, in each case, for the 12 months ended on June 30, 2014 (such period representing the most recent 12-month period for which the Filer was able to derive the consolidated specified profit or loss of the Oklahoma Portfolio based on the financial information made available to the Filer by the vendors of the Oklahoma Portfolio);

20. the application of the optional profit or loss test produces an anomalous result for the Filer because it exaggerates the significance of the Acquisition out of proportion to its significance on an objective basis in comparison to the results of the optional asset test and optional investment test;

De Minimis Acquisition

21. the Filer does not believe (nor did it at the time that it made the acquisition) that the acquisition of the Oklahoma Portfolio is significant to it from a commercial, business, practical or financial perspective; and

22. the Filer has provided the principal regulator with additional operational measures that demonstrate the non-significance of the acquisition of the Oklahoma Portfolio to the Filer. These additional operational measures compared other operational information such as revenue, number of rooms and net operating income for the Oklahoma Portfolio to that of the Filer, and the results of those measures are generally consistent with the results of the optional asset test and the optional investment test.

Decision

4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted.

"Andrew S. Richardson, CPA, CA"
Acting Director, Corporate Finance
British Columbia Securities Commission

2.1.2 Great Canadian Gaming Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions and Multilateral Instrument 11-102 Passport System – relief granted from requirement to file insider reports pursuant to section 3.3 of National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 10.1 – insiders will not make discrete investments decisions for the dispositions; participating insiders do not control or influence the timing of the dispositions of the underlying shares under the automatic plan; dispositions of the underlying shares occur automatically at pre-determined regular intervals; the disposition is not a specified disposition of securities – insiders will file reports with respect to dispositions under the plans during the year by March 31 of the next calendar year.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 107(2).
National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 3.3.

January 7, 2015

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA AND ONTARIO
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
GREAT CANADIAN GAMING CORPORATION
(the Filer)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that certain "reporting insiders" (the Insiders), as defined in National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (NI 55-104), be exempt from the requirements in Section 3.3 of NI 55-104 and Subsection 107(2) of the *Securities Act* (Ontario) to file an insider report within five days following the disposition of securities of the Filer under an automatic share disposition plan (ASDP), subject to certain conditions (the Exemption Sought).

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

(a) the British Columbia Securities Commission is the principal regulator for this application;

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; 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

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

Representations

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

1. the Filer is a corporation incorporated in British Columbia and is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador;

2. the Filer is not in default of the securities legislation in any of the jurisdictions in which it is reporting;

3. the Filer's head office is located at Suite 350 - 13775 Commerce Parkway, Richmond, British Columbia, V6V 2V4;

4. the authorized share capital of the Filer consists of an unlimited number of common shares without par value; as of August 7, 2014, there were 67,825,328 common shares (Common Shares) outstanding; the Common Shares are listed for trading on the Toronto Stock Exchange;

5. the Filer has adopted a policy (the Policy) which outlines, among other things, the terms upon which the Insiders may establish an ASDP for selling Common Shares, including Common Shares acquired from the exercise of stock options; the Policy is designed to facilitate sales of Common Shares by the Insiders; without automatic disposition processes, the Insiders have limited opportunities to dispose of Common Shares due to insider trading restrictions under applicable securities laws and the Filer's insider trading policy restrictions;

6. the parameters of an ASDP are set out in the Policy, which outlines the restrictions on sales of Common Shares; the Policy also outlines the mechanics of transfer and sale of Common Shares by an independent third-party broker administrator (the Administrator); the Administrator is a securities broker which is arm's length to the Filer and the Insiders; neither the Filer nor any of its directors, officers or employees may disclose any material undisclosed information to the Administrator; and no Insider participating in an ASDP may disclose to the Administrator any information that is intended to or could influence the timing of the exercise of options or the sale of Common Shares;

7. an ASDP is an automatic plan and the Insiders cannot make investment decisions through the ASDP; the ASDP under the Policy has been structured to comply with applicable securities legislation and guidance, including section 57.4(3) of the BC *Securities Act*, section 175(2)(b) of Regulation 1015 under the Ontario Securities Act, Ontario Commission Staff Notice 55-701 *Automatic Securities Disposition Plans and Automatic Securities Purchase Plans* (OSC Notice 55-701) and similar rules and regulations in other applicable Canadian securities laws, and accordingly, with the intent that sales (including the sales of Common Shares resulting from stock option exercises) under such ASDPs will be exempt from section 76(1) of the Ontario Act and from liability under section 134 of the Ontario Act, from section 57.2 of the BC Act and from liability under section 136 of the BC Act, and from the corresponding provisions in other applicable Canadian securities laws; any material change in the terms of any securities of the Filer deposited into an ASDP under the Policy will be disclosed or reported in accordance with applicable securities laws;

8. Insiders are required to complete an enrollment form (Enrollment Form) to participate in an ASDP, including making representations that they are not in possession of material undisclosed information about the Filer and that they are not entering the ASDP as part of a plan to evade the prohibitions against trading with material undisclosed information contained in applicable Canadian securities law;

9. the Insider must complete an agreement with the Administrator (the Administrator's Agreement) and elect in the Enrollment Form the number of Common Shares, including the number of Common Shares issuable upon the exercise of stock options, that are subject to the ASDP during the period (the Intention Period); the Insider must set a minimum price below which the Administrator will not sell the Common Shares; a similar mechanism is used for the exercise of stock options and sale of underlying Common Shares; the Insider must also specify in the Enrollment Form the period when the Common Shares are to be sold and a maximum daily limit on the number of Common Shares that may be sold under the ASDP;

10. to increase the likelihood of exercising any outstanding in-the-money stock options, the Insider may designate in the Enrollment Form a date during the Intention Period on which the minimum price will be automatically reduced, which would remain in effect for the duration of the Intention Period;

11. the Administrator will during the Intention Period and in accordance with the instructions provided in the Enrollment Form, but without any further input or instructions from the Insider or the Filer, attempt to sell the

Insider's Common Shares or exercise the Insider's vested stock options and sell the resulting Common Shares;

12. the Filer will issue a news release disclosing certain terms of the Insider's ASDP in accordance with the terms and conditions of the Policy;

13. the ASDP is an automatic plan and once an Enrollment Form has been approved by the Filer, the Administrator has acknowledged the instructions, the Administrator's Agreement has been completed and the public has been notified by news release, the Insider is prohibited from making another discrete investment decision with respect to the automatic plan during the Intention Period, unless the Insider terminates the Enrollment Form in accordance with the terms of the Policy;

14. if the Filer is not in a blackout period and the Insider is not in possession of any undisclosed material information, the Insider may elect to terminate the ASDP by completing a voluntary termination form, which termination must be approved by the Filer; subsequent enrollment in a new ASDP cannot have an Intention Period starting less than sixty calendar days after such termination; other than terminating the ASDP and enrolling in a new ASDP under these requirements, the Insider has no ability to amend the trading instructions or trading parameters under an ASDP or to vary or suspend the ASDP;

15. the Policy requires that the ASDP contain meaningful restrictions on the ability of the Insider to enroll, terminate or modify participation in the ASDP as recommended by OSC Notice 55-701; and

16. any transactions not completed by the Administrator during the Intention Period cannot be processed after the Intention Period; a new ASDP must be submitted for consideration by the Filer before any trades can be conducted.

Decision

4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that each Insider shall file a report, in the form prescribed for insider trading reports under the Legislation, disclosing on a transaction-by-transaction basis or "in acceptable summary form" (as such term is defined in NI 55-104) all dispositions of Common Shares under the ASDP, including dispositions resulting from the exercise of stock options, that have not been previously disclosed by or on behalf of the Insider during a calendar year, on or before March 31 of the next calendar year.

"Andrew S. Richardson, CPA, CA"
Acting Director, Corporate Finance
British Columbia Securities Commission

2.1.3 Bravura Ventures Corp. et al.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards, ss. 3.3(1)(a) and 5.1 – An issuer requires relief from the requirement that financial statements required by securities legislation to be audited must be accompanied by an auditor's report that expresses an unmodified opinion – The auditor was not in attendance at the physical inventory taking and not able to satisfy itself by other auditing procedures as to the opening inventory quantities; the modified opinion relates to the financial statements of a non-reporting issuer; the issuer is providing an audited period of nine months for which the auditor's report will express an unmodified opinion; the issuer's business is not seasonal.

Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency, ss. 3.3(1)(a), 5.1.

January 14, 2015

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA AND ONTARIO
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
BRAVURA VENTURES CORP. (the Filer),
NUTAQ INNOVATION INC. (the Target)
AND 1014372 B.C. LTD. (Newco)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the requirement that financial statements required by the Legislation to be audited must be accompanied by an auditor's report that expresses an unmodified opinion does not apply to the auditor's reports that accompany the following financial statements that must be filed as a consequence of the proposed acquisition of Target:

(a) the audited financial statements of the Target for the financial years ended October 31, 2013 and 2014 (the Modification Relief), and

(b) the audited financial statements of Newco for the financial year ended October 31, 2015 (the Comparative Year Modification Relief).

(the Requested Relief).

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

(a) the British Columbia Securities Commission is the principal regulator for this application;

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta; 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

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

Representations

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

1. the Filer was incorporated under the *Business Corporations Act* (British Columbia) on August 6, 2010;

2. Newco is a wholly owned subsidiary of the Filer;

3. the Target was incorporated on May 30, 2005 under the laws of Canada; the Target's principal business is providing advanced digital signal processing solutions and wireless technologies, including software defined radios; the Target operates three complementary lines of business: advanced development platforms, engineering services, and wireless network products; the Target's business is not seasonal;

4. the Filer is a "reporting issuer" within the meaning of applicable securities legislation in British Columbia, Ontario and Alberta; the Filer's common shares are listed on the TSX Venture Exchange (the TSX-V);

5. the Filer entered into an arrangement agreement with Newco dated as of October 14, 2014, which is expected to result in Newco's shares being exchanged with the shareholders of the Filer, and Newco becoming a reporting issuer in British Columbia and Alberta (the Arrangement);

6. following closing of the Arrangement, Newco will acquire all of the Target's issued and outstanding shares by way of a share exchange or such other business combination mutually acceptable to the parties (the Business Combination);

7. the Target is not a reporting issuer in any jurisdiction of Canada and the Target's common shares are not listed on any stock exchange or posted for trading on any quotation system;

8. the Filer and the Target are not in default of securities legislation in any jurisdiction in Canada;

9. the Filer's financial year end is January 31;

10. the financial year end for each of the Target and Newco is October 31;

11. completion of the Business Combination will be subject to, among other things, applicable regulatory approvals, approval by the Target's shareholders and negotiation of a definitive agreement between Target and Newco;

12. upon the completion of the Business Combination, the Target will become a subsidiary of Newco and Newco will continue to carry on its business through the Target; the Business Combination will be accounted for as a reverse acquisition; although for legal purposes Newco will be the acquirer, for accounting purposes the Target is the acquirer; accordingly, the consolidated financial statements of the resulting issuer will be those of the accounting acquirer, namely the Target; the fiscal year end will continue to be October 31;

13. completion of the Business Combination will trigger the requirements of section 4.10(2) of NI 51-102, that Newco file financial statements of the Target as required in the form of prospectus that the Target would have been eligible to use prior to the closing of the Business Combination;

14. the applicable form of prospectus for the Target is Form 41-101F1 *Information Required in a Prospectus*;

15. provided the Business Combination completes before the 90th day after the end of the Target's 2015 financial year, and following the requirements of Form 41-101F1 as they relate to a junior issuer, Newco must file the following financial statements of the Target:

    (a) audited annual financial statements for the year ended October 31, 2014;

    (b) audited annual financial statement for the year ended October 31, 2013;

    (c) unaudited financial statements for the year ended October 31, 2012, and

(d) unaudited interim financial statements statements for the most recently completed interim period beginning on or after November 1, 2014, if applicable;

18. the Target appointed a new auditor during its 2014 financial year; the auditor was not able to obtain sufficient audit evidence regarding inventory as at October 31, 2013; since opening and closing inventories enter into the determination of the results of operations and cash flows, the auditor was not able to determine whether adjustments to cost of sales, income taxes, net income and cash provided from operations for the Target for the year ended October 31, 2014 might have been necessary;

19. as a result, the auditor is expected to express a modified opinion on the Target's financial statements for each of the 2014 and 2013 financial years;

20. a modified opinion is contrary to subsection 3.3(1) of NI 52-107 *Acceptable Accounting Principles and Auditing Standards*;

21. paragraph 5.8(2) of the companion policy to NI 41-101 contemplates that relief may be granted to non-reporting issuers in appropriate circumstances to permit the auditor's report on financial statements to contain a modification relating to opening inventory if there is a subsequent audited period of at least six months on which the auditor's report expresses an unmodified opinion and the business is not seasonal; and

22. Newco proposes, upon completion of the Business Combination, to file the following financial statements (the Proposed Financial Statements):

(a) any interim financial statements for periods ending subsequent to October 31, 2014 required by NI 41-101;

(b) audited financial statements of the Target for the nine month period ended October 31, 2014 accompanied by an unmodified audit opinion;

(c) audited financial statements with respect to the Target's financial year ended October 31, 2014 accompanied by an auditor's report that is qualified with respect to opening inventory, cost of sales and net income;

(d) audited financial statements with respect to the Target's financial year ended October 31, 2013 accompanied by an auditor's report that is qualified with respect to opening inventory, closing inventory, cost of sales and net income; and

(e) unaudited financial statements of the Target for the year ended October 31, 2012 and the preceding period commencing November 16, 2011.

Decision

4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that Newco files the Proposed Financial Statements on or before 90 days after the Target's 2015 financial year-end.

"Andrew S. Richardson, CPA, CA"
Acting Director, Corporate Finance
British Columbia Securities Commission

2.1.4 PSM Exploration Inc. (formerly Polar Star Mining Corporation) – s. 1(10)(a)(ii)

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer deemed to no longer be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

January 15, 2015

PSM Exploration Inc.
(formerly Polar Star Mining Corporation)
100 King Street West, Suite 5600
Toronto, Ontario M5X 1C9

Dear Sirs/Mesdames:

Re: PSM Exploration Inc. (formerly Polar Star Mining Corporation) (the Applicant) – application for a decision under the securities legislation of Ontario, Alberta and Manitoba (the Jurisdictions) that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions for a decision under the securities legislation (the Legislation) of the Jurisdictions that the Applicant is not a reporting issuer.

As the Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions in Canada and fewer than 51 securityholders in total worldwide;

(b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

(d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is deemed to have ceased to be a reporting issuer.

"Sonny Randhawa"
Manager, Corporate Finance
Ontario Securities Commission

2.1.5 Primary Energy Recycling Corporation – s. 1(10)(a)(ii)

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer deemed to no longer be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

January 15, 2015

Primary Energy Recycling Corporation
2215 So. York Road, Suite 202
Oak Brook, IL 60523

Dear Sirs/Mesdames:

Re: Primary Energy Recycling Corporation (the Applicant) – application for a decision under the securities legislation of Ontario, Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Quebec, Saskatchewan and Yukon, that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions for a decision under the securities legislation (the **Legislation**) of the Jurisdictions that the Applicant is not a reporting issuer.

In this application, "securityholder" means, for a security, the beneficial owner of the security.

The Applicant has represented to the Decision Makers that:

a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 – *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer.

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

"Sonny Randhawa"
Manager, Corporate Finance
Ontario Securities Commission

2.1.6 Curis Resources Ltd. – s. 1(10)(a)(ii)

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer deemed to no longer be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

January 16th, 2015

Curis Resources Ltd.
15th Floor – 1040 West Georgia Street
Vancouver, BC V6E 4H1

Dear Sirs/Mesdames:

Re: Curis Resources Ltd. (the Applicant) – application for a decision under the securities legislation of Alberta and Ontario (the Jurisdictions) that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions for a decision under the securities legislation (the Legislation) of the Jurisdictions that the Applicant is not a reporting issuer.

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

The Applicant has represented to the Decision Makers that:

1. the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

2. no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

3. the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions of Canada in which it is currently a reporting issuer; and

4. the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer.

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

"Shannon O'Hearn"
Manager, Corporate Finance
Ontario Securities Commission

2.2 Orders

2.2.1 David M. O'Brien – s. 9(1) of the SPPA and Rules 5.2(1) and 8.1 of the OSC Rules of Procedure

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5, AS AMENDED

AND

IN THE MATTER OF
DAVID M. O'BRIEN

ORDER
(Subsection 9(1) of the Statutory Powers Procedure Act, R.S.O. 1990, c. S.22, as amended and Rule 8.1 and subrule 5.2(1) of the Commission's Rules of Procedure (2012), 35 O.S.C.B. 10071)

WHEREAS on December 8, 2010, the Secretary of the Ontario Securities Commission (the "Commission") issued a Notice of Hearing, pursuant to sections 37, 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), for a hearing to commence at the offices of the Commission on December 20, 2010 at 10:30 a.m., or as soon thereafter as the hearing could be held;

AND WHEREAS the Notice of Hearing provided for the Commission to consider, among other things, whether, in the opinion of the Commission, it is in the public interest, pursuant to section 127 of the Act, to issue temporary orders against O'Brien, as follows:

(a) O'Brien shall cease trading in any securities for a prescribed period or until the conclusion of the hearing on the merits in this matter;

(b) O'Brien is prohibited from acquiring securities for a prescribed period or until the conclusion of the hearing on the merits in this matter; and

(c) Any exemptions contained in Ontario securities law do not apply to O'Brien for a prescribed period or until the conclusion of the hearing on the merits in this matter;

AND WHEREAS on December 20, 2010, the hearing with respect to the issuance of the temporary orders was adjourned until December 23, 2010 at 12:30 p.m.;

AND WHEREAS on December 23, 2010, a hearing with respect to the issuance of the temporary orders was held and the panel of the Commission considered the affidavit of Lori Toledano, a member of Staff of the Commission ("Staff"), the cross-examination of Toledano and the submissions made by Staff and O'Brien;

AND WHEREAS on December 23, 2010, the Commission issued a temporary cease trade order pursuant to section 127 of the Act ordering that:

(a) O'Brien shall cease trading in securities;

(b) O'Brien is prohibited from acquiring securities; and

(c) Any exemptions contained in Ontario securities law do not apply to O'Brien (the "Temporary Cease Trade Order");

AND WHEREAS on December 23, 2010, the Commission ordered that the Temporary Cease Trade Order shall expire on April 1, 2011;

AND WHEREAS a confidential pre-hearing conference was scheduled for February 24, 2011;

AND WHEREAS at the confidential pre-hearing conference on February 24, 2011, Staff and O'Brien appeared and made submissions regarding the disclosure made by Staff, and Staff requested an extension of the Temporary Cease Trade Order;

AND WHEREAS on February 24, 2011, the Commission ordered that:

a) a hearing to extend the Temporary Cease Trade Order shall take place on March 30, 2011 at 11:30 a.m.;

b) a motion regarding disclosure shall take place on April 21, 2011 at 10:00 a.m., and in accordance with rule 3.2 of the Commission *Rules of Procedure* (2010), 33 OSCB 8017 (the "*Rules of Procedure*"), O'Brien shall serve and file a motion record, including any affidavits to be relied upon, by April 11, 2011 at 4:30 p.m.; and

c) a further confidential pre-hearing conference shall take place on May 30, 2011 at 10:00 a.m.;

AND WHEREAS on March 30, 2011, a hearing with respect to the extension of the Temporary Cease Trade Order was held, and the panel of the Commission considered the evidence filed and the submissions made by Staff and O'Brien, and the Commission ordered that:

a) the Temporary Cease Trade Order shall be extended to April 26, 2011; and

b) a further hearing to extend the Temporary Cease Trade Order shall take place on April 21, 2011 at 10:00 a.m.;

AND WHEREAS on April 21, 2011, a hearing with respect to the extension of the Temporary Cease Trade Order was held, and the panel of the Commission considered the evidence filed and the submissions made by Staff and O'Brien;

AND WHEREAS on April 21, 2011, the Commission ordered that:

a) the Temporary Cease Trade Order shall be extended until the conclusion of the hearing of the merits of this matter; and

b) O'Brien may, if he wishes to do so, apply to the Commission for an order revoking or varying this Order pursuant to section 144 of the Act;

AND WHEREAS also on April 21, 2011, O'Brien brought a motion regarding disclosure, wherein he sought an order from the Commission requiring Staff to provide him with all additional disclosure materials without requiring him to execute a further undertaking, and the panel of the Commission considered the evidence filed and the submissions made by Staff and O'Brien;

AND WHEREAS on April 21, 2011, the Commission ordered that Staff shall provide further disclosure materials to O'Brien without requiring the signing by him of an undertaking as to the confidentiality of that disclosure. The Commission further ordered that:

1) all disclosure materials provided to O'Brien are confidential and may be used by him only for the purpose of making full answer and defence in this proceeding. The use of disclosure materials for any other purpose is strictly prohibited. All disclosure materials provided to O'Brien are subject to the strict confidentiality restrictions imposed by section 16 of the Act;

2) O'Brien is also subject to the implied undertaking that all disclosure materials provided to him are subject to the restrictions on use referred to in paragraph (1);

3) the Previous Undertaking signed by O'Brien is binding upon him and applies by its terms to all of the disclosure materials provided by Staff to O'Brien, including all disclosure materials provided by Staff to O'Brien in the future; if O'Brien wishes to challenge the validity of the Previous Undertaking he is entitled to bring a motion before the Commission to do so; and

4) if O'Brien wishes to use the disclosure materials provided by Staff to him for any purpose other than as provided in paragraph (1), he must make an application to the Commission under section 17 of the Act for an order of the Commission consenting to that use;

AND WHEREAS at the confidential pre-hearing conference on May 30, 2011, Staff and O'Brien appeared and Staff sought to set dates for a hearing on the merits, while O'Brien advised the Commission that he was opposed to Staff's request. The Commission adjourned the hearing to June 20, 2011 at 10:00 a.m., for the purpose of setting the dates for the hearing on the merits;

AND WHEREAS at the confidential pre-hearing conference on June 20, 2011, Staff and O'Brien appeared and scheduling of the hearing on the merits was discussed and the Commission ordered that:

1. the hearing on the merits is to commence on March 12, 2012 at 10:00 a.m. at the offices of the Commission, and shall continue on March 14, 15, 16, 19, 20, 21, 22, 23, 26, and 28, 2012, or such further or other dates as may be agreed upon by the parties and fixed by the Office of the Secretary; and

2. a further confidential pre-hearing conference shall take place on January 11, 2012 at 10:00 a.m.;

AND WHEREAS at the confidential pre-hearing conference on January 11, 2012, Staff appeared and Counsel on behalf of O'Brien appeared, who advised the Commission that he had just been appointed to represent O'Brien in this matter and he requested that the pre-hearing conference be continued in a few weeks time to permit him to address certain matters that had just been brought to his attention. The Commission ordered that a further confidential pre-hearing conference take place on January 31, 2012 at 3:30 p.m.;

AND WHEREAS at the confidential pre-hearing conference on January 31, 2012, Staff and Counsel for O'Brien appeared and Counsel for O'Brien requested an adjournment of the hearing on the merits to permit interim issues to be raised before the Commission. Counsel for O'Brien also requested that the records from both the January 11 and 31, 2012 confidential pre-hearing conferences be sealed and treated as confidential. The Commission ordered that the hearing dates of March 12, 14, 15, 16, 19, 20, 21, 22, 23, 26 and 28, 2012 be vacated, a further confidential pre-hearing conference take place on March 12, 2012 at 10:00 a.m., and that the records from both the January 11 and 31, 2012 confidential pre-hearing conferences be sealed and treated as confidential pursuant to subsection 9(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "SPPA") and rule 8.1 and subrule 5.2(1) of the *Rules of Procedure*;

AND WHEREAS at the confidential pre-hearing conference on March 12, 2012, Staff and Counsel for O'Brien appeared and Counsel for O'Brien requested a confidential motion be scheduled to seek an adjournment of the hearing dates. The Commission ordered that a confidential motion take place on April 18, 2012 at 10:00 a.m., for which O'Brien shall serve and file a motion record, including any affidavits to be relied upon, by April 5, 2012 at 4:30 p.m., Staff shall serve and file any responding materials by April 12, 2012, O'Brien shall serve and file a factum by April 13, 2012, and Staff shall file its factum by April 16, 2012, and that the records from the March 12, 2012 confidential pre-hearing conference and from the April 18, 2012 confidential motion shall be sealed and treated as confidential pursuant to subsection 9(1) of the SPPA and rule 8.1 and subrule 5.2(1) of the *Rules of Procedure*;

AND WHEREAS at the confidential motion on April 18, 2012, Staff and Counsel for O'Brien appeared and Counsel for O'Brien presented evidence and requested an adjournment of any hearing dates and that a further confidential pre-hearing conference be scheduled. Staff did not oppose the adjournment request and agreed to the scheduling of a further pre-hearing conference. The Commission ordered that a confidential pre-hearing conference shall take place on July 19, 2012 at 10:00 a.m., for which O'Brien shall deliver any materials relevant to the pre-hearing conference by July 9, 2012, and that the records from the July 19, 2012 confidential pre-hearing conference shall be sealed and treated as confidential pursuant to subsection 9(1) of the SPPA and rule 8.1 and subrule 5.2(1) of the *Rules of Procedure*;

AND WHEREAS confidential pre-hearing conferences took place on July 19, 2012, September 28, 2012, October 25, 2012, March 11, 2013, July 18, 2013, September 30, 2013, and December 11, 2013, at which Staff and Counsel for O'Brien appeared, and the Commission ordered that the records from those confidential pre-hearing conferences be sealed and treated as confidential pursuant to subsection 9(1) of the SPPA and rule 8.1 and subrule 5.2(1) of the *Rules of Procedure*;

AND WHEREAS on December 11, 2013, the Commission ordered that a confidential pre-hearing conference take place on March 6, 2014 at 10:00 a.m.;

AND WHEREAS at the confidential pre-hearing conference on March 6, 2014, Staff appeared, and no one appeared for O'Brien. Staff made submissions and requested that a further confidential pre-hearing conference be scheduled, and the Commission ordered that a confidential pre-hearing conference take place on May 8, 2014 at 10:00 a.m.;

AND WHEREAS at the confidential pre-hearing conference on May 8, 2014, Staff and Counsel for O'Brien appeared, presented evidence, made submissions and requested that a further confidential pre-hearing conference be scheduled. The Commission ordered that a confidential pre-hearing conference shall take place on September 15, 2014 at 9:00 a.m., O'Brien shall file and serve any materials on which he intends to rely at the pre-hearing conference by September 8, 2014, and the records from the May 8, 2014 and September 15, 2014 confidential pre-hearing conferences shall be sealed and treated as confidential pursuant to subsection 9(1) of the SPPA and rule 8.1 and subrule 5.2(1) of the *Rules of Procedure*;

AND WHEREAS at the confidential pre-hearing conference on September 15, 2014, Staff and Counsel for O'Brien appeared, presented evidence, made submissions and requested that a further confidential pre-hearing conference be scheduled. The Commission ordered that a confidential pre-hearing conference shall take place on January 12, 2015 at 9:00 a.m, O'Brien shall file and serve any materials on which he intends to rely at the pre-hearing conference by January 8, 2015, and the records from the September 15, 2014 and January 12, 2015 confidential pre-hearing conferences shall be sealed and treated as confidential pursuant to subsection 9(1) of the SPPA and rule 8.1 and subrule 5.2(1) of the *Rules of Procedure*;

AND WHEREAS at the confidential pre-hearing conference on January 12, 2015, Staff and Counsel for O'Brien appeared, presented evidence, made submissions and requested that a further confidential pre-hearing conference be scheduled.

IT IS HEREBY ORDERED THAT:

1. a confidential pre-hearing conference shall take place on June 16, 2015 at 3:00 p.m.; and

2. the records from the January 12, 2015 confidential pre-hearing conference shall be sealed and treated as confidential pursuant to subsection 9(1) of the SPPA and rule 8.1 and subrule 5.2(1) of the *Rules of Procedure*.

DATED at Toronto this 12th day of January, 2015.

"Mary G. Condon"

2.2.2 Pro-Financial Asset Management Inc. et al. – s. 127

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
PRO-FINANCIAL ASSET MANAGEMENT INC.,
STUART McKINNON and JOHN FARRELL

ORDER
(Section 127)

WHEREAS on December 9, 2014, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") accompanied by a Statement of Allegations dated December 8, 2014 with respect to Pro-Financial Asset Management Inc. ("PFAM"), Stuart McKinnon ("McKinnon") and John Farrell ("Farrell") (collectively, the "Respondents");

AND WHEREAS on January 14, 2015, Staff of the Commission ("Staff"), counsel for PFAM and McKinnon and counsel for Farrell attended before the Commission;

AND WHEREAS on January 14, 2015, Staff advised that Staff sent out the initial electronic disclosure of approximately 11,000 documents to counsel for the Respondents on January 12, 2015;

AND WHEREAS the Respondents consent to the terms of this Order;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED that the hearing is adjourned to February 25, 2015 at 10:00 a.m. for the purpose of scheduling a date for a confidential pre-hearing conference as may be appropriate.

DATED at Toronto this 14th day of January, 2015

"Christopher Portner"

2.2.3 Pro-Financial Asset Management Inc.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
PRO-FINANCIAL ASSET MANAGEMENT INC.

ORDER

WHEREAS on May 17, 2013, the Commission issued a temporary order (the "Temporary Order") with respect to Pro-Financial Asset Management Inc. ("PFAM") pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering that:

(i) pursuant to paragraph 1 of subsection 127(1) of the Act, the registration of PFAM as a dealer in the category of exempt market dealer be suspended and the following terms and conditions apply to the registration of PFAM as an adviser in the category of portfolio manager ("PM") and to its operation as an investment fund manager ("IFM"):

a. PFAM's activities as a PM and IFM shall be applied exclusively to the Managed Accounts (as defined in the Temporary Order) and to the Pro-Hedge Funds and Pro-Index Funds (as defined in the Temporary Order); and

b. PFAM shall not accept any new clients or open any new client accounts of any kind in respect of the Managed Accounts;

(ii) pursuant to subsection 127(6) of the Act, the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on May 28, 2013, the Commission ordered: (i) the Temporary Order be extended to June 27, 2013; (ii) the hearing to consider whether to further extend the terms of the Temporary Order and/or to make any further order as to PFAM's registration proceed on June 26, 2013 at 10:00 a.m.;

AND WHEREAS on June 26, 2013, the Commission ordered that: (i) the Temporary Order be extended to July 15, 2013; and (ii) the affidavit of Michael Denyszyn sworn May 24, 2013 not be marked as an exhibit until the next appearance in the absence of a Commission order to the contrary; and the hearing to consider this matter proceed on July 12, 2012;

AND WHEREAS on July 11, 2013, the Commission ordered that: (i) the Temporary Order be extended to July 22, 2013; (ii) the hearing be adjourned to July 18, 2013 at 11:00 a.m.; and (iii) the hearing date of July 12, 2013 at 10:00 a.m. be vacated;

AND WHEREAS on July 18, 2013, PFAM brought a motion (the "First PFAM Motion") that the hearing be held *in camera* and that the affidavits of Michael Denyszyn sworn May 24 and June 24, 2013 and the affidavit of Michael Ho sworn July 17, 2013 (collectively the "Staff Affidavits") either not be admitted as evidence or else be treated as confidential documents and the parties agreed that the motion should be heard *in camera*;

AND WHEREAS on July 18, 2013, PFAM's counsel filed supporting documents (the "PFAM Materials") in support of the First PFAM Motion and counsel for PFAM and Staff made oral submissions and filed written submissions;

AND WHEREAS on July 22, 2013, the Commission ordered:

(i) the Temporary Order be extended to August 26, 2013;

(ii) leave be granted to the parties to file written submissions in respect of the First PFAM Motion;

(iii) the Staff Affidavits, the transcript of the PFAM motion, the PFAM Materials, written submissions filed by Staff and PFAM and other documents presented during the course of the First PFAM Motion shall be treated as confidential documents until further direction or order of the Commission; and

(iv) the hearing be adjourned to August 23, 2013 at 10:00 a.m.;

AND WHEREAS on August 23, 2013, Staff filed with the Commission the affidavit of Michael Ho sworn August 22, 2013 and PFAM's counsel filed the affidavit of Stuart McKinnon dated August 23, 2013 but the parties did not seek to mark these affidavits as exhibits;

AND WHEREAS on August 23, 2013, Staff and counsel for PFAM advised the Commission that the parties had agreed on the terms of a draft order;

AND WHEREAS on August 23, 2013, PFAM requested that the hearing be held *in camera* so PFAM's submissions on certain confidentiality issues could be heard and Staff did not oppose PFAM's request;

AND WHEREAS on August 27, 2013, the Commission ordered:

(i) the Temporary Order be extended to October 11, 2013;

(ii) the affidavit of Michael Ho sworn August 22, 2013 and the affidavit of Stuart McKinnon sworn August 23, 2013 be treated as confidential documents until further order of the Commission;

(iii) PFAM will deliver to Staff the final principal protected note ("PPN") reconciliation report by 4:30 p.m. on September 30, 2013; and

(iv) the hearing to consider whether to: (i) make any further order as to PFAM's registration as an adviser in the category of PM or in respect of its operation as an IFM, as a result of PFAM's ongoing capital deficiency; and/or (ii) otherwise vary or extend the terms of the Temporary Order, proceed on October 9, 2013 at 11:00 a.m.;

AND WHEREAS on October 9, 2013, PFAM brought a second motion (the "Second PFAM Motion") for an order that the hearing be held *in camera* and for a confidentiality order treating as confidential documents: (i) the Staff and PFAM affidavits; (ii) all facta and correspondence exchanged by Staff and PFAM; and (iii) any transcript of this and prior *in camera* proceedings;

AND WHEREAS on October 9, 2013, PFAM's counsel filed written submissions dated October 8, 2013, the affidavit of Stuart McKinnon sworn October 7, 2013 and the affidavit of Kenneth White sworn October 7, 2013 in support of the Second PFAM Motion and Staff filed written submissions dated October 9, 2013 and the affidavit of Michael Ho sworn October 8, 2013 and opposed the request for an *in camera* hearing and for the confidentiality order;

AND WHEREAS on October 9, 2013, the Commission heard submissions from counsel on the Second PFAM Motion *in camera* and the Commission requested the parties to prepare a draft order that, among other matters, addressed the confidentiality of documents filed with the Commission and permitted BNP Paribas Canada ("BNP") and Société Générale Canada ("SGC") (collectively the "Banks") to review certain documents attached to Staff affidavits dealing substantively with the PPN reconciliation process, provided the Banks treated such documents as confidential;

AND WHEREAS on October 11, 2013, the Commission ordered that:

(i) the Temporary Order be extended to December 15, 2013;

(ii) the affidavit of Michael Ho sworn October 8, 2013, the affidavit of Stuart McKinnon sworn October 7, 2013, the affidavit of Kenneth White sworn October 7, 2013 and the written submissions of the parties dated October 8 and 9, 2013 be treated as confidential documents until further order of the Commission; and

(iii) the hearing to consider whether to: (i) make any further order as to PFAM's registration as an adviser in the category of PM or in respect of its operation as an IFM, as a result of PFAM's ongoing capital deficiency; and/or (ii) otherwise vary or extend the terms of the Temporary Order, shall proceed on December 12, 2013 at 10:00 a.m.;

AND WHEREAS on October 17, 2013, the Commission ordered (the "October 17, 2013 Order") that:

(i) the affidavit of Michael Ho sworn October 8, 2013, the affidavit of Stuart McKinnon sworn October 7, 2013, the affidavit of Kenneth White sworn October 7, 2013 and the written submissions of the parties dated October 8 and 9, 2013 be treated as confidential documents until further order of the Commission;

(ii) the previous orders as to confidentiality made by the Commission on July 22, 2013 and August 27, 2013 remain in force until further order or direction of the Commission; and

(iii) documents related to the PPN reconciliation process listed on Schedule "A" to the October 17, 2013 Order be provided to counsel for the Banks on condition that the Banks treat those documents as confidential documents and not provide copies to any third party without further direction or order of the Commission;

AND WHEREAS on September 30, 2013, PFAM agreed to sell to another portfolio manager (the "Purchaser") PFAM's interest in all of the investment management contracts for the Pro-Index Funds and the Managed Accounts (the "First Transaction"). In a second transaction, an investor agreed to purchase through a corporation (the "Investor") all of the shares of the Purchaser (the "Second Transaction"):

AND WHEREAS on October 22, 2013, the Purchaser and PFAM filed a notification letter providing Compliance and Registrant Regulation Branch ("CRR Branch") Staff with notice ("Notice") of the application filed under section 11.9 and 11.10 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") relating to the First Transaction and the Second Transaction (collectively, the "Transactions");

AND WHEREAS on November 5, 2013, the staff member of the CRR Branch conducting the review of the Notice requested copies of the affidavits of Michael Denyszyn sworn May 24 and June 24, 2013, the affidavits of Michael Ho sworn July 17, August 22 and October 8, 2013, the affidavits of Stuart McKinnon sworn July 17, August 23 and October 7, 2013, the affidavit of Kenneth White sworn October 7, 2013 and the submissions of Staff and Pro-Financial Asset Management Inc. ("PFAM") (collectively, the "Confidential Documents");

AND WHEREAS on November 12, 2013, PFAM filed an application with the Investment Funds Branch ("IF Branch") of the Commission for an order under section 5.5 of National Instrument 81-102 – *Mutual Funds* ("NI 81-102") for approval of the Purchaser as investment fund manager of the Pro-Index Funds and the Purchaser applied on October 24, 2013 for registration in the investment fund manager category for this purpose;

AND WHEREAS on November 13, 2013, Staff filed a Notice of Motion returnable on a date to be determined by the Secretary's office seeking an Order that Staff of the Enforcement Branch be permitted to provide some or all of the Confidential Documents to certain staff members of the CRR Branch and the IF Branch;

AND WHEREAS on November 25, 2013, the Commission ordered that:

(i) Staff of the Enforcement Branch be permitted to provide the Confidential Documents to the following persons:

a. the staff members of the CRR Branch assigned to review the Notice;

b. the staff member who has been designated to act in the capacity of the Director on behalf of the CRR Branch for the purposes of deciding whether to object to the Notice;

c. the staff members of the IF Branch who have been assigned to review the application made by PFAM or the Purchaser under section 5.5 of NI 81-102; and

d. the staff member who has been designated to act in the capacity of the "Director" for the purposes of deciding whether to approve the application under section 5.5 of NI 81-102;

(ii) The CRR staff members assigned to review the Notice be permitted to provide relevant information derived from the Confidential Documents ("Relevant Information") to PFAM, the Purchaser and their counsel involved in the Notice as part of the CRR staff members' review and analysis of the Notice on condition that the recipients of such information treat it as confidential and not provide it to any third party without further direction or order of the Commission;

(iii) The IF staff members assigned to review the application for change of fund manager be permitted to provide Relevant Information to PFAM, the Purchaser and their counsel involved in the application filed under NI 81-102 as part of the Investment Funds staff members' review and analysis of the application on condition that the recipients of such information treat it as confidential and not provide it to any third party without further direction or order of the Commission;

