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CANADIAN SECURITIES ADMINISTRATORS CONSULTATION PAPER 33-404
PROPOSALS TO ENHANCE THE OBLIGATIONS OF ADVISERS, DEALERS, AND REPRESENTATIVES TOWARD THEIR CLIENTS

April 28, 2016

Administering the Canadian Securities Regulatory System
Les autorités qui réglementent le marché des valeurs mobilières au Canada

PART 1 – INTRODUCTION

On October 25, 2012, the Canadian Securities Administrators (the **CSA**) published CSA Consultation Paper 33-403 – *The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients* (the **Original Consultation Paper**). On December 17, 2013, the CSA published CSA Staff Notice 33-316 – *Status Report on Consultation under CSA Consultation Paper 33-403*: *The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients* (the **Staff Notice**).[1] The Staff Notice provided a status report on the best interest consultation initiative, and identified key themes that emerged from the Original Consultation Paper. We[2] concluded that more work was needed.

This consultation paper (**Consultation Paper**) is the next step in the CSA's work toward improving the relationship between clients and their advisers, dealers and representatives (**registrants**). It follows the comments received on the Original Consultation Paper and the key themes the CSA summarized in the Staff Notice, and builds on subsequent work conducted by the CSA, including related consultations and research, on the relationship between clients and registrants (the **client-registrant relationship**).

The purpose of this consultation is to seek comment on proposed regulatory action aimed at enhancing the obligations of advisers, dealers and representatives toward their clients. We are of the view that the current Canadian registrant regulatory framework requires enhancements to address the issues we have identified in the client-registrant relationship, including to better align the interests of registrants with the interests of their clients, to improve outcomes for clients, and to clarify the nature of the client-registrant relationship for clients. As a result, the status quo must change. It is in this context that:

- all of the CSA jurisdictions are consulting on a set of regulatory amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) that would work together to better align the interests of registrants to the interests of their clients and enhance various specific obligations that registrants owe to their clients (**proposed targeted reforms**); and

[1] The Original Consultation Paper and the Staff Notice are available on the websites of the members of the CSA.

[2] "We" or "us" when used in this Consultation Paper refers to the CSA other than when used in Part 8, a part of the Consultation Paper that expresses different opinions of various CSA members. In Part 8, "we" or "us", when used in each of the three subsections of that part, means the jurisdiction, or subset of jurisdictions, of the CSA defined at the beginning of each subsection.

- all of the CSA jurisdictions, except the British Columbia Securities Commission (**BCSC**), are consulting on a regulatory best interest standard, accompanied by guidance, that would form both an over-arching standard and the governing principle against which all other client-related obligations would be interpreted.

Regarding the regulatory best interest standard proposal:

- the Ontario Securities Commission (**OSC**) and the Financial and Consumer Services Commission of New Brunswick (**FCNB**) are of the current view that the introduction of a regulatory best interest standard would materially enhance the effectiveness of the proposed targeted reforms and strengthen the principled foundation of the client-registrant relationship. The OSC and FCNB believe that such a standard, as a governing principle, would have a number of benefits, such as assisting in the interpretation of more specific requirements and acting as a guide for registrants to address situations that fall between specific rules or that are novel;

- the Autorité des marchés financiers (**AMF**), the Alberta Securities Commission (**ASC**), the Manitoba Securities Commission (**MSC**) and the Nova Scotia Securities Commission (**NSSC**), in considering the current regulatory and business environment and the research conducted by the ASC and the BCSC, share strong reservations on the actual benefits of the introduction of a regulatory best interest standard over and above the proposed targeted reforms, and are concerned with the potential unintended outcomes of the codification of such an aspirational standard of conduct. However, the AMF, the ASC, the MSC and the NSSC are interested in receiving and reviewing the comments on the proposed regulatory best interest standard;

- the Financial and Consumer Affairs Authority of Saskatchewan (**FCAA**) recognizes that the introduction of a regulatory best interest standard would be a significant regulatory change and is interested in receiving and reviewing all comments on the proposed regulatory best interest standard; and

- the BCSC is of the view that implementing only the proposed targeted reforms will significantly strengthen the standards of conduct and advance the best interests of investors. Given the current regulatory and business environment, imposing an over-arching best interest standard may not be workable and may exacerbate one of the investor protection issues identified, that being misplaced trust and overreliance by clients on registrants. Further, the introduction of a regulatory best interest standard over and above the proposed targeted reforms is vague and unclear and will create uncertainty for registrants.

The jurisdictions that are consulting on the regulatory best interest standard have not made a final decision on whether such standard should be adopted; no final decision on implementation of a best interest standard will be made without broad public consultation and discussion.

Both the proposed targeted reforms and proposed regulatory best interest standard, if introduced, would apply to all advisers, dealers and representatives, including those who are members of the Investment Industry Regulatory Organization of Canada (**IIROC**) and Mutual Fund Dealers Association of Canada (**MFDA**, and together with IIROC, the **self-regulatory organizations** or **SROs**). We will work with the SROs to ensure their member rules are materially harmonized with the CSA's requirements and would be implemented on the same schedule.

Comments must be submitted in writing by **August 26, 2016**. We encourage commenters to provide comments on the full range of issues identified under both the proposed targeted reforms and the proposed regulatory best interest standard.

PART 2 – STRUCTURE OF CONSULTATION PAPER

The remainder of this Consultation Paper is structured as follows:

- Part 3 summarizes certain CSA and third-party research related to the client-registrant relationship.

- Part 4 summarizes the absence of certain explicit obligations of registrants toward their clients under NI 31-103.

- Part 5 identifies the CSA's key investor protection concerns in connection with the client-registrant relationship.

- Part 6 provides an overview of the proposals to enhance the obligations of registrants toward their clients.

- Part 7 describes in chart format the proposed targeted reforms under consideration by all CSA jurisdictions. In this chart, we refer to specific appendices containing a description of the potential guidance relating to specific reforms.

- Part 8 discusses the proposed regulatory best interest standard under consideration. We refer to a specific appendix containing a description of the potential guidance relating to such standard.

- Part 9 solicits feedback on the anticipated impacts of the proposals.
- Part 10 describes international developments involving a best interest standard and similar initiatives.
- Part 11 explains how stakeholders can provide comments and discusses next steps.
- Appendices:
    - Appendices A – G: potential guidance with respect to certain of the proposed targeted reforms;
    - Appendix H: potential guidance related to the proposed regulatory best interest standard; and
    - Appendix I: list of consultation questions.

PART 3 – RESEARCH RELATED TO THE CLIENT-REGISTRANT RELATIONSHIP

This part sets out certain key evidence related to the client-registrant relationship. Although this part only canvasses a limited subset of the evidence available on the issues with the client-registrant relationship, we feel it is reasonably representative of the key issues identified in this body of evidence. This part does not identify the research findings related to the benefits that registrants may provide to their clients, for example, with respect to increased saving.

CSA Research

Since publication of the Staff Notice in 2013, the CSA have continued their work to address regulatory issues and concerns arising in the client-registrant relationship. Through the Fund Facts delivery (**Point of Sale**)[3] and Client Relationship Model Phase 2 (**CRM2**)[4] initiatives, the CSA have introduced regulatory reforms to make mutual fund fees, registrants' compensation (and related conflicts), and clients' investment performance, more transparent. We are committed to measuring the impact of these initiatives to determine whether they have been effective in achieving greater investor understanding of mutual fund fees, registrants' compensation and individual investment performance. The CSA Mutual Fund Fee initiative[5] has also been considering issues relating to the client-registrant relationship in Canada. The following is a list of our key consultation, research (direct or commissioned), and outreach activities.