(iv) The CRR staff members assigned to review the Notice be permitted to provide Relevant Information to the Investor or its counsel with the consent of PFAM; and

(v) The parties may seek direction from the Commission in the event that the CRR staff members and PFAM cannot agree on whether Relevant Information should be provided to the Investor or its counsel;

AND WHEREAS Staff has filed an affidavit of Michael Ho sworn December 10, 2013 attaching a letter from counsel to The Investment Administration Solution Inc. ("IAS"), PFAM's recordkeeper for the PPNs, requesting a copy of the PPN reconciliation report submitted by PFAM to Staff;

AND WHEREAS PFAM's counsel provided to Staff and to the Commission and made submissions based on an affidavit of Stuart McKinnon sworn December 11, 2013 which was not marked as an exhibit on December 12, 2013 at the Commission hearing held that day;

AND WHEREAS on December 12, 2013, Staff and counsel for PFAM appeared before the Commission and made submissions on: (i) the appropriate form of order to govern the provision of the Confidential Documents to other members of Staff of the Commission; and (ii) whether IAS should receive copies of the PPN reconciliation reports submitted by PFAM to Staff;

AND WHEREAS by Commission Order dated December 13, 2013, the Commission ordered that:

(i) the Confidential Documents may be provided to any member of Staff of the Commission, as necessary in the course of their duties;

(ii) the Temporary Order be extended to January 24, 2014;

(iii) the hearing be adjourned to January 21, 2014 at 11:00 a.m.; and

(iv) Staff shall be entitled to provide a copy of each document relating to the PPN reconciliation process listed on Schedule "A" of the October 13, 2013 order to counsel for IAS on the conditions that: (a) IAS treat those documents as confidential and not provide them to any third party without further direction or order of the Commission; and (b) IAS may use the documents for the purpose of assisting Staff in resolving the PPN discrepancy, and for no other purpose;

AND WHEREAS on January 15, 2014, PFAM's counsel advised Staff that the prospectus for the distribution of securities of the Pro- Index Funds had passed its lapse date on January 14, 2014 and PFAM's counsel requested a lapse date extension of 40 days from Staff;

AND WHEREAS on January 17, 2014, PFAM's counsel filed a pre-hearing conference memorandum ("PFAM's Pre-Hearing Memorandum") with the Secretary's office to discuss various issues and seek an Order granting an extension to the lapse date for the Pro-Index Funds under subsection 62(5) of the Act (the "Lapse Date Relief");

AND WHEREAS PFAM filed the affidavit of Stuart McKinnon sworn January 19, 2014 with the Secretary's office and Staff filed the affidavit of Susan Thomas sworn January 20, 2014 with the Secretary's office but neither party marked either affidavit as an exhibit at the appearance on January 21, 2014;

AND WHEREAS on January 21, 2014, Staff and PFAM's counsel appeared before the Commission and Staff advised the Commission that: (i) Staff's review of the Notice was expected to take another three to four weeks; (ii) the parties agreed that the prior confidentiality orders should be revised to permit Staff to provide the Confidential Documents or excerpts therefrom to the Purchaser, the Investor and their counsel as Staff determines necessary in the course of their duties and on the condition that the recipients treat such documents as confidential and not disclose them to any third party without further direction or order of the Commission; and (iii) the parties agreed that the Temporary Order should be extended;

AND WHEREAS on January 21, 2014, PFAM's counsel requested that submissions relating to the issues raised in PFAM's Pre-Hearing Memorandum be made *in camera* pursuant to Rule 6 of the Commission's *Rules of Procedure*, Staff opposed PFAM's request, and the Commission directed and the parties made submissions *in camera* on the Lapse Date Relief;

AND WHEREAS on January 21, 2014, the Commission ordered that: (i) the Temporary Order be extended to February 24, 2014; (ii) the hearing be adjourned to February 21, 2014 at 2:00 p.m.; (iii) Staff who have received the Confidential Documents be permitted to provide the Confidential Documents or an excerpt of the Confidential Documents to the Purchaser, the Investor and their counsel as set out in the Order; and (iv) PFAM be granted the Lapse Date Relief under subsection 62(5) of the Act to extend the lapse date for the Pro-Index Funds to February 24, 2014 on the conditions set out in the Order;

AND WHEREAS on February 14, 2014, PFAM's counsel served on Staff and filed a pre-hearing conference memorandum with the Secretary's office and requested a confidential pre-hearing conference during the week of February 24, 2014;

AND WHEREAS on February 21, 2014, PFAM's counsel was unavailable to attend before the Commission so the Commission ordered: (i) the Temporary Order be extended to March 6, 2014; (ii) the hearing be adjourned to March 3, 2014 at 11:00 a.m.; and (iii) a confidential pre-hearing conference proceed on February 25, 2014 at 3:30 p.m.;

AND WHEREAS PFAM's counsel requested in his prehearing conference memorandum an extension to the lapse date for the Pro-Index Funds which was previously extended to February 24, 2014 by Commission order dated January 21, 2014 (the "Further Lapse Date Relief");

AND WHEREAS in connection with a confidential pre-hearing conference on February 25, 2014 and the appearance on March 3, 2014, Staff filed the affidavit of Michael Ho sworn February 24, 2014 and written submissions dated February 28, 2014 to oppose the request for the Further Lapse Date Relief and PFAM's counsel filed the affidavits of Stuart McKinnon sworn February 21, 2014 and March 3, 2014 and a factum dated March 3, 2014 in support of the Further Lapse Date Relief;

AND WHEREAS on March 3, 2014, counsel for PFAM requested that submissions relating to the Further Lapse Date Relief be heard *in camera* and the Commission agreed to this request and the parties made oral submissions *in camera* on the issue of whether the Commission should grant the Further Lapse Date Relief;

AND WHEREAS on March 3, 2014, the Commission ordered that the Further Lapse Date Relief would be granted until April 7, 2014 subject to: (i) PFAM issuing a news release, in a form satisfactory to Staff, to ensure that investors receive full disclosure of the matters identified by Staff as set out below; and (ii) PFAM only being permitted to distribute securities of the Pro-Index Funds to existing securityholders of the Pro-Index Funds;

AND WHEREAS on March 3, 2014, the Commission advised, in the public portion of the hearing, that there had been two Director decisions recently made affecting PFAM (the "Director Decisions") and PFAM's counsel advised that the affected parties would seek a hearing and review under subsection 8(2) of the Act of both of the Director Decisions on an expedited basis;

AND WHEREAS on March 4, 2014, the Commission ordered: (i) the terms and conditions imposed on PFAM's registration by the Temporary Order be deleted and replaced with new terms and conditions which provided that PFAM shall not accept any new clients or open any new client accounts of any kind in respect of its Managed Accounts and that PFAM may only distribute securities of the Pro-Index Funds to existing securityholders of the Pro-Index Funds (the "Distribution Restriction"); (ii) PFAM be granted the Further Lapse Date Relief under subsection 62(5) of the Act to extend the lapse date for the Pro-Index Funds to April 7, 2014 subject to the conditions that: (a) PFAM issue a news release by March 6, 2014, in a form satisfactory to Staff, providing disclosure about the specific items set out in the March 4, 2014 order; and (b) PFAM comply with the terms of the March 4, 2014 order; (iii) the hearing be adjourned to April 7, 2014 at 10:00 a.m.; and (iv) the Temporary Order be extended to April 10, 2014;

AND WHEREAS on March 6, 2014, a confidential prehearing conference was held to consider a motion by counsel to the Purchaser and the Investor to vary the Distribution Restriction imposed by the Commission in the March 4, 2014 order, so that PFAM could continue distributing securities until April 7, 2014 to new investors after issuing the press release provided for in the March 4 order (the "Variation Motion");

AND WHEREAS on March 6, 2014, the Commission was of the view that the hearing of the Variation Motion should proceed only after a notice of the Variation Motion has been filed with the Secretary's office so that the public could be advised of the hearing;

AND WHEREAS on March 6, 2014, the Commission ordered that: (i) portions of the Commission decision of March 3, 2014 imposing the Distribution Restriction and deleting and replacing the terms and conditions on PFAM's registration and operation be stayed until March 11, 2014; (ii) PFAM be granted lapse date relief to extend the lapse date for the Pro-Index Funds to March 11, 2014; (iii) the Purchaser and the Investor file notice of the Variation Motion with the Secretary's office; and (iv) the Variation Motion be adjourned to March 11, 2014 at 1:00 p.m.;

AND WHEREAS the Purchaser and Investor's counsel filed the affidavit of Diego Beltran sworn March 5, 2014, the affidavit of Stuart McKinnon sworn March 11, 2014 and written submissions dated March 6, 2014 in support of the Variation Motion and Staff filed the affidavit of Michael Ho sworn March 10, 2014 and written submissions dated March 10, 2014 to oppose the Variation Motion;

AND WHEREAS on March 11, 2014, the Purchaser and the Investor's counsel made a request that the hearing of the Variation Motion proceed *in camera* and Staff opposed the request and the Purchaser and Investor's counsel and Staff made oral submissions and the Commission denied the request that the hearing proceed *in camera*;

AND WHEREAS on March 11, 2014, Staff opposed the Variation Motion and the Purchaser and Investor's counsel and Staff made oral submissions on the Variation Motion and Staff advised that a separate order will be required to cease the distribution of securities of the Pro-Index Funds to new investors as of March 11, 2014 if the Variation Motion is dismissed;

AND WHEREAS on March 11, 2014, the Commission ordered that: (i) the Variation Motion be dismissed; and (ii) the distribution of securities of the Pro-Index Funds to new investors be ceased as of the end of the day on March 11, 2014;

AND WHEREAS PFAM filed the affidavit of Stuart McKinnon sworn April 4, 2014 in support of its request for a further lapse date extension (the "Third Lapse Date Extension Request") and requested that the affidavit be treated on a confidential basis and Staff filed an affidavit of Mostafa Asadi sworn April 4, 2014 and opposed the Third Lapse Date Extension Request on the basis that PFAM has not filed the annual audited financial statements or the annual management reports of fund performance for the Pro-Index Funds which were due on March 31, 2014;

AND WHEREAS on April 7, 2014, PFAM's counsel requested that the submissions of the parties be heard *in camera* and Staff opposed the request and the Commission directed PFAM's counsel and Staff to make oral submissions *in camera*;

AND WHEREAS on April 7, 2014, Staff requested permission to provide a copy of the affidavit of Stuart McKinnon sworn April 4, 2014 to IAS or its legal counsel prior to the argument of PFAM's Third Lapse Date Request and PFAM's counsel opposed Staff's request;

AND WHEREAS on April 7, 2014, the parties made submissions *in camera* and the Commission directed that the affidavit of Stuart McKinnon sworn April 4, 2014 shall not be received on a confidential basis and directed that the correspondence between Staff and PFAM's counsel be treated as confidential;

AND WHEREAS on April 7, 2014, the Commission ordered that: (i) the lapse date for the Pro-Index Funds be extended to April 21, 2014; (ii) the affidavit of Stuart McKinnon sworn April 4, 2014 shall appear on the public record except for exhibits containing the correspondence between Staff and PFAM's counsel, including enclosures; (iii) Staff shall be entitled to provide a copy of the affidavit of Stuart McKinnon sworn April 4, 2014 to IAS or IAS' legal counsel subject to the conditions that IAS shall treat as confidential all correspondence between PFAM and Staff forming part of the affidavit and IAS shall only use the affidavit to assist Staff in the ongoing proceeding; (iv) the Temporary Order be extended to April 21, 2014; and (v) the hearing be adjourned to April 17, 2014 at 11:00 a.m. to argue the Third Lapse Date Extension Request.

AND WHEREAS on April 17, 2014, Staff filed the affidavit of Michael Ho sworn April 11, 2014 to oppose the Third Lapse Date Extension Request and PFAM filed the affidavit of Stuart McKinnon sworn April 16, 2014 in support of the Third Lapse Date Extension Request;

AND WHEREAS on April 17, 2014, PFAM's counsel requested that the submissions of the parties on the Third Lapse Date Extension Request be heard *in camera* and Staff opposed PFAM's request and the Commission directed that the parties' submissions on the Third Lapse Date Extension Request would not be heard *in camera*;

AND WHEREAS on April 17, 2014, PFAM's counsel made oral submissions and filed written submissions dated April 7 and 17, 2014 in support of the Third Lapse Date Extension Request and Staff made oral and filed written submissions dated April 14, 2014 to oppose PFAM's request and after hearing the parties' submissions, the Commission reserved its decision and adjourned the hearing to April 21, 2014 at 2:00 p.m.;

AND WHEREAS on April 21, 2014, the Commission dismissed the Third Lapse Date Extension Request and provided oral reasons for its decision;

AND WHEREAS on April 21, 2014, the Commission ordered that: (i) the Third Lapse Date Extension Request be dismissed without prejudice to PFAM bringing an application under section 144 to vary or revoke this order if the audited financial statements and management reports of fund performance for the Pro-Index Funds are filed with the Commission; (ii) notwithstanding that the lapse date for the Pro-Index Funds was previously extended to April 21, 2014, the distribution of securities of the Pro-Index Funds shall cease as of the end of the day on April 21, 2014; (iii) the Temporary Order be extended to May 27, 2014; and (iv) the hearing be adjourned to May 23, 2014 at 10:00 a.m.;

AND WHEREAS on May 23, 2014, Staff filed the affidavit of Michael Ho sworn May 22, 2014 to: (i) update the Commission on the payments by PFAM on March 31, April 7 and 8, 2014 of maturity proceeds for certain series of PPNs to an escrow agent as arranged by the Banks and agreed to by PFAM; and (ii) confirm that the current discrepancy between the records of the recordkeeper and the trustee remains unchanged and indicates that the total cash obligation to PPN noteholders exceeds the amount in the trustee's records by $1,222,549.45;

AND WHEREAS on May 23, 2014, the Commission ordered that: (i) the term and condition on PFAM's registration which stated that "PFAM may only distribute securities of the Pro-Index Funds to existing security holders of the Pro-Index

Funds" be deleted and replaced with "PFAM shall not distribute securities of the Pro-Index Funds"; (ii) a confidential pre-hearing conference be held on June 5, 2014 at 10:00 a.m.; (iii) the hearing be adjourned to July 2, 2014 at 10:00 a.m.; and (iv) the Temporary Order be extended to July 4, 2014;

AND WHEREAS the Secretary's office advised the parties that the Commission was not available on July 2, 2014 and the parties agreed to adjourn the hearing to July 9, 2014 at 10:00 a.m. and to extend the Temporary Order to July 11, 2014;

AND WHEREAS on June 11, 2014, the Commission ordered that: (i) a confidential pre-hearing conference in respect of the section 8 hearing and review of the Director Decisions be held on June 26, 2014 at 2:00 p.m.; (ii) the hearing be adjourned to July 9, 2014 at 10:00 a.m.; and (iii) the Temporary Order be extended to July 11, 2014;

AND WHEREAS on July 9, 2014, the Commission ordered that: (i) the hearing be adjourned to August 8, 2014 at 10:00 a.m.; and (ii) the Temporary Order as amended by previous Commission orders be extended to August 11, 2014;

AND WHEREAS on July 9 and 10, 2014, the Commission held a hearing and review under subsection 8(2) of the Act to consider the decision of the Director of the CRR Branch to object to the Transactions;

AND WHEREAS on July 16, 2014, the Commission approved the Transactions under subsections 11.9(5) and 11.10(6) of NI 31-103 subject to nine terms and conditions;

AND WHEREAS on August 8, 2014, counsel for PFAM requested a short adjournment to permit counsel with carriage of the PFAM matter to attend before the Commission to make submissions on the affidavit of Michael Ho sworn August 7, 2014;

AND WHEREAS on August 8, 2014, the Commission ordered that the Temporary Order be extended to August 29, 2014 and the hearing be adjourned to August 26, 2014 at 10:00 a.m. to hear submissions from the parties;

AND WHEREAS on August 26, 2014, Staff filed the affidavit of Michael Ho sworn August 7, 2014 to update the Commission on the complaints received by Staff from PPN noteholders and advisers to PPN noteholders and to set out Staff's information that: (i) in June 2014, PFAM resigned as administrator for the PPNs issued by the Banks; (ii) eight of the nine series of PPNs have matured; (iii) two series of PPNs have been paid out to PPN noteholders at maturity in 2010 and 2011; (iv) in March and April, 2014, the maturity proceeds for five series of PPNs which matured between December 2012 and March 31, 2014 inclusive were paid to escrow accounts at the BMO Trust Company ("BMO Trust"); (v) one series of PPNs matured on June 30, 2014 and the maturity proceeds have been paid to BMO Trust; (vi) BNP has advised Staff that BNP intends to fund the shortfall and to pay the PPN noteholders the full redemption amounts on the matured series of PPNs issued by BNP; (vii) SGC has advised Staff that SGC has paid the full proceeds payable upon maturity for the matured series of PPNs issued by SGC and such funds are being held in escrow at BMO Trust; (viii) BNP has advised Staff that BNP is currently making the necessary administrative arrangements to make payments to PPN noteholders directly; and (ix) SGC has advised Staff that SGC is carefully reviewing the registers and other records available to identify PPN noteholders and SGC will make arrangement for payment once sufficient reliable information is available;

AND WHEREAS on August 26, 2014, the Commission ordered that the Temporary Order be extended to October 1, 2014 and the hearing be adjourned to September 29, 2014 at 10:00 a.m.;

AND WHEREAS on September 24, 2014, the Commission rescheduled the PFAM hearing from September 29, 2014 at 10:00 a.m. to September 30, 2014 at 12:30 p.m.;

AND WHEREAS on September 30, 2014, the Commission ordered that the Temporary Order be extended to November 24, 2014 and the hearing be adjourned to November 20, 2014 at 10:00 a.m.;

AND WHEREAS on November 20, 2014, Staff updated the Commission on: (i) the efforts of SGC and IAS to reach an agreement for access to IAS's PPN noteholder records; and (ii) the status of PFAM's and Kingship Capital Corporation's ("KCC's") change of manager application;

AND WHEREAS on November 20, 2014, the Commission ordered that the Temporary Order be extended to January 16, 2015 and the hearing be adjourned to January 14, 2015 at 9:00 a.m.;

AND WHEREAS on November 20, 2014, the Commission advised that the matter should be brought back before the Commission earlier than January 14, 2015 if: (i) SGC and IAS fail to reach an agreement within two weeks; and/or (ii) PFAM's and KCC's change of manager application is not approved;

AND WHEREAS on January 14, 2015, Staff filed the affidavit of Michael Ho sworn January 13, 2015 to update the Commission on SGC's steps to arrange for payment of the amounts owing on the matured PPNs issued by SGC and to update the Commission on the approval of the change of manager application and the closing of the First Transaction;

AND WHEREAS on January 14, 2015, Staff and PFAM's counsel advised that the parties consent to the adjournment of the hearing to February 25, 2015 at 10:00 a.m. and to the extension of the Temporary Order to February 27, 2015;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED that:

1. The hearing is adjourned to February 25, 2015 at 10:00 a.m.

2. The Temporary Order as amended by previous Commission orders is extended to February 27, 2015.

DATED at Toronto this 14th day of Janaury, 2015

"Christopher Portner"

2.2.4 David Charles Phillips and John Russell Wilson

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS AND JOHN RUSSELL WILSON

ORDER

WHEREAS on June 4, 2012, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing in relation to a Statement of Allegations filed by Staff of the Commission ("**Staff**") against David Charles Phillips ("**Phillips**") and John Russell Wilson ("**Wilson**") (together, the "**Respondents**");

AND WHEREAS on April 25, 2013 Staff filed an Amended Statement of Allegations;

AND WHEREAS the hearing on the merits commenced on June 5, 2013 and continued on June 6, 7, 10, 11, 12, 13, 17, 19, 20 and 24, 2013;

AND WHEREAS on September 9, 2013, the Commission granted the Respondents' motion seeking leave to tender new evidence in the hearing on the merits and admitted into evidence the affidavit of Dr. Douglas Hyatt ("**Hyatt**"), sworn July 30, 2013;

AND WHEREAS on June 19, 2014, the Respondents filed and served a Notice of Motion (the "**Stay Motion**"), seeking an order staying the proceeding against the Respondents, specifically the release of the decision on the merits, until a final determination of the civil action commenced on November 7, 2013 against the Commission and others in Court File CV-13-492385;

AND WHEREAS on September 10, 2014, the Stay Motion was heard;

AND WHEREAS on January 14, 2015, the Commission issued its Reasons and Decisions dismissing the Stay Motion;

AND WHEREAS on January 14, 2015, the Commission issued its Reasons and Decision on the merits in this matter;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS ORDERED THAT:

1. Staff shall serve and file its written submissions on sanctions and costs by 4:00 p.m. on February 18, 2015;

2. The Respondents shall serve and file their written submissions on sanctions and costs by 4:00 p.m. on March 25, 2015;

3. Staff shall serve and file reply written submissions on sanctions and costs (if any) by 4:00 p.m. on April 15, 2015;

4. The hearing to determine sanctions and costs against the Respondents will be held at the offices of the Commission at 20 Queen Street West, Toronto, Ontario, on May 11, 2015, at 10:00 a.m. or such further or other dates as agreed by the parties and set by the Office of the Secretary; and

5. Upon the failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceedings.

DATED at Toronto this 14th day of January, 2015.

"Edward P. Kerwin"

"C.W.M. Scott"

2.2.5 Darren Spears and May Spears – ss. 127(1), 127(5)

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
DARREN SPEARS and MAY SPEARS

ORDER
(Subsections 127(1) and 127(5))

WHEREAS it appears to the Ontario Securities Commission (the "Commission") that:

1. May Spears is an employee of the Finance Group at Magna International Inc. ("Magna");

2. Darren Spears is May Spears' husband. He is a Director of Finance, Cosma Castings, which is an operating division of Magna;

3. Darren Spears and May Spears (the "Respondents") may have purchased and sold securities of Magna, a reporting issuer, with knowledge of material facts that were not generally disclosed;

4. May Spears is a person in a special relationship with Magna as she is an employee of the Finance Group at Magna. May Spears had access to material, undisclosed information concerning Magna's financial performance at the relevant times and was restricted from trading Magna securities during various blackout periods;

5. May Spears may have informed Darren Spears of material, undisclosed facts regarding Magna financial results and he may have made purchases and sales of Magna securities with knowledge of the material, undisclosed facts concerning Magna's financial results and while in a special relationship with Magna;

6. Trading in Magna securities repeatedly took place in May Spears' brokerage accounts while she was subject to blackout restrictions at Magna;

7. The Respondents may have breached subsections 76(1) and (2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"); and

8. Staff are continuing to investigate the conduct described above;

AND WHEREAS on December 12, 2014, the Commission, pursuant to clause 2 of subsections 127(1) and 127(6) of the Act ordered that all trading in securities of Magna by the Respondents cease for a period of 15 days from the date of that Order (the "Cease Trade Order");

AND WHEREAS on December 18, 2014, Staff and counsel for the Respondents appeared and made submissions before the Commission regarding extending the Cease Trade Order;

AND WHEREAS on December 18, 2014, the Commission made the following order:

1. Darren Spears is permitted to sell all of his holdings in Magna shares in his TD Waterhouse trading accounts provided that the proceeds from such sale shall remain in his trading account in the form of cash unless the Commission consents to the release of the proceeds or until otherwise ordered by the court;

2. Darren Spears is permitted to sell his option contracts for Magna shares that expire on December 20, 2014, provided that the proceeds from such sale shall remain in his trading account in the form of cash unless the Commission consents to the release of the proceeds or until otherwise ordered by the court;

3. Darren Spears shall allow his option contracts for Magna shares that expire on January 17, 2015 and March 20, 2015, to expire without any exercise of any right to purchase Magna shares;

4. Pursuant to subsection 127(7) of the Act, the Cease Trade Order is extended until April 17, 2015 (the "December 18, 2014 Order"); and

5. The hearing is adjourned to Wednesday, April 15, 2015 at 10:00 a.m. or such other date as may be determined by the Office of the Secretary;

AND WHEREAS Darren Spears sold all of his holdings in Magna shares and the options contracts expiring on December 20, 2014 in his TD Waterhouse trading accounts, and the proceeds of such sales remain in his trading account in the form of cash;

AND WHEREAS Darren Spears wishes to sell his option contracts for Magna that expire on January 17 and on March 20, 2015, on the last day prior to their expiry and agrees to hold the proceeds of such sales in cash in his TD Waterhouse trading accounts;

AND WHEREAS on January 14, 2015, Darren Spears brought a motion pursuant to subsection 144(1) of the Act, to vary the December 18, 2014 Order so that he may sell his option contracts for Magna that expire on January 17 and March 20, 2015 and hold the proceeds of such sales in cash in his TD Waterhouse trading accounts;

AND WHEREAS Staff consents to Darren Spears selling the option contracts for Magna that expire on January 17 and March 20, 2015 in his TD Waterhouse trading accounts provided that the proceeds from such sales remain in his trading accounts in the form of cash;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS ORDERED THAT the December 18, 2014 Order is varied such that Darren Spears shall be allowed to sell his option contracts for Magna shares that expire on January 17, 2015, and on March 20, 2015, provided that he sell them on the last day prior to their expiry and that any proceeds from such sales shall remain in his trading account in the form of cash unless the Commission consents to the release of the proceeds or until otherwise ordered by the court.

DATED at Toronto this 15th day of January, 2015.

“Christopher Portner”

2.2.6 Christopher Reaney – s. 8(4)

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
CHRISTOPHER REANEY

ORDER
(Subsection 8(4))

WHEREAS on January 13, 2015, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsection 8(4) of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") with respect to Christopher Reaney (the "Applicant");

AND WHEREAS on January 14, 2015, the Commission held a hearing to consider a request made by the Applicant to stay a decision of a Director dated January 5, 2015 (the "Decision") pending the disposition of the Applicant's hearing and review of the Decision;

AND WHEREAS the Commission reviewed the Applicant's request for a stay of the Decision;

AND WHEREAS the Commission considered submissions from counsel for the Applicant on the Application Record and submissions from counsel for the Applicant and counsel for Staff of the Commission ("Staff") on relevant case law;

AND WHEREAS the hearing and review of the Decision will be heard on March 31, 2015;

AND WHEREAS counsel for Staff consented to a stay pending the hearing and review or other order of the Commission on certain terms and conditions;

AND WHEREAS upon considering the materials and submissions of the Applicant and of Staff, the Commission is of the opinion that it is in the public interest to grant a stay order with terms and conditions, pursuant to subsection 8(4) of the Act;

IT IS HEREBY ORDERED THAT:

1. The suspension of the Applicant's registration imposed by the Decision is stayed immediately and this order will continue in force until further order of the Commission and in any event not later than March 31, 2015.

2. During the period in which the stay is in effect, the Applicant's registration under the Act is subject to the following terms and conditions:

   (a) The registration of the Applicant shall be subject to strict supervision by his sponsoring firm.

   (b) The Applicant's sponsoring firm must submit written monthly strict supervision reports (in the form specified in Appendix "A") to Staff of the Commission, Attention: Deputy Director, Registrant Conduct Team, Compliance and Registrant Regulation Branch, and also to Staff of the Mutual Fund Dealers Association of Canada (the "MFDA"), Attention: Manager, Compliance. These reports must be submitted within 15 calendar days after the end of each month.

   (c) The Applicant must immediately report to the Commission's Deputy Director, Registrant Conduct Team, Compliance and Registrant Regulation Branch if he is under investigation by the MFDA or is reprimanded in any way by the MFDA.

   (d) If the Applicant processes a transaction for a client using a document which is signed or initialled by a client and which is not the original version of the document, the Applicant must deliver the original document to his sponsoring firm within one week of the transaction to permit the firm to verify the authenticity of the copied document, including whether the copied document was created using a pre-signed form. If the sponsoring firm finds any irregularity, it will notify Staff of the Commission in writing when it submits its monthly report, referred to above.

(e) The Applicant may not use a limited trading authorization for any of his clients.

DATED at Toronto this 14th day of January, 2015.

"Mary G. Condon"

Appendix "A"

Strict Supervision Report

I hereby certify that supervision has been conducted for the month ending _____, 201_ of the trading activities of Christopher Reaney (the "Registrant") by the undersigned. I further certify the following:

1. All orders, both buy and sell, and sales contracts have been reviewed by a supervising officer of IPC Investment Corporation prior to the trade occurring.

2. All client accounts have been reviewed for leveraging, suitability of investments, overconcentration of investments, excess trading or switching, and any amendments to know your client information.

3. A review of trading activity on a daily basis has been conducted of the Registrant's client accounts.

4. No transactions have been made in any client account until the full and correct documentation is in place.

5. The Registrant has not been granted any power of attorney over any client accounts.

6. All payments for the purchase of the investments were made payable to the dealer. There were no cash payments accepted.

7. No client complaints have been received during the preceding month. If there have been complaints, an outline of the nature of the complaint and follow-up action initiated by the company is attached.

8. There has been no handling by the Registrant of clients' funds or securities or issuance of cheques to clients without management approval.

9. Any transfer of funds or securities between clients' accounts has been authorized in writing and reviewed by the supervising officer.

10. Spot audits relative to the Registrant's client accounts have been conducted during the preceding month to ensure compliance with these procedures and no violations of these procedures were discovered.

This page intentionally left blank

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 David Charles Phillips and John Russell Wilson – Rule 3 of the OSC Rules of Procedure

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS and JOHN RUSSELL WILSON

REASONS AND DECISION
REGARDING A MOTION FOR A STAY OF THE PROCEEDING
(Rule 3 of the Commission's Rules of Procedure (2012), 35 OSCB 10071)

Hearing:	September 10, 2014		
Decision:	January 14, 2015		
Panel:	Edward P. Kerwin	–	Commissioner and Chair of the Panel
	C. Wesley M. Scott	–	Commissioner
Appearances:	Freya Kristjanson	–	For Staff of the Commission
	Alistair Crawley Bruce O'Toole	–	For the Respondents

TABLE OF CONTENTS

REASONS AND DECISION

I. BACKGROUND

[1] A hearing before the Ontario Securities Commission (the "**Commission**"), pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), commenced on June 5, 2013 (the "**Merits Hearing**") to consider whether David Charles Phillips ("**Phillips**") and John Russell Wilson ("**Wilson**") (together, the "**Respondents**") breached certain provisions of the Act and acted contrary to the public interest (the "**OSC Proceeding**").

[2] A Statement of Allegations was filed by Staff of the Commission ("**Staff**" and together with the Respondents, the "**Parties**") on and dated June 4, 2012, and a Notice of Hearing was issued by the Commission on and dated June 4, 2012.

[3] Staff filed an Amended Statement of Allegations on and dated April 25, 2013 alleging that each of the Respondents directly or indirectly engaged or participated in an act, practice or course of conduct relating to securities which he knew, or reasonably ought to have known, would perpetrate a fraud on investors of First Leaside Group ("**FLG**"), contrary to subsection 126.1(b) of the Act. Staff also alleged that each of the Respondents made statements a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the Act; failed to deal fairly, honestly and in good faith with their clients, contrary to section 2.1 of Commission Rule 31-505; and engaged in conduct contrary to the public interest and harmful to the integrity of the capital markets.

[4] The Merits Hearing began on June 5, 2013, and closing submissions were made on September 25, 2013. The Panel heard all the evidence and submissions of the Parties. The Panel has not rendered its decision on the Merits Hearing ("**Merits Decision**").

[5] The Respondents filed and served a Notice of Motion (the "**Stay Motion**") on and dated June 18, 2014, seeking an order to stay the OSC Proceeding against the Respondents. Specifically, the Respondents seek a stay of the release of the Merits Decision until a final determination of the civil action commenced by certain investors in FLG against the Commission, and others, in Court File CV-13-492385 dated November 7, 2013 (the "**Civil Action**").

[6] The Respondents filed and served a Memorandum of Fact and Law, a Brief of Authorities and a Motion Record on and dated July 28, 2014. Staff filed and served a Memorandum of Fact and Law, a Brief of Authorities and a Motion Record on and dated August 25, 2014. The Stay Motion was heard on September 10, 2014.

[7] The Respondents brought the Stay Motion because the Respondents are of the view that there is a real possibility of a conflict of interest between the interests of the Commission and its duty to hold a fair and proper hearing. The Respondents submit that there is significant overlap in the issues to be determined in the OSC Proceeding and the Civil Action that would give rise to a reasonable apprehension of bias on the part of the Panel. The Respondents submit that there is an actual or perceived incentive for the Commission to deflect blame for the collapse of FLG onto, among others, the Respondents, in order to protect its own interests and reputation.

[8] Staff opposes the Stay Motion pending the outcome of the Civil Action. Staff submits that there is no reasonable apprehension of bias on the part of the Panel. Accordingly, the Stay Motion should be dismissed.

II. THE RESPONDENTS' SUBMISSIONS

[9] The Respondents submit that a group of FLG investors, by way of Notice of Action dated November 7, 2013, commenced the Civil Action against the Commission and certain members of Staff, seeking $18,000,000 in damages for negligence accompanied by bad faith, misfeasance in public office, conspiracy, abuse of process, breach of fiduciary duty, intentional interference with economic and contractual relations, negligent misrepresentation and negligent investigation. The Respondents submit that the Civil Action was brought solely by investors who acquired securities between August 22 and October 28, 2011 (the "**Sales Period**"). The Respondents submit that they did not commence and are not parties to the Civil Action.

[10] The Respondents also submit that there is a significant overlap in the issues to be determined in the OSC Proceeding and in the Civil Action since the central critical issue to be decided by the Commission, is "whether the respondents failed to ensure that 'important facts' regarding FLG were disclosed to investors." Accordingly, the Respondents submit that the Commission must determine the following factual determinations in the OSC Proceeding which they submit are also at issue in the Civil Action:

(i) whether the retainer of Grant Thornton Limited ("**Grant Thornton**") by legal counsel to FLG to conduct a viability review of FLG was voluntary;

(ii) the appropriate interpretation of the report of Grant Thornton dated August 19, 2011 in respect of FLG (the "**Grant Thornton Report**");

(iii) whether the undertaking provided by Phillips to the Commission on March 18, 2011 that no sale will be made to any investors of any debt or equity in certain FLG entities was voluntarily extended at the September 1, 2011 meeting with Staff;

(iv) whether the Commission was aware that FLG, through the Respondents and its other sales people, was selling investments during the Sales Period;

(v) whether the directors and management of FLG, including the Respondents, were given the legal advice that they could not disclose the Grant Thornton Report;

(vi) whether the directors and management of FLG, including the Respondents, responded appropriately to the recommendations in the Grant Thornton Report, including the implementation of the Base Model (as defined in the Grant Thornton Report); and

(vii) whether there were material changes in circumstances from September 1, 2011 to October 28, 2011, warranting the threat of a cease trade (collectively the "**Proposed Factual Determinations**").

[11] The Respondents further submit that there is an actual or perceived incentive for the Panel to deflect blame for the collapse of FLG onto the former members of management and the board of directors, including the Respondents, in order to absolve the Commission from responsibility for the financial losses which befell the investors. In the Respondent's submission, this is because the Commission, in its Statement of Defence in the Civil Action, asserts that investors' losses were the result of the failure of FLG management to ensure that 'important facts' regarding FLG were disclosed to investors.

[12] It is the Respondents' position that the release of the Merits Decision should be stayed because there is a real possibility of a conflict of interest between the interests of the Commission and its duty to hold a fair and proper hearing, and that this conflict puts the integrity of the Commission at risk. The Respondents submit that there is no danger to the public interest as a result of delay in concluding the OSC Proceeding as the Respondents are not engaged in selling securities.

III. STAFF'S SUBMISSIONS

[13] Staff submits that the Respondents have the evidentiary burden to establish that a reasonable apprehension of bias exists on the part of the Panel and the Respondents have not met this burden. Staff submits that, instead, the Respondents rely on conjecture and speculation. Staff submits that there is no reasonable apprehension of bias on the part of the Panel.

[14] Staff also submits that there are significant safeguards in place to ensure the impartiality of the Panel. In support of this submission, Staff relies on the duties of the Panel under the Act, the Commission's *Charter of Governance Roles and Responsibilities* (the "**Charter of Governanc**e"), the Commission's *Guidelines for Members and Employees Engaged in Adjudication* (the "**Adjudication Guidelines**"), the Commission *Code of Conduct* (the "**Code of Conduct**"), the *Conflict of Interest Rules for Public Servants (Ministry) and Former Public Servants (Ministry)*¸Ontario Regulation 381/07, pursuant to the *Public Service of Ontario Act, 2006*, S.O. 2006, c. (the "**PSOA**" and the "**PSOA Rules**") and the common law.

[15] It is Staff's position that a reasonable person would not conclude that the prospect of liability for the Commission as a result of the Civil Action would create a reasonable apprehension of bias on the part of the Panel in the OSC Proceeding for the following reasons:

(i) there is a strong presumption of impartiality at law on the part of the Panel;

(ii) the adjudicative framework including the Adjudication Guidelines provides safeguards to ensure impartiality;

(iii) the lack of personal financial interest in the Civil Action or the OSC Proceeding on the part of the Panel;

(iv) the evidence and arguments of the Merits Hearing were completed prior to the commencement of the Civil Action and the filing of a lawsuit against the Commission does not freeze all adjudicative proceedings which may involve similar parties or issues;

(v) the role of the Respondents in the Civil Action has the appearance of self-help in engineering a conflict or a perception of bias; and

(vi) there are significant differences between the Civil Action and the OSC Proceeding.

[16] Staff further submits that it is in the public interest and the interest of justice for the Panel to release the Merits Decision since the Civil Action involves different parties and there are different issues to be decided. Additionally, Staff submits that the Civil Action could be delayed for a period of more than two years given the stage of the proceedings relating to the Civil Action.

[17] Staff submits that it is important for the Commission to deal with matters in a timely and efficient manner. Accordingly, it is in the public interest to conclude the proceedings and release the Merits Decision. It is Staff's position that to stay the Merits Decision would create an incentive for those subject to regulatory proceedings to encourage others to commence litigation against the adjudicative body, thereby tarnishing the appearance of the administration of justice. Notwithstanding the fact that the Respondents are not a named party to the Civil Action, Staff presented evidence that the Respondents were involved at the inception of the Civil Action. Staff submitted that, as of November 2013, Phillips was the liaison member of the instructing committee of the FLG investors who were the plaintiffs in the Civil Action, with responsibility for interfacing with the legal team on behalf of the plaintiffs in the Civil Action. Staff also submits that each of the Respondents provided their "complete cooperation" to the plaintiff FLG investors in the Civil Action that allowed the FLG investors to commence the Civil Action against the Commission and certain individuals, in order to allegedly reduce the likelihood of investors suing the Respondents.

[18] Staff submits that the issues raised by the Respondents may be dealt with on appeal. Accordingly, there would be irreparable harm to the public interest by restraining the release of the Merits Decision.

IV. THE ISSUE

[19] This Panel must determine whether it should exercise its discretion to grant the Stay Motion and delay the release of the Merits Decision until a final determination of the Civil Action. The question that this Panel must determine is whether releasing the Merits Decision would give rise to a reasonable apprehension of bias on the part of the Panel.

V. THE LAW

[20] The law on reasonable apprehension of bias is well-established in Canada, and has been considered on a number of occasions. The test for determining whether a reasonable apprehension of bias exists is set out in *Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369 ("***National Energy***") where the Supreme Court of Canada stated that:

> … the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information … [The] test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly." (the "**Reasonable Apprehension of Bias Test**") (para. 40).

The Reasonable Apprehension of Bias Test has been applied by the Supreme Court of Canada in *Newfoundland Telephone Co v Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 SCR 623 and was applied by the Commission in *Re Norshield Asset Management (Canada) Ltd.*, (2009) 32 OSCB 1249 ("***Re Norshield***").

[21] When applying the Reasonable Apprehension of Bias Test, there is a strong presumption of impartiality on the part of the Panel. In *E.A. Manning Ltd v Ontario (Securities Commission)*, [1995] OJ No 1305 ("***E.A. Manning***"), the Ontario Court of Appeal held that:

> … It must be presumed, in the absence of any evidence to the contrary, that the Commissioners will act fairly and impartially in discharging their adjudicative responsibilities and will consider the particular facts and circumstances of each case (para 28).

VI. ANALYSIS

[22] We find that an informed person, viewing this matter realistically and practically, and having thought the matter through, would think that it is more likely than not that the Panel would decide the Merits Decision fairly. We dismiss the Respondent's submission that the release of the Merits Decision would cause a reasonable and informed person to conclude that the Panel would try to deflect blame for the collapse of FLG onto the Respondents in order to absolve the Commission from responsibility for the financial losses which befell the investors.

[23] We have considered the following three questions in order to determine whether we should exercise our discretion to stay the release of the Merits Decision: whether

1. there is a reasonable apprehension of bias on the part of the Panel;

2. it is in the interest of justice to grant the Stay Motion; and

3. it is in the public interest to grant the Stay Motion.

1. The Reasonable Apprehension of Bias Test

[24] We find that the Respondents did not provide sufficient evidence to show a reasonable apprehension of bias on the part of the Panel.

[25] The burden of proof for the Stay Motion requires the Respondents to show that the Reasonable Apprehension of Bias Test is met; that is, would a "reasonable … and informed person, viewing the matter realistically and practically – and having thought the matter through – conclude" that there is bias on the part of the Panel impairing its duty to impartially adjudicate the allegations made against the Respondents. The Respondents have not met this burden of proof.

[26] Commissioners who serve on hearing panels are deemed to exercise their adjudicative role impartially and independently. The Commission in *Re Norshield*, referring to the decision in *E.A. Manning*, stated that "Commissioners are to be afforded the same presumption as judges that they will act fairly and impartially in discharging their adjudicative responsibilities and will consider the particular facts and circumstances of each case" (*Re Norshield* at para. 119).

[27] Hearing panels of the Commission are mandated by statute, common law and the governing provisions of the Commission to decide matters independently on the evidence before them. Accordingly, there are many safeguards in place to ensure that the Panel is, and remains, impartial. These safeguards include the Act, the *Statutory Powers Procedure Act*, RSO 1990, c S.22 as amended (the "**SPPA**"), the *Rules of Procedure* of the Commission (2012), 35 O.S.C.B. 10071, as amended, made under the SPPA (the "*Rules of Procedure*"), the Charter of Governance, the Adjudication Guidelines, the Code of Conduct, the PSOA Rules and principles of administrative law (including duties of procedural fairness and the obligation to make decisions based on the evidence) (collectively, the "**Safeguards**"). The Safeguards established by law and the adjudicative framework are important elements in providing the context within which to apply the Reasonable Apprehension of Bias Test.

[28] Proceedings before the Hearing Panel are governed by the Act, the SPPA, the Commission's Rules of Procedure, principles of administrative law and the common law. Panel members are also governed by the Charter of Governance, the Adjudication Guidelines and the Code of Conduct. The Adjudication Guidelines provide that:

> … Members should conduct their deliberations and make their decisions independently of other Members of the Commission who are not on the Panel. The prospect of disapproval from any person, institution, or group, including other Members, should not deter a Member from making the decision that he or she believes is fair and just. (Article 3.6 of the Adjudication Guidelines)

[29] Commissioners should decide on what they believe is fair and just, irrespective of any disapproval from others. Article 5 of the Adjudication Guidelines states that "members should endeavor to independently perform their adjudicative roles and functions in accordance with these Guidelines". The Charter of Governance also states that "members perform their adjudicative function by individually serving on adjudicative panels that conduct hearings and render decisions independently of the Commission as a whole" (Charter of Governance p 4).

[30] The Supreme Court of Canada in *Brosseau v Alberta (Securities Commission)*, [1989] 1 SCR 301 ("***Brosseau***") held that the "structure of the Act whereby commissioners could be involved in both the investigatory and adjudicatory functions did not, by itself, give rise to a reasonable apprehension of bias" (*Brosseau*, *supra*, at para. 39). The combination of the enforcement and adjudicative functions, to the extent that it is authorized by the Act, cannot form the grounds of a challenge of a reasonable apprehension of bias or lack of independence (*Norshield*, *supra* at para. 104).

[31] In *Brosseau*, the Supreme Court of Canada also recognized that "had there been any evidence of a possible conflict between the interest of the Commission in the outcome of the hearing, and their duty to give a fair hearing to the appellant, it would be a different matter, and might raise a reasonable apprehension of bias" (*Brosseau*, *supra*, at para. 41).

[32] The Respondents' submissions are based on a perceived incentive for the Panel to deflect blame for the collapse of FLG onto, among others, the Respondents, in order to absolve the Commission from responsibility for the financial losses which befell the investors. Accordingly, the Respondents submit that there is a real possibility of a conflict of interest between the interests of the Commission and the duty of the Panel to hold a fair and proper hearing.

[33] The Respondents also submit that there is significant overlap in the issues to be determined in the OSC Proceeding and the Civil Action and this overlap gives rise to a reasonable apprehension of bias.

[34] Notwithstanding their submissions, the Respondents failed to demonstrate how a reasonable and informed person, having thought the matter through, would conclude that there is a reasonable apprehension of bias on the part of the Panel particularly in light of the Safeguards.

[35] The Respondents failed to show a conflict between the interests of the Commission in the outcome of the hearing and the Panel's duty to give a fair hearing to the Respondents. The Respondents do not assert that the Panel is actually biased.

[36] In considering the Proposed Factual Determinations submitted by the Respondents we find that the OSC Proceeding is separate and apart from the Civil Action. The Civil Action is a proceeding under different procedural and evidentiary rules which may result in different findings by the trier in the Civil Action notwithstanding the findings of the Panel in the Merits Decision. The Proposed Factual Determinations are not issues that the Panel must determine, except, to consider whether the Respondents relied on legal advice in deciding whether or not to disclose the Grant Thornton Report. However, we find that the question of whether or not the Respondents relied on legal advice in deciding whether or not to disclose the Grant Thornton Report is not sufficient to grant the Stay Motion. In *Howe v Institute of Chartered Accountants of Ontario* (1994) 21 OR 3d 315 ("***Howe***"), the Ontario Divisional Court held, and the Ontario Court of Appeal affirmed, that "overlapping issues alone will not lead to a stay" (para 41).

[37] The inquiry into reasonable apprehension of bias is highly fact-specific and contextual (*Wewaykum Indian Band v. Canada*, [2003] S.C.J. No. 50 at para. 77).

[38] The Respondents rely on *Curtis v Manitoba (Securities Commission)* 2006 MBCA 135 ("***Curtis***") in which the Manitoba Court of Appeal ordered a stay of the Manitoba Securities Commission's proceeding because of a finding of reasonable apprehension of bias. In *Re Curtis*, the respondents were adversarial co-defendants with the Manitoba Securities Commission in a class action suit commenced prior to the hearing. The Court found that there was an actual or perceived incentive for the Manitoba Securities Commission "to deflect blame from itself onto the [respondents] in order to protect its own interests and reputation."

[39] *Curtis*, *supra* was distinguished on its facts by the Divisional Court in *Xanthoudakis v. Ontario Securities Commission*, 2011 ONSC 4685 ("***Xanthoudakis 2011***"). In that case, the Divisional Court considered comments made by the Chair of the Commission in a media interview, which was held during the hearing and in which the Commission's own actions in the matter were challenged. The Divisional Court considered the overall structure and organization of the Commission, including the Safeguards, and found that a reasonable, fully-informed person would recognize the separation of the adjudicative function from the investigative function and the Chair of the Commission and would not conclude that the Commission had pre-judged the matter (*Xanthoudakis 2011*, *supra*, at paras. 36-51).

[40] In *Pearlman v. Manitoba Law Society*, [1991] 2 S.C.R. 869, the Supreme Court of Canada found that the any alleged pecuniary interest that the members of the judicial committee might have in a costs award against the lawyer who was the subject of the disciplinary proceeding was "far too attenuated and remote to give rise to a reasonable apprehension of bias."

[41] Staff submits that the possibility that the Civil Action could result in adverse financial consequences for the Commission is also far too attenuated and remote, particularly given that the Panel has no personal financial interest in the outcome of the Civil Action.

[42] In this matter, unlike in *Re Curtis*, the Respondents are not co-defendants with the Commission to the Civil Action, (ii) the Merits Hearing, including the tendering of evidence and closing submissions by the Parties, was concluded prior to the commencement of the Civil Action and (iii) the Respondents were involved in commencing the Civil Action and thereby creating the alleged bias.

[43] In an email dated June 19, 2014 (the "**June 19, 2014 Email**") from Counsel to the Respondents to Staff, and in another email dated and sent November 21, 2013 (the "**November 21, 2013 Email**") from a plaintiff named in the Civil Action to another plaintiff in the Civil Action there is evidence that the Respondents had some involvement at the initial stages when a broader civil claim was being considered. Specifically, in the November 21, 2013 Email a named plaintiff to the Civil Action wrote: "this law suit is certainly not in their [the Respondents] interests, but we could not have contemplated it without their [the Respondents] complete co-operation". (Motion Record of Staff, Tabs E and N).

[44] The Alberta Court Appeal in *Boardwalk REIT LLP v Edmonton (City)*, 2008 ABCA 176 ("***Boardwalk***") held that one cannot attempt to create a reasonable apprehension of bias by his own actions and that "such attempts of self-help by engineering perceived conflicts are firmly rejected, for obvious reasons of justice and policy" (*Boardwalk* at para. 72).

[45] We find that a reasonable, fully-informed person would conclude that it was more likely than not that the Panel would decide the matter fairly given the Safeguards, and that the alleged source of bias are allegations made against the Commission in the Civil Action, which was commenced with the Respondents' involvement and after the hearing of evidence and submissions in the Merits Hearing had concluded.

[46] While it is critical that the public's confidence in the impartiality and integrity of governmental administrative agencies be maintained, the Respondents in this case have not established a reasonable apprehension of bias on the part of the Panel to warrant a stay of the proceeding. The Respondents have not shown how the release of the Merits Decision will not maintain the public's confidence as described in *Curtis*.

2. The Interest of Justice Test

[47] The Panel can exercise its discretion to grant the Stay Motion if the interests of justice support delaying the release of the Merits Decision. In *Xanthoudakis v Ontario (Securities Commission)* [2009] O.J. No. 1873 ("***Xanthoudakis 2009***"), the Divisional Court stated that:

> [t]he overarching consideration in determining whether a stay should be granted is whether the interests of justice call for a stay. This court has often said that it is undesirable to grant a stay of tribunal proceedings absent "exceptional or extraordinary circumstance demonstrating that the applicants must be heard" (para. 35).
>
> The Divisional Court in para. 36 adopted the frequently quoted statement from *Ontario College of Art v Ontario (Human Rights Commission)*, [1993] O.J. No. 61 at para. 6: For some time now the Divisional Court has ... taken the position that it should not fragment proceedings before administrative tribunals. Fragmentation causes both delay and distracting interruptions in administrative proceedings. It is preferable, therefore, to allow such matters to run their full course before the tribunal and then consider all legal issues arising from the proceedings at their conclusion. In particular, at that time, these applicants will have a full right of appeal...".

The Divisional Court dismissed the stay motion, and at para. 39 held that the public interest favoured the continuation of the OSC proceeding:

> In my view the public interest favours the continuation of this proceeding to allow the timely determination of the proceedings. The OSC has an important public interest mandate in regulating the financial market. These are important public interest proceedings that have been outstanding for two years and are near completion. The Divisional Court could address the issues raised in this appeal, together with any other grounds of appeal, in one hearing after the OSC proceedings have been concluded on the merits.

[48] In *Korea Data Systems (USA) Inc. v Amazing Technologies Inc.* 2012 ONCA 756 ("***Korea Data Systems***"), the Ontario Court of Appeal held that the statutory power to grant a stay, empowers the court to stay proceedings where "it is in the interest of justice that the proceedings be stayed" (para. 18). The court also stated in para. 18 that this "applies equally to the exercise of this Court's jurisdiction to stay an appeal pending the disposition of another body".

[49] The Ontario Court of Appeal, in *Korea Data Systems*, identified certain factors that are relevant in exercising the discretion to stay a proceeding, including "irreparable harm or an imbalance of convenience", "the public interest in the fair, well-ordered and timely disposition of litigation", and "the effective use of scarce public resources" (para. 19).

[50] Applying these factors to the facts in this matter, the public interest is better served through timely and efficient proceedings. The Respondents did not demonstrate the irreparable harm they would suffer from the release of the Merits Decision in view of the fact that they are not named parties to the Civil Action, and that the Respondents have a statutory right of appeal after the conclusion of the OSC Proceeding.

3. The Public Interest

[51] We find that it is in the public interest to conclude the OSC Proceeding and dismiss the Stay Motion. Although a discussion of the public interest may form part of the interests of justice test, we have decided to discuss it separately in light of the importance of this factor in this particular case.

[52] The Respondents submit that the public interest would not be harmed by a stay of the proceeding because neither of the Respondents is engaged in selling securities and Phillips remains subject to a cease trade order. However, the Respondents failed to address whether granting the Stay Motion would impact the timely and efficient enforcement of securities law in Ontario's capital markets and investor confidence in the capital markets.

[53] Section 1.1 of the Act provides that the purposes of the Act are:

(a) to provide protection to investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in capital markets.

[54] The Supreme Court of Canada has recognized that the primary goal of securities legislation is the protection of the investing public, intended to be exercised to prevent likely future harm to Ontario's capital markets. (*Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, [2001] 2 SCR 132 at paras. 37, 39 and 42) To achieve this goal the Commission has "a very broad discretion to determine what is in the public's interest". (*Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 SCR 557 at para 75) This broad discretion allows the Commission to intervene whenever the conduct is contrary to the public interest, even when there is no specific breach of the Act (*Re Canadian Tire Corp*. (1987), 10 OSCB 857 at paras. 124-126)

[55] The scope of the Commission's discretion in defining the public interest is limited only by the general purposes of the Act. (*Gordon Capital Corp. v Ontario (Securities Commission)*, [1991] 50 OAC 258 (Div Ct) at para. 37) The public interest demands that matters be dealt with expeditiously. The regulator's ability to respond efficiently and effectively is a fundamental requirement for a properly functioning capital market. It is in the public interest to maintain a system of securities regulatory enforcement that effectively and expeditiously deals with allegations of capital market misconduct to protect the public (*Re Arbour Energy* (2009) ABASC 366 at paras. 53-57).

[56] In *Howe*, the Court held that:

> To permit the disciplinary hearings in the case at bar to be blocked indefinitely by the existence of civil actions which may not be prosecuted expeditiously and which may ultimately be settled would be quite inconsistent, in my opinion, with a recognition of the public interest in the disciplinary proceedings.

[57] In *Re Robinson* (1993) 1 CCLS 248, the Commission held that "the public expects and requires that this Commission will move expeditiously to deal with market participants who are alleged to have engaged in conduct which is abusive of the capital markets" (para. 13).

[58] As noted above, the Divisional Court dismissed the stay motion in *Xanthoudakis 2009* and held that the public interest favoured the continuation of the OSC proceeding.

[59] We are concerned that it may take a number of years for the Civil Action to achieve some form of finality. Additionally, there is a wider concern that a stay of the OSC Proceeding in these circumstances would create an incentive on the part of those subject to such proceedings to encourage others to commence litigation against the Commission.

VII. CONCLUSION

[60] The Respondents have failed to establish a reasonable apprehension of bias on the part of the Panel by the release of the Merits Decision, and the interests of justice test calls for a release of the Merits Decision. Equally, the public interest is served by the conclusion of the OSC Proceeding.

[61] For these reasons, the Stay Motion is dismissed.

DATED at Toronto this 14th day of January, 2015.

Edward P. Kerwin"

"C.W.M. Scott"

3.1.2 David Charles Phillips and John Russell Wilson

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS AND JOHN RUSSELL WILSON

REASONS AND DECISION

Hearing:	June 5, 6, 7, 10, 11, 12, 17, 19, 20, 24 September 9 and 25, 2013		
Decision:	January 14, 2015		
Panel:	Edward P. Kerwin	–	Commissioner and Chair of the Panel
	C. Wesley M. Scott	–	Commissioner
Counsel:	Alistair Crawley Bruce O'Toole	–	For the Respondents
	Yvonne Chisholm Brooke Shulman	–	For Staff of the Commission

TABLE OF CONTENTS

1. OVERVIEW

A. BACKGROUND

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**"), pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), to consider whether David Charles Phillips ("**Phillips**") and John Russell Wilson ("**Wilson**") (together, the "**Respondents**") breached the Act and acted contrary to the public interest.

[2] A Statement of Allegations was filed by Staff of the Commission ("**Staff**") on and dated June 4, 2012, and a Notice of Hearing was issued by the Commission on June 4, 2012. Staff filed an Amended Statement of Allegations on and dated April 25, 2013.

B. HISTORY OF THE PROCEEDING

[3] The first appearance in this matter was held on June 25, 2012. Subsequent to that, two pre-hearing conferences were held on October 12, 2012 and May 30, 2013. On January 25, 2013, the hearing on the merits (the "**Merits Hearing**") was set to commence on June 3, 2013.

[4] The Merits Hearing commenced on June 5, 2013 and concluded on September 25, 2013. Evidence was heard on June 5, 6, 7, 10, 11, 12, 17, 19, 20 and 24, 2013. Throughout the tendering of evidence and the testimony of witnesses, the Commission panel was composed of Commissioners Carnwath (Chair), Kerwin and Scott. On August 1, 2013, after Commissioner Carnwath recused himself from the Panel, an order was issued that the hearing would continue before and be decided by a Commission panel (the "**Panel**") comprised of Commissioners Kerwin and Scott.

[5] The Respondents were represented by counsel throughout the Merits Hearing.

[6] On June 24, 2013, following the completion of the evidence phase of the Merits Hearing, Staff and the Respondents agreed and the Commission ordered that closing arguments would be heard on September 9, 2013. Staff filed and served its written submissions on August 2, 2013. The Respondents' written submissions were to be filed and served by August 21, 2013, and Staff's written reply submissions were to be filed and served by August 29, 2013.

[7] On August 6, 2013, the Respondents filed and served a Notice of Motion, seeking (a) leave to tender new evidence ("**New Evidence**") in the Merits Hearing in the form of, (i) the affidavit of Dr. Douglas Hyatt ("**Hyatt**"), sworn July 30, 2013 (the "**Hyatt Affidavit**") with respect to a meeting of the Independent Committee of the Board of Directors of First Leaside Wealth Management Inc. ("**FLWM**") held on November 13, 2011 (the "**November 13, 2011 Meeting**"), and (ii) the unredacted minutes of that meeting, or (b) in the alternative, leave to recall Hyatt to provide oral evidence in the Merits Hearing, and such further and other relief as to the Commission may seem just (the "**August 6, 2013 Motion**"). The Respondents submitted that there is no suggestion that the admission of the New Evidence required calling or recalling further witnesses to respond to or to contest the New Evidence.

[8] On August 8, 2013, in response to the August 6, 2013 Motion, Staff filed and served a Memorandum of Fact and Law, a Brief of Authorities, the affidavit of Stephanie Collins, sworn August 8, 2013, and the affidavit of Sharon Nicolaides, sworn August 9, 2013. Staff submitted that the August 6, 2013 Motion should be dismissed. Staff also made alternative submissions that, in the event the August 6, 2013 Motion is allowed, (i) the evidence should be in the form of the Hyatt Affidavit only, (ii) the Respondents should not be permitted to recall Hyatt to give oral evidence, and (iii) the Hyatt Affidavit should be given very little weight.

[9] On August 14, 2013, the Respondents filed and served a Reply Memorandum of Fact and Law, a Brief of Authorities and a Supplemental Motion Record, including the affidavit of Clarke Tedesco, sworn August 14, 2013.

[10] On August 16, 2013, having considered the written materials filed by the Parties, the Commission ordered that it would hear the Parties' oral submissions concerning the August 6, 2013 Motion on September 9, 2013, the date previously set aside for closing argument in the Merits Hearing. By order dated September 9, 2013 (the "**September 9, 2013 Order**"), the August 6, 2013 Motion was allowed, and the Hyatt Affidavit was admitted into evidence in the Merits Hearing. Pursuant to the September 9, 2013 Order, the Commission also set the timing for filing and serving written closing submissions and the date of September 25, 2013 for the hearing of oral closing submissions in the Merits Hearing. Staff was ordered to file and serve written closing submissions by September 16, 2013, and the Respondents were ordered to file and serve written reply submissions by September 20, 2013. Oral closing submissions were heard on September 25, 2013, and Staff, counsel for the Respondents and Wilson were in attendance but Phillips was unwell and did not attend.

[11] On June 19, 2014, the Respondents filed and served a Notice of Motion (the "**Stay Motion**"), seeking an order staying the proceeding against the Respondents, specifically the release of the decision on the merits, until a final determination of the civil action commenced on November 7, 2013 against the Commission and others in Court File CV-13-492385. On July 16, 2014, counsel for Staff filed and served Staff's motion record in respect of the Stay Motion.

[12] On July 28, 2014, the Respondents filed and served a Memorandum of Fact and Law and a Brief of Authorities. In response to the Stay Motion, on August 25, 2014, Staff filed and served a Memorandum of Fact and Law and a Brief of Authorities. Staff submitted that the Stay Motion should be dismissed.

[13] On September 10, 2014, the Panel heard oral submissions from the Respondents and Staff in respect of the Stay Motion. In a separate decision dated January 14, 2015, the Panel determined that there is no reasonable apprehension of bias on the part of the Panel. Therefore, the Stay Motion requesting a stay was dismissed.

C. THE RESPONDENTS

i. Phillips

[14] Phillips was the founder of the First Leaside Group ("**FLG**") and Chief Executive Officer ("**CEO**"), President and director of FLWM from its incorporation until November 2011. Phillips owned 100% of the common shares of FLWM and was "the driving mind" of FLWM.

[15] Phillips was also the CEO, President, Secretary, a director and ultimate designated person ("**UDP**") of, and employed as a salesperson with, First Leaside Securities Inc. ("**FLSI**"). In addition, Phillips was the President, Secretary and a director of First Leaside Finance Inc. ("**FL Finance**"). As of the date of the Merits Hearing, Phillips remained a director of FLWM. (Exhibit 1 – Grant Thornton Report, p.15; Testimony of Krieger, June 5, 2013, p. 120 and pp. 155-159; Testimony of Phillips, June 19, 2013, p. 7 and p. 96; Exhibit 2 – Hearing Brief, Volume 1, Jonathan Krieger, Tab 9; Opening Statement of the Respondents dated June 5, 2012, p. 8)

[16] Phillips was registered with the Commission in various capacities since 1981 and he held many roles as a registrant in respect of FLG entities. Phillips was registered as a trading officer and approved as a director and shareholder from March 1, 2004 to February 24, 2012 in respect of FLSI. During the Sales Period, Phillips was a registrant in respect of FLSI and was registered as UDP of FLSI from January 11, 2010 to February 24, 2012. (Testimony of Phillips, June 19, 2013, p. 7 and pp. 99-100; Exhibit 4 – Hearing Brief: Corporate and Registration Documents, Tab 9; Exhibit 6 – Affidavit of Stephanie Collins sworn October 28, 2011, p. 4, para. 10)

[17] Phillips' registrations in respect of FLSI were suspended on February 24, 2012 under subsection 29(2) of the Act when the registration for FLSI as an investment dealer under the Act was suspended by the Commission due to the suspension of FLSI's membership with the Investment Industry Regulatory Organization of Canada ("**IIROC**"). (Exhibit 6 – Affidavit of Stephanie Collins sworn October 28, 2011, p. 4, para. 10; Exhibit 4 – Hearing Brief: Corporate and Registrations Documents, Tabs 5 and 6)

[18] Phillips was also registered with the Commission in respect of F.L. Securities Inc. ("**FL Securities**") in various capacities, including salesperson, trading officer, director and shareholder from February 27, 1992 to February 28, 2012. Phillips' registrations in respect of FL Securities were suspended on February 28, 2012 under subsection 29(2) of the Act when the registration of FL Securities as a limited market dealer was suspended by the Commission. (Exhibit 4 – Hearing Brief: Corporate and Registrations Documents, Tabs 5 and 6)

[19] Phillips was at the top of the reporting structure within FLG and directed all significant aspects of the business and growth of FLG, including capital raising, deal origination, deal negotiation and structuring and internal administration. (Testimony of Krieger, June 5, 2013, p. 108, Testimony of Phillips, June 19, 2013, pp. 102-103, Exhibit 1 – Grant Thornton Report, p. 23)

[20] Phillips approved all FLG proprietary products, including limited partnerships (individually an "**LP**" and collectively "**LPs**") and fund offerings. He explained new products to the registered representatives at FLSI and signed off on all trades for everyone who was selling in the FLG organization. Phillips also hired, fired and supervised the sales staff until November 2011. (Testimony of Chien, Testimony of Phillips, June 19, 2013, p. 112 and pp. 114-115; Testimony of Chien, June 10, 2013, pp. 65-66 and pp. 76-80)

[21] Phillips' role at FLG also included selling directly to investors. Phillips had between 100 and 500 clients and his book of business by early November 2011 exceeded $100 million in assets under management. (Testimony of Phillips, June 19, 2013, pp. 106-115; Exhibit 19 – Respondents' Hearing Brief, Tab 27; Testimony of Wilson, June 20, 2013, pp. 84-86)

ii. Wilson

[22] Wilson first heard about FLG as an investor in 1991 when he was a founding investor in Wimberly Apartments Limited Partnership ("**WALP**"), a FLG entity. Wilson has known Phillips since 1991 and described himself and Phillips as good friends who socialized together from time to time. Wilson joined FL Securities in November 2002, having previously spent 26 years as salesperson of a company in the United States selling industrial machinery. (Testimony of Wilson, May 15, 2012, pp. 86-87; Exhibit 13 – Phillips and Wilson Transcripts, Tab B, pp. 24-25)

[23] Wilson was registered with the Commission as a trading officer and approved as a director of FL Securities from March 11, 2004 to December 31, 2004. Wilson also was registered with the Commission as a salesperson or dealing representative with FLSI from April 12, 2005 to February 24, 2012, which permitted him to offer wealth management services to clients of FLG. Wilson also was approved as an officer and director of FLSI from March 29, 2011 to February 24, 2012. (Testimony of Wilson, June 20, 2013, pp. 62-63; Exhibit 4 – Hearing Brief: Corporate Registration Documents, Tab 11)

[24] In early 2011, Wilson was an investment advisor with FLSI and a director of FLSI, FLWM and 960510 Ontario Inc., WALP's general partner. During the Sales Period, Wilson's title was Vice President, Sales of FLSI, but he and Phillips described Wilson's role as that of the Director of Investor Relations since Wilson helped to coordinate communications to investors. (Testimony of Wilson, June 20, 2013, pp. 62-64, 82, 84 and 92-93; Exhibit 4 – Hearing Brief: Corporate and Registration Documents, Tab 9; Testimony of Krieger, June 5, 2013, p. 108; Testimony of Phillips, June 19, 2013, p. 9; Testimony of Wilson, June 20, 2013, p. 64; Exhibit 1 – Grant Thornton Report, p. 23)

[25] Wilson was a senior salesperson with FLG who described himself as "an old salesman, an old customer guy" who "very much enjoyed working directly with people". As per his request, Wilson did not have anyone reporting to him and he did not have authority over the other salespeople. Wilson found that in management, "you got further and further away from the customer ..." Wilson worked closely with and reported directly to Phillips along with all sales staff at FLG. However, he oversaw a sales team of 6 investment advisors and 19 sales associates. (Testimony of Phillips, June 19, 2013, pp.112-115; Testimony of Wilson, June 20, 2013, pp. 84-87; Exhibit 13 – Phillips and Wilson Transcripts, Tab B, pp. 24-25; Exhibit 1 – Grant Thornton Report, p. 23)

[26] As of August 19, 2011, Wilson had raised the most capital within the FL Group. As of early November 2011, Wilson had more than 100 clients and his book of business was in excess of $100 million. (Testimony of Phillips, June 19, 2013, pp. 112-115; Testimony of Wilson, June 20, 2013, pp. 84-86; Exhibit 1 – Grant Thornton Report, p. 23)

[27] Wilson had invested in excess of $2 million in FLG. His FLG portfolio included approximately $1 million in cash that he put into FLG over time and more than half were units that he received as compensation (including bonuses) in lieu of an amount of cash that he earned while working at FLG since 2002, including certain bonuses. (Testimony of Wilson, June 20, 2013, p. 63)

D. THE ALLEGATIONS

[28] In the Amended Statement of Allegations, Staff alleges that during the period between August 22 and October 28, 2011 (the "**Sales Period**"), Phillips directed and oversaw sales of offerings of equity and debt securities in the First Leaside Group ("**FLG**") which raised about $18.76 million from investors (the "**FLG Sales Investors**"), with Phillips having sold about $3.38 million directly to FLG Sales Investors and Wilson having sold about $8.95 million directly to FLG Sales Investors.

[29] Staff alleges that Phillips and Wilson effected these sales of FLG securities to FLG Sales Investors despite knowing that an independent accounting firm, Grant Thornton Limited ("**Grant Thornton**"), had conducted an extensive six-month review of FLG and had delivered a report to them on and dated August 19, 2011 (the "**Grant Thornton Report**"), which included findings that the future viability of FLG was contingent on its ability to raise new capital and that there was a significant equity deficit.

[30] Staff alleges that the fact that Grant Thornton was reviewing FLG, the existence of the Grant Thornton Report and the contents of Grant Thornton Report were important facts FLG Sales Investors should have known. Staff alleges that, during the Sales Period, Phillips did not disclose these important facts to FLG salespeople, and Phillips and Wilson did not disclose them to FLG Sales Investors to whom they directly sold FLG securities. Staff alleges that by concealing these important facts while selling FLG securities to FLG Sales Investors, and in Phillips' case, supervising the entire sales effort, Phillips and Wilson dishonestly placed FLG Sales Investors' pecuniary interests at risk.

[31] Staff further alleges that, as registrants, each of Phillips and Wilson had an obligation to deal honestly, fairly and in good faith with their clients. In supervising and conducting sales in the circumstances described, Phillips failed to discharge this obligation. In conducting sales in the circumstances described, Wilson failed to discharge this obligation.

[32] Specifically, Staff alleges that each of Phillips and Wilson:

a. directly or indirectly engaged or participated in an act, practice or course of conduct relating to securities which he knew, or reasonably ought to have known, would perpetrate a fraud on FLG Sales Investors, contrary to subsection 126.1(b) of the Act;

b. made statements a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the Act;

c. failed to deal fairly, honestly and in good faith with their clients, contrary to section 2.1 of Commission Rule 31-505; and

d. engaged in conduct contrary to the public interest and harmful to the integrity of the capital markets.

E. OVERVIEW OF FIRST LEASIDE GROUP, BUSINESS AND OPERATIONS

i. The First Leaside Group of Companies

[33] FLG was founded in the late 1980's by Phillips. The FLG office was at Phillips' residence address, 430 Durham Road 8 in Uxbridge, Ontario ("**Phillip's Residence**"). (Exhibit 1 – Grant Thornton Report, p. 15; Testimony of Phillips, June 19, 2013, p. 96; Exhibit 4 – Hearing Brief: Corporate and Registration Documents, Tabs 1, 2, 3 and 4)

[34] FLG offered a variety of investment opportunities, including (i) full brokerage and financial planning services administered by Penson Financial Services Canada Inc.; and (ii) higher risk securities with debt and equity offerings invested directly or indirectly within FLG. The type of products offered included limited partnership ("**LP**") units, trust units, mortgages and corporate preferred shares. In addition, FLEX LP (as defined in [40] below) conducted a $5 million offering of subordinated debentures. (Exhibit 1 – Grant Thornton Report, p. 15)

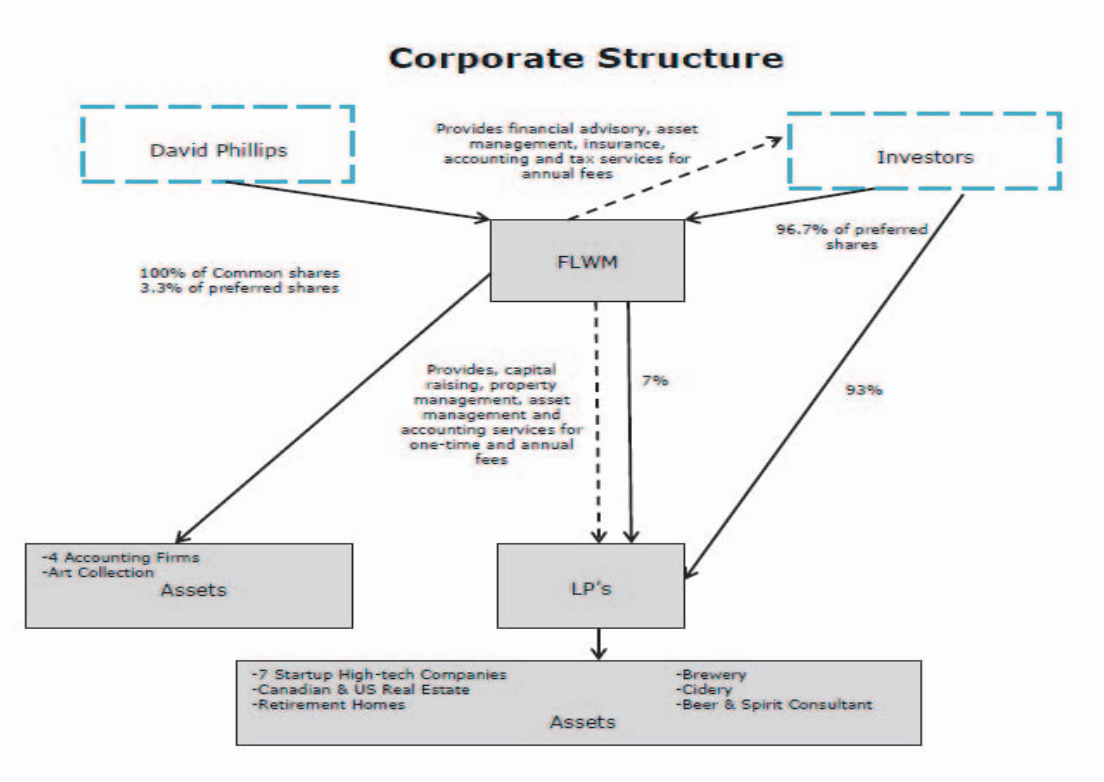
[35] FLG raised debt and equity and pursued investments with the objective of providing its investors with monthly distributions, potential capital appreciation, and in the case of equity investments, potential tax deductions. FLG also offered its investors wealth management, estate planning, insurance, accounting and tax services through a number of different entities. (Exhibit 1 – Grant Thornton Report, p. 15)

ii. FLG Limited Partnerships and Companies

[36] FLG started raising LP capital and advising investors in 1988. The Grant Thornton Report identified that FLG initially raised $10 million and acquired two Texas properties (Pointe and Crossing), which as of August 2011, still formed part of the WALP portfolio. LP units were initially priced at $1 per unit and the majority of the investments had distribution rates ranging from 4% to 10%, which typically were paid to investors on a monthly basis. (Exhibit 1 – Grant Thornton Report, p. 15)

[37] Each year, FLG formed a Canadian Limited Partnership ("**Canadian LP**") and a U.S. Limited Partnership ("US LP") to acquire and own real estate and to provide tax write-off opportunities. Each LP held different assets. By August 2011, FLG was a complex corporate structure comprised of about 161 LPs and companies. There were significant interrelationships between the entities. (Testimony of Krieger, June 5, 2013, pp. 107-126; Exhibit 6 – Affidavit of Stephanie Collins sworn October 26, 2011, para. 12)

[38] The following chart depicts the corporate structure of FLG:



(Exhibit 1 – Grant Thornton Report, p. 23)

[39] By August 2011, FLG managed several of the limited partnerships including FLWM, First Leaside Expansion Limited Partnership ("**FLEX LP**"), WALP, First Leaside Global Limited Partnership ("**Global LP**"), First Leaside Venture Limited Partnership ("**Venture LP**") and First Leaside Realty & Realty II Limited Partnerships ("**Realty I & II LPs**"), First Leaside Acquisitions Limited Partnership ("**Acquisitions LP**"), First Leaside Investors Limited Partnership ("**Investors LP**"), First Leaside Progressive Limited Partnership ("**Progressive LP**"), First Leaside Universal Limited Partnership ("**Universal LP**"), First Leaside Spring Valley Limited Partnership ("**Spring Valley LP**"), FLWM Holding Limited Partnership ("**FLWM Holdings L**P"), First Leaside Select Limited Partnership ("**FL Select LP**"), First Leaside Elite Limited Partnership ("**Elite LP**"), First Leaside Premier Limited Partnership ("**Premier LP**"), First Leaside Ultimate Limited Partnership ("**Ultimate LP**"), First Leaside Visions I & II Limited Partnership ("**Visions I & II LPs**") and First Leaside Mortgage Fund ("**Mortgage Fund**"). (Exhibit 1 – Grant Thornton Report, pp. 24-28)

[40] LPs and other investment entities within FLG collectively allowed investors to place their capital, directly or indirectly, in certain assets, including, among other things, multi-unit residential properties in Canada and the United States, retirement homes in the provinces of Ontario and British Columbia, raw land with development potential throughout Southern Ontario, four small accounting firms in Western Canada, a cider and brewery in Southern Ontario, a liquor consulting business and high tech companies, which were eligible to receive government grants. (Exhibit 1 – Grant Thornton Report, p. 15)

[41] Several FLG entities, particularly FLWM, FL Finance, FL Securities and several LPs, along with investors external to FLG, owned units in other FLG LPs and FLG funds.