OSC Town Hall Meetings

The OSC held financial advisor town hall meetings in 2014 with local communities of representatives. A common theme from these meetings was that most representatives believe they already act in their client's best interest.[6]

BCSC/ASC Review of Client-Registrant Relationship

In 2015, the BCSC and ASC reviewed the client-registrant relationship. Staff reviewed commentary in media reports, investment publications, academic journals and investor advocate publications and conducted interviews with investor advocates, industry organizations and current and former industry participants. The findings of the review were that there are three main problems in the registrant-client relationship:

- misplaced trust and reliance, creating an expectations gap between clients and their registrants that may result in suboptimal investments;
- clients not getting the value or returns they could reasonably expect from investing. Product costs, investment strategy and investor bias can all erode overall savings; and
- clients not getting outcomes that the regulatory system is designed to give them.

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3 See *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* (December 11, 2014). The publication is available on the websites of members of the CSA.

4 See CSA Notice of Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and to Companion Policy 31-103CP *Registration Requirements, Exemptions And Ongoing Registrant Obligations* (Cost Disclosure, Performance Reporting And Client Statements) (March 28, 2013). The publication is available on the websites of members of the CSA.

5 See CSA Discussion Paper and Request for Comment 81-407 *Mutual Fund Fees* and related, subsequent, materials. These publications are available on the websites of members of the CSA.

6 OSC, 2015 Annual Report, online: https://www.osc.gov.on.ca/documents/en/Publications/Publications_rpt_2015_osc-annual-rpt_en.pdf at p.7.

Mystery Shopping Report

The Mystery Shopping report, published on September 17, 2015 by the OSC, IIROC and the MFDA,[7] describing the results of a "mystery shop" of registrants across Ontario between July and November 2014,[8] found that:

- investors did not always know if they have had experienced a good advice process: while 88% felt they received sufficient information to make an informed decision, 33% of those experiences did not meet regulators' compliance expectations;
- the variety of business titles used by representatives (48 different titles were used across all platforms) creates confusion concerning proficiency and representatives' status and responsibilities within their firms;
- when first meeting with a representative, investors were likely to hear about products and services offered (78%) and discuss their investment goals (89%), but less likely to hear about product fees (56%), the risk/return relationship (52%) or registrant compensation (25%), making it difficult to comparison shop for financial advice, especially on important aspects such as fees and costs;
- in the 24 shops[9] where a product or specific recommendation was made:
    - 71% complied with know your client (**KYC**), know your product (**KYP**) and suitability requirements and 29% did not;
    - 37% did not fulfill all compliance expectations;
    - 67% did not discuss registrant compensation and 29% did not discuss product fees;
    - 50% did not explain how the recommendation related to the investors' goals; and
- in the 21 shops where only a specific product was recommended, 14% were in fact unsuitable due to asset concentration issues.

National Smarter Investor Study

The National Smarter Investor Study, which was published on November 3, 2015 by the BCSC,[10] examined client-registrant relationships in Canada. The study found that, among other things, 90% of respondents described their existing level of trust in their investment representative as strong or very strong. This trust led some clients to ask fewer questions about how their representatives were compensated and to place less importance on reading their account statements because they were confident that their representative was taking care of their money.

Fee-Based v. Commission-Based Literature Review: The Brondesbury Report

On June 11, 2015, the CSA published a report prepared by The Brondesbury Group entitled *Mutual Fund Fee Research*.[11] The Brondesbury Group conducted a literature review to assess the extent to which the use of fee-based versus commission-based compensation changes the nature of advice and impacts investment outcomes over the long term. The Brondesbury Group found that there is conclusive evidence that commission-based compensation creates problems that must be addressed. More specifically, the research found that:

- funds that pay a commission (sales loads and trailer fees) underperform those that do not, whether looking at raw, risk-adjusted or after-fee returns;
- representatives tend to push investors into riskier funds;
- investors cannot easily assess what form of compensation is best for them and readily make sub-optimal choices;

7 *Mystery Shopping for Investment Advice* (https://www.osc.gov.on.ca/documents/en/Securities-Category3/20150917-mystery-shopping-for-investment-advice.pdf).

8 A total of 105 shops were completed throughout Ontario across four investment platforms, including investment dealers, mutual fund dealers, exempt market dealers and portfolio managers.

9 "Shops" in this context means a visit by the "client" to a representative. In some cases, more than one shop occurred at the same firm.

10 http://www.investright.org/uploadedFiles/news/research/Smarter%20Investor%20Study%20FULL%20REPORT.pdf.

11 https://www.securities-administrators.ca/uploadedFiles/General/pdfs/Brondesbury%20Mutual%20Fund%20Fee%20Research%20Report_engwr.pdf.

- representative recommendations are sometimes biased in favour of alternatives that generate more commission for the representative;
- compensation affects the effort made by representatives to overcome investor behavioural biases that may lead to sub-optimal returns; and
- while commission-based compensation is problematic, there are other conflicts that would likely persist under a fee-based model and that would affect the representative's conduct (e.g. advancement, recognition, affiliation between the investment fund manager and a dealer firm).

Fund Flows Research: The Cumming Report

On October 22, 2015, the CSA published a research paper prepared by a team led by Professor Douglas Cumming entitled *A Dissection of Mutual Fund Fees, Flows and Performance*.[12] The paper found that conflicts of interest, specifically sales commissions and trailing commissions paid by fund companies (**embedded registrant compensation**), dealer affiliation and the use of deferred sales charge arrangements materially affect representative/dealer behaviour to the detriment of investor outcomes and market efficiency. While generally, mutual fund flows should (and do) bear a relationship to the fund's past performance, the research found that:

- the payment of embedded registrant compensation and the use of deferred sales charge arrangements materially reduce the sensitivity of fund flows to past performance and increase the level of fund flows that have no relationship to performance;
- the converse is also true: fund flows for mutual fund series that do not pay embedded registrant compensation (fee-based series) are more sensitive to past performance;
- as embedded registrant compensation increases there is an associated reduction in future outperformance before fees; and
- fund flows from affiliated dealers of the investment fund manager show little to no sensitivity to past performance, and this lack of sensitivity is also associated with reduced future outperformance before fees.

Risk Profiling Report

On November 12, 2015, the OSC Investor Advisory Panel[13] published a report entitled *Current Practices for Risk Profiling in Canada and Review of Global Best Practices*.[14] This report was prepared by PlanPlus Inc., an independent research firm engaged to perform research into the current practices in the Canadian marketplace to determine a client's risk profile and to evaluate these practices compared to best practices globally. For purposes of the report, risk profiling was defined as a complex, multi-dimensional process that combines many factors, both subjective and objective, to try and arrive at an overall assessment of the most appropriate level of risk for a consumer, called a 'risk profile'.

The report made a number of findings, including:

- there are verified techniques that improve the measurement of some subjective or emotional factors like risk tolerance or loss aversion, but they are rarely used by the industry;
- over 53% of respondents to a survey indicated that between 76% and 100% of clients had completed a risk questionnaire, creating a strong dependency on the fitness of these tools;
- only 11% of firms could confirm that their questionnaires (where they had one) were 'validated' in some manner;
- only 16.7% of questionnaires reviewed would be considered 'fit for purpose' – they have too few questions, poorly worded or confusing questions, arbitrary scoring models or outright poor scoring models; and
- there is overwhelming evidence that the issue of assessing a client's risk profile and recommending suitable solutions is a primary area of concern in the industry.