[42] Certain LPs, particularly WALP, became a drain on the resources in the FLG organization because of recurring operating losses and property rehabilitation costs. (Testimony of Krieger, June 5, 2013, pp. 111-113; Exhibit 1 – Grant Thornton Report, Organizational Chart at Appendix "B", p. 79 (right side); Exhibit 1 – Grant Thornton Report, pp. 17 and 29)

[43] By August 2011, FLG had approximately $370 million of assets under management ("**AUM**"), invested in 39 properties and/or investments through 19 LPs. The AUM were divided amongst those associated with real estate (the "**Real Estate Assets**") and non-Real Estate Assets (the "**Admin Assets**"). The majority of FLG Investors had multiple investments within FLG and the average investment was approximately $290,000 per investor in Real Estate Assets and $190,000 per investor in Admin Assets. (Exhibit 1 – Grant Thornton Report, pp. 17 and 20; Testimony of Krieger, June 5, 2013, pp. 141-146)

FLWM

[44] FLWM is the de facto parent company and the main operating entity of FLG. Phillips owns 100 per cent of the common shares of FLWM. (Exhibit 1 – Grant Thornton Report, p. 24)

[45] Within FLWM, there are seven operating companies that provided all of the advisory services for FLG. These seven operating companies are: FLSI, FL Securities, First Leaside Fund Management Inc. ("**FL Fund Management**"), First Leaside Accounting and Tax Services Inc. ("**FL Accounting**"), FL Finance, First Leaside Insurance Inc. ("**FL Insurance**") and First Leaside Management Inc. ("**FL Management**"). There were over 50 employees and 399 investors in FLWM.(Testimony of Krieger, June 5, 2013, p. 108; Testimony of Phillips, June 19, 2013, pp. 102-103; Exhibit 1 – Grant Thornton Report, pp. 23-24 and p. 83)

[46] In 2011, equity was being raised in FLWM through the distribution of three series of preferred shares, paying annual dividends of 10%, 8% and 6% and debt was being raised through the First Leaside Wealth Management Trust Fund ("**FLWM Fund**"), which was paying interest at 7%. FLWM earned its revenue by charging fees of 17.5% on new equity capital raised, property management fees of 2% of net revenues and administration fees for accounting, tax and other services provided within FLG. FLWM debt and equity investments were characterized by FLG Management as having been designed to provide investors with consistent monthly distributions, potential capital appreciation and in the case of equity investments, potential tax deductions. (Testimony of Krieger, June 5, 2013, pp. 126-128 and p. 131; Exhibit 1 – Grant Thornton Report, p. 15, p. 18 and p. 24)

[47] By August 2011, FLWM owned the following assets:

(i) approximately $13.4 million worth of units in various LPs and other assets within FLG;

(ii) 33.3% of First Leaside Retirement Residences Limited Partnership ("**FL Retirement LP**"), an LP that owns 51 % of a group of 8 retirement properties through Ontario and BC;

(iii) 34.9% of First Leaside Beverages Limited Partnership ("**Beverages LP**"), an entity that owns a cidery in Thornbury, King Brewery in King City and a beer and spirits consulting company called Beer Barons;

(iv) $2 million worth of art and paintings being held for FLG's new office premises in Uxbridge;

(v) $4.1 million in notes receivable from investors who had borrowed funds on a short term basis to acquire units in various LPs within FLG;

(vi) Joanna Hampton Holdings Limited, a company that owned 3 accounting firms in Western Canada;

(vii) Jim Brander Professional Corporation, an accounting firm in Western Canada; and

(viii) $1.6 million in marketable securities. (Exhibit 1 – Grant Thornton Report, p. 81)

FLSI

[48] FLSI is an Ontario corporation which was incorporated on February 17, 1999. FLSI's registered address is Phillip's Residence. FLSI was registered as an investment dealer under the Act from March 1, 2004 to February 24, 2012. FLSI's registration was suspended on February 24, 2012 due to the suspension of FLSI's membership with IIROC. FLSI charged agency fees, business development fees and acquisition analysis fees. (Exhibit 1 – Grant Thornton Report, p. 24; Exhibit 4 – Hearing Brief: Corporate and Registration Documents, Tab 1 and 15; Exhibit 6 – Affidavit of Stephanie Collins sworn October 28, 2011, p. 6, para. 23)

[49] In 2004, FLSI became registered with the Investment Dealer Association (now IIROC) which allowed the FL Group to become a dealer member. The membership with IIROC allowed FL Group to offer full brokerage services through FLSI, which created a significant revenue source through FLWM and a greater opportunity to attract new investors seeking a more diversified portfolio. With the expansion of its potential investor pool, the FL Group began raising significant capital beginning in 2004. The FL Group's total AUM grew over 500% between 2004 – 2011 from $62M to $370M. (Exhibit 1 – Grant Thornton Report, p. 62)

FL Securities

[50] FL Securities was incorporated on February 18, 1988 with its registered office address at Phillip's Residence. The President and UDP of FL Securities is Joanna Hampton ("**Hampton**"). (Exhibit 4 – Hearing Brief: Corporate and Registration Documents Brief, Tab 2; Exhibit 21 – Email chain with final email from Joanna Hampton to Ellen Bessner dated March 4, 2011; Exhibit 6 – Affidavit of Stephanie Collins sworn October 28, 2014, pp. 7-8, paras. 26-28)

[51] FL Securities became registered as an exempt market dealer ("**EMD**") with the Commission as of September 28, 2009. Prior to that date, FL Securities was registered as a limited market dealer from March 1, 1991. On September 28, 2009, with the implementation of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, the limited market dealer category was changed to the EMD category. The EMD registration of FL Securities was suspended by the Commission on February 28, 2012. FL Securities earns its revenues by charging promotional, acquisition analysis, property management and advisory fees. (Exhibit 1 – Grant Thornton Report, pp. 15, 24 and p. 86; Exhibit 4 – Hearing Brief: Corporate and Registration Documents, Tab 6; Exhibit 20 – Document titled "Welcome to the 2nd Flex Annual General Meeting" dated June 4, 2011; Exhibit 6 – Affidavit of Stephanie Collins sworn October 28, 2011, p. 7, para. 25)

FL Fund Management

[52] FL Fund Management is described as the investment fund manager within FLG and represented that it was registered with the Commission as an investment fund manager, although no evidence of such registration was provided to the Panel. FL Fund Management provided fund management services to entities of FLG that issued securities to the public and charged fees to all Canadian properties equal to 2% to 4% of net revenues. (Exhibit 1 – Grant Thornton Report, pp. 24 and 83; Exhibit 17 – Hearing Brief: HZ and BZ, Tab 4)

FL Accounting

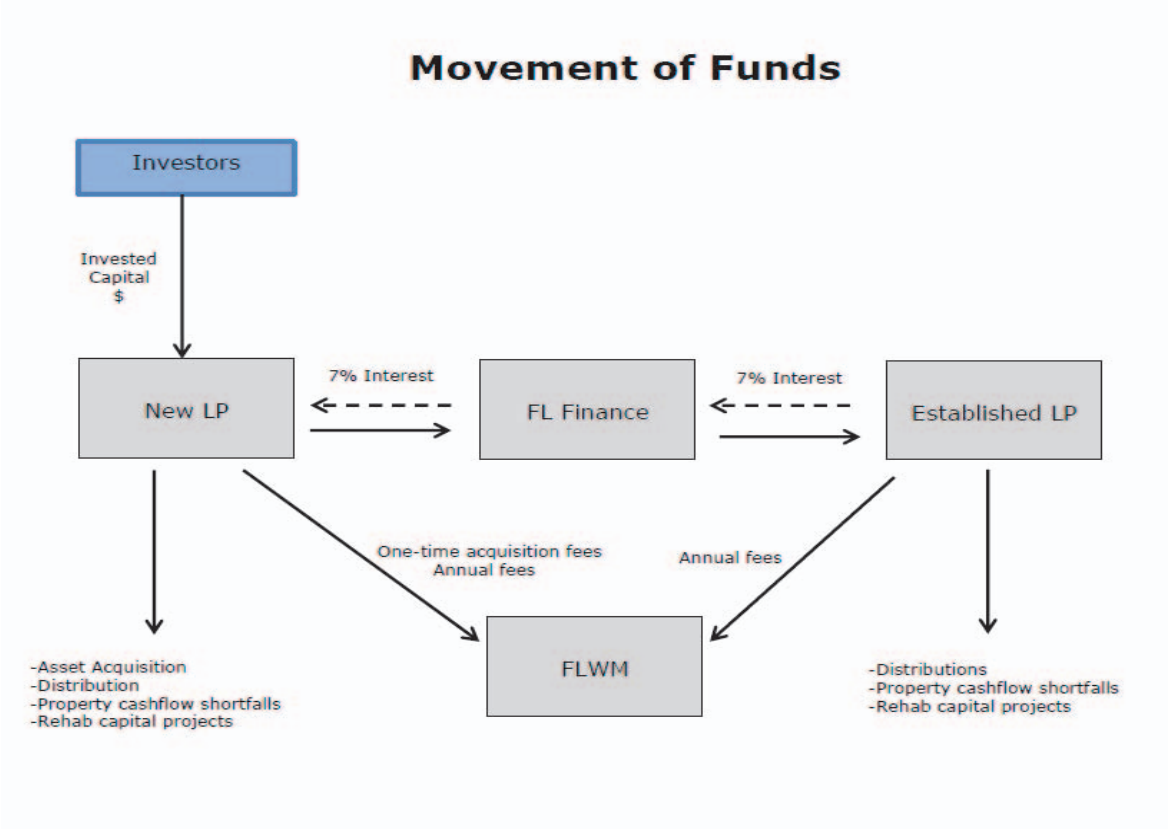
[53] FL Accounting provides accounting and income tax advisory services for Canadian and US personal and corporate needs. Hampton is the President of FL Accounting and oversees a staff of four accountants. (Exhibit 1 – Grant Thornton Report, pp. 23-24 and p. 66)

FL Finance

[54] FL Finance acts as the central bank within FLG. Most related party transactions are recorded through FL Finance and all purchases of units from investors are financed through this entity. (Exhibit 1 – Grant Thornton Report, p. 24)

[55] Prior to the review of FLG by Grant Thornton and the release of the Grant Thornton Report, the business of FLG was conducted such that LPs within the FLG organization would often raise more capital than required for a specific project, or raised capital without an identified acquisition or a specific use of proceeds. This resulted in idle cash in the bank account of a respective LP that generated an immaterial amount of interest, while the LP was still obligated to pay the requisite distributions to unit holders. The FLG LP would subsequently lend its idle cash to FL Finance on commercial terms. FL Finance would then lend the cash to another LP in FLG that had an immediate cash flow requirement to fund distributions, property cash flow shortfalls or property rehabilitation costs. Loan agreements were prepared and signed between FL Finance and the lending LP, at an agreed upon interest rate of 7% annually, and subject to a guarantee from FLWM. (Testimony of Krieger, June 5, 2013, pp. 146-151; Testimony of Krieger, June 6, 2013, pp. 60-61; Exhibit 1 – Grant Thornton Report, p. 31)

[56] The movement of funds between FL Finance and other FLG LPs within the FLG organization is depicted through the following diagram from the Grant Thornton Report:



(Exhibit 1 – Grant Thornton Report, p. 31)

[57] It was noted in the Grant Thornton Report that significant funds have been loaned between FLG entities through FL Finance on commercial terms, which allowed FLG [and FLWM] to operate perpetually as a going concern, as FLG has generally had access to capital to meet cash flow shortfalls, albeit using new investor money in some cases. (Exhibit 1 – Grant Thornton Report, p. 9)

[58] By August 2011, the practice of lending funds from one LP to another through FL Finance resulted in a cash flow shortfall within FLG. LPs that had lent money to FL Finance were required to pay interest or distributions to their investors, but the entities that had received the funds from FL Finance, including WALP, which borrowed the majority of the money lent by FL Finance, did not have the cash flow to pay interest to FL Finance. (Testimony of Krieger, June 5, 2013, pp. 151-155; Exhibit 1 – Grant Thornton Report, pp. 30-32) The balance sheets for each LP and FLWM revealed that the majority of funds lent to FL Finance by certain LPs ("**Lending LPs**") were lent, in turn, by FL Finance to WALP to fund the property rehabilitation costs and operating losses of WALP. However, the funding of losses and property rehabilitation programs would have a negative short term cash flow impact on FLG because FL Finance had to pay 7% interest to the Lending LPs (to cover their interest fund distribution payments) while FL Finance would not receive the 7% interest from the borrowing LP (WALP) if the borrowed money is being used to fund operating losses and property rehabilitation programs that are not yet generating income. Accordingly, the related party balance owing to FL Finance from the borrowing LP would continue to grow with accruing interest on the books of FL Finance.

[59] The FL Finance balance sheet as at December 31, 2010 showed it had borrowed $27.9 million from within FLG, lent $10.2 million to certain LPs, and acquired $11.7 million in LP units (through investor redemptions at face value of $1.00 per unit for investors who sold their investments back to FLG). By August 2011, FL Finance did not have sufficient liquid assets to pay back the $27.9 million in outstanding loans to the other LPs within FLG from which FL Finance had borrowed the funds. Notwithstanding this fact, as of August 2011, each of FLWM, FLEX LP, WALP, Global LP, Venture LP and First Leaside Mortgage Trust ("**FL Mortgage**") were continuing to raise capital. (Testimony of Krieger, June 5, 2013, pp. 151-155; Exhibit 1 – Grant Thornton Report, p. 16 and pp. 30-32)

FL Insurance

[60] In August 2010, FL Insurance was incorporated and is a licensed life insurance agency in Ontario. FL Insurance offered services with respect to life, health and accident insurance to investors within FLG. (Exhibit 1 – Grant Thornton Report, p. 18, p. 24 and p. 83)

iii. The FLG Investment Model and Flow of Funds

[61] The Grant Thornton Report disclosed that FLG Management (as defined in [80] below) targeted a total return on investments ("**ROI**") between 12% to 15% and that FLG Management forecast that investors would begin to realize on their capital appreciation within five years. In order to meet this investment objective, FLG pursued properties that required significant tax deductible expenditures at the initial stage and properties that FLG Management believed would have distinct upside potential in the future (the "**Investment Model**"). (Exhibit 1 – Grant Thornton Report, p. 18)

[62] The Investment Model required that an LP in the FLG organization raise capital prior to the identification of a property or assets for acquisition by the LP. The strategy was such that the LP would invest in assets in the first or second year of the LP's existence. (Testimony of Chien, June 10, 2013, pp. 66-69)

[63] Certain LPs within the FLG organization were described as blind pools since they did not own any assets at the outset of raising funds, but sought investment opportunities at some point in the future. In certain instances, LPs within the FLG organization raised more capital than was required at the time. In order to mitigate the cost of having excess cash earning a nominal return in the respective LP, the LP would lend the idle cash to another FLG entity until the LP that originally raised the funds required access to the capital. These loans between LPs were facilitated through FL Finance, and were subject to written agreements setting out commercial terms, and supported by a guarantee from FLWM. LPs that did not acquire assets were merged with another FLG entity such as WALP or FLEX LP. (Testimony of Chien, June 10, 2013, pp. 66-69; Testimony of Phillips, June 19, 2013, p. 116; Exhibit 1 – Grant Thornton Report, p. 18)

[64] The sources of payments of distributions or interest to FLG Investors (as defined below) who had invested in an LP within the FLG organization came from cash flow from properties or investments, loan repayments from related parties, bank financing or mortgages, and interest on promissory notes. (Testimony of Krieger, June 5, 2013, pp. 119-120; Exhibit 1 – Grant Thornton Report, Organizational Chart at Appendix "B", p. 82 (right side))

iv. Key Investment Vehicles

WALP

[65] WALP was established in July 1992 and is considered the U.S. real estate LP within the FLG organization. WALP was created to consolidate FLG's Texas real estate holdings. WALP has a portfolio which holds properties in Texas, including 11 different apartment complexes. WALP owns the F.L. Master Texas Ltd., ("**Master Texas**"), F.L. Master Sherman Ltd. ("**Master Sherman**") and F.L. Sedona Creek Ltd. ("**Sedona**") which own multi-unit residential buildings are located in Texas. Master Texas owns six Limited Partnerships that each owns one apartment complex in the Dallas/Ft. Worth area. Master Sherman owns four LPs that each owns one apartment complex in the Sherman, Texas area. Sedona owns an apartment complex in the Dallas area. (Testimony of Krieger, June 5, 2013, pp. 124-126; Exhibit 1 – Grant Thornton Report, pp. 25-26 and Organizational Chart at Appendix "B", p. 85)

[66] As at June 30, 2011, WALP had 226 investors and had raised $46.77 million. Equity was raised directly by WALP, which paid annual distributions of 4% as return of capital. Debt was raised by WALP for the Master Texas properties through First Leaside Fund ("**FL Fund**"), First Leaside Properties Fund ("**FL Properties Fund**") and Wimberly Fund in order to facilitate the ongoing cash requirements for certain properties. (Exhibit 1 – Grant Thornton Report, pp. 94-96)

[67] FL Fund was opened to investment in 2005. As at June 30, 2011, FL Fund had raised $43.3 million in debt with an annual interest rate of 9%. FL Fund debt instruments had maturity dates varying from 2015 to 2019, with an option to extend or renew for an additional 10 years at the discretion of Master Texas. (Exhibit 1 – Grant Thornton Report, p. 96)

[68] Wimberly Fund was opened to investment in 2010 and had raised $9.3 million in debt bearing an annual interest rate of 8% and an additional $1.2 million in debt bearing an annual interest rate of 7% as at June 30, 2011. Wimberly Fund debt instruments had maturities from 2019 to 2021 with an option to extend or renew for an additional 10 years at the discretion of WALP. (Exhibit 1 – Grant Thornton Report, p. 96)

[69] The Grant Thornton Report disclosed that FLG Management intended to convert approximately $20 million of the $43 million in debt of FL Fund to equity in WALP, bearing a dividend yield of 4.375% in order to better position FLG "from a cash flow perspective as it will be able to reduce the distribution it pays to its unit holders". FLG Management was of the view that the

opportunity to earn distributions in the form of return of capital would compensate for the reduction of yield as the after-tax benefit would be attractive to investors in the highest income tax bracket. (Exhibit 1 – Grant Thornton Report, p. 96)

FLEX LP

[70] FLEX LP is a Canadian real estate LP in the FLG organization. FLEX LP is an open fund that is considered the Canadian real estate fund for FLG. FLEX LP began raising capital in 2005 and has 262 investors. FLEX LP raised funds from investors in two different ways: (i) Equity units, which provided for a dividend at a yield that had recently been changed from 7.5% per year to 6% per year, as was announced at the Annual General Meeting of FLEX LP held on June 4, 2012 (**"FLEX AGM"**); and (ii) Debt, which provided for interest at a rate of 7.75% per year, was raised from investors, through notes issued to investors by Development Notes LP ("**Development Notes**") and the money is then lent by Development Notes LP to FLEX LP at the same rate and amount, with a 30-month term.

[71] By August 2011, FLEX LP owned several LPs and real estate assets, including First Leaside Growth Limited Partnership ("**Growth LP**"), First Leaside Unity Limited Partnership ("**Unity LP**"), and First Leaside Entities Limited Partnership ("**Entities LP**").

[72] Growth LP held a fully tenanted 70,000 square feet industrial building located in Brampton, Ontario. Unity LP held 2.74 acres of land in Wheatley, Ontario, zoned for a residential townhome complex with plans for 16 townhomes, for which construction was planned for 2012. Entities LP owned two properties in downtown Uxbridge: (i) a 1.57 acre property, used as a parking lot for the construction workers who were engaged in constructing nearby office buildings for FLEX LP; and (ii) a 0.59 acre parcel of vacant land that was not producing income.

[73] FLEX LP also owned 100% of 1.04 acres of land in downtown Uxbridge, Ontario, which was being developed by FLG into a platinum LEED, 58,182 square feet, 4 floor office building (the "**Victoria St. Building**"), and which was planned to be FLG's head office, with FLWM to be the main occupant. As of the Grant Thornton Report, the total costs incurred for the property were approximately $5.13 million. The property was in the excavation stage of development and the foundations were expected to be poured in September 2011. The total cost of the Victoria St. Building was anticipated to be $31.5 million. The Grant Thornton Report disclosed that the Victoria St. Building was expected to be completed and occupied by FLWM in September 2012, with a projected Net Operating Income ("**NOI**") (after third party debt) of approximately $1.2 million. FLEX LP also owned Queenston Manor Limited Partnership ("**QM LP**"), a 77 unit retirement living apartment complex in St. Catharines, Ontario, which had an occupancy rate of 92%.

[74] In the summer of 2011, FLG Management closed FLEX LP and opened the FLEX Fund to investors, offering debt with interest at 6% per year and the option to re-invest the monthly interest payments so that interest accumulates and is compounded on a monthly basis and paid out when the investment matures.

[75] FLEX LP was projected to raise equity in the amounts of $11.5 million in 2011 and $5.5 million in 2012 as well as secure construction financing of $9 million in 2012 and an additional $3 million (refinanced into a mortgage) in 2013. As at June 30, 2011, FLEX LP had raised $12.4 million of debt at a 7.75% interest rate. FLG Management expected to convert three-quarters of the debt holders to equity in 2012 and the balance in 2013. As discussed in [71] above, the annual distributions on FLEX LP's equity were reduced from 7.5% to 6%, which was announced at the FLEX AGM.

Venture LP

[76] Venture LP was opened by FLG in 2011 and had raised $886,000 in equity as of June 30, 2011, paying distributions of 5% by way of return of capital. As of August 2011, Venture LP was in the advanced stage of negotiations to acquire three retirement home complexes in Ottawa called (i) The Palisades, (ii) The Palisades Condo Club and (iii) The Redwoods. Venture LP was projected to raise $14.4 million, $3.1 million and $2.16 million by sales of equity in the following three years, respectively. FLG Management anticipated that the purchase of the three Ottawa properties would close on August 26, 2011. (Exhibit 1 – Grant Thornton Report, p. 28 and p. 48)

[77] FLG Management advised Grant Thornton that funds for Venture LP's acquisition of the three Ottawa properties would be raised from two sources:

(i) PrimeTime Living LP would refinance three of its properties (Shores, Cherry Park & Orchard Valley) and would lend Venture $4.5 million (through FL Finance) by way of a Promissory Note with interest-only payments of 7% per year, which FLG Management expects would be repaid before the end of 2011; and

(ii) Venture LP has arranged mortgage financing with CIBC in the amount of $40 million with an interest rate of 5.00% per year, amortized over 25 years, maturing in September 2016 as well as a vendor take-back ("**VTB**") mortgage financing in the amount of $17.5 million with Kingsett Capital Partners. The Grant Thornton Report stated that the majority of the cash deficiency is due to the VTB arrangements which require a principal

payment at the end of each of the next three years of $4.4 million, and the balance of $4.3 million at the end of 2014. (Exhibit 1 – Grant Thornton Report, p.117)

Special Notes LP

[78] The Special Notes Limited Partnership ("**Special Notes LP**") offered debt to investors by way of Special Notes that provide for interest at a rate of 10.1% per annum, payable monthly and are callable after 30 months. Special Notes were offered to FLG investors along with Venture LP equity by group email to investors dated September 9, 2011 from Wilson ("**Wilson's Group Email**"). Wilson's Group Email about the Special Notes LP offering described its features and indicated that there was a limited supply and that he expected the Special Notes "to be fully subscribed rather quickly".

(Testimony of Wilson, June 20, 2013, pp. 107-110; Exhibit 7 – Hearing Brief: Lists of Sales During Sales Period and Marketing Material, Tab 2; Submissions of Staff dated August 1, 2013, pp. 147-148, para. 429)

v. Key Personnel

[79] The senior management team of FLG ("**FLG Management**") included Phillips, Wilson, Joanna Hampton ("**Hampton**"), Director of Finance, Leon Efraim ("**Efraim**"), Corporate Counsel and Chief Compliance Officer and Joan Wilson, Director of Real Estate. (Testimony of Phillips, June 19, 2013, pp. 9-11)

[80] Hampton oversaw a staff of four accountants, and was the President of FL Accounting and Joan Wilson oversaw a team of two people and liaised with the third party property managers. Joan Wilson also reviewed and reported on all real estate acquisitions for the Company. Phillips' wife, Margaret Davis ("**Davis**"), was a director and the Secretary of FLWM, and the Vice-President and Treasurer of FL Finance.

(Testimony of Phillips, June 19, 2013, pp. 9-11; Exhibit 1 – Grant Thornton Report, p. 21; Testimony of Krieger, June 5, 2013, pp. 156-157; Testimony of Phillips, June 19, 2013, pp. 7-8, p. 97 and p. 99; Exhibit 4 – Hearing Brief: Corporate and Registration Documents, Tabs 1, 3, 4 and 9)

vi. The FLG Sales Teams

[81] The FLG sales teams consisted of three "tiers". Tier 1 employees "cold called" people in order to find leads. Tier 2 employees followed up on the cold call leads in order to book a meeting for a tier 3 salesperson. A tier 3 salesperson was a registered representative, who then met with individuals with the intention of getting them to invest with FLG. (Testimony of Chien, June 10, 2013, pp. 62-63)

[82] In 2011, there were six FLG sales teams led by Phillips, Wilson, Edmund Chien ("**Chien**") and three others (collectively the "**Senior Sales Team**").

[83] The Senior Sales Team worked in an open concept space on the second floor of a barn on the Uxbridge property at Phillips' Residence. Phillips worked out of his home, which was on the same property. Phillips' dedicated work space was the atrium, a glass structure with a fireplace on the main floor of the house. (Testimony of Chien, June 10, 2013, pp. 65-66, pp. 71-73 and p. 76; Testimony of Wilson, June 20, 2013, pp. 93-94)

[84] Phillips was at the top of the reporting structure within FLG. All of the tier 3 salespeople at FLSI reported to Phillips and Phillips signed off on trades for everyone who was selling in the FLG organization. (Testimony of Chien, June 10, 2013, pp. 65-66 and pp.76-80; Testimony of Phillips, June 19, 2013, p. 112 and pp. 114-115)

vii. FLG Investors

[85] The Grant Thornton Report disclosed that there were approximately 1,000 investors within FLG (the "**FLG Investors**"), the majority of whom were accredited investors with liquid assets in excess of $1 million. FLG Investors were characterized as middle-aged and older and primarily from Southern Ontario. They were primarily in the highest tax bracket for personal income taxes and were motivated to invest in tax-efficient instruments in order to reduce their personal income taxes while earning reasonable yield. FLG Investors were also seeking predictable distribution payments. Capital appreciation was a secondary investment objective of FLG Investors. Investments in FLG securities were presented to prospective clients as offering real estate income and, at the same time, providing tax relief or tax management. (Exhibit 1 – Grant Thornton Report, p. 18; Testimony of Krieger, June 5, 2013, pp. 140-141; Testimony of Chien, June 10, 2013, p. 61 and pp. 80-81)

[86] Each accredited FLG Investor was required to invest a minimum of $25,000. Each non-accredited FLG investor was required to invest a minimum of $150,000 per investment. (Exhibit 1 – Grant Thornton Report, p. 17; Testimony of Krieger, June 5, 2013, pp. 140-141)

[87] Directors and FLG Management were also heavily invested in different FLG investments. Some of the units held by FLG Management and directors were received as compensation and others were acquired by investing cash or obtaining a loan to finance their purchases of units. (Testimony of Collins, June 10, 2013, p. 42)

[88] On July 20, 2011, Leo De Bever ("**De Bever"**), a director of FLWM, made an investment of approximately $1 million and on July 25, 2011, John Cook ("**Cook**"), another director of FLWM, invested $250,000. These investments were made during the period when Grant Thornton was working on the review of FLG. On July 28, 2011, the spouse of De Bever made an investment of $90,834 and on August 3, 2011, the spouse of Cook made an investment of $250,000. On October 17, 2011, Ian De Bever, a family member of De Bever, invested $96,000. (Testimony of Collins, June 10, 2013, pp. 40-41; Exhibit 7 – Hearing Brief: Lists of Sales During Sales Period and Marketing Material, Tab 1)

F. THE INVESTIGATION OF FLG

i. The Investigation of FLG by Staff and the Grant Thornton Engagement

[89] On November 24, 2009, Staff commenced an investigation into FLG. Phillips was made aware of Staff's investigation when he was served with a summons from the Commission on or about March 16, 2010. (Exhibit 13 – Phillips and Wilson Transcripts, Tab 16)

[90] Staff interviewed Phillips over a period of three days in September 2010, as part of the investigation. There were ongoing discussions between Staff and FLG Management, which started in the fall of 2010, with respect to FLG retaining an independent valuator to prepare valuations of the WALP properties. FLG provided Staff, in December 2010, with third party valuations for various properties, which FLG owned in Texas. These valuations raised concerns among Staff as to the financial viability of FLG.

[91] In March 2011, Staff requested that a viability study be carried out on FLG and Staff provided FLG Management with a short list of firms that Staff deemed suitable for the engagement. Grant Thornton was included on that list. On the advice of Peter Dunne ("**Dunne**"), a partner with the law firm of Cassels Brock & Blackwell LLP ("**Cassels Brock**"), counsel to Phillips and FLG, FLG Management selected Grant Thornton. (Testimony of Phillips, June 19, 2013, pp.11-12 and pp 22-23)

[92] Grant Thornton was engaged by Cassels Brock, on behalf of FLG, for the purpose of reviewing, reporting and making recommendations on the business, assets, affairs and operations of FLG and to assess the viability of FLG. By engagement letter dated March 5, 2011 (the "**Grant Thornton Engagement**"), Grant Thornton agreed to review, report and make recommendations on the business, assets, affairs and operations of FLG. Cassels Brock, Grant Thornton and Staff communicated regularly on the progress being made by Grant Thornton on the viability report. (Exhibit 1 – Grant Thornton Report, pp. 3-4, pp. 77-78 and pp. 38-39; Exhibit 2 – Affidavit of Stephanie Collins sworn May 23, 2012, p. 7 para. 20; Opening Statements of the Respondents dated June 5, 2013, pp. 3-5)

ii. The Phillips' Undertaking

[93] During the course of the Grant Thornton review, Staff, Dunne and Ellen Bessner, another partner of Cassels Brock, agreed that FLG could continue to raise funds during the period of that review. However, Staff requested that Phillips provide an undertaking so that it would be incumbent upon Phillips to ensure that there were no sales of certain FLG securities. On March 18, 2011, Phillips undertook as follows:

> As agreed with Staff of the Ontario Securities Commission ("Staff"), Grant Thornton LLP ("Grant Thornton") has been retained to conduct a viability review (the "Review"). During the Review, and for a one week period after the delivery to Staff of the final report prepared by Grant Thornton as a result of the Review, David C. Phillips undertakes that no sale will be made to any investors of any debt or equity in Wimberly Apartments Limited Partnership ("WALP") nor any of its subsidiaries. This undertaking includes an agreement not to sell any units of WALP, Wimberly Fund or First Leaside Fund during the relevant time. (the "**Phillips' Undertaking**")
>
> (Exhibit 5 – Hearing Brief: Correspondence and Notes, Undertaking of Phillips dated March 18, 2011, Tab 25; Opening Statements of the Respondents dated June 5, 2013, pp. 3-5)

2. THE FACTS

[94] There is no agreed statement of facts between the parties. However, the Respondents agree that they:

(i) were aware of the Grant Thornton Engagement;

(ii) received and reviewed the Grant Thornton Report;

(iii) sold approximately $18.76 million of securities of FLG entities to investors during the Sales Period; and

(iv) did not disclose to investors the fact of the Grant Thornton Engagement or the Grant Thornton Report.

(Opening Statements of the Respondents dated June 5, 2012, p. 2, para. 5 and p. 7)

3. THE ISSUES

[95] Staff's allegations raise the following issues for consideration:

(a) Did the Respondents, Phillips and Wilson, each directly or indirectly engage or participate in an act, practice or course of conduct relating to securities which they each knew, or reasonably ought to have known, would perpetrate a fraud on investors, contrary to subsection 126.1(b) of the Act;

(b) Did the Respondents, Phillips and Wilson, each make statements a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the Act;

(c) Did the Respondents, Phillips and Wilson, each fail to deal fairly, honestly and in good faith with their clients, contrary to section 2.1 of Commission Rule 31-505; and

(d) Did the Respondents, Phillips and Wilson, each engage in conduct which was contrary to the public interest and harmful to the integrity of the capital markets.

4. THE STANDARD OF PROOF

[96] The standard of proof in this hearing is the civil standard of proof on a balance of probabilities. The Supreme Court of Canada has stated that the "...evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test". (*F.H. v. McDougall*, [2008] 3 S.C.R. 41 ("***McDougall***") at paras. 46 and 49) The Panel must scrutinize the relevant evidence with care in deciding whether it is more likely than not that the alleged event has occurred (*McDougall*, *supra* at para. 49).

5. THE EVIDENCE PRESENTED

A. Witnesses

[97] Staff called eight witnesses at the hearing: Jonathan Krieger ("**Krieger**"), a partner with Grant Thornton LLP and a Senior Vice-President of Grant Thornton; Stephanie Collins ("**Collins**"), a Senior Forensic Accountant with Staff; Chien, a salesperson formerly employed by FLSI; and five investor witnesses Mr. H., Mr. M., Dr. Z. and Mrs. Z. and Mrs. C.

[98] Each of Phillips and Wilson testified at the hearing. In addition, the Respondents called Douglas Hyatt ("**Hyatt**"), a member of the Boards of FLWM and 960510 Ontario Inc., the general partner of WALP (the "**WALP GP**"), and Dunne.

B. Krieger

[99] Krieger is a chartered accountant licensed in the Province of Ontario and is a chartered insolvency and restructuring practitioner. He is also a trustee in bankruptcy. He was admitted to the CA Institute in 1997 and became a CIRP in 2000 and a trustee in bankruptcy in 2001. At the time of the Merits Hearing, Krieger had been with Grant Thornton for approximately 19 years and had been trained at the firm. His area of expertise includes restructuring and insolvency which comprises a number of different areas but primarily viability reviews, financial reviews and formal restructuring.

[100] Grant Thornton LLP is a firm of chartered accountants in three primary areas of practice (i) auditing, (ii) tax and (iii) advising services. Its specialty fields include restructuring, forensic accounting, business risk services and corporate finance. (Testimony of Krieger, June 5, 2013, pp. 70-72)

[101] Krieger testified on June 5, 6 and 7, 2013. The Grant Thornton Report and Monitor's Report (as defined in [172] below were entered as exhibits in the Merits Hearing during the course of Krieger's testimony.

C. Collins

[102] Collins is a charted accountant who is a member of the Institute of Chartered Accountants in England and Wales and a member of the Institute of Chartered Accountants of Ontario. She has been a member of the Staff for more than 15 years. She was engaged in the investigation of FLG that preceded the Merits Hearing.

[103] Collins testified on June 7 and 10, 2013. Nine hearing briefs and certain other materials were entered as exhibits in the Merits Hearing during the course of Collin's testimony.

D. Chien

[104] Chien was a leader of one of the six FLG sales teams and was one of the Senior Sales Team. Chien was also a tier 3 salesperson and ran the 90-day training program for registrants. Chien had approximately 200 clients and a book of business of approximately $37 million in assets under management. Aside from Phillips and Wilson, Chien had the next largest book of business. (Testimony of Chien, June 10, 2013, pp. 64-65 and pp. 115-117) Chien testified on June, 10, 2013. One document was entered as an exhibit in the Merits Hearing during the course of Chien's cross-examination.

E. Investor Witnesses

i. Mr. H.

[105] Mr. H. is a 66 year old retired pastry chef. Prior to investing with FLG, Mr. H. had invested primarily in mutual funds, which were investments that he funded by using the proceeds of real estate transactions and the sale of his bakery business. Mr. H.'s portfolio had grown to just over $1,000,000 before he was approached by FLG. Mr. H. considered himself to have a low risk tolerance. (Testimony of Mr. H., June 10, 2013, pp. 170-174)

[106] On September 6, 2011, Mr. H. and his wife Mrs. H., on their own behalf and on behalf of H. Co. (their company) made a number of investments, totalling $163,317 in FLG securities. Their investments are as follows:

Investor	Date of Purchase	First Leaside Product	Number of Units Purchased	Amounts of Purchase	Sales Person
Mrs. H.	September 7, 2011	FLEX Fund Class B	1,375	$1,375	Chien
Mrs. H.	September 7, 2011	FLEX Fund Class B	12,297	$12,297	Chien
Mrs. H.	September 7, 2011	FLEX Fund Class C	11,500	$11,500	Chien
Mr. H.	September 7, 2011	Flex Fund Class B	1,375	$1,375	Chien
Mr. H.	September 7, 2011	FLEX Fund Class B	18,770	$18,770	Chien
Mr. H.	September 7, 2011	FLEX Fund Class C	18,000	$18,000	Chien
H. Co.	September 13, 2011	Special Notes LP	100,000	$100,000	Chien
TOTAL			163,317	$163,317	

(Exhibit 15 – Hearing Brief: EH, Tabs 22 23, 24, 25, 26, 28 and 32; Exhibit 14 – Five-page spreadsheet titled "First Leaside Securities Inc. Trading Data", FLSI Trading Data for Mr. H., Mrs. H., and H. Co.)

[107] Confirmation notices and a certificate of LP units were sent to Mr. H., Mrs. H. and H. Co. shortly thereafter, and the transactions were reflected on their respective client statements for the various accounts provided at month's end. Although Mr. H. received an offering memorandum dated August 1, 2011 for FLEX Fund, Mr. H. did not receive any financial information about any of the LPs or FLG funds in which he invested, and he never received any financial statements. Mr. H. testified that Phillips had indicated, at the FLEX AGM in June 2011, that financial statements would be forthcoming. Mr. H. did not attend the WALP AGM in September 2011, and FLG did not provide him with the financial statements thereafter. (Testimony of Mr. H., June 11, 2013, pp. 38-40)

[108] Mr. H. testified that when he invested in FLG securities in September 2011: he did not understand that Grant Thornton had done a review and issued a report with respect to FLG; he had not heard anything about Grant Thornton being involved; no one at FLG had any discussions with him about Grant Thornton's involvement whatsoever prior to signing all the documents dated September 6, 2011; and he did not have the Grant Thornton Report. (Testimony of Mr. H., June 11, 2013, pp. 43-44)

[109] Mr. H. testified that no disclosure was provided to him about the Grant Thornton Report until November 7, 2011 and he "was overwhelmed" by the Grant Thornton Report after it was disclosed to FLG investors on November 7, 2011. Mr. H. testified that after receiving the Grant Thornton Report, he wanted to know the companies that he was actually invested in and he phoned the FLG office. (Testimony of Mr. H., June 11, 2013, p. 44 and p. 51)

ii. Mr. M.

[110] Mr. M. is a 75 year old industrial designer. His investment experience consists mostly of purchasing mutual funds and Canadian and American equities over the years. He considers himself relatively risk tolerant when it comes to his investments. At the time when Mr. M. became involved with FLG, he had financial assets totalling approximately $300,000, held at another brokerage firm, which included a registered retirement savings plan ("**RRSP**") valued at $230,000, a margin account holding some securities, and some cash. (Testimony of Mr. M., June 11, 2013, pp. 104-106)

[111] Mr. M. testified that he dealt primarily with Phillips from 2007 to 2011, that he attended the WALP AGM on September 17, 2011 where Phillips introduced a sales brochure on the Venture LP to Mr. M. and that he met with Phillips on September 27, 2011 to discuss an investment by Mr. M. in Venture LP. On October 25, 2011, Mr. M. bought 150,000 units of Venture LP with Phillips as the salesperson as follows:

Investor	Date of Purchase	First Leaside Product	Number of Units Purchased	Amount of Purchase	Salesperson
Mr. M.	October 25, 2011	Venture LP	150,000	$150,000	Phillips
TOTAL			150,000	$150,000	

(Testimony of Mr. M., June 11, 2013, pp. 123-124, pp. 131-133 and pp. 136-138; Exhibit 9 – Hearing Brief: 45-106 Forms and Manual Payment Transmittal Forms Filed by Filing Date (Volume 2 of 2), Tab 60; Exhibit 11 – Hearing Brief: Analysis of Sales During the Sales Period, Tabs 5, 10, 16 and 20)

[112] Mr. M. testified that prior to November 7, 2011 he had never heard of the review by Grant Thornton nor of the Grant Thornton Report and had never been given the Grant Thornton Report prior to his $150,000 investment in Venture LP. Mr. M. further testified that when he read the Grant Thornton Report after it was made available to FLG Investors on November 7, 2012, he had mixed feelings. He stated that he was "hoping that something could be done to have a going concern and save the company, but [he] was hopeful". Mr. M. testified that he was "angry" because "the Grant Thornton Report should have been published and that investors should have known about it long before the 7th of November". (Testimony of Mr. M., June 11, 2013, p. 152 and pp. 157-158)

iii. Mrs. C.