[12] http://www.csa-acvm.ca/uploadedFiles/General/pdfs/Dissection%20Fund%20Fees%20Flows_October%2019%202015_FINALEng.pdf.

[13] The Investor Advisory Panel is an independent committee of the OSC.

[14] https://www.osc.gov.on.ca/documents/en/Investors/iap_20151112_risk-profiling-report.pdf.

Compensation Practices Impacting Representatives

CSA staff conducted a survey to identify the practices used by adviser and dealer firms to compensate their representatives. The CSA expects that a staff notice summarizing the results of this research will be published before the end of the year.

Compliance Reviews

Non-compliance with key areas of the client-registrant regulatory regime, such as obligations relating to suitability and conflicts of interest, remains stubbornly high. These requirements are therefore not currently protecting investors as regulators intended or as expected by investors.[15] In addition, compliance reviews have also identified a variety of scenarios that highlight the limitations of the current client-facing obligations of advisers, dealers and representatives toward their clients.

Investor Complaints

The self-regulatory and industry organization investor complaint experience shows there is consistent and ongoing non-compliance with many of the current key regulatory requirements, with the unsuitability of investment recommendations being the primary basis for complaints to OBSI for the past five years, case assessment files for IIROC for the past three years and allegations in MFDA enforcement cases for the past three years.[16]

Third-Party Research

In addition to the work performed or commissioned by the CSA, there is a variety of third-party research that identifies areas of concern with the client-registrant relationship, both domestically and internationally. The following sets out a short list of certain key third-party research findings.

Foerster Research

In 2014, a team of academics led by Professor Stephen Foerster published a paper entitled *Retail Financial Advice: Does One Size Fit All?*[17] The paper focused on costs, benefits and customization of mutual fund advice and found that registrants influence investors' trading choices but that their advice materially underperforms passive investment benchmarks. Specifically, the research showed that, among other things:

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[15] IIROC, *IIROC Notice 16-0068 - Managing Conflicts in the Best Interest of the Client* (April 6, 2016), online: http://www.iiroc.ca/Documents/2016/F58C9465-AFC5-42F3-A5D1-6C5BFDF19CF3_en.pdf; IIROC, *2015-2016 Annual Compliance Priorities Report* (April 2016), online: http://www.iiroc.ca/Documents/2016/09cf32f7-236c-4d13-a3ca-4c53a2a32fd0_en.pdf; IIROC, *Annual Consolidated Compliance Report* (2014), online: http://www.iiroc.ca/Documents/2015/0bdb279a-eb58-484e-a164-4748e96c478b_en.pdf; BCSC, 2014 Compliance Report Card, online: http://www.bcsc.bc.ca/uploadedFiles/For_Registrants/BCSC_2014_Compliance_Report_Card.pdf?t=1412377357621; BCSC, 2012 Compliance Report Card, online: http://www.bcsc.bc.ca/uploadedFiles/Common/2012_Compliance_Report_Card.pdf; OSC Staff Notice 33-728 – 2007 Annual Report – Compliance Team, online: https://www.osc.gov.on.ca/documents/en/Securities-Category3/sn_20070824_33-728_2007-annual-rept.pdf; OSC Staff Notice 33-731 - 2008 Compliance Team Annual Report, online: https://www.osc.gov.on.ca/documents/en/Securities-Category3/sn_20080904_33-731_2008-compliance-rpt-commercial.pdf; OSC Staff Notice 33-732 - 2009 Compliance Team Annual Report, online: https://www.osc.gov.on.ca/documents/en/Securities-Category3/sn_20090925_33-732_2009-compliance-rpt.pdf; OSC Staff Notice 33-734: (2010) Compliance and Registrant Regulation Branch Annual Report, online: http://www.osc.gov.on.ca/en/29509.htm; OSC Staff Notice 33-735 Sale of Exempt Securities to Non-Accredited Investors (2011), online: http://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20110513_33-735_non-accredited-investors.htm; OSC Staff Notice: 33-736 - 2011 Annual Summary Report for Dealers, Advisers and Investment Fund Managers, online: http://www.osc.gov.on.ca/en/33324.htm; OSC Staff Notice 33-740 - Report on the results of the 2012 targeted review of portfolio managers and exempt market dealers to assess compliance with the know-your-client, know-your-product and suitability obligations, online: http://www.osc.gov.on.ca/en/SecuritiesLaw_33-740.htm; OSC Staff Notice: 33-738 - 2012 OSC Annual Summary Report for Dealers, Advisers and Investment Fund Managers, online: http://www.osc.gov.on.ca/en/SecuritiesLaw_33-738.htm; OSC Staff Notice: 33-742 - 2013 OSC Annual Summary Report for Dealers, Advisers and Investment Fund Managers, online: http://www.osc.gov.on.ca/en/SecuritiesLaw_33-742.htm; OSC Staff Notice: 33-745 - 2014 Annual Summary Report for Dealers, Advisers and Investment Fund Managers, online: http://www.osc.gov.on.ca/en/46225.htm; CSA Staff Notice 31-336 – Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product and Suitability Obligations, online: https://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20140109_31-336_kyc-kyp-suitability-obligations.pdf; CSA Staff Notice 31-343 – *Conflicts of interest in distributing securities of related or connected issuers* (November 2015), online: https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/PDF/31-343__CSA_Notice___November_19__2015/.

[16] MFDA, 2015 Annual Enforcement Report, online: http://www.mfda.ca/about/AnnReports/EnfAR2015.pdf; MFDA 2014 Annual Enforcement Report, online: http://www.mfda.ca/about/AnnReports/EnfAR2014.pdf; IIROC Website - "Statistics" webpage, online: http://www.iiroc.ca/industry/enforcement/Pages/Statistics.aspx; OBSI, 2015 Annual Report, online: https://www.obsi.ca/en/download/fm/500/filename/Annual-Report-2015-1457540052-fdac0.pdf; OBSI, 2014 Annual Report, online: https://www.obsi.ca/en/download/fm/290/filename/Annual-Report-2014-1426085311-f082e.pdf (for copies of OBSI annual reports from prior years, see https://www.obsi.ca/en/news-and-publications/annual-report).

[17] Foerster *et al*, *Retail Financial Advice: Does One Size Fit All?* (2014), online: http://www.usc.edu/schools/business/FBE/seminars/papers/F_10-3-14_LINNAINMAA.pdf. This study draws on a large data set comprised of account-level data for a large group of Canadian investors and their representatives.

- representatives induce their clients to take more risk, thereby raising clients' expected investment returns. However, they do not generally customize portfolios to their clients' attributes, but instead build very similar portfolios for all of their clients. Given the lack of customization, a question arises about why the advice is not cheaper. The paper finds that investors pay on average 2.5% of assets per year for advice. It states "if the equity premium is 6 percent, the 40-percentage point increase in risky share *caused* by [representatives] translates into 0.40 x 6% = 2.4% higher expected return ... But for the average investor, it is the [representative] who captures all of these additional returns";[18]

- "[t]here is little evidence of [representatives] adding value through superior performance. The performance lag is largely due to the fees the investors pay, not due to the poor performance of the underlying assets." The significance of these negative net alphas[19] is non-trivial (-2.91%). "Because investors could earn a net alpha of 0% by investing in the passive benchmarks, this estimate implies that the investors hand over a steady stream of potential savings year after year"; [20] and

- "the typical investor who begins saving for retirement with a [representative] hands over a quarter of the present value of his or her retirement savings on day one."[21]

Other Research

The findings from the Cumming Research are consistent with the findings of a research paper based on an analysis of United States (**U.S.**) data. Between 1993 and 2009, among U.S. mutual funds with loads or revenue sharing, higher payments to registrants led to higher inflows, suggesting that registrants' recommendations are biased by the payments they receive. Net returns are approximately 50 basis points lower for every 100 basis points of loads that are shared with registrants. This suggests biased advice, lower returns, and higher fees.[22]

In the U.S., one study found that "[c]onflicted advice leads to lower investment returns. Savers receiving conflicted advice earn returns roughly 1 percentage point lower each year (for example, conflicted advice reduces what would be a 6 percent return to a 5 percent return)."[23]

Another U.S. study found that "[registrants] fail to de-bias their clients and often reinforce biases that are in their interests. [Registrants] encourage returns-chasing behavior and push for actively managed funds that have higher fees, even if the client starts with a well-diversified, low-fee portfolio."[24]

Several U.S. studies have found that conflicts of interest affect financial representatives' behavior and that registrants often act opportunistically because of payments they receive from product providers.[25]

The current suitability process places too little emphasis on product cost despite a number of studies supporting the general position that "in virtually every single time period and data point tested, low-cost funds beat high-cost funds and costs are still the most dependable predictor of performance."[26]

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18 *Ibid*. at p.1 and 31.

19 "Net alpha" is a term that means the average abnormal return net of fees and expenses.

20 *Ibid*. at p.27

21 *Ibid*.

22 Christoffersen et al, *What do Consumers' Fund Flows Maximize? Evidence from Their Brokers' Incentives* (2013), online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1393289.

23 Executive Office of the President of the United States, *The Effects of Conflicted Investment Advice on Retirement Savings* (2015), online: https://www.whitehouse.gov/sites/default/files/docs/cea_coi_report_final.pdf at p.2. See also, e.g., Bergstresser et al, Assessing the Costs and Benefits of Brokers in the Mutual Fund Industry (2009), online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1479110; Chalmers & Reuter, What is the Impact of Financial Advisors on Retirement Portfolio Choices and Outcomes? (2012), online: http://www.nber.org/papers/w18158; and Del Guercio & Reuter, Mutual Fund Performance and the Incentive to Generate Alpha (2012), online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1935109.

24 NBER Working Paper Series, *The Market for Financial Advice: An Audit Study* (2012), online: http://www.nber.org/papers/w17929 at Abstract. See also Hackethal et al, *Financial Advisors: A Case of Babysitters?* (2011), online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1360440&download=yes.

25 See, e.g., Bergstresser et al, *Assessing the Costs and Benefits of Brokers in the Mutual Fund Industry* (2009), online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1479110; Chalmers & Reuter, *What is the Impact of Financial Advisors on Retirement Portfolio Choices and Outcomes?* (2012), online: http://www.nber.org/papers/w18158; Del Guercio & Reuter, *Mutual Fund Performance and the Incentive to Generate Alpha* (2012), online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1935109; and Finke, *Financial Advice: Does it Make a Difference?* (2012), online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2051382&download=yes.

26 Russel Kinnel, "How expense ratios and star ratings predict success", Morningstar FundInvestor, August 2010, online: http://news.morningstar.com/articlenet/article.aspx?id=347327. See also William F. Sharpe, "The Arithmetic of Investment Expenses" Financial Analysts Journal, Volume 69:2, online: http://www.cfapubs.org/doi/pdf/10.2469/faj.v69.n2.2; The Economist, "Against the odds: The costs of actively managed funds are higher than most investors realise" (February 11, 2014), online: http://www.economist.com/news/finance-and-economics/21596965-costs-actively-managed-funds-are-higher-most-investors-realise-

Canadian mutual fund investors are more highly invested in actively managed funds relative to fund investors in other jurisdictions. At June 2015, index-tracking funds comprised only 1.5% of the Canadian mutual fund market (excluding exchange traded funds) compared to 15.3% of the U.S. market and 11.2% of the United Kingdom (U.K.) market.[27]

Finally, conflict disclosure, by itself, is generally an ineffective conflict mitigation strategy and may have counter-intuitive results, such as increasing reliance on conflicted advice, which results in sub-optimal outcomes for investors.[28]

PART 4 – ABSENCE OF CERTAIN EXPLICIT OBLIGATIONS IN NI 31-103

The following table provides a high-level summary of certain obligations of registrants toward their clients that are not currently explicitly set out in NI 31-103.[29] Compliance with some of these obligations, although not explicit, is necessary to meet the CSA's expectations for compliance with the current regulatory framework.

Obligation	*Summary of Areas Without Explicit Requirements*

Conflicts of Interest	• No explicit requirement to prioritize the interests of the client when responding to conflicts
	• No explicit requirement that:
	  ○ disclosure related to conflicts of interest is fully understood by the client, including the implications and consequences of the conflict; and
	  ○ registrants must have a reasonable basis for concluding that a client understands such disclosure
	• Only explicitly applies to firms, not representatives

Know Your Client	• No explicit requirement to collect certain key elements of investment needs and objectives and financial circumstances (e.g., amount and nature of debts) • No explicit requirement around developing risk profiles for clients • No explicit requirement that the original KYC information, and any material change, is confirmed in writing with a signed copy provided to the client • No explicit requirement that registrant take reasonable steps to update KYC information at least once a year
Know Your Product	• Although KYP is a key element of the suitability analysis, it is not an explicit, stand-alone requirement (currently embedded for representatives as an element of proficiency that applies only when a recommendation is made, but not explicitly when the client initiates the order) • No explicit requirement for representatives to know about all the products on their

against; Vanguard, *The Case For Index-Fund Investing for Canadian Investors* (April 2015), online: https://www.vanguardcanada.ca/documents/case-for-indexing.pdf. See also http://www.ft.com/intl/cms/s/0/7db9d3ee-4887-11e4-9d04-00144feab7de.html#axzz40vW4XIk8.

27 Sources: Investor Economics, Morningstar Direct, and the Investment Management Association at June 2015.

28 See, e.g., Cain et al, *The Dirt on Coming Clean: Perverse Effects of Disclosing Conflicts of Interest* (2005), online: http://www.cbdr.cmu.edu/mpapers/cainloewensteinmoore2005.pdf; Sah et al, *The Burden of Disclosure: Increased Compliance with Distrusted Advice* (2012), online: http://www.cmu.edu/dietrich/sds/docs/loewenstein/BurdenDisclosure.pdf; Sah & Loewenstein, *Nothing to declare: Mandatory and voluntary disclosure leads advisors to avoid conflicts of interest* (2014), online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2289975; Prentice, *Moral Equilibrium: Stock Brokers and the Limits of Disclosure* (2011), online: http://wisconsinlawreview.org/wp-content/files/1-Prentice.pdf.

29 This summary is not comprehensive and we note that interpretations of current law are not necessarily static and can be the subject of continuing interpretation and refinement; therefore, this limited summary is not binding on the interpretation of the current obligations by members of the CSA or the SROs in any particular case.