[113] Mrs. C. is a manager of customer service information systems with Air Canada. She is also a vice-president in a private software development company ("**C. Co.**"), which she owns with her husband, Mr. C. Mr. C. and Mrs. C. made their investment decisions together, and they both have moderate investment knowledge. Prior to investing with FLG, Mr. C. and Mrs. C. had an investment advisor and mainly held mutual funds. Mrs. C. has a very low risk tolerance, allocating about 80 percent to low risk investments, because she was self-employed and had no pension. Mrs. C. was saving for retirement and, therefore wanted a good, secure vehicle to increase her savings. (Testimony of Mrs. C., June 17, 2013, pp. 5-8)

[114] Mr. C. and Mrs. C. began dealing with FLG in 2003, after a FLG representative, Ermo Ou ("**Ou**"), contacted Mr. C. about the investment vehicles that FLG offered for small businesses in order to reduce the tax burden. Mr. C. made an investment in Spring Valley LP, for approximately $50,000. (Testimony of Mrs. C., June 17, 2013, pp. 8-9) In 2008, Ou left FLG,

and Phillips became advisor to Mr. C. and Mrs. C. Since Ou left FLG, they have only dealt with Phillips. Mrs. C. brought her elderly parents to meet Phillips, and they became FLG clients around 2008. (Testimony of Mrs. C., June 17, 2013, p. 9 and pp. 20-21; Testimony of Phillips, June 20, 2013, pp. 40-41)

[115] Phillips met Mrs. C. and Mr. C. for dinner on September 6, 2011 and over the course of two to three hours discussed FLG's plans and FLG investment opportunities. In addition, Mrs. C. and Mr. C. attended the WALP AGM (as defined in [164] below) on September 17, 2011. Phillips did not disclose the Grant Thornton Report to Mrs. C. or Mr. C. on September 6 or September 17, 2011 nor did Phillips disclose that there was any concern about the future viability of FLG. Shortly after in September, 2011, Mrs. C. invested $250,000, which she understood would be used by FLG to assist FLG in FLG's purchase of a controlling interest in PrimeTime Living LP. This investment was combined with other cash in the C. Co. account for a total investment of $283,700. Mrs. C. received the FLEX Fund offering memorandum prior to making these investments, however, no other offering memorandum or marketing materials and no financial statements were provided to Mrs. C, Mr. C. or C. Co. prior to making the investment. Subscription agreements were signed for the purchase of Special Notes LP on September 17, 2011. Subsequently, a confirmation and certificate dated September 23, 2011 was sent to C. Co. indicating its registered ownership of 283,700 LP units in the Special Notes LP. (Testimony of Mrs. C., June 17, 2013, pp. 19-20, pp. 32-33 and pp. 37-39; Exhibit 18 – Hearing Brief: VC, Tabs 2, 5, 18 and 19)

[116] In addition, Mrs. C., Mr. C. and C. Co. made a number of other investments during the Sales Period, "repurposing" proceeds of $95,784 from other FLG investments to investments in FLEX Fund Class B units in order to maximize their tax benefits. The investments made by Mr. C., Mrs. C. and C. Co. in FLG products during the Sales Period are as follows:

Investor	Date of Purchase	First Leaside Product	Number of Units Purchased	Amount of Purchase	Salesperson
Mrs. C. RRSP	Sept 20, 2011	FLEX Fund Class B	26,150	$26,150	Phillips
Mrs. C. Spousal RRSP	Sept 20, 2011	FLEX Fund Class B	12,171	$12,171	Phillips
Mrs. C. TFSA	Sept 20, 2011	FLEX Fund Class B	1,307	$1,307	Phillips
Mr. C. RRSP	Sept 20, 2011	FLEX Fund Class B	54,849	$54,849	Phillips
Mr. C. TFSA	Sept 20, 2011	FLEX Fund Class B	1,307	$1,307	Phillips
C. Co.	Sept 23, 2011	Special Notes LP	283,700	$283,700	Phillips
TOTAL			379,484	$379,484	

(Testimony of Mrs. C., June 17, 2013, pp. 11-18 and pp. 30-33; Exhibit 18 – Hearing Brief: VC, Tabs 2, 4, 6, 8, 9, 13 and 14)

[117] Mrs. C. testified that she first learned about the Grant Thornton Report in the beginning of November, 2011. Mrs. C. testified that she received a letter dated November 7, 2011 from FLG (Exhibit 18 – Hearing Brief: Mrs. C., Tab 24) and the Grant Thornton Report was posted on the FLG website. (Testimony of Mrs. C., June 17, 2013, pp. 39-40) Upon receiving the Grant Thornton Report, Mrs. C. was concerned because she had "no idea that things were as serious as they were indicated in this letter." Mrs. C. testified that she was shocked to read the statement "The future viability of the FL Group is contingent on their ability to raise new capital". She further testified:

> "The future viability of FL Group …" seemed to us to be a huge jump from "We have some challenges with WALP" to now the entire group was threatened. (Testimony of Mrs. C., June 17, 2013, pp. 40-41)

[118] Mrs. C. testified that after reading the Grant Thornton Report, she and Mr. C. were "horrified". Mrs. C. testified "we had no idea. We thought that all of the assets were far more siloed than, in fact, they appeared to be. So our risk tolerance for about 10 percent of WALP was non-existent. We were exposed to a high, a much higher risk in that funds that we'd invested were propping up WALP. So we were horrified. I was also horrified because I had encouraged friends and family to participate in First Leaside, so it was pretty devastating." (Testimony of Mrs. C., June 17, 2013, p. 42)

iv. Dr. Z. and Mrs. Z.

[119] Dr. Z. is a 51 year old chiropractor and his wife, Mrs. Z., is a 48 year old "medical aesthetician." They both reside in Newmarket. Dr. Z. and Mrs. Z. have been married for 25 years. Dr. Z. met both Phillips and Wilson, initially as patients of Dr. Z. Dr. Z. first met Phillips in 2007 when Phillips was referred to Dr. Z. as a patient. Phillips continued as a patient until 2009. Dr. Z. saw Wilson as a patient, on average one appointment every three weeks, from 2007 to 2011.

[120] When Phillips came to see Dr. Z. for appointments, he would give Dr. Z. information about FLG, including the number of investors they had and the amount of money that FLG was managing. Over time, Dr. Z. eventually decided to move his RRSP to FLG. Prior to investing with FLG, Dr. Z. held mutual funds with Dundee Wealth Management for many years. His portfolio also contained mostly Canadian equity and a cash account. Dr. Z. thought that his portfolio was not doing much and that it had reached a point where he thought that his financial advisor was doing as much as he could, but "it [was not] really going anywhere." (Testimony of Dr. Z. and Mrs. Z., June 12, 2013, p. 6) Dr. Z. and Mrs. Z. transferred $380,000 "near to the end of 2007", which was the entire amount of their RRSP to FLG. (Testimony of Dr. Z. and Mrs. Z., June 12, 2013, p. 17)

[121] Dr. Z. described himself as having "low to medium investment knowledge" and Mrs. Z describes her investment knowledge as "limited to low." (Testimony of Dr. Z. and Mrs. Z., June 12, 2013, pp. 8, 11)

[122] During the Sales Period, Dr. Z. and Mrs. Z. had meetings with Wilson who solicited new investments and reinvestments by them in FLG securities. Dr. Z. signed documents, with Wilson, to invest $100,000 in the Special Notes LP. On September 7, 2011, Dr. Z. deposited approximately $100,000 from his bank account into his FLG account. Dr. Z. received a certificate dated September 9, 2011 indicating he was the registered owner of 100,000 LP units in the Special Notes LP. (Testimony of Dr. Z. and Mrs. Z., June 12, 2013, pp. 38-39 and pp. 46-47; Exhibit 17 – Hearing Brief: HZ and BZ, Tabs 3 and 9)

[123] On September 9, 2011, Dr. Z. also purchased, through Wilson, $3,341.78 of FLEX Fund Class C, and Mrs. Z. purchased $9,643 of FLEX Fund Class C, both in their RRSPs, for a total of $12,984.78.

[124] On October 13, 2011, Dr. Z. purchased $210,000 of FLEX LP, and Mrs. Z. purchased $105,000 of FLEX LP, both outside their RRSPs, for a total of $315,000, which they rolled over from their previous investments in another FLG security. The investments were made through Wilson. The source of funds was the maturity of Development Notes, which they had held for some time and which were maturing. The investments made by Dr. Z. and Mrs. Z. in FLG products during the Sales Period are as follows:

Investor	Date of Purchase	First Leaside Product	Number of Units Purchased	Amount of Purchase	Salesperson
Dr. Z.	September 9, 2011	Special Notes Limited Partnership Units	100,000	$100,000	Wilson
Dr. Z.	October 13, 2011	FL Expansion Limited Partnership Units	210,000	$210,000	Wilson
Mrs. Z.	October 13, 2011	FL Expansion Limited Partnership Units	105,000	$105,000	Wilson
Dr. Z.	September 9, 2011	Flex Fund Class B and C Units	9,560	$9,560	Wilson
Mrs. Z.	September 9, 2011	Flex Fund Class B and C Units	3,313	$3,313	Wilson
Mrs. Z.	October 13, 2011	FLEX LP	105,000	$105,000	Wilson
Mrs. Z. (Penson ITF)	September 9, 2011	FLEX LP Class C	9,560	$9,560	Wilson
Dr. Z.	September 9, 2011	Special Notes	100,000	$100,000	Wilson

Investor	Date of Purchase	First Leaside Product	Number of Units Purchased	Amount of Purchase	Salesperson
Dr. Z.	October 13, 2011	FLEX LP	210,000	$210,000	Wilson
Dr. Z. (Penson ITF)	September 9, 2011	FLEX Fund Class C	3,313	$3,313	Wilson
TOTAL			855,746	$855,746	

(Testimony of Dr. Z. and Mrs. Z., June 12, 2013, p. 48; Exhibit 17 – Hearing Brief: HZ and BZ, Tabs 8, 10, 12 and 17)

[125] Dr. Z. testified that he did not receive a copy of the Grant Thornton Report prior to November 7, 2011 and he had an "awful" reaction to the Grant Thornton Report after it was released. Dr. Z. testified that when he read the Grant Thornton Report two points stuck out in his mind (i) he didn't know "how a company can run a business when they can't produce a financial statement when they needed to"; and (ii) FLG needed money, more new money to keep going to fund projects that he did not even know what he was invested in. Dr. Z. testified that he concluded that FLG was not a viable company going forward and it would not meet its target in 2013. Dr. Z. testified that at that point he was "really freaking out". (Testimony of Dr. Z. and Mrs. June 12, 2013, pp. 52-54)

[126] Dr. Z. testified that "because [he] had dealings with [Wilson] in September and October … [he] couldn't believe a person that [he] felt was [his] friend would do that to [him]. Dr. Z. testified that "[Wilson] didn't tell [him] about the [Grant Thornton] report. [Wilson] said that he wasn't allowed to tell me about the report. So, basically, we blew everything on that." (Testimony of Dr. Z. and Mrs. Z., June 12, 2013, p. 54)

F. Dunne

Dunne was legal counsel to the FLG entities for a number of years. Dunne was called to the bar in 1988 and has been working with Cassels Brock since then. Phillips was one of Dunne's first clients. As Phillips' business evolved into FLG, Dunne became counsel to FLG. (Testimony of Dunne, June 24, 2013, pp. 46-48). Dunne testified on June 24, 2013 about communications between Cassels Brock and certain of its clients up to and including September 5, 2011. (Testimony of Dunne, June 24, 2013, pp. 44-45)

G. Grant Thornton Report

[127] On August 19, 2011, Grant Thornton completed its review and provided the Grant Thornton Report to Cassels Brock. Phillips testified that he received the Grant Thornton Report from Dunne by way of an email communication from Dunne that was forwarded to Phillips by Hampton. Also, on August 19, 2011, Dunne provided the Grant Thornton Report to Staff. (Testimony of Phillips, June 19, 2013, pp. 50-51; Exhibit 19 – Respondents' Hearing Brief, Tab 28)

[128] The information presented in the Grant Thornton Report is information of FLG that was provided to the team at Grant Thornton by Hampton and Phillips, which included, among other things, financial statements of FLG, forecasts prepared for the various LPs and business ventures for the fiscal years ended December 31, 2011 to 2013; 2007 – 2008 Audited Financial Statements for WALP prepared by KPMG; 2009 – 2010 Draft Audited Financial Statements for WALP prepared by KPMG; FLG Organization Charts; Offering Memoranda for the various LPs; Minutes of Meetings of the Boards of Directors; and FLG marketing materials for the various LPs. (Exhibit 1 – Grant Thornton Report, p. 3)

[129] The observations and conclusion in the Grant Thornton Report were those of Grant Thornton. However, Grant Thornton staff relied on information provided by FLG for the analysis and review by Grant Thornton. (Testimony of Krieger, June 6, 2012, p. 6)

[130] As part of their analytical procedures, Grant Thornton staff compared the financial information provided by Phillips and Hampton to, among other things, historical financial information, previous results of FLG, discussions with FLG Management, and other avenues in which Grant Thornton staff could analyse or review the information that was presented. (Testimony of Krieger, June 6, 2012, p. 18)

[131] The cash flow projections of FLG were compiled in integrated cash flow worksheets, which were confirmed by FLG Management as an "an accurate reflection" of their projections for the next three years in the various FLG entities. FLG's integrated cash flow model was presented as the Base Model (as defined below) in the Grant Thornton Report. (Testimony of Krieger, June 6, 2012, pp. 16-20)

i. Findings Made by Grant Thornton in the Grant Thornton Report

[132] The Grant Thornton Report concluded that the future viability of FLG is contingent on its ability to raise new capital. If FLG was restricted from raising new capital, it would likely be unable to continue its operations in the ordinary course, as it would have insufficient revenue to support its infrastructure, staffing costs and distributions, and to meet their funding requirements for existing projects. (Exhibit 1 – Grant Thornton Report, p. 12)

[133] The Grant Thornton Report concluded after its assessment that FLG's ability to be viable was contingent on its ability to raise new capital, in addition to achieving a number of other parameters as set out in FLG's projections and FLG's assumptions. The reference to the "viability" of FLG was a qualified term. The Grant Thornton Report articulated a finding that there was "a possibility prospectively of viability if certain things took place." (Testimony of Krieger, June 7, 2013, pp. 68-69)

The Base Model

[134] The base model set forth in the Grant Thornton Report (the "**Base Model**") was a compilation of FLG's cash flow forecasts and financial projections for 2011 to 2013 for each FLG LP that was consolidated and compiled by Grant Thornton from the cash flow forecast and information provided by FLG into an integrated cash flow model and was supported by a number of stated assumptions that were based on management's view. FLG Management prepared the projections at the request of Grant Thornton. The Base Model contains significant assumptions surrounding the timing and quantum of operating income or loss, capital expenditures, distributions, financing requirements and capital raising. There were 20 Base Model assumptions that were provided by FLG Management and are set out in the Grant Thornton Report. (Testimony of Krieger, June 6, 2013, pp. 15-20; Exhibit 1 – Grant Thornton Report, p. 42 and p.52)

[135] The Base Model was FLG Management's view and was premised on certain financial assumptions and business behavioural assumptions provided by FLG Management. In order for the Base Model to be achieved, a certain number of financial elements had to occur over the 2011 to 2013 period, and certain business behavioural changes also had to occur. In particular, the Base Model required FLG Management to change the way it deployed capital, in that new investor money could not be used to fund existing projects (including the payment of distributions to earlier investors) nor could cash be moved between LPs. (Testimony of Krieger, June 6, 2013, pp. 131-134; Exhibit 1 – Grant Thornton Report, p. 71)

[136] The Base Model had to be prepared because Grant Thornton determined that there were a significant number of inter-company transactions that were taking place within FLG. Accordingly, "just looking at the individual cash flow projections of each [FLG] business on its own did not tell a sufficient enough story as to what the overall financial picture of [FLG] would look like over a period of three years, 2011 through 2013." (Testimony of Krieger , June 6, 2012, pp. 16-20)

[137] The Base Model also contained an assumption by FLG Management that after 2013, FLG would generate enough cash to fund all distributions in the foreseeable future, provided that there are no further property rehabilitations beyond 2013 and that the assets continued to generate operating cash flows at the forecasted 2013 levels. This included projections by FLG that it would raise $223 million in new financing over the three year period, 2011 to 2013, on which FLWM would earn fees of 17 ½ percent on these capital raises. (Testimony of Krieger, June 6, 2013, pp. 26-27; Exhibit 1 – Grant Thornton Report, p. 43)

[138] The Base Model also included an assumption by FL Management that all new investments, going forward, would be cash flow neutral; that is 82.5% of new capital remaining, after the deduction of fees to be paid to FLWM, would be deployed by FLG in cash-neutral investments, and would not be a burden on the cash flow or operating income of FLG. (Testimony of Krieger, June 6, 2013, pp. 27-32; Exhibit 1 – Grant Thornton Report, p. 44)

[139] The Base Model also assumed that there would be no further inter-LP movement of funds in order to meet cash flow requirements. Prior to the development of the Base Model, FLG LPs or entities loaned money to FL Finance, which then loaned the money to other LPs or entities that had a cash flow requirement. With the implementation of the Base Model, it was assumed that movement of funds would stop, and new funds would be siloed within each of the new investments, and might be reinvested or distributed to investors of the LP. Phillips understood that this assumption would be an element of the Base Model, and in his view, FLG would be able to operate with that change. (Testimony of Krieger, June 6, 2013, pp. 48-49 and pp. 37-38; Exhibit 1 – Grant Thornton Report, pp. 52 and 49; Testimony of Phillips, June 20, 2013, pp. 25-27)

[140] Another key assumption was that senior management and certain significant investors would advance $5 million in 2011 in order to "shore up a portion of the recurring WALP cash flow deficiency." FLG was of the view that the "investment of Management's personal resources on a subordinated basis would demonstrate their support for their Base Model and projections for the period 2011 to 2013 and a commitment to the Company." FLG Management would raise unsecured, subordinated debt of $5 million, with restricted repayment terms and no cash payments during the term, in order to rectify a portion of the recurring WALP cash flow deficiency, Grant Thornton understood that these funds would come from people within management or involved on the Board. (Testimony of Krieger, June 5, 2013, pp. 165-167; Testimony of Krieger, June 6, 2013, pp. 46-47; Exhibit 1 – Grant Thornton Report, pp. 94, 48 and p. 52) Krieger testified that "In the absence of the advance of that $5 million, the Base Model would have a cash flow deficiency'. (Testimony of Krieger, June 6, 2013, pp. 134-136; Testimony of

Krieger, June 7, 2013, pp. 73-74; Exhibit 1 – Grant Thornton Report, pp. 71 and 9) In the end, there no evidence that his capital contribution was made.

[141] The Grant Thornton Report disclosed that:

> "Based on third party information and information provided by Management, we calculate the total FMV of the Assets is $319.2M, with total third party mortgages of $136.2 for a total FMV of the net assets of $182.9M. All 19 of the LPs/companies have a positive FMV of net assets. Once [FLG] investor debt of $115.8M is removed from the FMV of net assets we calculate the FMV of equity at $67.1 M. Based on this analysis, there is a significant shortfall compared to raised equity of approximately $200M. Only WALP and Mortgage Fund appear to have insufficient Net Asset Value to cover their invested debt amounts."
>
> (Exhibit 1 – Grant Thornton Report, p. 66)

[142] In the absence of raising additional capital, the Grant Thornton Report concluded that FLG would not be able to continue as a going concern. (Testimony of Krieger, June 6, 2012, p. 14) There were significant funds lent between entities in FLG through FL Finance on commercial terms, which allowed FLG to operate as a perpetually going concern, as it has generally had access to capital to meet cash flow shortfalls, using new investor money in some cases. (Exhibit 1 – Grant Thornton Report, p. 9)

[143] The conclusions in the Grant Thornton Report were based on the assumption that FLG would follow the Base Model assumptions in order to achieve its results. (Testimony of Krieger, June 6, 2013, pp. 15-20 and pp. 38-40; Exhibit 1 – Grant Thornton Report, p. 42 and pp. 51-52)

[144] According to the Grant Thornton Report, if FLG followed the Base Model and the assumptions and achieved its financial projections, it should have sufficient cash flows within FLG over the three-year period. However, the Base Model represented "a major or drastic departure from the manner in which the company conducted business in the past." (Testimony of Krieger, June 6, 2013, pp. 23-26; Exhibit 1 – Grant Thornton Report, p. 43; Testimony of Krieger, June 7, 2013, p. 72)

[145] Grant Thornton, in its analysis, "sensitized" certain assumptions in the Base Model because FLG Management's projections were not fully supported by the information presented, nor its historical trends. Grant Thornton noted that "once the Base Model was sensitized, the FL Group has a cash flow deficiency of approximately $15.9 [million] over the three year period of 2011 to 2013".

[146] The Grant Thornton Report also disclosed that in order to address the sensitivities raised by Grant Thornton, FLG Management has identified certain management levers,

> "which it believes it can implement to ensure that [FLG's] obligations can be met and allow their Assumptions to still stand, while in their view having little impact on their ordinary course operations and capital raising efforts going forward. Once the Base Model is sensitized, and all of the Levers are applied, the Company forecasts that it should still be able to satisfy its obligations (aside from intercompany loans)."
>
> (Exhibit 1 – Grant Thornton Report, p. 11)

[147] Grant Thornton also disclosed that:

> "We have prepared the Asset Valuation of [FLG], using the highest third party valuation figures available for the WALP properties. In this regard, we have calculated an aggregate equity surplus (represented as asset FMV, less third party mortgages and investor debt) of approximately $67M, while there is raised equity in [FLG] of approximately $200M. In this regard, there is a significant equity deficit based on the Asset Valuation. However, the invested equity of $200M does not take into account the grind down of investor's Adjusted Cost Base through return of capital, nor does it include imputed tax benefits the investor receives on their investment. We have shared with Management our Asset Valuation in the Report, and they disagreed with the analysis. As set out in the Report, Management has provided us with details of FMV adjustments which they believe are appropriate, which contemplates that equity investors are almost whole. We have not been able to support much of Management's FMV adjustments based on the information presented but we have disclosed same in the Report as a comparative."
>
> (Exhibit 1 – Grant Thornton Report, p. 12)

[148] Grant Thornton indicated in the Grant Thornton Report that they had not undertaken a review of the flow of funds to specifically conclude where money had been spent. However, through discussions with FLG Management and a review of balance sheets for each FLG LP and FLWM, it would appear the majority of funds loaned to FL Finance by Select LP, Elite LP, Premier LP and Ultimate LP have been loaned by FL Finance to WALP to fund the "rehab" and operating losses of WALP. (Exhibit 1 – Grant Thornton Report, p.31)

ii. Recommendations Made by Grant Thornton in the Grant Thornton Report

[149] The Grant Thornton Report made the following recommendations:

- Management should take steps to improve its accounting capacity and financial systems, so that it can better accommodate its financial reporting requirements, budgeting process, external auditor liaison, and investor communications;
- FLG should ensure that there are external financial statements available for every entity which holds investors' money. In addition to the entities currently subject to audit, FLG should obtain audits of the FLWM and FL Finance financial statements, to enhance the integrity of its financial reporting. They should further ensure that better reporting and disclosure be made to investors;
- Management should continue with the exercise of maintaining an integrated model, so that it can better prepare and modify projections, identify cash flow requirements and understand the interrelation and impact between the various LPs/companies in the FLG;
- Notwithstanding demonstrable steps that FLG is improving its governance in the past 12 months, the Board should better document its governance policies and procedures, and establish better governance protocols. Further, Management should consider a division of responsibilities as it relates to the executive function, so that there are greater checks and balances in the organization;
- Management should take immediate steps to ensure its investment strategy and business activities align with the projections and assumptions it has set out in the Base Model, and consider having strict Board oversight and/or a third party monitoring program in place to supervise its implementation and the results therefrom on a timely basis; and
- Should Management not achieve its Base Model, it should ensure it is sufficiently agile to implement appropriate [sic] the Levers as it has identified to protect investor's interests going forward. (Exhibit 1 – Grant Thornton Report, p. 75)

[150] It is suggested in the Grant Thornton Report that, if FLG is able to achieve its Base Model, or implement sufficient levers to counteract any deficiencies as represented by the sensitivities, there should be minimal erosion to existing investors' equity going forward, and greater investor value may be created as the rehabilitation projects are completed. That statement was made subject to certain qualifications such as real estate market corrections, cost overruns on rehabilitations, or credit restrictions when it comes time to refinance the properties, which Grant Thornton was not able to anticipate at that time. (Exhibit 1 – Grant Thornton Report, p. 75)

H. September 1, 2011 Meeting

[151] On September 1, 2011, Krieger along with his partner Tim Oldfield ("**Oldfield**") met with Staff, counsel to the Commission, Collins, Andy Wilczynski ("**Wilczynski**") of PricewaterhouseCoopers LLP, a chartered accountant and bankruptcy and insolvency expert retained by Staff, Dunne and Bessner from Cassels Brock, and Hampton to discuss the findings from the Grant Thornton Report (the "**September 1, 2011 Meeting**"). (Testimony of Krieger, June 6, 2013, pp. 146-148 and June 7, 2013, pp. 25-27; Testimony of Collins, June 7, 2013, p. 104 and pp. 116-125; Exhibit 5 – Hearing Brief: Correspondence and Notes, Tab 17)

[152] The September 1, 2011 Meeting was a question and answer session, with Krieger and Oldfield responding to Staff and Wilczynski. Staff and their advisors challenged some of the bases on which the Grant Thornton Report was presented and asked questions of Krieger to test and ensure that the Grant Thornton Report was reasonable. The questions went to "breaking down the report, breaking down the conclusions into individual business units and [whether] the individual business units were viable or not viable and what would happen if there were no sales …." Krieger indicated that if FLG was unable to raise additional capital, FLG would be unable to continue in the ordinary course. (Testimony of Dunne, June 24, 2013, pp. 72-74 and pp. 81-82; Testimony of Krieger, June 7, 2013, pp. 65-66; Testimony of Collins, June 7, 2013, p. 104 and pp. 116-125)

[153] Collins and Wilczynski also asked questions of Bessner and Dunne about FLG's business. Bessner also stated that FLG was continuing to comply with the Phillips' Undertaking; however, she did not mention that FLG was raising capital through

FLEX LP, FLEX Fund Class B and C, Venture LP, FLWM Fund, PrimeTime Living LP or Beverages LP. (Testimony of Collins, June 7, 2013, pp. 118-121 and pp. 123-124; Exhibit 5 – Hearing Brief: Correspondence and Notes, Tab 17, pp. 44 and 45)

[154] Staff was told that $5 million special financing (the "**Special Financing**"), would be raised, of which $1 million would be contributed by Phillips, and the other directors would make up some of the remaining $4 million If $4 million was not raised from the other directors, then they would contact the longest standing FLG Investors to see if they would invest. The Special Financing was described as high risk, with no distributions, for a term of three years, and payback would be linked to an objective or a milestone of the company. (Testimony of Phillips, June 20, 2013, pp. 49-50)

[155] After the September 1, 2011 Meeting concluded, Dunne and Bessner were asked by Kathryn Daniels ("**Daniels**"), Deputy Director of Enforcement Staff, to stay behind where Daniels advised that Staff had not accepted the Grant Thornton Report nor the Base Model. Daniel also advised that there were "no plans for immediate action" by Staff. (Testimony of Dunne, June 24, 2013, pp. 72-74 and pp. 81-82; Exhibit 5 – Respondents' Hearing Brief, Tab 33 and Tab 34)

[156] Collins recalled that at the September 1, 2011 Meeting, Bessner stated that FLG was continuing to comply with the Phillips' Undertaking. Collins stated that she did not make a note of this comment; at the time, she wondered why Bessner made the comment, because Collins had forgotten that the Phillips' Undertaking expired a week after receipt of the Grant Thornton Report. So, when Bessner made the remark, Collins did not realize that Bessner was saying something of substance. (Testimony of Collins, June 7, 2013, pp. 123-124; Exhibit 5 – Hearing Brief: Correspondence and Notes, Tab 17)

I. September 5, 2011 Board Meeting

[157] On September 5, 2011, a meeting of the board of directors of FLWM and 965010 was held (the "**September 5 Board Meeting**"). The Grant Thornton Report was the main point of discussion. As a preliminary matter, Phillips explained, and all directors agreed, that "more detailed minutes of the meetings were required and greater care had to be taken in developing resolutions out of discussions of the Board and recording Board approval of same." (Exhibit 19 – Respondents' Hearing Brief, Tab 37)

[158] Phillips indicated to the Board, with respect to the Grant Thornton Report, that "it was a positive report in respect of what management was hoping for in that the report concluded that First Leaside overall was viable, with certain qualifications based on the correctness of forecasts." Phillips told the Board that he thought that the recommendations in the Grant Thornton Report "were all things that management wants to implement and will implement" and that FLG Management was making arrangements to retain the services of various consultants to help implement the recommendations set forth in the Grant Thornton Report. (Exhibit 19 – Respondents' Hearing Brief, Tab 37)

[159] Phillips also explained to the Board that the Commission had received and reviewed the Grant Thornton Report and had made no comment or taken any action, which Phillips construed as a positive sign. In the minutes of the September 5 Board Meeting it is recorded that "Dunne explained that the OSC has not endorsed the [Grant Thornton] Report but he concurred with Mr. Phillips that the lack of response from the OSC could be taken as positive. Dunne stated that "the more time that passed without an OSC response, the better it looked for the outcome, however this was not certain". Phillips also stated at the September 5 Board Meeting that increasing FLG's governance and financial reporting procedures would likely satisfy the OSC. (Exhibit 19 – Respondents' Hearing Brief, Tab 37; Testimony of Phillips, June 19, 2013, pp. 62-65; Testimony of Dunne, June 24, 2013, pp. 75-76)

[160] Dunne further explained that FLG, from a financial perspective, was not in "a bad situation through to 2013", however there was a projected large cash shortfall for WALP in 2012. Dunne explained that if this "hole" was left unaddressed it might encourage the Commission to take some form of action. The "hole" was $5 million, representing cash required to finish the rehabilitation project and pay distributions to investors. (Exhibit 19 – Respondents' Hearing Brief, Tab 37)

[161] Dunne explained that Grant Thornton suggested beginning with Step 3 – the Special Financing – and that the Special Financing should be structured in a form of equity to be issued in 2011 or early 2012, which would fix the $5 million dollar shortfall. (Exhibit 19 – Respondents' Hearing Brief, Tab 37)

[162] Phillips explained that the Grant Thornton Report indicated the Special Financing should be raised from investment from Directors and Trustees, particularly Phillips. He explained to the Board that he would contribute $500,000 and has already done so. Phillips, however, explained that the idea that the Board members should have to fund the Special Financing exclusively is not palatable as it gives the impression that they have somehow benefitted wrongly. (Exhibit 19 – Respondents' Hearing Brief, Tab 37)

[163] Hyatt testified that he expressed concern that FLG would be offside of the Phillips' Undertaking by raising those funds and asked Phillips whether there was a restriction on raising of capital and Phillips indicated that there was none. There was no reference to that exchange in the minutes of the September 5 Board Meeting. (Testimony of Hyatt, June 24, 2013, p. 35-37)

[164] The Board resolved that management was "authorized to develop an investment structure that complies with the recommendations of the [Grant Thornton Report] to raise $5 million for WALP for presentation to the Board." (Exhibit 19 – Respondents' Hearing Brief, Tab 37)

[165] Late in the September 5 Board Meeting, an in-camera session of the independent directors was held where it was determined that Dunne would prepare a letter to the Commission outlining the Board's reaction to the Grant Thornton Report and the Board's proposed responses to the recommendations outlined by Grant Thornton. (Exhibit 19 – Respondents' Hearing Brief, Tab 37)

J. September 8, 2011 Meeting

[166] On September 8, 2011, the independent members of the Board of FLWM met with Grant Thornton, including Krieger, at the offices of Cassels Brock to discuss the Grant Thornton Report and received further insight into the mandate of Grant Thornton, the process they followed to complete the Grant Thornton Report, and their conclusions and recommendations (the "**September 8, 2011 Meeting**"). The meeting was by way of conference call with the Board of Directors of FLWM. Not all of the Board members were on the call. Phillips was not on the call. (Opening Statements of the Respondents dated June 5, 2012 at p. 6; Testimony of Krieger, June 6, 2013, pp. 148-149; Testimony of Hyatt, June 24, 2013, pp. 20-21)

K. September 12, 2011 Letter to Staff

[167] On September 12, 2011, Dunne sent a letter to Daniels (the "**September 12 Letter**"), copied to all members of the FLWM Board, Phillips, Hampton, Efraim and Bessner, setting out the preliminary response of the FWLM Board to the Grant Thornton Report and to inform Daniels of the steps that had been taken, steps in process and steps being contemplated in response to the Grant Thornton Report. Dunne stated in the September 12 Letter that the FLWM Board understood the general thrust of the Grant Thornton Report, the implications for the FLG organization, the key operating assumptions in the Base Model presented in the Grant Thornton Report, and appreciated the benefits to the FLG organization and to its investors of following the recommendations set out in the Grant Thornton Report. Dunne also indicated in the September 12 Letter that the Board and FLG Management was in the process of structuring the Special Financing. (Testimony of Collins, June 7, 2013, pp. 125-127; Exhibit 5 – Hearing Brief: Correspondence and Notes, Tab 18, pp. 46-47; Testimony of Phillips, June 19, 2013, pp. 92-93; Testimony of Dunne, June 24, 2013, pp. 82-83 and pp. 106-108)

L. September 17, 2011 WALP Annual General Meeting

[168] On September 17, 2011, FLG held the WALP Annual General Meeting (the "**WALP AGM**"). Several hundred people were in attendance, including those who owned WALP equity or Funds or who were invested in seed capital deals related to the U.S. real estate, long-time investors and prospective clients. Phillips, who was introduced by Efraim, was the only speaker. (Testimony of Phillips, June 19, 2013, pp. 89-91 and pp. 119-121; Exhibit 19 – Respondents' Hearing Brief, Tab 40)

[169] Phillips gave a PowerPoint slide presentation consisting of 114 slides, at the WALP AGM which took approximately one hour. Phillips provided an overview of WALP's real estate properties, the WALP financial statements prepared by KPMG, and conducted a question and answer period. Phillips did not, however, discuss the financial statements in their entirety nor did he mention or discuss or, in any way, disclose the Grant Thornton Report. Phillips also addressed challenges for WALP in terms of rehabilitating the rental units, the declining real estate market, and occupancy rate issues. Phillips' PowerPoint slides presentation included references to "new cycles of opportunity" and the "sound financial position" of FLG. When one investor asked a question about the going concern note contained in the financial statements, Phillips indicated that there were matters in dispute, and that they were trying to have the going concern note removed from the financials. (Testimony of Mrs. C., June 17, 2013, pp. 36-38; Exhibit 18 – Hearing Brief: V.C. , Tab 3; Testimony of Phillips, June 19, 2013, pp. 122-125; Testimony of Chien, June 10, 2013, pp. 159-169; Exhibit 19 – Respondents' Hearing Brief, Tab 40, p. 6)

M. Investments During the Sales Period

[170] FLG sales team continued to raise capital in FLG entities during the Sales Period. The total value of investments sold to FLG Sales Investors by FLG salespeople during the Sales Period was $18,765,168. (Testimony of Collins, June 7, 2013, pp. 156-158 and pp. 169-183; Exhibit 11 – Analysis of Sales During the Sales Period Brief, Tab 1) The completed sales were as follows:

Entity	Subscription Price for Units Sold
Special Notes LP	$8,077,328
First Leaside Expansion LP	$3,927,102
Flex Fund – Class B and C	$3,029,990

Entity	Subscription Price for Units Sold
First Leaside Venture LP	$1,921,359
FLWM Fund	$1,265,931
First Leaside Primetime Living LP	$335,000
First Leaside Beverages Group LP	$130,010
Wimberly Apartments LP	$78,448
Total	**$18,765,168**

(Amended Statement of Allegations, April 25, 2013, paragraph 26; Exhibit 7 – Hearing Brief: Lists of Sales During Sales Period and Marketing Material; Exhibit 11 – Hearing Brief: Analysis of Sales During the Sales Period; Testimony of Chien, June 10, 2013, pp. 86-102; Testimony of Phillips, June 19, 2013, pp. 76-84; Testimony of Phillips, June 20, 2013, pp. 14-17; Testimony of Collins, June 7, 2013, pp. 158-169; Exhibit 8 – Hearing Brief: 45-106 Forms and Manual Payment Transmittal Forms Filed by Filing Date (Volume 1 of 2); Exhibit 9 – Hearing Brief: 45-106 Forms and Manual Payment Transmittal Forms Filed by Filing Date (Volume 2 of 2); Exhibit 10 – Hearing Brief: First Leaside Subscription Agreements)

[171] During the Sales Period, Wilson sold a total of $8,945,865 of units to 94 FLG Sales Investors, with an average of almost $900,000 of securities during each week of the Sales Period. Phillips sold a total of $3,388,626 of units to 46 FLG Sales Investors. Chien sold a total of $2,268,081 of units to 40 FLG Sales Investors, the majority of which was to existing clients. (Testimony of Collins, June 7, 2013, pp. 156-158 and pp. 169-183; Exhibit 11 – Hearing Brief: Analysis of Sales During the Sales Period Brief Tabs 1, 10, 11 and 12; Testimony of Phillips, June 20, 2013, pp. 13-14; Testimony of Wilson, June 20, 2013, pp. 104-107; Testimony of Chien, June 10, 2013, pp. 82-84)

N. Grant Thornton Monitor's Report

[172] Staff submitted the Grant Thornton Confidential Report of Monitor, First Leaside Group of Companies dated December 9, 2011 (the "**Monitor's Report**") which gave a retrospective analysis of the business of FLG Entities between August 19, 2011 and November 1, 2011 (the "**Monitor's Review Period**") and the total source of funds received into the FLG Group.