Obligation	*Summary of Areas Without Explicit Requirements*
	firm's product list, how each product compares to the others, and all fees, costs and charges connected to the product, the client's account and the product and account investment strategy • No explicit role for the firm in meeting the KYP requirement • No explicit requirements for shelf development by the firm
Suitability	• Requirement is primarily "trade"-based (i.e., based on a product order or recommendation to buy or sell only) • No explicit requirement to consider product/account costs against the client's investment needs and objectives • No explicit requirement to conduct a suitability review for recommendations or decisions to hold or exchange securities • No explicit requirement to conduct a suitability review for recommendations not to purchase, sell, hold or exchange securities • No explicit requirement for representatives to recommend the product from their firm's shelf that is most likely to meet the investment needs and objectives of the client compared to the other products on the firm's shelf • No explicit requirement to consider the investment strategy and other basic financial strategies as part of the product-focused suitability analysis • No explicit requirement that suitability be conducted upon certain key events, including at least once a year
Relationship Disclosure	• No explicit requirement for firms to provide disclosure about the general nature of the client-registrant relationship in easy to understand terms • No explicit requirement for firms to provide disclosure about the nature and impact on the client of the firm's approved product list or restricted category of registration, as applicable
Proficiency	• No explicit ongoing continuing education requirement • Less, or no, emphasis on the areas that lack certain explicit obligations set out in this table
Titles and Designations	• Limited regulation on client-facing titles has allowed proliferation of dozens of confusing and competing titles
Role of UDP and CCO	• No explicit requirement for ultimate designated persons (**UDPs**) and chief compliance officers (**CCOs**) in the context of key compliance and oversight obligations, such as the compliance obligations relating to conflicts of interest and suitability
Statutory Standard of Conduct	• Limited guidance that explains what regulators' expectations are and how this standard is used separately from, and together with, more targeted obligations

We note that the analysis may be different in respect of certain obligations in the SROs' rules, and, as a result, there is some inconsistency (in law and/or application) across platforms (CSA jurisdictions, IIROC and/or MFDA). Ideally, there would be no, or only principled, inconsistency across these platforms.

PART 5 – KEY INVESTOR PROTECTION CONCERNS IN CONNECTION WITH THE CLIENT-REGISTRANT RELATIONSHIP

Based on the evidence gathered to date, we have identified the following key investor protection concerns in Canada:

- **Clients are not getting the value or returns they could reasonably expect from investing:** At least part of the reason for this is the wording of the existing suitability requirement. Failure of registrants to consider all relevant factors, including product costs and investment strategies (such as the use of leverage or choosing active over passive management of assets) in their suitability analysis may prevent clients from meeting the goals of their investment activity.

- **Expectations Gap**: Most investors incorrectly assume that their registrants must always provide advice that is in their best interest. As a result, clients have misplaced reliance or trust on their registrants, resulting in opportunities for some registrants to take advantage of their clients and creating an expectations gap between clients and registrants. Most investors place too much reliance on their registrants, which exacerbates the agency problem inherent in the client-registrant relationship and can result in sub-optimal investments.

  Clients need to understand the nature of the relationship, and what level of trust and reliance they should afford their registrant. The problem of misplaced reliance is exacerbated when registrants (1) use titles or designations that exaggerate their proficiency or the services they actually provide and (2) sell a limited or proprietary shelf of products.

- **Conflicts of Interest**: The application in practice of the current conflicts of interest rules is, in many instances, less effective than intended. Not only is the concern that disclosure may be ineffective in mitigating conflicts of interest, disclosure may have a counter-intuitive effect of increasing reliance on advice where the client is told such advice is, or potentially is, conflicted. Part of the challenge for regulators is identifying when disclosure of conflicts is effective, and when it may exacerbate the conflict situation or is ineffective.

- **Information Asymmetry**: The current regulatory framework is, in many instances, less effective than intended in mitigating the consequences of the information and financial literacy asymmetry between registrants and their retail clients. With the limited financial literacy of most investors, the increasing complexity of securities products and the limited effectiveness of initiatives to improve financial literacy, coupled with the challenge that most investors have in avoiding biases and applying their financial knowledge in their decision making, more onus for prioritizing the client's interest and ensuring that clients understand the information and advice they receive should shift onto registrants.

- **Clients are not getting outcomes that the regulatory system is designed to give them:** There are a number of potential causes of this concern, including opaqueness in the suitability assessment, existing requirements that require more clarity to assist in effective enforcement, barriers to obtaining redress for a registrant breach, and lack of effective compliance and enforcement in certain cases.

PART 6 – OVERVIEW OF PROPOSALS TO ENHANCE THE OBLIGATIONS OF ADVISERS, DEALERS, AND REPRESENTATIVES TOWARD THEIR CLIENTS

In light of the foregoing:

- all of the CSA jurisdictions are consulting on a set of proposed targeted reforms to NI 31-103, which are described in further detail in Part 7 below; and

- all of the CSA jurisdictions, except the BCSC, are consulting on a regulatory best interest standard, accompanied by guidance, that would form both an over-arching standard and the governing principle against which all other client-related obligations would be interpreted, which is described in further detail in Part 8 below.

As stated above, we think some elements of the proposed regulatory action are consistent with our expectations for compliance with the current regulatory framework applicable to registrants. However, we think that making these expectations explicit will clarify, and strengthen the enforceability of, the requirements applicable to registrants.

In addition, we are also taking regulatory action to focus compliance initiatives on conflicts management. In particular, we will be conducting (or have already conducted, depending on the jurisdiction) compliance sweeps to target incentives that may favour the sale of one family of funds over another.

PART 7 – PROPOSED FRAMEWORK FOR THE PROPOSED TARGETED REFORMS

In this part, we discuss the proposed targeted reforms relating to the client-registrant relationship, including the regulation of conflicts of interest, the KYC and KYP requirements, the suitability obligation, the use by registrants of business titles and proficiency. These potential reforms are intended to work together to improve the client-registrant relationship. We ask consultation questions in respect of each of the potential regulatory reforms.

We will work with the SROs to ensure that SRO member rules will be materially harmonized with the CSA's requirements and will be implemented on the same schedule.

For certain of the proposed targeted reforms, we refer to an appendix containing a description of potential guidance we might include in Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. We ask additional consultation questions in these appendices.

Proposed Targeted Reforms	Description of Proposed Targeted Reforms	Consultation Questions
Conflicts of Interest – General obligation	Part 13 of NI 31-103 would be amended to require that firms and representatives must respond to each identified material conflict of interest in a manner that prioritizes the interests of the client ahead of the interests of the firm and/or representative. Any disclosure given to a client about a conflict of interest must be prominent, specific and clear. The disclosure must be sufficient to be meaningful to the client such that the client fully understands the conflict, including the implications and consequences of the conflict for the client. Firms and representatives must have a reasonable basis for concluding that a client fully understands the implications and consequences of the conflict that is disclosed. Please refer to Appendix A for a description of potential guidance.	1) Is this general approach to regulating how registrants should respond to conflicts optimal? If not, what alternative approach would you recommend? 2) Is the requirement to respond to conflicts "in a manner that prioritizes the interest of the client ahead of the interests of the firm and/or representative" clear enough to provide a meaningful code of conduct? If not, how could the requirement be clarified? 3) Will this requirement present any particular challenges for specific registration categories or business models?
Know Your Client	Section 13.2 of NI 31-103 would be amended by adding requirements that registrants must: • ensure that the KYC process results in a thorough understanding of the client; • gather more client-centered information in respect of each of the three key elements of the KYC obligation, including: o **investment needs and objectives**: time horizon for their investments, how liquid they need their investments to be, and applicable investment constraints; o **financial circumstances**: the amount and nature of all assets and debts, employment status, basic tax position, and spousal and dependents' status and needs; and	4) Do all registrants currently have the proficiency to understand their client's basic tax position? Would requiring collection of this information raise any issues or challenges for registrants or clients? 5) Should the CSA also codify the specific form of the document, or new account application form, that is used to collect the prescribed KYC content? 6) Should the KYC form