[173] The Monitor's Report revealed that the total source of funds received in FLG during the Monitor's Review Period was $24.1 million, of which $20 million was raised from new investors. Funds raised from FLG Sales Investors were placed into nine different accounts, three of which were Special Notes (CAD), Special Notes (USD) and Beverages LP. The total use of funds was approximately $25.6 million, of which $8.4 million was used to close the purchase of the three Ottawa properties by Venture LP, $4.43 million was used to buy out all of the Development Notes by FLEX LP, and $3.7 million was distributed to FLG Investors. The remainder related to other expenditures.

[174] The Monitor's Report also indicated that during the Monitor's Review Period, the FLG Management did not follow the siloed approach to maintain its funds as set out in the Base Model. There were significant internal transfers between the First Leaside accounts totalling over $83 million, a portion of which was used to fund a portion of operating costs within the WALP portfolio of properties. (Testimony of Krieger, June 6, 2013, p. 166, paras. 3-11; Exhibit 3 – Monitor's Report, p. 7)

[175] The Monitor's Report identified that $10,175,000 of the initial proceeds of the Special Notes LP raised were indirectly deposited into FL Finance. In particular, $3,789,000 went to WALP in the Canadian account related to the Texas Properties. And then the WALP Canadian account transferred $3,724,00 to WALP U.S. dollar account and then the WALP U.S. dollar account disbursed $3,534,000 to a number of different entities including $2.3 million to Master Texas and $619,000 was transferred to FL Fund which was related to the WALP portfolio, and $340,000 went to fund distributions within WALP. Another $128,000 was transferred back to FL Finance. (Testimony of Krieger, June 6, 2013, pp. 173-175)

[176] The Monitor's Report also disclosed that Phillips made a loan of $500,000 to FLG on September 2, 2011 and FLG paid $80,000 to Phillips on September 8, 2011 and repaid the amount of $500,000 to Phillips on November 3, 2011. (Testimony of Krieger, June 6, 2013 p. 167; Exhibit 3 – Monitor's Report, p. 7)

6. ANALYSIS

A. Did the Respondents, Phillips and Wilson, each directly or indirectly engage or participate in an act, practice or course of conduct relating to securities which they knew, or reasonably ought to have known, would perpetrate a fraud on investors, contrary to subsection 126.1(b) of the Act and contrary to the public interest?

i. The Applicable Law

[177] Subsection 126.1(b) of the Act provides that:

> *A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities, derivatives or the underlying interest of a derivative that the person or company knows or reasonably ought to know,*
>
> *…….*
>
> *(b) perpetrates a fraud on any person or company.*

[178] Fraud is "one of the most egregious securities regulatory violations" and is both "an affront to the individual investors directly targeted" and something that "decreases confidence in the fairness and efficiency of the entire capital market system" (*Re Capital Alternatives Inc.*, 2007 ABASC 79 at para. 308, citing D. Johnston & K. D. Rockwell, *Canadian Securities Regulation*, 4th ed., Markham: LexisNexis, 2007 at 420) ("***Capital Alternatives***").

[179] The term "fraud" is not defined in the Act, however subsection 126.1(b) of the Act has been considered by the Commission in *Re Al-tar* (2010), 33 O.S.C.B. 5535 ("***Al-tar***") and subsequent decisions of the Commission provided by Staff including *Re Lehman Cohort* (2010), 33 O.S.C.B. 7041 ("***Re Lehman Cohort***"), at paragraphs 86-100; *Re Global Partners* (2010), 33 O.S.C.B. 7783 ("***Re Global Partners***"), at paragraphs 238-245; and *Re Borealis International Inc.* (2011), 34 O.S.C.B. 777 ("***Re Borealis***"), at paragraphs 65-67.

[180] The Supreme Court of Canada discussed the elements necessary to establish fraud in *R. v. Théroux*, [1993] 2 S.C.R. 5 ("***Théroux***") at paragraph 27. Justice McLachlin (as she then was) stated that since the *mens rea* of an offence is related to its *actus reus*, it is helpful to begin the analysis by considering the *actus reus* of the offence of fraud (*Théroux*, *supra* at para. 16). The *actus reus* of the offence of fraud, is established by proof of:

> (a) the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
>
> (b) deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> (*Théroux*, *supra* at para. 27)

[181] With respect to deceit and falsehood, in the first branch of the *actus reus* of fraud, the Supreme Court of Canada held that "all that need be determined is whether the accused, as a matter of fact, represented that a situation was of a certain character, when, in reality, it was not" (*Théroux*, *supra*, at para. 18)

[182] Where it is alleged that the *actus reus* of a particular fraud is "other fraudulent means", the Supreme Court of Canada held that the existence of such means is "determined objectively, by reference to what a reasonable person would consider to be a dishonest act" (*Théroux*, *supra*, at paras. 17 and 18; and *R. v. Olan*, [1978] 2 S.C.R. 1175 (S.C.C.) ("***Olan***") at p. 1180). The concept of "other fraudulent means" is intended to encompass all other means, other than deceit or falsehood, which can be properly characterized as dishonest (*R. v. Zlatic*, [1993] 2 S.C.R. 29 ("***Zlatic***") at para. 31 citing *Olan*, *supra* at p.1180) "Other fraudulent means" includes the non-disclosure of important facts (*Zlatic*, *supra* at para.31; and *Théroux*, *supra*, at para. 18).

[183] The second branch of the *actus reus* of fraud, deprivation, is "established by proof of detriment, prejudice or risk of prejudice to the economic interests of the victim caused by the dishonest act" (*Théroux*, *supra*, at paras. 16 and 27). In establishing deprivation, it is not necessary to prove that an accused ultimately profited or received an economic benefit or gain from the conduct or that actual deprivation or actual economic loss occurred (*Théroux*, *supra*, at para. 19).

[184] The element of "deprivation" is satisfied on proof of: (i) actual loss to the victim; (ii) prejudice to a victim's economic interest; or merely (iii) the risk of prejudice to the economic interests of a victim even though no actual loss has been suffered. (*Théroux*, above, at paras. 16-17 and 27)

[185] The establishment of fraud also requires proof of the necessary mental element (the *mens rea*) on the part of the accused. The Supreme Court of Canada in *Théroux* held that the mental element is established by proof of:

1. subjective knowledge of the prohibited act; and

2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

(*Théroux*, *supra* at para. 27)

[186] The Supreme Court of Canada in *Théroux* observed that subjective awareness of the consequences can be inferred from the act itself (*Théroux*, *supra*, at para. 23) and that it is not necessary to show precisely what was in the mind of the accused at the time of the fraudulent act. The Court stated in *Théroux*, in respect of awareness of the risk of deprivation that:

> [t]he accused must have subjective awareness, at the very least, that his or her conduct will put the property or economic expectations of others at risk. As noted above, this does not mean that the Crown must provide the trier of fact with a mental snapshot proving exactly what was in the accused's mind at the moment the dishonest act was committed. In certain cases, the inference of subjective knowledge of the risk may be drawn from the facts as the accused believed them to be … [W]here the accused tells a lie knowing others will act on it and thereby puts their property at risk, the inference of subjective knowledge that the property of another would be put at risk is clear.
>
> (*Théroux*, *supra* at para. 29)

[187] To establish the *mens rea* of fraud requires proof that the Respondents "undertook the acts which constitute the falsehood, deceit or other fraudulent means, and that the accused was aware that deprivation could result from such conduct." (*Théroux*, *supra* at para. 39) A sincere belief or hope that no risk or deprivation would ultimately materialize does not establish an absence of fraud. The Supreme Court of Canada has held that "the fact that the accused may have hoped the deprivation would not take place, or may have felt there was nothing wrong with what he or she was doing, provides no defence" and further stated that "the better view is that the accused's belief that the conduct is not wrong or that no one will in the end be hurt affords no defence to a charge of fraud". (*Théroux*, *supra*, at para. 24 and para. 35).

[188] The Supreme Court of Canada in *Théroux* stated:

> A person who deprives another person of what the latter has should not escape criminal responsibility merely because, according to his moral or her personal code, he or she was doing nothing wrong or because of a sanguine belief that all will come out right in the end. Many frauds are perpetrated by people who think there is nothing wrong in what they are doing or who sincerely believe that their act of placing other people's property at risk will not ultimately result in actual loss to those persons. If any offence of fraud is to catch those who actually practise fraud, its *mens rea* cannot be cast so narrowly as this.
>
> This approach conforms to the conception of the offence of fraud which imbues this Court's decision in *Olan*. *Olan* points the way to a conception of fraud broad enough in scope to encompass the entire panoply of dishonest commercial dealings. It defines the *actus reus* accordingly; the offence is committed whenever a person deceives, lies or otherwise acts dishonestly, and that act causes deprivation (including risk of deprivation) to another. To adopt a definition of *mens rea* which requires subjective awareness of dishonesty and a belief that actual deprivation (as opposed to risk of deprivation) will result, is inconsistent with *Olan*'s definition of the *actus reus*. The effect of such a test would be to negate the broad thrust of *Olan* and confine the offence of fraud to a narrow ambit, capable of catching only a small portion of the dishonest commercial dealing which *Olan* took as the target of the offence of fraud
>
> (*Théroux*, supra at paras. 36 and 37)

[189] The Supreme Court of Canada's test for fraud was applied in respect of securities regulatory proceedings by the British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 ("***Anderson***") (at para. 27) in its consideration of section 57(b) of the British Columbia *Securities Act* and adopted by the Commission in *Al-tar*, *supra* at para. 217).

ii. Analysis and Findings

[190] This Panel finds that the Respondents sold securities of FLG Entities during the Sales Period, without disclosing the Grant Thornton Report and, in particular, the important facts in the Grant Thornton Report, to FLG Sales Investors, which they knew would perpetrate a fraud within the meaning of subsection 126.1(b) of the Act. Phillips and Wilson had the subjective

knowledge that by not disclosing the Grant Thornton Report and, in particular, the important facts in the Grant Thornton Report, to FLG Sales Investors they put the financial or pecuniary interests of FLG Sales Investors at risk.

The Actus Reus and Mens Rea of Fraud

[191] We find that the Grant Thornton Report contained important facts with respect to the business of FLG, which ought to have been disclosed to prospective FLG Sales Investors, but were not disclosed to prospective FLG Sales Investors. Particularly, the Grant Thornton Report disclosed the following:

(a) [t]he future viability of the [FLG] is contingent on their ability to raise new capital, in addition to achieving a number of other parameters as set out in their projections and underlying assumptions. One of the largest sources of revenue in [FLG] is the fees it generates in FLWM on the raising of new capital. If [FLG] was restricted from raising new capital, it would likely be unable to continue its operations in the ordinary course, as it would have insufficient revenue to support its infrastructure, staffing costs, distributions, and to meet their funding requirements for existing projects.

(Exhibit 1 – Grant Thornton Report, p. 66)

(b) there is a significant equity deficit based on the Asset Valuation.

(Exhibit 1 – Grant Thornton Report, p. 12 and p. 66)

(c) [FLG] would have a cash flow deficiency of approximately $15.9 million over the three year period of 2011 to 2013.

(Exhibit 1 – Grant Thornton Report, p. 9)

[192] Both Phillips and Wilson maintained throughout their respective testimony that the Grant Thornton Report concluded that FLG was viable. Phillips testified that the Grant Thornton Report was positive in terms of "what management was hoping for and that the report concluded that First Leaside overall was viable, with certain qualifications based on the correctness of forecasts." Wilson testified that he wanted to publish the Grant Thornton Report. He testified that "… my own personal reason for wanting to publish the report was that it was going to confirm that we had a viable plan going forward three years which would have, in my opinion, been good news for those people." (Testimony of Wilson, June 20, 2013, p. 75)

[193] However, we find, and Krieger confirmed, that the Grant Thornton Report does not contain language that FLG is viable, but that:

> [t]he report qualifies that the company's ability to be viable is contingent on its ability to raise new capital, in addition to achieving quite a number of other parameters as set out in their projections and the assumptions that support that. So, it was a reference to viability as a qualified term.
>
> (Testimony of Krieger, June 5, 2013, pp. 407-408)

[194] We find that both Phillips and Wilson had the subjective knowledge that the Grant Thornton Report contained those important facts, which they did not disclose to prospective FLG Investors.

[195] As directing mind and as member of the Board, Phillips had a copy of the Grant Thornton Report and knew of its contents and conclusion. Hyatt testified that Phillips presented a management summary of the Grant Thornton Report at the September 5 Board Meeting. (Testimony of Hyatt, June 24, 2013, p. 16)

[196] We also find that Wilson had the subjective knowledge that the Grant Thornton Report contained those important facts because as a member of the Board, he too had a copy of the Grant Thornton Report and was at the September 5 Board Meeting where its contents and conclusions were discussed.

[197] Phillips did not address in his testimony at the Merits Hearing, why FLG Investors did not need to know that, without the fees that FLG generates in FLWM, FLG would likely be unable to continue its operations or that there is a significant equity deficit based on the Asset Valuation or that FLG would have a cash flow deficiency of approximately $15.9 million over the three year period of 2011 to 2013. However, the Grant Thornton Report disclosed that FLG Management, which included Phillips and Wilson, was "reluctant to reduce distributions entirely as it does not want to signal to current investors (and potential investors) that the LP cannot cover its own stated distributions." We find that Phillips and Wilson had the subjective awareness that FLG Investors would find the fact that FLG LPs could not cover stated distributions from the operations of the respective LP or that there is a significant equity deficit based on the Asset Valuation or that FLG would have a cash flow deficiency of approximately

$15.9 million over the three year period of 2011 to 2013 were important facts, and were important enough for the Respondents to conceal, thereby putting the investors' financial or pecuniary interests at risk.

[198] Failing to disclose important information to investors constitutes a dishonest act. Courts have included the non-disclosure of important facts to be within the meaning of "other fraudulent means" (See *Théroux*, supra at para. 18; *Zlatic*, *supra* at para. 31; *R. v. Émond* (1997), 117 C.C.C. (3d) 275 (Que. C.A.), leave to appeal denied, [1997] S.C.R. No. 335 ("***Émond***"). In *Émond*, the Quebec Court of Appeal found fraud on the basis, in part, of the accused's "intended and planned non-disclosure of the objective reality" of certain investment transactions. In that case, the accused specifically represented to investors that he had negotiated the best price for various real estate investments, yet failed to disclose hidden profits of several hundred thousand dollars which he was making through each sale. (*Émond*, *supra* at pp. 278-279 and 286).

[199] Both Phillips and Wilson knew that FLG's viability was contingent on FLG adopting the Base Model, which required management to change the way it deployed capital, in that new investor money could not be used to fund existing projects (including the payment of distributions to earlier investors) nor could cash be moved between LPs. The Base Model represented "a major or drastic departure" from the manner in which the FLG conducted business. Without the Grant Thornton Report, FLG Sales Investors were deprived of important facts, which were in the hands of the Respondents, and, as a result, the financial or pecuniary interests of FLG Sales Investors were put at risk. (Testimony of Krieger, June 7, 2013, p. 72)

[200] Phillips and Wilson knew that, in light of Grant Thornton's findings, as disclosed in the Grant Thornton Report, they failed to disclose important information to FLG Sales Investors during the Sales Period with respect to the cash flow deficiencies in FLG entities, regarding the use of proceeds raised from investors, the state of FLG in the statements they made at the September 17, 2011 WALP AGM, on the FLG Website, and in Marketing Materials and in their communications with FLG Sales Investors.

[201] We infer from all of the facts that Phillips and Wilson knew that the Grant Thornton Report contained these important facts. We find that the evidence establishes that both Phillips and Wilson committed dishonest acts by failing to disclose important information to FLG Sales Investors, which caused deprivation by putting the financial or pecuniary interests of FLG Sales Investors at risk.

Representations made at the September 17, 2011 WALP AGM

[202] During the Sales Period, Phillips made representations that it was "business as usual" to Mr. M. and at the September 17, 2011 WALP AGM. Phillips also reported at the September 17, 2011 WALP AGM to FLG Investors and FLG Sales Investors that "sales had never been better." Wilson, during the Sales Period, created an impression that "the company [was] doing fantastic" and then he encouraged Dr. Z. to invest in the Special Notes LP. Wilson said "[i]f you have anything more to invest, we have this great product coming out. It's going to pay 10.1 percent. You will only be exposed for a year." Wilson also told Dr. Z. that "[w]e were having our best year on record." (Testimony of Mr. M., June 2013, p. 135, paras. 9-15, p. 132, paras. 17-18 and p. 150, para. 23; Testimony of Wilson, June 20, 2013, p. 12, paras. 16-19; and Testimony of Dr. Z. and Mrs. Z., June 12, 2013, p. 27, para. 15 and p. 43, paras. 3-4)

[203] We are troubled that Phillips represented to investors that it was "business as usual" at FLG and that Wilson created an impression that "the company [was] doing fantastic" during the Sales Period. In light of the conclusions made in the Grant Thornton Report, this was a deliberate falsehood. As the directing mind of FLG, Phillips knew that the Grant Thornton Report disclosed that it was anything but "business as usual" at FLG since the Board had resolved at the September 5 Meeting to authorize FL Management "to develop an investment structure that complies with the recommendations of the [Grant Thornton Report] to raise $5 million for WALP for presentation to the Board" and that this, together with stopping the movement of funds such that new funds be siloed within each of the new investment entities, would represent "a major or drastic departure" from FLG's way of doing business. (Testimony of Mr. M., June 11, 2013, p. 135, paras. 9-15, Testimony of Dr. Z. and Mrs. Z., June 12, 2013, p. 27, para. 15; Testimony of Hyatt, June 24, 2013, p. 35, paras. 1-5)

[204] Additionally, both Phillips and Wilson knew that the Grant Thornton Report disclosed that funding losses and property rehabilitation programs would have a negative short term cash flow impact on FLG because FL Finance will have to pay 7% related party interest to the lending LP (to cover the distribution payments) but FL Finance would not receive 7% related party interest from the borrowing LP (WALP in this case) if the borrowed money is being used to fund operating losses and rehabilitation programs that are not yet generating income. Accordingly, in instances such as this, the related party balance owing to FL Finance from the borrowing LP would continue to grow with accruing interest. Both Phillips and Wilson also knew that Grant Thornton had determined that "FLG would have a cash flow deficiency of approximately $15.9M over the three year period of 2011 to 2013." (Exhibit 1 – Grant Thornton Report, p. 9)

[205] We find that each of the Respondents, as a matter of fact, represented that the state of FLG was of a certain character, when in reality, it was not. We find that the Respondents' actions were deliberate and formed part of a willful strategy to continue to raise capital for FLG in order to meet its obligations across the spectrum of its entities.

[206] Phillips testified that he did not have any concerns personally about selling securities to investors without them having any awareness of the Grant Thornton Report because "we didn't think we were allowed to give out the report, and I thought that we were taking great pains to try to disclose what was needed to be disclosed to whoever was investing in their respective deals." (Testimony of Phillips, June 19, 2013, p. 92, paras. 18-22) Notwithstanding Phillips' testimony, he did not disclose to FLG Sales Investors the important facts and other contents of the Grant Thornton Report in the Marketing Materials that were given to FLG Sales Investors, and in respect to the Special Notes, there were no offering documents.

[207] It is not necessary for this panel to consider whether Phillips considered his actions to be dishonest in order to find Phillips contravened subsection 126.1(b) of the Act. Nor does the fact that both Phillips and Wilson believed that their respective conduct was not wrong, provide a defence for fraud. As the Supreme Court of Canada has held "the fact that the accused may have hoped the deprivation would not take place, or may have felt that there was nothing wrong with what he or she was doing, provides no defence" (*Théroux*, *supra* at para. 24). "The question is whether the accused subjectively appreciated that certain consequences would follow from his or her acts" (*Théroux*, *supra*, at para. 22). Further, in para 21 in *Théroux*, the Court states that "the test is not whether a reasonable person would have foreseen the consequences of the prohibited act, but whether the accused subjectively appreciated those consequences at least as a possibility".

[208] We find that the evidence established that the Grant Thornton Report contained facts with respect to the business of FLG Group that a reasonable investor would consider important. We also find that the fact that the Respondents continued to sell securities of FLG entities, without disclosing the Grant Thornton Report, was detrimental to, and deprived FLG Sales Investors of important facts that put their financial or pecuniary interests at risk.

[209] We find that Phillips deliberately and intentionally withheld the Grant Thornton Report and, in particular, the important information contained within it from FLG Sales Investors. In so doing, Phillips was aware that deprivation or risk of deprivation could follow as a likely consequence, putting the financial or pecuniary interests of FLG Sales Investors at risk.

[210] We find that Wilson deliberately withheld the Grant Thornton Report and, in particular, the important facts contained in the Grant Thornton Report from FLG Sales Investors. In so doing, Wilson was aware that deprivation or risk of deprivation could follow as a likely consequence, putting the financial or pecuniary interests of FLG Sales Investors at risk.

[211] This panel is satisfied that, on a balance of probabilities, in these circumstances, there is clear, convincing and cogent evidence that Staff has proven the *actus reus* and *mens rea* of fraud on the part of both Phillips and Wilson. We find that each of the Respondents engaged in or participated in an act, practice or course of conduct relating to securities that they knew would perpetrate a fraud on FLG Sales Investors, contrary to subsection 126.1(b) of the Act and contrary to the public interest.

iii. Reliance on Legal Advice

[212] Both Phillips and Wilson testified that they received legal advice that they could not disclose the Grant Thornton Report. The Commission has previously held that even if a defence of reliance on legal advice is available, that defence will fail unless the respondent can establish four things:

1. The lawyer had sufficient knowledge of the facts on which to base the advice;
2. The lawyer was qualified to give the advice;
3. The advice was credible given the circumstances under which it was given; and
4. That the respondent made sufficient enquiries and relied on the advice.

(*Mega-C Power Corp. (Re)* (2010), 33 O.S.C.B. 8290, para. 261;)

[213] There was no evidence submitted or produced by the Respondents to support a finding that legal advice was given not to disclose the Grant Thornton Report during the Sales Period and that the Respondents relied on that advice. Phillips testified that he was given legal advice at the September 5 Board Meeting, but acknowledged that the advice did not appear in the minutes of the September 5 Board Meeting. (Testimony of Phillips, June 20, 2013, p. 26) On cross-examination of Phillips by Staff, the following exchange occurred:

> Q. No one asked Grant Thornton for their consent to disclose that report, did they?
>
> A. I asked the attorneys if we could send it out, and I was told no. I don't see why I would then go and ask the author if I can when my lawyer's already said I can't.

> Q. So you didn't say to Mr. Dunne, 'Well, that may be your considered view, Mr. Dunne, but I'm euphoric about this report, and I think that you should go to Mr. Krieger and ask him if I can share it with my investors'?
>
> A. My attorney has just told me that I will be violating the law if I do it, and you're asking me to then say I should have overruled him? He's my attorney, it's his advice that I need to take, and he told me you can't send it out.
>
> Q. And you didn't take any other steps or ask any other questions in respect of that?
>
> A. No, ma'am, I did not.
>
> Q. Okay. Because we know, of course, from Mr. Krieger's testimony he was absolutely clear he was only asked twice for his consent to disclose the report: First, on August 19, 2011, and again in early November 2011. Isn't that right?
>
> A. That's Mr. Krieger's testimony.
>
> (Testimony of Phillips, June 20, 2013, p. 28-29)

[214] Phillips acknowledged that no opinion letter was provided, nor was he aware of any email containing the legal advice but stated that "I believe Mr. Dunne is a witness, and he will give his testimony." (Testimony of Phillips, June 20, 2013, pp. 29-30)

[215] On his direct examination, Wilson was asked about sales and disclosure of the Grant Thornton Report:

> Q. Did anyone say you couldn't sell at that meeting?
>
> A. Never came up.
>
> Q. Did anyone –
>
> A. Well, except for the Wimberly, except for the U.S. assets which were under the undertaking. And to our – to my knowledge, what I was – that it was understood that that had expired or it had been fulfilled, and so that was behind us as well. So that did get discussed, but that was ...
>
> Q. Okay. Did anyone discuss disclosing the Grant Thornton report more broadly than the board of directors?
>
> A. It was certainly discussed.
>
> Q. Can you tell us what was said?
>
> A. Um, there was an interest by one of the independent directors, would that be possible to publish the report.
>
> Q. Do you remember who that was?
>
> A. I believe it was Doug Hyatt, but I can't be a hundred percent certain.
>
> Q. What was the response, then, to the question?
>
> A. My understanding is the response was no, it would not be, like, possible. I'm sorry, I'm trying to remember the actual expression, and I don't. "Not likely" might have been the expression.
>
> Q. Do you remember who gave the response?
>
> A. My recollection, I'm afraid, is – it was either – in my recollection, I wasn't certain. It was either David Phillips, Leon Efraim, or Grant – or Peter Dunne.
>
> Q. Whoever responded, did they tell you – was there a reason given why it was unlikely?

> A. Oh, the reason was understood to be section 16, that it was not – that it was part of a... It was production of the investigation and it was a part investigation, and as such, it was clearly covered by section 16.
>
> (Testimony of Wilson, June 20, 2013, pp. 73-74)

[216] Wilson testified that he understood that the Grant Thornton Report was part of the "gag order." Wilson said that it was his "own conclusion" that the Grant Thornton Report was naturally part of the Commission process. However, Wilson also testified that he was not necessarily told that in those words by Phillips or Efraim, but "it would have become clear in those discussions in that meeting [on September 5] that it was, um, protected by section 16, if you will." Wilson testified that:

> My own interpretation of why it would have been logically, then, it's because it's part of the OSC review and that's why it would be covered by section 16. So I simply deduced that from why it would be covered.
>
> (Testimony of Wilson, June 20, 2013, pp. 117-119; Exhibit 13 – Phillips and Wilson Transcripts, Tab B, pp. 111-130)

[217] Hyatt, the Chair of the FLWM Board, testified that the ability to disclose the Grant Thornton Report was discussed at the September 5 Board Meeting. Hyatt said that he understood that the report was confidential. Hyatt explained that Dunne had said that the Grant Thornton Report formed part of the Commission's investigation, and as a consequence, the report could not be disclosed. (Testimony of Hyatt, June 24, 2013, pp. 17 and 37)

[218] Hyatt testified that at that September 5 Board Meeting, Dunne did not give advice that, on the one hand, First Leaside could sell, for example Special Notes, without, on the other hand, disclosing the Grant Thornton Report at that time. As Hyatt said, "I'm not sure that issue came up in that way." Similarly, at the September 5 Board Meeting, Dunne did not give advice that First Leaside could sell, for example, FLEX LP, without disclosing the Grant Thornton Report. As Hyatt stated, "I don't know that he connected those two things. We were simply told that the report could not be disclosed." (Testimony of Hyatt, June 24, 2013, p. 37)

[219] While the minutes of the September 5 Board Meeting do not refer to it, Hyatt testified that at that meeting, there were discussions about whether FLG was permitted to raise capital. Hyatt indicated that the discussions with respect to whether or not FLG was permitted to raise capital arose in the context of the WALP Undertaking, which was relevant to the $5 million Special Financing. Hyatt testified that he was not certain at the time of the September 5 Board Meeting whether the Phillips' Undertaking was still in effect. Hyatt testified that he had asked Phillips whether there were any other restrictions on raising capital, and Phillips said there were none. Hyatt said that no one else at that meeting, including Dunne, provided any advice on that issue. According to Hyatt, Dunne did not contribute to the discussion in respect of capital raising, other than with regard to the $5 million Special Financing, nor did he give any advice in regard to FLG's projected sales or future sales efforts.

[220] Dunne, on the other hand, testified directly that he never provided an opinion letter or email in which he connected two things: (i) that First Leaside could not disclose the Grant Thornton Report; and (ii) that First Leaside could go ahead and sell its LPs and Funds in those circumstances. Dunne testified firmly that "I was not asked for an opinion." (Testimony of Dunne, June 24, 2013, p. 105)

[221] Dunne testified, without hesitation, that at the September 5 Board Meeting, he did not give FLG advice that First Leaside could sell Special Notes without disclosing the Grant Thornton Report. Dunne stated that I wasn't asked, didn't give." Dunne said he similarly did not give advice that FLG could sell FLEX LP, or any other LP or Fund sold in September and October 2011, without disclosing the Grant Thornton Report. (Testimony of Dunne, June 24, 2013, pp. 101-102 and p. 104)

[222] In the Hyatt Affidavit, Hyatt stated that he was surprised by Dunne's evidence in respect of the disclosure of the Grant Thornton Report. Hyatt stated that he recalled Dunne giving advice at the September 5 Board Meeting and reiterating the advice during the November 13, 2011 Meeting. Neither the minutes of the September 5 Board Meeting nor the minutes of the November 13, 2011 Meeting record or reflect Dunne giving any legal advice or opinion that FLG could not disclose the Grant Thornton Report or that FLG could sell its LPs and Funds without disclosing the Grant Thornton Report. The minutes of the November 13, 2011 Meeting do contain a sentence that does note that "the Corporation was precluded from disclosing to investors the Grant Thornton Report or the [OSC] investigation that gave rise to the [Grant Thornton] Report"; that note however, is not attributed to Dunne or anyone in particular in those minutes and is placed after a sentence that sets forth a discussion of the Independent Committee.

[223] In addition, Collins testified that at the September 1, 2011 Meeting, she did not recall any discussion concerning the disclosure of the Grant Thornton Report nor did she recall a discussion about a "gag order" that would prevent the discussion or disclosure of the Grant Thornton Report to FLG Investors. (Testimony of Collins, June 7, 2013, p. 124)

[224] We find that the Respondents did not produce any evidence of a legal opinion or advice in the minutes of the September 5 Board Meeting which was held during the Sales Period, or any other evidence to substantiate a defence of reliance on legal advice other than their own testimony and that of Hyatt as to his recollection that advice was given. This was directly contradicted by the testimony of Dunne, the lawyer whom they said had provided the legal opinion and advice; Dunne, on the other hand, testified firmly that he was not asked for an opinion and never provided the alleged opinion or advice. We accept the testimony of Dunne on this point that he did not provide any legal advice or opinion that FLG could not disclose the Grant Thornton Report or that FLG could sell its LPs and Funds without disclosing the Grant Thornton Report.

[225] In *Springer v. Aird & Berlis LLP* (2009), 96 O.R. (3d) 325 ("***Springer***"), the Court held that the "most satisfactory judicial test of truth lies in its harmony or lack of harmony with the preponderance of probabilities disclosed by the facts and circumstances in the conditions of the particular case". (*Springer*, *supra* at para. 14 citing *R. v. Pressley* (1948), 94 C.C.C. 29). In cases where there is conflicting testimony and where the trier of fact is deciding whether a fact occurred on a balance of probabilities,

> provided the judge has not ignored evidence, finding the evidence of one party credible may well be conclusive of the result because that evidence is inconsistent with that of the other party. In such cases, believing one party will mean explicitly or implicitly that the other party was not believed on the important issue in the case.
>
> (*McDougall*, *supra*, at para. 86)

[226] We made assessments of the credibility of the witnesses who testified before the panel. As we have stated above, we accept as credible the testimony of Dunne that he did not provide any legal advice or opinion that FLG could not disclose the Grant Thornton Report or that FLG could sell its LPs and Funds without disclosing the Grant Thornton Report. As we have noted above, there was no evidence of a legal opinion or advice on this issue in the minutes of the September 5 Board Meeting or the November 13, 2011 Meeting. We do not accept as credible the testimony of Phillips and Wilson, with respect to having received such legal advice or opinion from Dunne.

[227] Accordingly, we find that legal advice in respect of non-disclosure of the Grant Thornton report was not given by Dunne during the Sales Period. As such, the Respondents cannot rely on reliance on legal advice as a defence. Therefore, the test set out in *Mega-C Power Corp.* is not applicable.

B. Did the Respondents, Phillips and Wilson, each make statements that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the Act and contrary to the public interest?

i. The Applicable Law

[228] Subsection 44(2) of the Act provides that:

> *No person or company shall make a statement about any matter that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with the person or company if the statement is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances in which it is made.* 2009, c. 18, Sched. 26, s. 9.

[229] In *Re Winick*, the Commission articulated the test to make a finding that a person or company has breached subsection 44(2) as requiring that the panel must be satisfied that:

> the respondent made a statement about a matter that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with the respondent, which is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances.
>
> *(Re Winick* (2013), 36 O.S.C.B. 8202 at para. 156)

[230] In *Re Carter*, a decision of the Director of the Commission found marketing materials of an entity affiliated with Carter Securities Inc. violated subsection 44(2) of the Act since the materials contained statements that were "misleading, unsupported or not accurate" (*Re Carter Securities Inc.* (2010), 33 O.S.C.B. 8691 ("***Carter***") at para. 53 and 74).

ii. Analysis and Findings

[231] This panel finds that during the Sales Period, each of the Respondents made statements with respect to FLG that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with each of the respondents, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances.

[232] In deciding whether each of Phillips and Wilson breached subsection 44(2) of the Act, we considered whether the statements made by each of Phillips and Wilson to existing and prospective FLG investors were relevant to a reasonable investor in deciding whether to enter into or maintain a trading or advising relationship with each of the Respondents, respectively, and whether the statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances. We also considered the marketing materials provided by the Respondents, including (i) the PowerPoint Slide Presentation at the September 17 WALP AGM, (ii) the FLG website during the Sales Period, (iii) Wilson's Group Email, as well as the evidence of FLG Sales Investors as to their reaction to learning of the Grant Thornton Report after the Sales Period.

The PowerPoint Slide Presentation at the September 17, 2011 WALP AGM

[233] The PowerPoint slide presentation made by Phillips at the September 17, 2011 WALP AGM contained the following statements:

> The time for new opportunities appears as we approach a market 'bottom'.
>
> Because of our sound financial position, and strategy of maintaining no stock market risk, the partnership's exposure to market risk is unchanged. In fact, the partnership can now entertain a brand new suite of options and opportunities.
>
> (Exhibit 19 – Respondents' Hearing Brief, Tab 40, p. 6)

[234] Phillips testified that this was his position at that time.

[235] During the Sales Period, Phillips made representations that it was "business as usual" to Mr. M. and at the September 17, 2011 WALP AGM.

[236] Phillips also reported at the September 17, 2011 WALP AGM to FLG Investors that "sales had never been better" while the evidence indicates that he was, at that time, funneling new investor money indirectly into WALP to keep it afloat; that use of investor money was not disclosed by Phillips to new investors during the Sales Period and was contrary to the recommendation of the Grant Thornton Report.

[237] The minutes of the September 5 Board Meeting disclose that Phillips asked Dunne why FLWM, if it is allowed to raise capital, cannot invest its capital in WALP. Dunne explained that the OSC would likely be concerned that by allowing FLWM to invest in WALP, "FLWM investors take disproportionate risk as FLWM is already significantly invested in WALP."

[238] We find that Phillips made representations that WALP and FLG had a "sound financial position" and it was "business as usual" to FLG Sales Investors in order to induce them to purchase units of the FLG entities. We are troubled that Phillips made representations to investors that WALP and FLG had a "sound financial position" and it was "business as usual" at FLG during the Sales Period. In light of the conclusions made in the Grant Thornton Report, these statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances. As the directing mind of FLG, Phillips knew that the Grant Thornton Report disclosed that it was anything but "business as usual" at FLG because the recommendations in the Grant Thornton Report indicated that FLG's financial viability is contingent on the ability of FLG to raise the Special Financing to prevent a cash flow deficiency, that FLG stop the movement of funds, that new funds be siloed within each of the new investment entities and the Base Model represented "a major or drastic departure from the manner in which [FLG] conducted business in the past". (Testimony of Krieger, June 7, 2012, p. 72) We were not provided evidence that FLG or FLG Management took reasonable actions to change the way they did business and to implement the recommendations in the Grant Thornton Report.

FLG Website Marketing Material

[239] We find that the marketing materials set forth on the FLG website contained statements that were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances. The FLG website included statements such as:

- "One of Canada's Fastest Growing Real Estate Portfolios". (Testimony of Krieger, June 7, 2013, p. 137);
- "With an 18-year track record, First Leaside proved that buying underperforming D grade properties in established neighborhoods and then repositioning them in the market could be very profitable". (Testimony of Krieger, June 7, 2013, p. 137);
- "Since 1992 First Leaside Limited Partners have received continuous monthly cash distributions." (Testimony of Krieger, June 7, 2013, p. 137); and
- "Exceptional investment Return Over the Past Two Decades" (Testimony of Krieger, June 7, 2013, p. 138)

[240] However, the reality was that the valuation of the FLG properties was less than the total amount outstanding under the mortgages and the promissory notes issued by FLG. This meant that the liabilities of FLG were greater than the assets of FLG and FLG had to service that debt, but the cash flow of FLG was negative. This was a solvency issue. (Testimony of Collins, June 10, 2013, pp. 43-44).

[241] In the balance sheet of the financial statements of WALP dated December 31, 2009 (Exhibit 2 – Hearing Brief, Volume 1, Jonathan Krieger), under "WALP Liabilities", Collins said that there were mortgages payable of $50,077,299 and the promissory notes payable add up to $46,427,226 making the total of those two liabilities approximately $96.5 million. (Testimony of Collins, June 7, 2013, p. 97) while the valuation of the properties added up to either $58.0 million at the low end or $68.8 million at the high end (Testimony of Collins, June 7, 2013, pp. 98-99).

[242] Collins told the panel that Staff noted that:

> "Grant Thornton had identified significant financial reporting and corporate governance concerns, including a failure to provide adequate and timely financial statements."

It appears that these concerns were not disclosed to investors by FLG. (Testimony of Collins, June 7, 2013, pp. 140-141)

[243] Wilson described the websites as a very effective marketing tool. On its websites, captured on October 21, 2011, FLG indicated that it had "One of Canada's Fastest Growing Real Estate Portfolios" and "Continuous monthly cash distributions since 1992." The marketing material also referred to FLG's "exceptional investment return over the past two decades…allowing us continued access to additional investment capital." The FLG paper marketing materials said that the valuation of the assets or the properties held by WALP were worth over $100 million whereas the valuations of the WALP properties were in fact not more than $68.8 million. (Testimony of Collins, June 7, 2013, pp. 97-99). We find that all these statements made, inter alia, on marketing materials, were misleading, unsupported or not accurate.

Wilson's Group Email

[244] On September 9, 2011, Wilson sent Wilson's Group Email to investors trying to drum up sales in the Special Notes LP and Venture LP offerings. Wilson described the Special Notes LP and Venture LP offerings, as "compelling investment opportunities [for] our partners." Wilson also described the 10.1% per annum interest rate and other attributes of the Special Notes LP offering and advised "If you have an interest, contact me for further detail. There is limited supply, and we expect to be fully subscribed rather quickly." (Testimony of Wilson, June 20, 2013, pp. 107-110; Exhibit 7 – Hearing Brief: Lists of Sales during Sales Period and Marketing Material, Tab 2)

[245] In respect of the Venture LP offering, Wilson wrote:

> For partners who can utilize a substantial tax deduction in 2011 and 2012, this new LP is ideal! This has the potential to be our best deal in 20 years, given the high deductions, and the substantial portfolio of real estate acquired. (Renovations for several retirement properties will provide the deductions).
>
> (Testimony of Wilson, June 20, 2013, pp. 107-110; Exhibit 7 – Hearing Brief: Lists of Sales during Sales Period and Marketing Material, Tab 2)

[246] We find that during the Sales Period, Wilson induced Dr. Z. to invest in FLG by offering 5 percent bump investment incentives that he knew that FLG could not meet. Wilson also represented to Dr. Z. and Mrs. Z. that they had to reinvest the funds in FLG since they did not have an opportunity to take the money out (Testimony of Dr. Z. and Mrs. Z., June 12, 2013, pp. 78-79). Both Dr. Z. and Mrs. Z. wanted to take out $15,000 because they wanted to do some renovations to their home but were told by Mr. Wilson that they were not allowed to take out any money because in order to get the 5 percent bump "it was either all or none" because all of the money had to be reinvested in the fund. (Testimony of Dr. Z. and Mrs. Z., June 12, 2013, pp. 50-51).