Proposed Targeted Reforms	Description of Proposed Targeted Reforms	Consultation Questions
	○ **risk profile**: the client's risk profile for investment purposes, based on concepts including risk attitude, risk capacity and loss aversion (terms to be defined for client); • ensure that KYC forms and a record of the risk profile, both at initial account opening and upon material changes, are dated and signed by both the client and the representative and a copy is provided to the client; and • take reasonable steps to update their client's KYC information (and related form) at least once every 12 months, and more frequently in response to material changes in circumstances affecting the client or the client's portfolio. Please refer to Appendix B for a description of potential guidance.	also be signed by the representative's supervisor?
Know Your Product – Representative	Part 13 of NI 31-103 would be amended by explicitly setting out that representatives must have sufficient knowledge of a product, together with the KYC information about the client, to support a suitability analysis. This would include requirements for representatives to: (1) understand and consider the structure, product strategy, features, costs and risks of each security on their firm's product list, (2) understand and consider how a product being recommended compares to other products on the firm's product list, and (3) understand and consider the impact on the performance of the product of all fees, costs and charges connected to: • the product, • the client's account, and • the product and account investment strategy. Please refer to Appendix C for a description of potential guidance.	7) Is this general approach to regulating how representatives should meet their KYP obligation optimal? If not, what alternative approach would you recommend?
Know Your Product – Firm	Part 13 of NI 31-103 would be amended by explicitly requiring that firms: • ensure, through policies and procedures, training tools, guides or other methods, that their representatives have the information and ability to comply with their KYP obligation; and • identify whether they have a proprietary or mixed/non-proprietary product list. ○ A "proprietary product list" would be defined as a product list that includes only proprietary products. ○ A "mixed/non-proprietary product list" would be defined as a product list that includes both proprietary and non-proprietary	8) The intended outcome of the requirement for mixed/non-proprietary firms to engage in a market investigation and product comparison is to ensure the range of products offered by firms that present themselves as offering more than proprietary products is representative of a broad range of products suitable for their client base. Do you agree or disagree with this intended

Proposed Targeted Reforms	Description of Proposed Targeted Reforms	Consultation Questions
	products, or only non-proprietary products, that the firm is registered to advise on or trade in. Mixed/non-proprietary firms would be required to select the products they offer in accordance with policies and procedures that include a fair and unbiased market investigation of a reasonable universe of products that the firm is registered to advise on or trade in; a product comparison to determine whether the products the firm offers are appropriately representative of the reasonable universe of products most likely to meet the investment needs and objectives of its clients, and an optimization process where the firm makes any necessary changes to the range of products it offers to achieve a range of products that is appropriately representative of the products most likely to meet the investment needs and objectives of its clients, based on the securities products that the firm is registered to advise on or trade in. Please refer to Appendix D for a description of potential guidance.	outcome? Please provide an explanation. 9) Do you think that requiring mixed/non-proprietary firms to select the products they offer in the manner described will contribute to this outcome? If not, why not? 10) Are there other policy approaches that might better achieve this outcome? 11) Will this requirement raise challenges for firms in general or for specific registration categories or business models? If so, please describe the challenges. 12) Will this requirement cause any unintended consequences? For example, could this requirement result in firms offering fewer products? Could it result in firms offering more products? 13) Could these requirements create incentives for firms to stop offering non-proprietary products so that they can fit the definition of proprietary firm? 14) Should proprietary firms be required to engage in a market investigation and product comparison process or to offer non-proprietary products? 15) Do you think that categorizing product lists as either proprietary and mixed/non-proprietary is an optimal distinction amongst firm types? Should there be other characteristics that differentiate firms that should be identified or taken into account in the

Proposed Targeted Reforms	Description of Proposed Targeted Reforms	Consultation Questions
		requirements relating to product list development?
Suitability	Section 13.3 of NI 31-103 would be replaced with the following. A registrant must ensure that, before it makes a recommendation to (or recommendation not to), or accepts an instruction from a client to, buy, sell, hold or exchange a security, or makes a purchase, sale, hold or exchange of a security for a client's managed account, such purchase, sale, hold or exchange (or decision not to purchase, sell, hold or exchange in the case of a recommendation not to take any of these actions) satisfies the following three elements, as applicable: • **Basic financial suitability**: by identifying whether there are any other basic financial strategies, such as paying down high interest debt or directing cash into a savings account, that are more likely to achieve the client's investment needs and objectives than a transaction in securities; • **Investment strategy suitability**: by identifying a basic asset allocation strategy for the client (and evaluating any other proposed investment strategy) that is most likely to achieve the client's investment needs and objectives. This would include identifying a target rate of return the client will need to achieve his or her investment needs and objectives, assessing the target rate against the client's risk profile and resolving any mismatches. If the risk required to achieve the investment needs and objectives is higher than the client's risk capacity, the registrant must revisit the investment needs and objectives with the client; and • **Product selection suitability**: by ensuring that the purchase, sale, hold or exchange of the security (or the decision not to purchase, sell, hold or exchange) is both: o suitable for the client, and o most likely to achieve the client's investment needs and objectives, given the client's financial circumstances and risk profile, based on a review of the structure, features, product strategy, costs and risks of the products on the firm's product list. This determination must take into account the impact on the performance of the product of any compensation paid to the registrant by the client or a third party in relation to the product and the impact of the investment strategy of the product. Registrants must perform a suitability analysis of the portfolio of securities in the client's account at the firm: • when accepting an instruction from the client to buy, sell, hold or exchange securities or using (or ceasing to use) an investment strategy involving a security; • when recommending that the client buy, sell, hold or exchange	16) Do you agree with the requirement to consider other basic financial strategies? 17) Will there be challenges in complying with the requirement to ensure that a purchase, sale, hold or exchange of a product is the "most likely" to achieve the client's investment needs and objectives? 18) Should there be more specific requirements around what makes an investment "suitable"? 19) Will the requirement to perform a suitability assessment when accepting an instruction to hold a security raise any challenges for registrants? 20) Will the requirement to perform a suitability analysis at least once every 12 months raise challenges for specific registrant categories or business models? For example, a client may only have a transactional relationship with a firm. In such cases, what would be a reasonable approach to determining whether a firm should perform ongoing suitability assessments? 21) Should clients receive a copy of the representative's analysis regarding the client's target rate of return and his or her investment needs and objectives? 22) Will the requirement to perform a suitability review for a

Proposed Targeted Reforms	Description of Proposed Targeted Reforms	Consultation Questions
	securities or using (or ceasing to use) an investment strategy involving a security; and • within a reasonable time after any of the following events occur while the client retains an account with the firm, and in any case, at least once every 12 months, or more frequently if the investment strategy (if any) proposed by the representative requires more frequent monitoring: o securities received into the client's account by deposit or transfer; o change in representative or firm for the account; o material changes in the client's KYC information that the registrant knew or reasonably should have known; o occurrence of a significant market event affecting capital markets to which the client is exposed; and o material change in the risk profile of an issuer whose securities are held in the client's account, whether determined by external credit ratings or other internal or external risk assessment mechanisms. Where an unsuitable investment is identified within an account, the registrant must take appropriate measures to ensure the client receives advice considering the client's investment needs and objectives, risk profile, and other particular circumstances (for example, an appropriate measure or course of action may include contacting the client in a timely manner to recommend changes). Where a client does not want to dispose of the unsuitable investment, it may be appropriate to recommend changes to other investments within the account in order to ensure the suitability of the overall portfolio.[30] Please refer to Appendix E for a description of potential guidance.	recommendation *not* to purchase, sell, hold or exchange a security be problematic for registrants?
Relationship Disclosure	Section 14.2 of NI 31-103 would be amended by including the following explicit requirements. *Nature of Relationship Disclosure* Firms would be required to disclose the actual nature of the client-registrant relationship in easy-to-understand terms. *Proprietary Product List Disclosure* Firms must disclose whether they offer proprietary products only or a mixed/non-proprietary list of products. Firms that offer a mixed/non-proprietary list of products must disclose the proportion of proprietary products they offer. Where the product list of the firm meets the definition of a "proprietary product list", the firm must clearly disclose to its clients,	23) Do you agree with the proposed disclosure required for firms registered in restricted categories of registration? Why or why not? 24) Do you agree with the proposed disclosure required for firms that offer only proprietary products? Why or why not? 25) Is the proposed

[30] See IIROC Notice 12-0109 - *Know your client and suitability – Guidance*, online: http://www.iiroc.ca/Documents/2012/d21b2822-bcc3-4b2f-8c7f-422c3b3c1de1_en.pdf.

Proposed Targeted Reforms	Description of Proposed Targeted Reforms	Consultation Questions
	prominently and in plain language at the time of account opening (or before any product or service is provided), that: • their product list is restricted to proprietary products and they will only recommend proprietary products; and • as a result, the suitability analysis conducted by the firm and its representatives does not consider: o the larger market of non-proprietary products; and o whether such non-proprietary products are better, worse or equal in meeting the client's investments needs and objectives. This obligation does not apply when firms deal with institutional clients. *Restricted Registration Category Disclosure* Firms that are mutual fund dealers, exempt market dealers, scholarship plan dealers or restricted dealers/advisers must clearly disclose to their clients, prominently and in plain language at the time of account opening (or before any product or service is provided), that they only offer, as a result of their registration category, a limited range of products and, as a result, the suitability analysis conducted by the firm and its representatives does not consider: • a full range of securities products; and • whether such other types of products are better, worse or equal in meeting the client's investments needs and objectives. This obligation does not apply when firms deal with institutional clients. Please refer to Appendix F for a description of potential guidance.	disclosure for restricted registration categories workable for all categories identified? 26) Should there be similar disclosure for investment dealers or portfolio managers? 27) Would additional guidance about how to make disclosure about the relationship easier to understand for clients be helpful?
Proficiency	Division 2 of Part 3 of NI 31-103 would be amended to add the following explicit requirements: • increased proficiency for representatives, including standards that explicitly incorporate the knowledge elements required for compliance with the proposed targeted reforms, including that all representatives must generally understand the basic structure, features, product strategy, costs and risks of all types of securities, such as equities, fixed income, mutual funds, other investment funds, exempt products, and scholarship plan securities; • in particular, increased proficiency regarding how product costs and investment strategies (e.g. active vs passive) can impact investment outcomes for clients; and • that representatives are subject to a continuing education requirement,[31] including on key securities regulatory obligations	28) To what extent should the CSA explicitly heighten the proficiency requirements set out under Canadian securities legislation? 29) Should any heightening of the proficiency requirements for representatives be accompanied by a heightening of the proficiency requirements for CCOs and UDPs?

[31] Note that (i) in Québec, representatives of mutual fund dealers and of scholarship plan dealers must be members of the Chambre de la sécurité financière, and are subject to an existing continuing education (CE) requirement, and (ii) IIROC registered individuals are subject to a CE requirement and the MFDA issued a discussion paper soliciting detailed feedback regarding appropriate components of CE

Proposed Targeted Reforms	Description of Proposed Targeted Reforms	Consultation Questions
	such as suitability, the KYC and KYP obligations and conflicts of interest, as well as an ethics training component.	
Titles	A new requirement would be added to NI 31-103 that explicitly requires that all client-facing business titles for representatives be prescribed, as follows: Alternative 1: • for a representative (i) where his or her sponsoring firm is registered as a portfolio manager or investment dealer and has a mixed/non-proprietary product list, and (ii) that manages a client's discretionary account: **securities advisor – portfolio management** • for a representative (i) where his or her sponsoring firm is registered as a portfolio manager or investment dealer and has a mixed/non-proprietary product list, and (ii) that advises a client with a non-discretionary account: **securities advisor** • for a representative of any other firm that is not an investment dealer or portfolio manager but that has a mixed/non-proprietary product list: **restricted securities advisor** • for a representative of any firm that has a proprietary product list: **securities salesperson**. Alternative 2: • for representatives of firms registered as portfolio managers and of firms registered as investment dealers that are IIROC members and manage clients with discretionary accounts: **advisor** • for representatives of any other firm: **salesperson** Alternative 3: • representatives could only use their individual category of registration (e.g., dealing representative and/or advising representative)	30) Will more strictly regulating titles raise any issues or challenges for registrants or clients? 31) Do you prefer any of the proposed alternatives or do you have another suggestion, other than the status quo, to address the concern with client confusion around representatives' roles and responsibilities? 32) Should there be additional guidance regarding the use of titles by representatives who are "dually licensed" (or equivalent)?
Designations	NI 31-103 would be amended to include specific provisions about the designations (i.e., credentials that are used to indicate that the individual has specialized knowledge or expertise in an area gained through education and/or experience) that each category and specific types of representatives may use when dealing with clients. Please refer to Appendix G for a description of potential guidance.	33) Should we regulate the use of specific designations or create a requirement for firms to review and validate the designations used by their representatives?
Role of UDP and CCO	Sections 5.1, 5.2 and 11.1 of NI 31-103 would be amended to clarify the role of UDPs and CCOs, both in terms of compliance systems generally, as well as ensuring compliance in key areas, such as obligations relating to conflicts of interest and suitability. Specifically, section 5.1 of NI 31-103 would be amended to clarify that a UDP must: • ensure the firm has policies and procedures to identify and manage	34) Are these proposed clarifying reforms consistent with typical current UDP and CCO practices? If not, please explain.

requirements and related implementation considerations.

Proposed Targeted Reforms	Description of Proposed Targeted Reforms	Consultation Questions
	conflicts of interest arising between the firm, each individual acting on its behalf, and clients; • ensure that material conflicts are avoided if they cannot be managed by disclosure and controls; • promote consideration and management of conflicts of interest in a manner that prioritizes the interests of the client; and • promote compliance with the suitability obligation, including assessing the impact of the cost of products on the client's ability to meet his/her investment needs and objectives, given his/her risk profile and financial circumstances. Specifically, section 5.2 of NI 31-103 would be amended to clarify that a CCO must establish and maintain policies and procedures and monitor and assess compliance by the firm, and individuals acting on its behalf, with: • the obligation to respond to material conflicts of interest in a manner that prioritizes the interests of the client ahead of the interests of the firm or registrant; and • the suitability obligation, including assessment of the impact of the cost of products on the client's ability to meet its investment needs and objectives, given his/her risk profile and financial circumstances.	
Statutory Fiduciary Duty when Client Grants Discretionary Authority	Existing securities legislation in British Columbia, Saskatchewan, Ontario, Québec, Nova Scotia, Prince Edward Island, Nunavut, Yukon, and the Northwest Territories would be amended to introduce a statutory fiduciary duty for registrants when they manage the investment portfolio of a client through discretionary authority granted by the client.	35) Is there any reason not to introduce a statutory fiduciary duty on these terms?

Although the proposed targeted reforms are meant to apply to all registrants in respect of all their clients, their application is tailored in the following situations:

Institutional Clients

For registrants dealing with institutional clients:

- the proposed targeted reforms relating to suitability and KYC requirements do not apply;
- the requirement to identify the product list as either mixed/non-proprietary or proprietary does not apply;
- disclosure by itself may be an acceptable response to a conflict of interest if the conflict of interest is not obviously contrary to the interests of the institutional client, based on the information the firm and representative have about the institutional client. However, certain situations may arise where there can be no other reasonable response than avoidance; and
- the requirements relating to client-facing titles do not apply.