In reality, the Grant Thornton Report concluded that FLG Group did not have sufficient cash to repay existing investors and had to keep raising capital in order to try to be viable.

[247] We find that based on the evidence, FLG Sales Investors did not understand the financial situation at FLG, particularly with respect to WALP. We find that FLG Sales Investors were not informed as to the type of company they were investing in. We find that they believed what they were told by Phillips and Wilson, including in FLG marketing materials, at the September 17, 2011 WALP AGM and in the sales pitches.

[248] We find that, on a balance of probabilities, each of the Respondents made statements about FLG that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with the respective Respondent. We also find that, in making those statements, without disclosing the current state of FLG, in light of the findings and recommendations in the Grant Thornton Report, the Respondents each made statements that were untrue or omitted information necessary to prevent their respective statements from being false or misleading in the circumstances in which they were made. The actions of the Respondents constitute breaches of subsection 44(2) of the Act and were contrary to the public interest.

C. Did the Respondents, Phillips and Wilson each fail to deal fairly, honestly and in good faith with their clients, contrary to section 2.1 of Commission Rule 31-505 and contrary to the public interest?

i. The Applicable Law

[249] Section 2.1 of Commission Rule 31-505 – *Conditions of Registration* provides that every registrant, whether corporate or individual, has a statutory obligation to deal fairly, honestly and in good faith with clients. Section 2.1 states :

> (1) *A registered dealer or adviser shall deal fairly, honestly and in good faith with its clients.*
>
> (2) *A representative of a registered dealer or a registered adviser shall deal fairly, honestly and in good faith with his or her clients.*

ii. Analysis and Findings

[250] This panel finds that each of Phillips and Wilson, as registrants, had a duty to deal fairly, honestly and in good faith with FLG Sales Investors, who were their clients, and that each of the Respondents failed to meet that duty. Accordingly, each of the Respondents contravened 2.1(2) of Commission Rule 31-505 during the Sales Period and in so doing acted contrary to the public interest. The Respondents did not take appropriate steps to discharge their obligations as registrants with integrity and, as the ultimate designated person and directing mind of FLG, Phillips failed to promote a culture of compliance with securities law at FLG.

[251] The Commission is given the responsibility by statute to "provide protection to investors from unfair, improper or fraudulent practices" and to "foster fair and efficient capital markets and confidence in capital markets" (section 1.1 of the Act). The Act stipulates that the "primary means" for achieving its purposes include "requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants" (section 2.1 of the Act, clause 2(iii)).

[252] Registrants act as gatekeepers of the integrity of the capital markets. They should not, by act or omission, facilitate conduct that brings the market into disrepute. As part of their gatekeeper role, registrants shall deal fairly, honestly and in good faith with clients. (Companion Policy to NI 31-103CP)

[253] The Respondents submit that section 2.1 "is no more than a generic statement of the duty of care of dealers and advisers." (Opening submissions of the Respondents dated June 5, 2012 at p. 18 para. 64) and that "if there was no requirement to disclose the Undisclosed Facts, then there is no basis to make finding of a breach of the duty of care of dealers and advisers". The Panel rejects the Respondents' submission. The duty to act fairly, honestly and in good faith "goes to the heart of what securities regulation is about and a breach of this obligation is especially serious." (*Re Norshield Asset Management (Canada) Ltd.* (2010), 33 O.S.C.B. 7171 at para. 79)

[254] Registrants hold positions of trust in the securities industry and towards their clients, creating a responsibility on their part to fulfill an important role directed towards the protection of investors and fostering fair and efficient capital markets and confidence in capital markets. (*Re Sawh* (2012), 35 OSCB 7431 ("***Sawh***") at para. 309). It is:

> … through the registration process, the Commission attempts to ensure that those who trade in securities meet the applicable proficiency requirements, are of good character, satisfy the appropriate ethical standards and comply with the Act. (*Re Limelight Entertainment Inc.* (2008), 31 OSCB 1727 ("***Limelight***") at para. 135)

[255] In *Re Cartaway Resources Corp.*, (2000) BCSECCOM 88 ("***Cartaway Resources***"), the B.C. Securities Commission held:

> ... that conduct by market participants that results in breaches of the letter and spirit of securities legislation is conduct that brings the capital markets into disrepute and undermines public confidence in the system. It is particularly egregious where it is demonstrated that registrants have taken advantage of their position and have been deceitful and misleading …
>
> (*Cartaway Resources*, *supra* at para. 239)

[256] Registration is a privilege and not a right, which is granted to individuals and entities that have demonstrated their suitability for registration (*Sawh*, *supra* at para. 142). Registrants have an obligation to act fairly, honestly and in good faith with their clients. This is an important standard and requires registrants to put the interests of their clients first. To participate in the capital markets in Ontario requires a registrant to embrace this standard.

Phillips

[257] Phillips testified that he understood that as a registrant, he had a duty to deal fairly, honestly, and in good faith with his clients. He understood that as a registrant, he had an obligation to his clients to make sure that they had all of the relevant facts and information they needed in order to decide whether to invest. Phillips also agreed that the other registrants he supervised in his role as UDP, including Wilson, had the same duty of honesty, and the same duty to all clients to ensure that they had the relevant information they needed to make an investment decision. However, his actions showed that he withheld important information from FLG Sales Investors and his Sales Team. (Testimony of Phillips, June 19, 2013, pp. 103-106; Exhibit 4 – Hearing Brief: Corporate and Registration Documents, Tab 9)

[258] Phillips also testified that he understood the role as UDP to be very important and, and that as the UDP of a securities firm, he was responsible for supervising the firm's activities to ensure that everyone was compliant with securities law, and for promoting compliance with securities legislation by the firm and individuals acting on its behalf. (Testimony of Phillips, June 19, 2013, p. 7 and pp. 99-100; Exhibit 4 – Hearing Brief: Corporate and Registration Documents. Tab 9)

[259] Phillips was aware of the findings of the Grant Thornton Report and failed to disclose those findings to existing and potential FLG Investors. Those findings were important and relevant for investors to make investment decisions. Phillips represented to investors during the Sales Period that it was "business as usual", notwithstanding that the Base Model, findings and recommendations of the Grant Thornton Report would be "a major or drastic departure" from FLG's way of doing business.

[260] Notwithstanding Phillips's testimony that he understood his duty as a registrant and role as UDP, we find that Phillips' actions (as discussed above) during the Sales Period demonstrated his disregard of this duty. We find that Phillips failed to deal fairly, honestly and in good faith with FLG Investors who were his clients and thereby contravened Section 2.1(2) of Commission Rule 31-505 during the Sales Period and in so doing acted contrary to the public interest.

Wilson

[261] Wilson testified that in his previous career selling industrial machinery, he had a duty of candour and honesty toward his clients. Wilson testified that he understood that as a registrant, he had a duty to act fairly, honestly and in good faith with his clients. He also understood that his duty included an obligation to his clients to make sure that they had all of the relevant facts they needed in order to decide whether to invest. Wilson agreed that this was a higher duty than the one he had as a salesperson of industrial machinery, because as a registrant, he was often dealing with someone's life savings, and their investment decisions could impact them profoundly, including in respect of whether or when they could retire. (Testimony of Wilson, June 20, 2013, pp. 87-89 and p. 98)

[262] Notwithstanding Wilson's understanding of his duty as a registrant, which included an obligation to make sure that his clients had all of the relevant facts they needed to decide whether to make an investment decision, we find that Wilson deceived and misled FLG Investors during the Sales Period by (i) creating the impression that "the company [was] doing fantastic," (ii) continuing to raise funds from FLG Investors, and (iii) ensuring that their maturing investments were not withdrawn. Even though Wilson knew about the questionable viability of FLG, as disclosed in the Grant Thornton Report, Wilson encouraged Dr. Z. to invest additional funds in FLG products stating:

> "if you have any – anything more to invest, we have this great product coming out. It's going to pay 10 percent. You will only be exposed for a year."

Wilson also offered a "bump" to Dr. Z. and Mrs. Z. if they rolled over all of their existing investments. (Testimony of Dr. Z. and Mrs. Z., June 12, 2013 pp. 42-46)

[263] On October 13, 2011, Dr. Z. and Mrs. Z. invested a total of $315,000 in FLEX LP under "Canadian Investment Accounts" (Testimony of Dr. Z. and Mrs. Z., June 12, 2013, p. 49). The source of the funds was a rollover from their previous investments in other FLG securities. (Testimony of Dr. Z. and Mrs. Z., June 12, 2013, p. 49-50). Mrs. Z. testified that they were unaware of what purpose their funds were being used for, however, they were aware that some of the funds were getting transferred and assumed that it was to make more money for FLW using their RRSP. (Testimony of Dr. Z. and Mrs. Z., June 12, 2013, p. 74). Mrs. Z. testified that she did not know that she was purchasing Wimberly Fund. She believed that she was investing $930,000 in the compounding interest fund. Mrs. Z. testified that John Wilson, her advisor, told her so. (Testimony of Dr. Z. and Mrs. Z., June 12, 2013, p.32) The risk factors in the cash margin and other accounts of Dr. Z. was 50 percent medium and 50 percent high risk on the form, however, Mrs. Z. told Staff that at the time they had filled out the form, the discussion with Wilson in 2007 was about their registered RRSPs, where they wanted 65 percent, low risk, 20 percent, medium risk, and 15 percent to be high risk for their investment profile. (Testimony of Dr. Z. and Mrs. Z., June 12, 2013, p. 67). Dr. Z. and Mrs. Z. were unaware of the change in their risk profile and confirmed that they would not have agreed to it. (Testimony of Dr. Z. and Mrs. Z., June 12, 2013, pp. 68-69).

[264] Dr. Z. testified that "we did not think that we were invested in the States." (Testimony of Dr. Z. and Mrs. Z., June 12, 2013, p. 13)

[265] In *Re Marchment*, the Commission stated:

> The duty to know the client's investment objectives, financial means and personal circumstances, and to recommend only those investments which are suitable for the client is fundamental to the obligation of every dealer and registered representative dealing with the public.
>
> (*Re Marchment & Mackay Ltd.*, 1999 Carswell Ont 5644 at para. 13)

[266] In light of the detailed findings on the viability of FLG as disclosed in the Grant Thornton Report, we find that Wilson sold FLG Sales Investors investments which were not suitable for their investment objectives. As a registrant, Wilson knew the risks associated with investments in an entity that Grant Thornton had recently identified as having a $132.1 million equity deficit to equity holders of the FLG Entities (Testimony of Krieger, June 6, 2013, pp. 102 and 104) and whose viability was questionable. As a registrant, and in fulfilling his duty to act fairly, honestly and in good faith, Wilson ought to have explained and disclosed these facts to FLG Sales Investors as part of his obligation to determine whether the investments were suitable for FLG Sales Investors. Instead, Wilson misrepresented the level of risk associated with the investments during the Sales Period and in so doing, Wilson failed to act fairly, honestly and in good faith.

[267] We also find that the FLG Sales Investors were vulnerable because of their lack of investment knowledge and we accept their evidence that they relied on the advice of Wilson. We also find that this was or should have been evident to Wilson. While we recognize that clients have responsibilities to understand the potential risks and returns on their investments, this does not relieve Wilson of his duty as a registrant to make certain that investors have this understanding and to make appropriate recommendations, especially in circumstances where he is dealing with investors who have relatively little investment experience. (Re Daubney (2008), 31 O.S.C.B. 4817 at para. 201) The Respondents provided no evidence that they discussed the risks of investing in FLG products during the Sales Period with FLG Sales Investors.

[268] Notwithstanding Wilson's testimony that he understood his duty as a registrant, we find that Wilson's conduct (as discussed above) during the Sales Period demonstrated his failure to fulfill his obligations. We find that Wilson failed to deal fairly, honestly and in good faith with FLG Investors who were his clients and thereby contravened Section 2.1(2) of Commission Rule 31-505 during the Sales Period and so doing acted contrary to the public interest.

[269] We also find that the Respondents, by favouring their own interests to raise additional capital for FLG, prejudiced FLG Investors. The conduct of the Respondents, in not disclosing the risks associated with an investment in FLG products, including (i) the $132.1 million equity deficit to equity holders of the FLG Entities, (ii) the cash flow deficiency of approximately $15.9 million over the three-year period of 2011 to 2013, and (iii) the viability of FLG, the Respondents' conduct constituted a breach of their duties as gatekeepers of the integrity of the capital markets.

[270] Each of the Respondents had a duty to conduct themselves with integrity and have an honest character. However, in engaging in a course of conduct that perpetrated a fraud on investors, the Respondents did not conduct themselves with integrity and acted contrary to the public interest.

7. CONCLUSION

[271] For the reasons stated above, we find that each of the Respondents:

(a) breached subsection 126.1(b) of the Act;

(b) breached subsection 44(2) of the Act;

(c) breached section 2.1 of Commission Rule 31-505; and

(d) acted contrary to the public interest.

[272] An order will be issued as follows:

(i) Staff shall serve and file written submissions on sanctions and costs by 4:00 p.m. on February 18, 2015;

(ii) The Respondents shall serve and file responding written submissions on sanctions and costs by 4:00 p.m. on March 25, 2015;

(iii) Staff shall serve and file reply written submissions on sanctions and costs (if any) by 4:00 p.m. on April 15, 2015;

(iv) the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, 17th floor, Toronto, ON, on May 11, 2015 at 10:00 a.m., or such further or other dates as agreed by the parties and set by the Office of the Secretary; and

(v) upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 14th day of January, 2015.

“Edward P. Kerwin”

“C.W.M. Scott”

This page intentionally left blank

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Fire River Gold Corp.	12 March 2014	24 March 2014	24 March 2014	20 January 2015

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

THERE ARE NO ITEMS TO REPORT THIS WEEK.

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Mahdia Gold Corp.	13 January 2015	26 January 2015			

This page intentionally left blank

Chapter 7

Insider Reporting

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

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

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

Chapter 8

Notice of Exempt Financings

REPORT OF TRADES ON FORM 45-106F1 AND 45-501F1

There are no Reports of Exempt Distribution on Forms 45-106F1 or 45-501F1 (Reports) in this Bulletin.

Reports filed on or after February 19, 2014 must be filed electronically.

As a result of the transition to mandated electronic filings, the OSC is considering the most effective manner to make data about filed Reports available to the public, including whether and how this information should be reflected in the Bulletin. In the meantime, Reports filed with the Commission continue to be available for public inspection during normal business hours.

This page intentionally left blank

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
FÉRIQUE BALANCED GROWTH Fund
Principal Regulator - Quebec
Type and Date:
Preliminary Simplified Prospectus dated January 12, 2015
NP 11-202 Receipt dated January 14, 2015
Offering Price and Description:
Mutual Fund Trust Units
Underwriter(s) or Distributor(s):
SERVICES D'INVESTISSEMENT FÉRIQUE
Services d'investissement FÉRIQUE
Promoter(s):
Gestion FÉRIQUE
Project #2299660

Issuer Name:
GC-Global Capital Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 16, 2015
NP 11-202 Receipt dated January 16, 2015
Offering Price and Description:
Up to $ * - * Subordinate Voting Shares
Price: $ * per Offered Share
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
Promoter(s):
-
Project #2300697

Issuer Name:
Interfor Corporation
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated January 13, 2015
NP 11-202 Receipt dated January 13, 2015
Offering Price and Description:
$60,300,000.00 - 3,000,000 Subscription Receipts each representing the right to receive one Common Share
$20.10 per Subscription Receipt
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
RAYMOND JAMES LTD.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
Promoter(s):
-
Project #2298712

Issuer Name:
Orbite Aluminae Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Base Shelf Prospectus dated January 15, 2015
NP 11-202 Receipt dated January 15, 2015
Offering Price and Description:
$30,000,000.00
Class A Shares (Common Shares)
Debt Securities
Convertible Securities
Warrants
Rights
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2300311

Issuer Name:
Pacific & Western Bank of Canada
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 16, 2015
NP 11-202 Receipt dated January 16, 2015
Offering Price and Description:
Maximum: $15,000,000 - 1,500,000 Non-Cumulative 6-Year Rate Reset Preferred Shares, Series 3
Minimum: $10,000,000
Price: $10.00 per Series 3 Preferred Share, to yield initially 7.0% per annum
Underwriter(s) or Distributor(s):
INDUSTRIAL ALLIANCE SECURITIES INC.
DUNDEE SECURITIES LTD.
MACKIE RESEARCH CAPITAL CORPORATION
PI FINANCIAL CORP.
BURGEONVEST BICK SECURITIES LIMITED
INTEGRAL WEALTH SECURITIES LIMITED
JONES GABLE & COMPANY LIMITED
LEEDE FINANCIAL MARKETS INC.
Promoter(s):
PWC CAPITAL INC.
Project #2300627

Issuer Name:
TVA Group Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated January 16, 2015
NP 11-202 Receipt dated January 19, 2015
Offering Price and Description:
$110,000,000 - Rights to Subscribe for * Class B Shares, Non-Voting, Participating, Without Par Value.
Price: $ * per Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2300792

Issuer Name:
WPT Industrial Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 14, 2015
NP 11-202 Receipt dated January 14, 2015
Offering Price and Description:
US$40,500,000.00 - 3,750,000 Units
Price: US$10.80 per Unit
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
DESJARDINS SECURITIES INC.
TD SECURITIES INC.
GMP SECURITIES L.P.
SCOTIA CAPITAL INC.
Promoter(s):
-
Project #2298972

Issuer Name:
Yamana Gold Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 15, 2015
NP 11-202 Receipt dated January 16, 2015
Offering Price and Description:
$260,230,000.00 - 49,100,000 Common Shares
Price: $5.30 per Offered Share
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
NATIONAL BANK FINANCIAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
MERRILL LYNCH CANADA INC.
CREDIT SUISSE SECURITIES (CANADA) INC.
RAYMOND JAMES LTD.
CITIGROUP GLOBAL MARKETS CANADA INC.
CORMARK SECURITIES INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
MORGAN STANLEY CANADA LIMITED
BARCLAYS CAPITAL CANADA INC.
Promoter(s):
-
Project #2300535

Issuer Name:
ARC Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated January 16, 2015
NP 11-202 Receipt dated January 16, 2015
Offering Price and Description:
$350,201,500
15,530,000 Common Shares
Price: $22.55 per Common Share
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
TD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
ALTACORP CAPITAL INC.
BARCLAYS CAPITAL CANADA INC.
FIRSTENERGY CAPITAL CORP.
MACQUARIE CAPITAL MARKETS CANADA LTD.
PETERS & CO. LIMITED
Promoter(s):
-
Project #2298694

Issuer Name:
Cambridge American Equity Fund
(Class A, F, and I units)
Cambridge American Equity Corporate Class
(Class A, AT5, AT8, E, EF, ET5, ET8, F, FT5, FT8, I, IT8, O, OT5 and OT8 shares)
Principal Regulator - Ontario
Type and Date:
Amendment No. 4 dated January 12, 2015 to the Simplified Prospectuses and Amendment No. 6 dated January 12, 2015 to the Annual Information Form ("Amendment no. 6") dated July 29, 2014
NP 11-202 Receipt dated January 15, 2015
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Investments Inc.
Project #2219012

Issuer Name:
Dynamic U.S. Sector Focus Class
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated December 19, 2014 to the Simplified Prospectus and Annual Information Form dated September 19, 2014
NP 11-202 Receipt dated January 16, 2015
Offering Price and Description:
Series A, E, F, FH, FI, H and O shares
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
Promoter(s):
1832 Asset Management L.P.
Project #2243199

Issuer Name:
First Asset Active Utility & Infrastructure ETF
Principal Regulator - Ontario
Type and Date:
Amendment dated January 12, 2015 to the Long Form Prospectus dated July 18, 2014
NP 11-202 Receipt dated January 13, 2015
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
First Asset Investment Management Inc.
Project #2173562; 2280662

Issuer Name:
First Asset Active Credit ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 12, 2015
NP 11-202 Receipt dated January 13, 2015
Offering Price and Description:
Common units, Advisor Units, US$ Common Units and US$ Advisor Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
FIRST ASSET INVESTMENT MANAGEMENT INC
Project #2281418

Issuer Name:
First Asset Core Canadian Equity ETF
(Common Units and Advisor Class Units)
First Asset Core U.S. Equity ETF
(Common Units, Advisor Class Units, Unhedged Common Units, US$ Unhedged Common
Units, Unhedged Advisor Class Units and US$ Unhedged Advisor Class Units)
First Asset Core Balanced ETF
(Common Units and Advisor Class Units)
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 12, 2015
NP 11-202 Receipt dated January 13, 2015
Offering Price and Description:
Common Units, Advisor Class Units, Unhedged Common Units, US$ Unhedged Common Units, Unhedged Advisor Class Units and US$ Unhedged Advisor Class Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
FIRST ASSET INVESTMENT MANAGEMENT INC.
Project #2280707

Issuer Name:
Templeton Global Smaller Companies Fund
(Series A, F, I and O units)
Templeton Global Smaller Companies Corporate Class
(Series A, F, I and O shares)
Class of Franklin Templeton Corporate Class Ltd.
Principal Regulator - Ontario
Type and Date:
Amendment #4 dated January 15, 2015 to the Simplified Prospectuses and Annual Information Form dated May 29, 2014
NP 11-202 Receipt dated January 19, 2015
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Franklin Templeton Investments Corp.
Bissett Investment Management, a division of Franklin Templeton Investments Corp.
Promoter(s):
Franklin Templeton Investments Corp.
Project #2189252

Issuer Name:
iShares U.S. High Yield Fixed Income Index ETF (CAD-Hedged)
(formerly iShares Advantaged U.S. High Yield Bond Index ETF)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated January 9, 2015 to the Long Form Prospectus dated May 28, 2014
NP 11-202 Receipt dated January 15, 2015
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BlackRock Asset Management Canada Limited
Promoter(s):
-
Project #2196483

Issuer Name:
iShares Short Term Strategic Fixed Income ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 15, 2015
NP 11-202 Receipt dated January 15, 2015
Offering Price and Description:
Exchange traded fund securities @ net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2284911

Issuer Name:
Series A, Series A2, Series F and Series G Units (as indicated) of
Portland Advantage Fund (Series A, F and G)
Portland Canadian Balanced Fund (Series A, F and G)
Portland Canadian Focused Fund (Series A, F and G)
Portland Global Banks Fund (Series A, A2, F and G)
Portland Global Dividend Fund (Series A, A2, F and G)
Portland Global Income Fund (Series A, A2, F and G)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated December 19, 2014 to the Simplified Prospectuses and Annual Information Form dated May 26, 2014
NP 11-202 Receipt dated January 13, 2015
Offering Price and Description:
Series A, Series A2, Series F and Series G Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Mandeville Private Client Inc.
Mandeville Wealth Services Inc.
Portland Private Wealth Services Inc.
Promoter(s):
Portland Investment Counsel Inc.
Project #2194831

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Penderfund Capital Management Ltd.	From: Investment Fund Manager To: Investment Fund Manager and Exempt Market Dealer	January 13, 2015
New Firm	Authentic Asset Management Inc.	Portfolio Manager and Commodity Trading Manager	January 15, 2015

This page intentionally left blank

Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 IIROC – Amendments to IIROC Rules to Harmonize with Client Relationship Model Phase 2 Provisions Effective July 15, 2015 and July 15, 2016

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

AMENDMENTS TO IIROC RULES TO HARMONIZE WITH CLIENT RELATIONSHIP MODEL PHASE 2 PROVISIONS EFFECTIVE JULY 15, 2015 AND JULY 15, 2016

NOTICE OF COMMISSION APPROVAL

The Recognizing Regulators of the Investment Industry Regulatory Organization of Canada (**IIROC**) have approved or not objected to amendments to IIROC Dealer Member Rule 200 and Form 1 (the **IIROC 2015-16 CRM2 Amendments**). The amendments and new policy will harmonize requirements for IIROC members with certain requirements in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* that were introduced as part of the Client Relationship Model, Phase 2 and which take effect on July 15, 2015 and July 15, 2016.

In addition, the British Columbia Securities Commission, the Alberta Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan, the Manitoba Securities Commission, the Autorité des marchés financiers (Québec), the Financial and Consumer Services Commission of New Brunswick, the Nova Scotia Securities Commission, the Superintendent of Securities, Prince Edward Island and the Financial Services Regulation Division, Service NL, Government of Newfoundland and Labrador also approved or did not object to the IIROC 2015-16 CRM2 Amendments.

The IIROC 2015-16 CRM2 Amendments were first published as proposals for public comment on December 12, 2013 and revised proposals were published on September 18, 2014. IIROC's summary of the public comments and responses to them, along with the text of the IIROC 2015-16 CRM2 Amendments, are available on IIROC's website and on the OSC's website at http://www.osc.gov.on.ca.

January 22, 2015

13.2 Marketplaces

13.2.1 Liquidnet Canada – Notice of Proposed Changes and Request for Comment

LIQUIDNET CANADA

NOTICE OF PROPOSED CHANGES AND REQUEST FOR COMMENT

Liquidnet Canada is publishing this Notice of Proposed Changes in accordance with the "Process for the Review and Approval of Rules and the Information Contained in Form 21-101F2 and the Exhibits Thereto." Market participants are invited to provide the Commission with comment on the proposed changes.

Comment on the proposed changes should be in writing and submitted by February 23, 2015 to

Market Regulation Branch
Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Fax: (416) 595-8940
marketregulation@osc.gov.on.ca

and

Thomas Scully
General Counsel
Liquidnet Canada Inc.
498 Seventh Avenue
New York, NY 10018
tscully@liquidnet.com.

Comments received will be made public on the OSC website. Upon completion of the Review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

Any questions regarding the information below should be addressed to:

Robert Young
Chief Executive Officer
Liquidnet Canada Inc.
200 Bay Street Suite 3400
Toronto, ON M5J2J4
ryoung@liquidnet.com.

Liquidnet Canada, Inc.
200 Bay Street – Suite 3400
Toronto, ON M5J2J4
P: 877 660 6553
F: 416 504 8923

Liquidnet Canada proposes to introduce the following three (3) changes to the Liquidnet Canada trading system:

1. Canada broker blocks participants include Liquidnet Canada

A. Description of the proposed change

The Liquidnet Canada ATS is expanding "Canada broker blocks" functionality such that Canada broker blocks participants include broker Liquidnet Canada, an IIROC-registered securities dealer, acting as agent on behalf of any of its non-Canadian dealer affiliates, which, in turn, is acting as agent on behalf of a third-party dealer registered outside of Canada. In such cases, Liquidnet Canada's foreign dealer affiliate will route such orders directly to Liquidnet Canada, which will transmit those orders to the Liquidnet Canada ATS. As an example, upon approval, US dealer affiliate Liquidnet, Inc. (LNI) will send orders to trade Canadian equities on behalf of third party dealers registered in the US (agency orders only) to Liquidnet Canada, which will transmit those orders to the Liquidnet Canada ATS. All such third party US dealers will be FINRA members, and orders from such third party US dealers will be routed through US broker dealer (and FINRA member) LNI.

Canada broker blocks participants

Currently, "Canada broker blocks participants" are defined as IIROC-registered Canadian brokers that can send orders on behalf of their customers (agency orders only) to trade Canadian equities to the Liquidnet Canada ATS. These brokers are considered direct participants in the Liquidnet Canada ATS and their orders are referred to as "broker block orders." Their resting orders interact with Liquidnet liquidity in the same manner as orders from trading desk customers, but trading desk personnel do not have access to order information of Canada broker blocks participants. Members and customers elect whether to interact with Canada broker blocks participants. As an IIROC-registered Canadian broker, Liquidnet Canada meets the existing definition of Canada broker blocks participants.

With regulatory approval of the proposed change, broker Liquidnet Canada will transmit orders to trade Canadian equities (agency orders only) to the ATS as agent on behalf of any of its non-Canadian dealer affiliates, which, in turn, is acting as agent on behalf of a third-party dealer registered outside of Canada.

B. Expected date of implementation

It is expected that the proposed change will be implemented shortly after satisfaction of the requirements set forth in Section 3.2(1) of National Instrument 21-101, Marketplace Operation (NI 21-101), including the expiration of a 45-day notice period.

C. Rationale for the proposed change

Liquidnet Canada is implementing the proposed change in an effort to provide additional liquidity to the ATS.

D. Expected impact of the proposed change on market structure, subscribers, investors and capital markets

We foresee no adverse impact on market structure, subscribers, investors or the capital markets because the proposed change should only provide additional liquidity for the trading of Canadian equities. Moreover, Liquidnet's LiquidityWatch group monitors all orders to trade Canadian equities, regardless of the origin of the order, i.e., whether or not the order originated from a Canadian or non-Canadian dealer. Liquidnet Canada will also continue to comply with all applicable requirements of NI 23-101 concerning the recordation of order marker information relating to all orders that it receives, handles and executes, regardless of origin.

E. Expected impact of the proposed change on Liquidnet Canada's compliance with Ontario securities law and the requirements for fair access and maintenance of a fair and orderly market

We foresee no adverse impact on Liquidnet Canada's compliance with market structure, Ontario securities laws or to requirements of fair access and the maintenance of a fair and orderly market.

F. Whether the proposed change will require subscribers and vendors to modify their own systems

The proposed change will not require any work by subscribers or vendors to modify their own systems. The proposed change is not a material change to technology requirements regarding interfacing with or accessing the marketplace within the meaning of Part 12.3 of NI 21-101.

G. Whether the proposed change would introduce a fee model or feature that currently exists in other markets or jurisdictions

Liquidnet Canada's affiliates in other jurisdictions have not implemented the proposed change because "Canada broker block participants" is a participant category that is specific to Canada.

2. Additional configuration for automatically converting indications from active to passive

A. Description of the proposed change

Liquidnet Canada proposes to make available to Members a configuration option whereby active indications are converted to passive status if the mid-point increases (or decreases) by 35 basis points or more from the time that a Member went active on a buy (or sell) indication.

Transmission of indications

Members can interact with Liquidnet Canada by transmitting non-binding indications. Indications are non-binding, which means that a further affirmative action must be taken by the trader before an executed trade can occur.

Matching of indications

Negotiation functionality for Canadian equities is provided through the Liquidnet Canada ATS. For Members that elect to participate in Liquidnet Canada's negotiation functionality, Liquidnet Canada the broker transmits indications received from the Member to Liquidnet Canada's indication matching engine. When a trader at a Member firm (a "trader") has an indication in Liquidnet Canada that is transmitted to Liquidnet Canada's indication matching engine, and there is at least one other trader with a matching indication on the opposite side (a "contra-party" or "contra"), Liquidnet Canada notifies the first trader and any contra. A matching indication (or "match") is one that is in the same equity and instrument type and where both the trader and the contra are within each other's minimum tolerance quantities.

Active, passive and outside status

A trader may set an indication to "outside," which makes the indication ineligible for Liquidnet Canada's indication matching engine. Indications that are eligible for Liquidnet Canada's indication matching engine are considered "in the pool."

An indication that is in the pool can have a status of passive or active. Unless otherwise configured for a trader, all indications have an initial default status of passive. A trader can indicate that he is ready to receive an invitation to negotiate by changing the status of his indication from passive to active. This is also known as "going active." The indication that is made active is known as an "active indication." The active status is displayed to the contras on a match. Going active is not a binding bid or offer.

At present, Liquidnet Canada defaults each Member's active indications to convert to passive in either of the following circumstances:

- 180 seconds after a match breaks
- 180 seconds after a Member makes an un-matched indication active, providing that indication remains un-matched.

Members can override these default configurations upon notice to Liquidnet Canada.

Should the proposed change be implemented, Members can also choose to be configured to automatically convert active indications to passive if the mid-point increases (or decreases) by 35 basis points or more from the time that a Member went active on a buy (or sell) indication.

B. Expected date of implementation

It is expected that the proposed change will be implemented shortly after satisfaction of the requirements set forth in Section 3.2(1) of National Instrument 21-101, Marketplace Operation (NI 21-101), including the expiration of a 45-day notice period.

C. Rationale for the proposed change

Liquidnet Canada is implementing the proposed change because a Member who has chosen to go active may no longer be interested in trading if the price of the stock has changed from the time the Member originally went active. The 35 bps level was selected based on historical feedback from Members concerning what would generally be considered a significant market move in a short period of a time. Based on this Member feedback, Liquidnet has set the level for this available configuration option at 35 bps.

D. Expected impact of the proposed change on market structure, subscribers, investors and capital markets

We foresee no adverse impact on market structure, subscribers, investors or the capital markets because the proposed change should only promote matching situations where both parties have an intention to trade.

E. Expected impact of the proposed change on Liquidnet Canada's compliance with Ontario securities law and the requirements for fair access and maintenance of a fair and orderly market

We foresee no adverse impact on Liquidnet Canada's compliance with market structure, Ontario securities laws or to requirements of fair access and the maintenance of a fair and orderly market.

F. Whether the proposed change will require subscribers and vendors to modify their own systems

The proposed change will provide an additional front-end configuration option, and will not require subscribers or vendors to modify their own systems. The proposed change is not a material change to technology requirements regarding interfacing with or accessing the marketplace within the meaning of Part 12.3 of NI 21-101.

G. Whether the proposed change would introduce a fee model or feature that currently exists in other markets or jurisdictions

Liquidnet Canada's affiliates in other jurisdictions will implement this feature in other jurisdictions prior to the expected implementation of this feature in Canada.

3. Reference prices for pre-open matching of indications with OMS limits

A. Description of change

Liquidnet Canada proposes to allow matching of indications with order management system (OMS) limits pre-open or at market open based on the following reference prices in the applicable stock:

- If there is a valid best bid and best offer in the market, the applicable reference price for the Member (mid-price, bid or offer, as applicable)
- If a valid best bid and best offer is not available, last sale price of the preceding day
- If a valid best bid and best offer and last sale price are not available, most recent closing price.

Matching indications with OMS limits

At present, during regular trading hours in the applicable market, indications with OMS limits are eligible for matching where the limit on a buy indication is at or above the applicable reference price and the limit on a sell indication is at or below the applicable reference price. The default reference price is the mid-price, but Members can request that Liquidnet Canada set the reference price as the bid (in the case of a buy indication) and the offer (in the case of a sell indication).

At present, indications with OMS limits are only eligible for matching if there is a valid best bid and best offer in the market.

Should the proposed change be implemented, Liquidnet Canada intends to allow matching of indications pre-open or at market open for Canadian equities based on the following reference prices in the applicable stock:

- If there is a valid best bid and best offer in the market, the applicable reference price for the Member, as described above (mid-price, bid or offer, as applicable)
- If a valid best bid and best offer is not available, last sale price of the preceding day
- If a valid best bid and best offer and last sale price are not available, most recent closing price.

B. Expected date of implementation

It is expected that the proposed change will be implemented shortly after satisfaction of the requirements set forth in Section 3.2(1) of National Instrument 21-101, *Marketplace Operation* (NI 21-101), including the expiration of a 45-day notice period.

C. Rationale for the proposed change

Liquidnet Canada is implementing the proposed change to promote matching situations for indications having OMS limits.

D. Expected impact of the proposed change on market structure, subscribers, investors and capital markets

We foresee no adverse impact on market structure, subscribers, investors or the capital markets because the proposed change should promote matching situations where both parties have an intention to trade. Matching of indications does not result in an execution until parties have entered into and successfully completed a negotiation. Liquidnet will continue to comply with all applicable requirements of UMIR Rule 6.6 concerning minimum order size and execution price. Orders below the minimum size specified in UMIR Rule 6.6 will be rejected by the Liquidnet Canada system if the negotiation price is not specified as the mid-point.

E. Expected impact of the proposed change on Liquidnet Canada's compliance with Ontario securities law and the requirements for fair access and maintenance of a fair and orderly market

We foresee no adverse impact on Liquidnet Canada's compliance with market structure, Ontario securities laws or to requirements of fair access and the maintenance of a fair and orderly market.

F. Whether the proposed change will require subscribers and vendors to modify their own systems

The proposed change will not require any work by subscribers or vendors to modify their own systems. The proposed change is not a material change to technology requirements regarding interfacing with or accessing the marketplace within the meaning of Part 12.3 of NI 21-101.

G. Whether the proposed change would introduce a fee model or feature that currently exists in other markets or jurisdictions

Liquidnet Canada's affiliates in other jurisdictions have previously implemented the proposed change.

13.2.2 Canadian Securities Exchange – Request for Comments – Additional Self Trade Prevention Features

CSE – REQUEST FOR COMMENTS – ADDITIONAL SELF TRADE PREVENTION FEATURES

January 22, 2014

The Canadian Securities Exchange ("CSE" or the "Exchange") intends to introduce additional "self-trade prevention" functions. The Exchange is publishing this Notice in accordance with the process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto attached as Appendix B to the Exchange's recognition order.

Comments may be provided no later than February 23, 2015 and should be addressed to:

Mark Faulkner
Vice President, Listings and Regulation
CNSX Markets Inc.
220 Bay Street, 9th Floor
Toronto, ON, M5J 2W4
Fax: 416.572.4160
Email: Mark.Faulkner@cnsx.ca

A copy should be provided to:

Susan Greenglass
Director, Market Regulation
Ontario Securities Commission
22nd Floor, Box 55
20 Queen Street West
Toronto, ON, M5H 3S8
Fax: 416.595.8940
Email: Marketregulation@osc.gov.on.ca

Terms not defined in this Notice are defined in the CNSX Rules.

Proposed Change

The CSE proposes to introduce two new Self Trade Prevention features in addition to the Cancel Newest Order that is available today. The first feature is Cancel Oldest Order which allows clients to cancel the resting order to prevent wash trading. The second feature, Suppress Trade from Tape, will allow clients the option to receive fills for both orders without having a trade be reported to the public feed. The resulting fill reports will be provided to IIROC through the normal channels. The features are available on an order-by-order basis through the use of the FIX protocol. Both of these features are being introduced at the request of the industry, which is coordinating the efforts of marketplaces through a committee of the Investment Industry Association of Canada.

Effective Date

The self-trade prevention functionality will be introduced, following public comment and OSC approval, on the later of:

I. the date that the Exchange is notified that the change is approved;

II. if applicable, the date of publication of the notice of approval on the OSC website; and

III. a date designated by the Exchange.

Rationale

These features are being delivered in response to a coordinated industry effort, to assist dealers in meeting their trade compliance obligations.

Impact

The proposed new functionality is optional. Clients that decide to use the new features will have the ability to better manage their trade compliance obligations.

Exchange Compliance

There will be no impact on the Exchange's compliance with Ontario securities law. The changes, given the benefits to be gained and sufficient advance notice, will not impact fair access or the maintenance of fair and orderly markets.

Consultation

As previously mentioned, these features are being delivered at the request of a large number of dealer customers, with industry implementation being coordinated by an industry association. The most significant feedback is related to compliance with the FIX protocol. We have confirmed with clients that our approach is consistent with their requirements.

Technological Change

Clients already support these features on other marketplaces. There should be minimal development requirements for those clients that decide to us the optional functionality.

Comparable Functionality

The Cancel Oldest Order feature is available on Alpha Exchange and Omega ATS. Suppress from Tape is available on CHIX & CHIX 2.

Questions about this Notice may be directed to:

Mark Faulkner
Vice President – Listings & Regulation
Mark.Faulkner@cnsx.ca or 416.572.2000 x2305

13.2.3 CX2 Canada ATS – Notice of Commission Approval of Proposed Changes

CX2 CANADA ATS

NOTICE OF COMMISSION APPROVAL OF PROPOSED CHANGES

On January 19, 2015, the Commission approved changes proposed by CX2 Canada ATS, which will introduce the ability for subscribers to trade odd lot orders (and odd lot portions of mixed lot orders) which are immediately marketable and marked IOC. These odd lot orders will receive guaranteed fills at the Canadian best bid / offer.

A notice requesting feedback on the proposed changes was published on the OSC website and in the OSC Bulletin on March 27, 2014 at (2014), 36 OSCB 3329. No comments were received.

CX2 Canada ATS is expected to publish a notice indicating the intended implementation date of the approved changes.

13.2.4 Toronto Stock Exchange – Request for Comments – Amendments to Toronto Stock Exchange Company Manual

TORONTO STOCK EXCHANGE

REQUEST FOR COMMENTS

AMENDMENTS TO TORONTO STOCK EXCHANGE COMPANY MANUAL

Toronto Stock Exchange ("TSX" or the "Exchange") is publishing proposed amendments to modify, expand and formalize certain exemptions available to interlisted issuers (the "Amendments") in the TSX Company Manual (the "Manual"). The Amendments provide for public interest changes in Parts IV and VI of the Manual, as well as certain ancillary changes to Parts I and III. The public interest changes will be published for public comment for a 45-day period.

The Amendments will be effective upon approval by the Ontario Securities Commission (the "OSC") following public notice and comment. Comments should be in writing and delivered by **March 9, 2015** to:

Catherine De Giusti
Legal Counsel, Regulatory Affairs
Toronto Stock Exchange
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
Fax: (416) 947-4461
Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:

Susan Greenglass
Director
Market Regulation
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
Fax: (416) 595-8940
Email: marketregulation@osc.gov.on.ca

Comments will be publicly available unless confidentiality is requested.

Overview

TSX is seeking public comment on Amendments to the Manual. This Request for Comments explains the reasons for, and objectives of, the Amendments. Following the comment period, TSX will review and consider the comments received and implement the Amendments, as proposed, or as modified as a result of comments.

Text of the Amendments

The Amendments to the Manual are set out as blacklined text at **Appendix A**. The Amendments would allow TSX to defer to other exchanges or jurisdictions for an expanded number of transactions as well as on certain corporate governance matters for interlisted issuers.

Interlisted Issuers on TSX

Certain issuers choose to list on two or more exchanges or marketplaces. We commonly refer to these issuers as interlisted issuers. Typically, these issuers first list on the market of their home jurisdiction (the home market) and, as they grow, seek a listing in another jurisdiction (an interlisted market) to increase their access to capital, enhance the liquidity of their securities, broaden their investor base, join their peers, increase analyst coverage or build brand recognition. A significant number of issuers, whether incorporated in Canada or in a foreign jurisdiction, are interlisted on TSX and another market and TSX expects this trend to continue.

As at November 30, 2014, there were 332 interlisted issuers on TSX. The vast majority of these issuers (273 or 82%) are incorporated in Canada ("Canadian-based Interlisted Issuers"), while the remaining 59 (or 18%) are foreign incorporated (for example in Australia or the State of Delaware) ("International Interlisted Issuers").

In 2013, 56 (22%) of the Canadian-based Interlisted Issuers and 37 (46%) of the International Interlisted Issuers had less than 25% of their trading volume on TSX.

Exemptions Currently Available to TSX Interlisted Issuers

TSX currently grants exemptions from its rules for a limited number of transactions, such as private placements and acquisitions, to certain interlisted issuers pursuant to Subsection 602 (g) of the Manual, which was adopted in 2005. This Subsection was adopted to reduce the regulatory burden on interlisted issuers without impacting the quality of the market. Subsection 602 (g) limits the availability of the exemptions to interlisted issuers where: (i) at least 75% of the issuer's trading volume and value over the six months preceding notification of the transaction occurs on another exchange (the "Trading Threshold"); and (ii) the other exchange is reviewing the transaction.

Certain interlisted issuers can also apply to TSX for relief on a discretionary basis from elements of TSX's corporate governance requirements. In July 2013, TSX issued Staff Notice 2013-0002 providing guidance to International Interlisted Issuers seeking to obtain relief from elements of the director election requirements in Sections 461.1 – 461.4 of the Manual. TSX has used the Trading Threshold as a factor in assessing whether to grant waivers to International Interlisted Issuers from the director election requirements.

Deference Practices of Other Exchanges for Interlisted Issuers

Most major exchanges (with the exception of the London Stock Exchange Main Board ("LSE") and AIM) have formalized rules or frameworks that allow an interlisted issuer to be exempted from certain exchange requirements. Based on this review, we have determined that exchanges that are peers of TSX have more comprehensive exchange deference frameworks than the model TSX currently has in place. LSE may provide certain exemptions to foreign incorporated entities upon application and on a discretionary basis. Almost all exchanges restrict the availability of these exemptions to foreign incorporated interlisted issuers. Most exchanges also use the level of trading in the home market or residency of security holders in determining whether an issuer is eligible for the exemption. The exemptions are typically for transactions and corporate governance matters and allow the issuer to rely on the regulatory regime of its home or principal market. The table below summarizes the deference rules of other exchanges.

	NYSE	NYSE MKT	NASDAQ	LSE	AIM	HKSE	ASX
Formalized rules / framework	✓	✓	✓	—	—	✓	✓(1)
Discretionary exemptions provided for in rules				✓			✓
Eligibility criteria							
Foreign incorporation	✓	✓	✓	✓	—	✓(2)	✓
Level of trading or residency of security holders	✓	✓	✓	—	—	✓	✓
Regulated by other market / must follow home country practice	✓	✓	✓	—	—	✓	✓
Exemptions / relief available for:							
Transactions	✓	✓	✓	✓	—	✓	✓
Corporate governance	✓	✓	✓	—	—	✓	✓

(1) ASX provides relief from its rules for only its largest foreign incorporated issuers (profits of $200M in the last 3 years or assets of at least $2B).
(2) One of several factors considered to assess whether the other market / exchange is the primary listing.

In Canada, the Canadian Securities Exchange does not have rules exempting interlisted issuers from its requirements. Aequitas Neo Exchange will consider granting exemptions from its requirements to foreign interlisted issuers in certain circumstances.

On TSX Venture Exchange ("TSXV"), there are no specific rules or frameworks that allow interlisted issuers to be exempted from TSXV rules.

Rationale for the Amendments

Interlisted issuers are generally subject to at least two sets of exchange requirements that may not be identical, but often address the same policy objectives of protecting security holders and preserving the quality of the market. These exchange requirements may be duplicative and sometimes contradictory, creating an unnecessary regulatory burden for interlisted issuers.

Many exchanges that are peers of TSX have either formal rules or informal practices that allow their interlisted issuers to be exempted from certain exchange requirements, deferring to the regulations of the interlisted market or the applicable laws in the home jurisdiction. The Manual currently provides interlisted issuers with exemptions from TSX requirements for certain transaction types, mainly on the basis of the interlisted issuer's level of trading on the other exchange, deferring in these cases to the review by the other exchange.

TSX has determined it is appropriate to adopt a broader deference model that would reduce the regulatory burden on certain eligible interlisted issuers in situations where the other exchange and corporate laws impose appropriate requirements. The Amendments would allow TSX to defer to other exchanges or jurisdictions for an expanded number of transactions as well as on certain corporate governance matters as they apply to certain interlisted issuers (the "Deference Model").

The Amendments are an incremental change to the exemptions currently available to interlisted issuers pursuant to Subsection 602(g) of the Manual and provide for greater transparency regarding the transactions for which TSX will defer to other exchanges or jurisdictions.

Over the last ten years, TSX has gained significant experience in administering the provisions of Subsection 602(g). TSX recognizes that corporate statutes and market requirements in other jurisdictions may differ from those in Canada while still addressing similar policy objectives, including protecting security holders and maintaining the quality of the market. In our view, the Deference Model is appropriate where the other exchange and corporate laws have appropriate requirements and TSX has a clear minority of trading, although such requirements may not be exactly the same as the requirements in Canada.

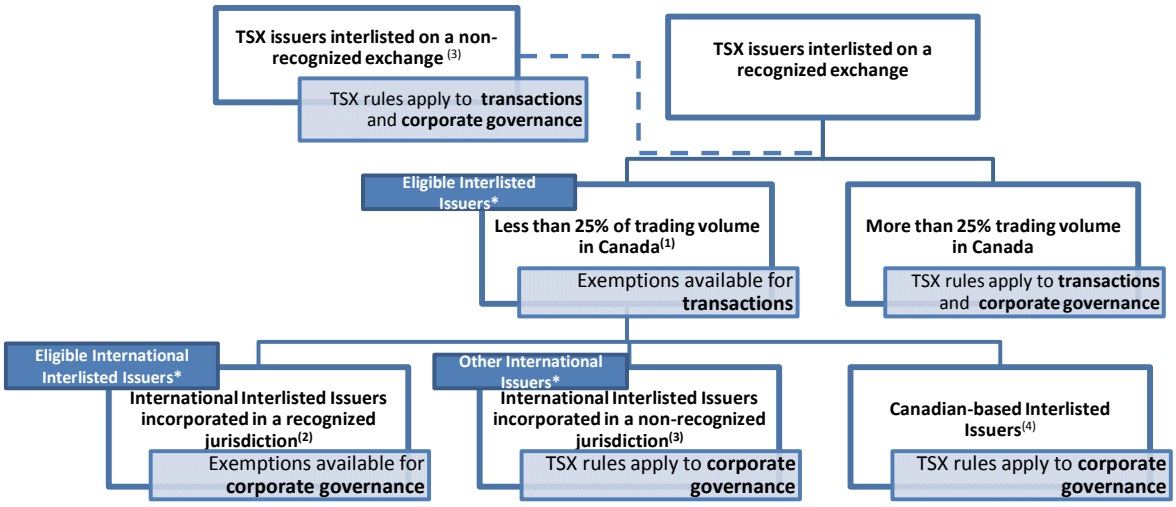
In proposing the Deference Model, TSX was guided by the following principles:

- Reduction of regulatory burden – The model should reduce unnecessary regulatory burden on certain interlisted issuers. The process for issuers seeking to rely on the Deference Model should be as simple and streamlined as possible;
- Transparency – Qualification for the Deference Model should be easy for issuers and other market participants to understand. Market participants should be able to easily identify issuers that have relied on the Deference Model;
- Quality of the marketplace – The Deference Model must not compromise (or be perceived to compromise) TSX's standards or present unacceptable risks to the Canadian capital markets. Therefore deference to another exchange is appropriate provided that:
    - trading in Canada is limited;
    - the issuer is subject to acceptable requirements on the other exchange and pursuant to its local corporate laws; and
    - such other exchange will not exempt the issuer from its requirements, leaving the issuer without exchange review and oversight.

Proposed Amendments to the Manual

The following diagram sets out the framework for issuer eligibility for the proposed exemptions.

Eligibility Framework with Proposed Amendments



(1) Relief will be granted under new Section 602.1 of the Manual for an expanded number of transactions.
(2) Relief will be granted under new Section 401.1 of the Manual for corporate governance matters such as individual director elections and majority voting.
(3) Relief may be granted on a discretionary basis pursuant to TSX Staff Notice 2013-2002.
(4) Relief may be available upon application, on a discretionary basis.

In summary, under the proposed Amendments, Eligible Interlisted Issuers[1] will be able to apply to be exempted from the following requirements relating to transactions:

The current exemptions available in Subsection 602(g):

- Security holder approval (Section 604)
- Private placements (Section 607)
- Unlisted warrants (Section 608)
- Acquisitions (Section 611)
- Security based compensation arrangements (Section 613)

and the following new exemptions:

- Special requirements for non-exempt issuers (Section 501[2])
- Prospectus offerings (Section 606)
- Convertible securities (Section 610)
- Securities issued to registered charities (Section 612)
- Rights offerings (Section 614)

[1] Issuers listed on a recognized exchange (e.g. NYSE, ASX) and that had less than 25% of the overall trading volume of their listed securities occurring on all Canadian marketplaces in the 12 months preceding the application.

[2] Section 501 provides the requirements for transactions undertaken by "junior" issuers in regards to: i) notification to TSX of material changes; and ii) transactions involving insiders and no potential issuance of securities.

Eligible International Interlisted Issuers[3] can apply to be exempted from the following corporate governance requirements:

- Director Election Requirements (Sections 461.1 – 461.4)
- Annual Meeting (Sections 464) (which is a new exemption)

More specifically, the Amendments will provide:

- For transactions, a new Section 602.1 – Exemptions for Eligible Interlisted Issuers will replace current Subsection 602(g). Section 602.1 will set out the sections of the Manual from which exemptions are available to Eligible Interlisted Issuers, together with the application process for such exemptions. This application process includes: (i) notification to TSX; (ii) evidence that the Recognized Exchange has accepted the transaction, or confirmation from qualified legal counsel in the local jurisdiction that the proposed transaction is in compliance with applicable rules of the other exchange or marketplace, as well as applicable laws; and (iii) disclosure in press releases issued in connection with the transaction that the issuer intends to or has relied on the exemption from TSX rules. Please refer to Appendix A for the full text of proposed Section 602.1.

  Instead of relying on the concept of deference to "another exchange", new Section 602.1 requires the issuer to be interlisted on a "Recognized Exchange". The Recognized Exchange concept provides the market with transparency regarding the level of exchange oversight that will be applied if TSX defers to that exchange's rules.

  We propose to continue with the current practice of making an exemption available for transactions based on the Trading Threshold but propose to recast the test based on: (i) less than 25% of trading occurring in Canada, rather than more than 75% of trading occurring outside Canada; (ii) the trading over a period of 12 months preceding the application, rather than 6 months; and (iii) trading volume only, rather than value and volume. We believe these changes will make the Trading Threshold more relevant, transparent and easily assessable for all market participants.

- For corporate governance matters, a new Section 401.1 – Exemptions for Eligible International Interlisted Issuers and Other International Interlisted Issuers will be introduced. This Section will set out the requirements from which Eligible International Interlisted Issuers may apply for an annual exemption, together with the application process for such exemptions. The process will be based on whether the issuer is an Eligible International Interlisted Issuer or Other International Interlisted Issuer. Please refer to Appendix A for the full text of proposed Section 401.1.

  The exemptions in Section 401.1 will not be available to Canadian-based Interlisted Issuers unless TSX grants a discretionary waiver from its requirements. When TSX adopted its director election requirements in 2012 (including the annual and the individual election of directors and the majority voting requirement), the stated purpose was to bolster the reputation of Canadian companies internationally by better aligning Canadian corporate governance practices with those of its international peers. Accordingly, TSX does not generally believe that it is appropriate to grant such waivers to Canadian-based Interlisted Issuers.

  In addition, the combination of Canadian (including provincial) corporate law and TSX's corporate governance requirements have established market expectations for director election requirements and the timing of annual meetings for Canadian companies. We believe that security holders are entitled to consistency as to how directors of Canadian incorporated companies are elected. We are of the view that allowing the corporate governance practices of Canadian incorporated issuers to shift based on the location of trading volumes would neither meet the expectations of market participants nor bolster the reputation of TSX or Canada's corporate governance practices.

- Ancillary amendments will be made to the Manual to introduce certain related definitions in Part 1.
- Ancillary amendments will also be made to Section 324 – Minimum Listing Requirements for International Issuers to reference the introduction of new Sections 401.1 and 602.1.
- TSX Staff Notice 2013-0002 will be updated to reflect the revised definitions being added to Part 1 of the Manual, as well as to refer to the volume of the issuer's trading for the 12 months immediately preceding the

[3] Issuers incorporated or organized in a recognized jurisdiction of incorporation (e.g. Australia, Delaware or England) listed on a recognized exchange (e.g. NYSE, ASX) and that had less than 25% of the overall trading volume of their listed securities occurring on all Canadian marketplaces in the 12 months preceding the application.

application for the exemption, instead of the value and volume of trading for the 6 months preceding the application for the exemption.

Application of the Amendments – Illustrative Scenarios

Scenario 1

Pursuant to the proposed Amendments, where the trading volume in the securities of an interlisted issuer is greater than 25% across all Canadian marketplaces, TSX rules will apply for both transactions and corporate governance matters, regardless of the issuer's jurisdiction of incorporation.

Scenario 2

A Canadian-based Interlisted Issuer listed on a Recognized Exchange that has less than 25% of its trading volume in Canada in the preceding 12 months could rely on the rules of the other exchange to complete a transaction, such as a private placement which may entail a requirement for security holder approval, provided that such other exchange has not exempted the issuer from its rules. However, such issuer would not be exempted from TSX's corporate governance requirements, such as the majority voting requirement.

Scenario 3

An Australian incorporated issuer listed on a Recognized Exchange that had less than 25% of its trading in volume Canada in the preceding 12 months would be eligible for exemptive relief for a transaction, such as a private placement, as well as for an exemption from TSX's corporate governance requirements. A similar interlisted Australian incorporated issuer not listed on a Recognized Exchange would not be eligible for the same exemptions. This issuer could, however, apply for discretionary relief from TSX's requirements. In such a case, TSX would require submissions in support of the appropriateness of granting the exemption.

Scenario 4

TSX rules for transactions and corporate governance matters would apply to an issuer that is incorporated in the Cayman Islands (which is not a recognized jurisdiction) and not interlisted on a Recognized Exchange. However, if that issuer was interlisted on a Recognized Exchange and less than 25% of the overall trading volume of its listed securities occurred on all Canadian marketplaces in the previous 12 months preceding the application, it could apply for an exemption from the rules related to transactions as set out in Section 602.1, but would need to apply for discretionary relief for corporate governance matters.

Questions

In responding to any of the questions below, please explain your response.

1. Do you think that the proposed trading threshold (less than 25% of trading occurring on all Canadian marketplaces in the year preceding the application) is appropriate to defer to the other exchange or jurisdiction?

2. Are the transactions for which TSX is proposing to allow deferral to another exchange appropriate? Are there any transactions that should be excluded? Are there additional transaction types that should be included?

3. Are there other requirements for which TSX should defer to another exchange or jurisdiction?

4. Is the proposed definition of "recognized exchange" appropriate? Should other exchanges or marketplaces be included? Should any of the proposed exchanges or marketplaces be excluded from the definition?

5. Is the proposed definition of "recognized jurisdiction" appropriate? Should other jurisdictions be included? Should any of the proposed jurisdictions be excluded from the definition?

Public Interest

TSX is publishing the Amendments for a 45-day comment period, which expires March 9, 2015. The Amendments will only become effective following public notice and the approval of the OSC.

APPENDIX A

TEXT OF PROPOSED AMENDMENTS TO THE TSX COMPANY MANUAL

324. Minimum Listing Requirements for International Issuers

~~International issuers are entities where the issuer is already listed on another recognized exchange, which is acceptable to the Exchange, and is incorporated outside of Canada.~~ There are no unique requirements for the management or the financial requirements for ~~i~~International Interlisted ~~i~~Issuers listed on a Recognized Exchange. However, these issuers are generally required to have some presence in Canada and must be able to demonstrate, as with all issuers, that they are able to satisfy all of their reporting and public company obligations in Canada. This may be satisfied by having a member of the board of directors or management, an employee or a consultant of the issuer situated in Canada.

Certain exemptions may be available to Eligible International Interlisted Issuers or Eligible Interlisted Issuers as set out in Sections 401.1 and 602.1 of the Manual, respectively.

****

401.1 Exemptions for Eligible International Interlisted Issuers and Other International Interlisted Issuers

Subject to prior approval, TSX will not apply Sections 461.1 – 461.4 (Director Elections) and 464 (Annual Meetings) to Eligible International Interlisted Issuers. Eligible International Interlisted Issuers must obtain TSX's prior acceptance of the application of this exemption on an annual basis, at least five (5) and not more than thirty (30) business days in advance of finalizing the materials sent to holders of listed securities in connection with a meeting at which directors are being elected. The application should take the form of a letter addressed to TSX requesting the exemption and include: i) the Recognized Exchange(s) on which it is listed; ii) the jurisdiction of incorporation of the issuer; and iii) evidence that the volume of trading of the issuer's securities on all Canadian marketplaces in the 12 months immediately preceding the date of the application was less than 25%.

Other International Interlisted Issuers that do not qualify as Eligible International Interlisted Issuers may apply to TSX for an exemption on an annual basis from Sections 461.1 – 461.4 (Director Elections) and 464 (Annual Meetings), as provided in updated TSX Staff Notice [2013-0002].

Eligible International Interlisted Issuers and other International Interlisted Issuers must disclose the requirement from which they have been exempted for the year and their reliance on this Section 401.1 in a press release issued in connection with their annual meeting or in the materials sent to holders of listed securities in connection with a meeting at which directors are being elected, as applicable.

****

~~**602. General.**~~

~~(g) TSX will not apply its standards with respect to security holder approval (Section 604), private placements (Section 607), unlisted warrants (Section 608), acquisitions (Section 611) and security based compensation arrangements (Section 613) to issuers listed on another exchange where at least 75% of the trading value and volume over the six months immediately preceding notification occurs on that other exchange[4], provided that such other exchange is reviewing the transaction. These issuers must still comply with Section 602, at which time TSX will notify the issuer of their eligibility under this Subsection 602(g) and the documents and fees required for TSX acceptance of the notified transaction~~

~~[4] For the purposes of determining whether an issuer is eligible under this subsection, TSX will consider aggregating trading value and volume occurring on multiple trading venues in the same jurisdiction as such other exchange.~~

****

602.1 Exemptions for Eligible Interlisted Issuers

Subject to prior approval and provided that the proposed transaction is being completed in accordance with the standards of a Recognized Exchange, TSX will not apply its standards to Eligible Interlisted Issuers in respect of the following Sections: 501 (special requirements for non-exempt issuers), 604 (security holder approval), 606 (prospectus offerings), 607 (private placements), 608 (unlisted warrants), 610 (convertible securities), 611 (acquisitions), 612 (securities issued to registered charities), 613 (security based compensation arrangements) and 614 (rights offerings[1]).

Eligible Interlisted Issuers must obtain TSX acceptance of the proposed transaction by notifying TSX as required under Subsections 602 (a) or 501 (b), as applicable. The form of notice must comply with the requirements set out in Subsection 602 (e) or Subsection 501 (g) and also include: i) a notification that the listed issuer intends to rely on the exemption outlined in this Section 602.1; ii) the Recognized Exchange(s) on which it is listed; and iii) evidence that the volume of trading of the issuer's securities on all Canadian marketplaces in the 12 months immediately preceding the date of the application was less than 25%.

TSX will confirm its acceptance that the Eligible Interlisted Issuer may rely on the exemption as well as receipt of the documents and fees required for TSX acceptance. As a condition of acceptance, TSX will require evidence that the Recognized Exchange has accepted the transaction, or confirmation from qualified legal counsel in the local jurisdiction that the proposed transaction is in compliance with applicable rules of the other exchange or marketplace, as well as applicable laws. Eligible Interlisted Issuers must disclose that they intend to or have relied on the exemption under this Section 602.1 in the press release(s) issued in connection with the transaction.

****

PART 1 – INTRODUCTION

Interpretation

Addition of the following definitions:

"Eligible Interlisted Issuer" means a listed issuer that is also listed on a Recognized Exchange and that had less than 25% of the overall trading volume of its listed securities occurring on all Canadian marketplaces in the 12 months immediately preceding the date of an application pursuant to Section 401.1 or 602.1 of the Manual;

"Eligible International Interlisted Issuer" means an Eligible Interlisted Issuer that is incorporated or organized in a Recognized Jurisdiction;

"International Interlisted Issuer" means an issuer incorporated or organized outside of Canada and listed on another exchange;

"Recognized Exchange" includes the following exchanges and marketplaces: New York Stock Exchange, NYSE MKT, NASDAQ, London Stock Exchange Main Board, AIM, Australian Securities Exchange, Hong Kong Stock Exchange Main Board and others, as may be determined by TSX from time to time;

"Recognized Jurisdiction" includes the following: Australia, England and the State of Delaware and other jurisdictions with corporate statutes substantially modelled after these jurisdictions. Other jurisdictions may also be acceptable, as may be determined by TSX from time to time. In making its determination, TSX will compare the corporate statutes of these jurisdictions against the *Canada Business Corporations Act*;

[1] Contact TSX to discuss the relief for rights offerings as certain elements related to trading, notice and mechanics will still be required.

13.2.5 Toronto Stock Exchange – Request for Comment – Amendments to Toronto Stock Exchange Company Manual

TORONTO STOCK EXCHANGE

REQUEST FOR COMMENTS

AMENDMENTS TO TORONTO STOCK EXCHANGE COMPANY MANUAL

Toronto Stock Exchange ("TSX" or the "Exchange") is publishing proposed public interest amendments to the voluntary delisting requirements (the "Amendments") found in Section 720 of the TSX Company Manual (the "Manual"). The public interest changes will be published for public comment for a 30-day period.

The Amendments will be effective upon approval by the Ontario Securities Commission (the "OSC") following public notice and comment. Comments should be in writing and delivered by **February 23, 2015** to:

Catherine De Giusti
Legal Counsel, Regulatory Affairs
Toronto Stock Exchange
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
Fax: (416) 947-4461
Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:

Susan Greenglass
Director
Market Regulation
Ontario Securities Commission
20 Queen Street West
T oronto, Ontario M5H 3S8
Fax: (416) 595-8940
Email: marketregulation@osc.gov.on.ca

Comments will be publicly available unless confidentiality is requested.

Overview

TSX is seeking public comment on the Amendments to the Manual. This Request for Comments explains the reasons for, and objectives of, the Amendments. Following the comment period, TSX will review and consider the comments received and implement the Amendments, as proposed, or as modified as a result of comments.

Text of the Amendments

The Amendments to the Manual are set out as blacklined text at **Appendix A**. For ease of reference, a clean version of the Amendments to the Manual is set out at **Appendix B**. The Amendments relate to the requirements and process for an issuer to voluntarily delist from TSX under Section 720 of the Manual.

Background

Section 720 of the Manual sets out the current requirements and process for an issuer to voluntarily delist from TSX. Currently, an issuer must apply to TSX in writing, outlining the reasons for the request. The issuer must also submit a certified copy of a resolution of the issuer's board of directors authorizing the voluntary delisting request. Security holder approval is not currently a requirement for a voluntary delisting.

In certain circumstances, security holders may be prejudiced because a voluntary delisting may severely curtail liquidity. In the absence of another marketplace or near term liquidity event, security holders may be unable to sell their securities while having expected such investment to be reasonably liquid. This may leave security holders vulnerable to predatory take-over bids, management buy-outs or other similar transactions. In addition, security holders will no longer have the additional protection of TSX's oversight of the issuer for dilutive and other capital transactions.

Summary of the Amendments

The new proposed Section 720 requires an issuer to submit an application for voluntary delisting to TSX, accompanied by: (a) a resolution of the issuer's board of directors authorizing the application to delist; and (b) a draft copy of the press release to be pre-cleared by TSX.

Under the Amendments, TSX proposes to generally require approval by the holders of the affected class or series of securities for a voluntary delisting application for the principal equity class(es) of a listed issuer's securities, unless TSX is satisfied that: (a) an acceptable alternative market exists or will exist for the listed securities on or about the proposed delisting date; (b) security holders have a near term liquidity event, such as a going private transaction, for which all material conditions have been satisfied and the likelihood of non-completion is remote; or (c) the listed issuer is under delisting review and it is unlikely that TSX will be satisfied that the deficiencies will be cured within the prescribed period. If any insider has an interest which materially differs from other security holders, such insider will not be eligible to vote its securities. Furthermore, a security holder that controls 50% or more of the affected class or series of securities of a listed issuer will generally not be eligible to vote in respect to the voluntary delisting.

TSX will also generally require security holder approval for the voluntary delisting of other classes of listed securities, if such securities are not convertible, exercisable or exchangeable into another class of listed securities.

A draft copy of the information circular or form of written consent used to obtain security holder approval for the voluntary delisting application must be submitted to TSX for pre-clearance at least five business days prior to finalization.

The delisting date for the securities is not to be earlier than the tenth business day following the later of: (a) dissemination of the press release pre-cleared by TSX announcing the voluntary delisting; and (b) the issuer having obtained security holder approval for the voluntary delisting, if applicable.

Rationale for the Amendments

TSX is proposing the Amendments to protect security holders and to preserve the integrity of the marketplace. TSX is concerned about the prejudice to security holders who may otherwise be deprived of a fair and orderly market for their securities without their approval. Security holder approval is not proposed to be required if the issuer has or will obtain a listing on another marketplace, or there is a near term liquidity event.

Without the proposed requirement, an issuer that is proposing a dilutive acquisition may apply for a voluntary delisting in order to avoid security holder approval. Without the security holder approval requirement for the voluntary delisting, security holders may be deprived of an opportunity to vote on such dilutive acquisition and TSX's oversight of future transactions. In light of directors' fiduciary duties, it is rare for a board to approve a voluntary delisting in the absence of another marketplace or a near term liquidity event. Nonetheless, TSX has from time to time received such applications and is accordingly proposing the Amendments to protect security holders while providing a transparent process.

In order to balance the interests of the investing public with those of security holders of an issuer that is under delisting review, the proposed Amendments allow a voluntary delisting without security holder approval for listed issuers that are under delisting review where it is unlikely that the issuer will regain compliance. We believe the Amendments will allow TSX to properly administer continued listing privileges to the benefit of the market as a whole.

TSX is also proposing to exclude insiders from voting on the resolution to approve the voluntary delisting application when, in TSX's opinion, the insiders' interests materially differ from those of other security holders. Conflicts of interest could arise in the case of an announced going-private transaction led by management. This approach is consistent with TSX requirements for transactions involving insiders and related parties and is consistent with protecting the interests of the public and promoting the integrity of the Canadian capital market.

In addition, if a security holder controls 50% or more of the issued and outstanding securities of the affected class or series, such holder will be deemed to have interests materially differing from those of other security holders and will be excluded from the vote. Typically, a security holder with a majority controlling interest in an issuer has a significantly different interest than smaller security holders. The nature of the investment for such security holders tends to be of a longer term investment, often strategic and therefore typically a liquid market for the securities is less important. Excluding major controlling security holders from the vote is consistent with the approach by most of the other exchanges reviewed by TSX.

The Amendments will also improve the consistency of information about the voluntary delisting available to the market because the news release, information circular and form of consent, if applicable, will be subject to TSX review and pre-clearance. We believe that this will be beneficial to the quality of the marketplace and promote investor confidence.

To ease the cost and regulatory burden, issuers who are required to obtain security holder approval for a voluntary delisting will be able to rely on the procedure in Subsection 604(d) of the Manual to obtain the requisite security holder approval in writing rather than at a security holder meeting.

Review of Other Exchange Rules

We conducted a review of the voluntary delisting requirements among various other stock exchanges. With respect to the requirement for security holder approval for voluntary delistings, apart from the U.S. exchanges, other major exchanges require security holder approval. The U.S. exchanges operate in a different market environment from other countries with two major exchanges competing for similar listings and a vibrant OTC market, which together with the litigious nature of shareholders in the US may alleviate some of the concerns around voluntary delisting without security holder approval. Domestically, Aequitas requires security holder approval, while the Canadian Stock Exchange does not. By way of reference, on TSX Venture Exchange, approval of the majority of minority security holders is required if an acceptable alternative market does not exist for the securities to be delisted. Public disclosure of an issuer's intention to voluntarily delist is a common requirement amongst the exchanges reviewed. Therefore, we believe that the proposed amendments are in line with most practices at peer exchanges for voluntary delisting.

Questions

In responding to any of the questions below, please explain your response.

1. Is it appropriate for TSX to require security holder approval when issuers wish to voluntarily delist if they are not under delisting review and no other acceptable market exists?

2. Should security holder approval be required to be obtained at a meeting? Is it sufficient to allow security holder approval in writing by a majority of the holders?

3. Is security holder approval from a simple disinterested majority appropriate? Some stock exchanges require a two-thirds or 75% security holder approval.

4. Should security holder approval exclude certain security holders such as the controlling security holder, management and/or the board?

5. Should we be requiring a longer notice period for jurisdictions in which it may be more difficult to trade?

6. Are the circumstances in which TSX will not require security holder approval for voluntarily delisting appropriate? Are there additional circumstances in which TSX should not require security holder for voluntary delisting?

Public Interest

TSX is publishing the Amendments for a 30-day comment period, which expires **February 23, 2015**. The Amendments will only become effective following public notice and the approval of the OSC.

APPENDIX A

TEXT OF PROPOSED AMENDMENTS TO THE TSX COMPANY MANUAL

G. Voluntary Delisting

Sec. 720.

~~A listed issuer wishing to have all its listed securities, or any class of its securities, delisted from TSX must apply formally to TSX to do so. The application should take the form of a letter addressed to TSX. The letter should outline the reasons for the request and be accompanied by a certified copy of a resolution of the listed issuer's board of directors (or other similarly situated body) authorizing the request.~~

(a) A listed issuer may apply to have all or any class of its listed securities voluntarily delisted from TSX. The application should take the form of a letter addressed to TSX and should outline: (i) the reasons for the application to delist; (ii) whether security holder approval will be sought and if not, why; and (iii) the proposed date of delisting. The application should be accompanied by:

(i) a certified copy of a resolution of the listed issuer's board of directors (or other similar body) authorizing the application to delist; and

(ii) a draft copy of a press release to be pre-cleared by TSX, disclosing:

1. the application to voluntarily delist, together with the reasons for the application;

2. the anticipated date of the security holder meeting, if applicable;

3. the satisfaction of any of the conditions set out in Subsection 720(b) below, if applicable; and

4. the proposed delisting date.

(b) TSX will generally require approval by the holders of the affected class or series of securities as a condition of acceptance of a voluntary delisting application for the principal equity class(es) of the listed issuer's securities, unless TSX is satisfied that:

(i) an acceptable alternative market exists or will exist for the listed securities on or about the proposed delisting date;

(ii) security holders have a near term liquidity event, such as a going private transaction, for which all material conditions have been satisfied and the likelihood of non-completion is remote; or

(iii) the listed issuer is under delisting review for failure to comply with any of the delisting criteria in this Part VII of the Manual and it is unlikely that TSX will be satisfied that the deficiencies will be cured within the prescribed period.

If, in TSX's opinion, any insider of the listed issuer has a beneficial interest, directly or indirectly, in the voluntary delisting which materially differs from other security holders, such insiders are not eligible to vote their securities in respect of the voluntary delisting. Any security holder that beneficially owns, or controls or directs, directly or indirectly 50 percent or more of the issued and outstanding securities of the affected class or series will be deemed as having an interest which materially differs from other security holders and are not eligible to vote their securities in respect of the voluntary delisting.

TSX will also generally require security holder approval as a condition of acceptance of a voluntary delisting application for other classes of listed securities, if such securities are not convertible, exercisable or exchangeable at the holder's option into another class of listed securities.

A draft copy of the information circular or form of written consent used to obtain security holder approval for the voluntary delisting application must be submitted to TSX for pre-clearance at least five (5) business days prior to finalization.

The delisting date for the class of securities subject to the voluntary delisting shall not be earlier than the tenth (10th) business day following the later of: (i) dissemination of the press release pre-cleared by TSX announcing the voluntary delisting; and (ii) the issuer having obtained security holder approval for the voluntary delisting, if applicable..

APPENDIX B

TEXT OF PROPOSED AMENDMENTS TO THE TSX COMPANY MANUAL (CLEAN)

G. Voluntary Delisting

720.

(a) A listed issuer may apply to have all or any class of its listed securities voluntarily delisted from TSX. The application should take the form of a letter addressed to TSX and should outline: (i) the reasons for the application to delist; (ii) whether security holder approval will be sought and if not, why; and (iii) the proposed date of delisting. The application should be accompanied by:

(i) a certified copy of a resolution of the listed issuer's board of directors (or other similar body) authorizing the application to delist; and

(ii) a draft copy of a press release to be pre-cleared by TSX, disclosing:

1. the application to voluntarily delist, together with the reasons for the application;

2. the anticipated date of the security holder meeting, if applicable;

3. the satisfaction of any of the conditions set out in Subsection 720(b) below, if applicable; and

4. the proposed delisting date.

(b) TSX will generally require approval by the holders of the affected class or series of securities as a condition of acceptance of a voluntary delisting application for the principal equity class(es) of the listed issuer's securities, unless TSX is satisfied that:

(i) an acceptable alternative market exists or will exist for the listed securities on or about the proposed delisting date;

(ii) security holders have a near term liquidity event, such as a going private transaction, for which all material conditions have been satisfied and the likelihood of non-completion is remote; or

(iii) the listed issuer is under delisting review for failure to comply with any of the delisting criteria in this Part VII of the Manual and it is unlikely that TSX will be satisfied that the deficiencies will be cured within the prescribed period.

If, in TSX's opinion, any insider of the listed issuer has a beneficial interest, directly or indirectly, in the voluntary delisting which materially differs from other security holders, such insiders are not eligible to vote their securities in respect of the voluntary delisting. Any security holder that beneficially owns, or controls or directs, directly or indirectly 50 percent or more of the issued and outstanding securities of the affected class or series will be deemed as having an interest which materially differs from other security holders and are not eligible to vote their securities in respect of the voluntary delisting.

TSX will also generally require security holder approval as a condition of acceptance of a voluntary delisting application for other classes of listed securities, if such securities are not convertible, exercisable or exchangeable at the holder's option into another class of listed securities.

A draft copy of the information circular or form of written consent used to obtain security holder approval for the voluntary delisting application must be submitted to TSX for pre-clearance at least five (5) business days prior to finalization.

The delisting date for the class of securities subject to the voluntary delisting shall not be earlier than the tenth (10th) business day following the later of: (i) dissemination of the press release pre-cleared by TSX announcing the voluntary delisting; and (ii) the issuer having obtained security holder approval for the voluntary delisting, if applicable.

13.3 Clearing Agencies

13.3.1 CDS Clearing and Depository Services Inc. – Material Amendments to CDS Rules – Emergency Authority – Notice of Commission Approval

CDS CLEARING AND DEPOSITORY SERVICES INC.

MATERIAL AMENDMENTS TO CDS RULES

EMERGENCY AUTHORITY

NOTICE OF COMMISSION APPROVAL

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved on January 9, 2015 the Amendments to CDS Rules – Emergency Authority.

A copy of the CDS notice was published for comment on October 23, 2014 on the Commission's website at: http://www.osc.gov.on.ca. No comments were received.

This page intentionally left blank

Index