Order Execution-Only Services

For registrants dealing with clients in the context of discount brokerage services, suitability and related KYC requirements do not apply.

PART 8 – PROPOSED FRAMEWORK FOR A REGULATORY BEST INTEREST STANDARD

Reasons all jurisdictions (except the BCSC) are consulting on the potential introduction of a regulatory best interest standard

All the jurisdictions of the CSA (except the BCSC) (the **BIS Consulting Jurisdictions**) are also consulting on the potential addition of a regulatory best interest standard to the current standard of care for registrants, in addition to the proposed targeted reforms set out in Part 7.

A regulatory best interest standard would require that a registered dealer or registered adviser shall deal fairly, honestly and in good faith with its clients and act in its clients' best interests, and that a representative of a registered dealer or registered adviser shall deal fairly, honestly and in good faith with his or her clients and act in his or her clients' best interests. The conduct expected of a registrant in meeting her, his or its standard of care would be that of a prudent and unbiased firm or representative (as applicable), acting reasonably. In complying with the standard of care, registrants would be guided by the following principles:

1. Act in the best interests of the client
2. Avoid or control conflicts of interest in a manner that prioritizes the client's best interests
3. Provide full, clear, meaningful and timely disclosure
4. Interpret law and agreements with clients in a manner favourable to the client's interest where reasonably conflicting interpretations arise
5. Act with care

The BIS Consulting Jurisdictions have not made a final decision on the adoption of such a standard but have articulated potential guidance in the form provided in Appendix H.

Any best interest standard in the context of Canadian securities legislation would be formulated as a regulatory conduct standard and not as a restatement or formulation of a fiduciary duty. This approach is preferable since:

- the content of the regulatory best interest standard is more comprehensive and tailored to the client-registrant relationship than a statutory fiduciary duty would be;
- the fiduciary duty and its content have developed primarily through case law. Securities regulators can appropriately express a regulatory best interest standard, where the regulator imposes the existence and content of the standard, separate from the process undertaken in particular cases by the courts;
- fiduciary duty remedies are potentially too harsh for all instances of registrant misconduct;[32] and
- fiduciary duty, as a common law concept with a long history and application across various disciplines and situations, lacks the upfront clarity and specificity we require, and that registrants expect, regarding registrant conduct standards that apply on a day-to-day basis.

The BIS Consulting Jurisdictions have also considered whether the use of the phrase "best interest" in the formulation automatically establishes a fiduciary duty. Our view is that it does not, since our express intention is not to establish a statutory fiduciary duty for registrants, and although the phrase "best interest" has been interpreted in some contexts as a fiduciary duty,[33] in others it has not.[34] With respect to the experience in the U.K. and Australia, two other common law jurisdictions, we understand that the statutory "best interest" standard in those jurisdictions does not, by itself, establish a fiduciary duty.[35]

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[32] For example, when calculating damages when a breach of fiduciary duty has been found, such calculation "is not subject to the limiting principles of foreseeability, contributory negligence or the duty to mitigate." From G. Clarke, "Liability and Damages in Unsuitable Investment Advice Cases" (August 2005), online: http://www.fasken.com/files/Publication/4cf45b14-e485-48e4-aa0a-da03f61fc5bd/Presentation/PublicationAttachment/b246cb59-696f-49e9-a746-8f905e0437d7/LIABILITY_AND_DAMAGES.PDF at 64. See also See also generally M.V. Ellis, *Fiduciary Duties in Canada*, looseleaf (Toronto: Carswell, 1988) at Chapter 20.

[33] For example, sections 116 of the *Securities Act* (Ontario) and 159.3 of the *Securities Act* (Québec); director duties under corporate law; and other situations where legislation codified pre-existing fiduciary duties at common law.

[34] For example, in the SRO rules relating to responding to conflicts of interest (which is a key area of focus of fiduciary duties), the obligation includes a reference to acting in a manner consistent with the best interests of the client. The SROs are clear that this, by itself, does not constitute a fiduciary duty; it seems their members and the courts have not disagreed.

[35] For a detailed discussion regarding the feasibility of amending the law of fiduciary duty to address concerns with the conduct of financial intermediaries in the U.K., please see http://www.lawcom.gov.uk/wp-content/uploads/2015/03/cp215_fiduciary_duties.pdf.

The OSC and the FCNB are of the current view that the introduction of a regulatory best interest standard would materially enhance the effectiveness of the proposed targeted reforms and strengthen the principled foundation of the client-registrant relationship. The OSC and FCNB believe that such a standard, as a governing principle, would have a number of benefits, such as assisting in the interpretation of more specific requirements and acting as a guide for registrants to address situations that fall between specific rules or that are novel.

The AMF, the ASC, the MSC and the NSSC are consulting on the best interest standard; however, considering the current regulatory and business environment and the research conducted by the ASC and the BCSC, all four share strong reservations on the actual benefits of the introduction of such a standard over and above the proposed targeted reforms, and are concerned with the potential unintended outcomes of the codification of such an aspirational standard of conduct. See concerns in "Reasons certain CSA jurisdictions have concerns with the potential regulatory best interest standard" below.

The FCAA recognizes that the introduction of a regulatory best interest standard would be a significant regulatory change and is interested in receiving and reviewing all comments on the proposed regulatory best interest standard.

The BIS Consulting Jurisdictions understand that there are different views on the adoption of a best interest standard, and we welcome all views. Comments will help the jurisdictions considering the adoption of a best interest standard make a decision on this matter.

The OSC and FCNB are of the view that the introduction of a regulatory best interest standard on the terms set out above would have the benefits identified below; the other BIS Consulting Jurisdictions are of the view that the regulatory best interest standard may have the identified benefits.

- **Governing principle**. A regulatory best interest standard would constitute a governing principle that would:
    - govern the interpretation of more specific regulatory requirements (e.g., those obligations related to KYC, KYP, conflicts of interest and suitability) as a result of ambiguity, new developments or other changes in the investment environment, and
    - act as a guide for registrants and securities regulators to address situations arising in the client-registrant relationship that fall outside specific rules.
- **Closes the expectations gap**. A regulatory best interest standard, over and above the proposed targeted reforms, would help close the expectations gap between the standard of care that clients believe they are receiving from registrants and the standard of care that registrants are subject to under securities legislation. Clients would have the confidence that their relationship with a registrant is governed by a standard of care that prioritizes their interests and that this will govern the interpretation of specific rules as well as situations not presently covered by the rules. A statutory best interest standard would also align with the standard of conduct that representatives who seek to follow high standards of integrity themselves feel they already provide to their clients. In this sense, it would close this gap as well.
- **More objective, client-centered standard of care**. A regulatory best interest standard would be a more objective, client-centered standard of care than the current standard of care (i.e., dealing fairly, honestly and in good faith). At the heart of the regulatory best interest standard is a clear expectation that when registrants are faced with competing interests, their clients' interests are paramount. This would provide a more concrete, intuitive and actionable standard of care for registrants than the current standard of care.
- **Appropriate tone from the top**. The regulatory best interest standard would codify what we currently expect as a sound "tone from the top" at registrants, but now given the strength of a regulatory requirement. This would better enable management of firms to assert that the development of a strong compliance culture within the firm is the right thing to do and is a necessary risk management principle. This standard would strengthen the role of CCOs who, with their firms' knowledge, could implement the best practices to be adopted rather than accept minimum standards set out in prescriptive rules.
- **A principle-based approach allows greater flexibility for registrants**. Framing the regulatory best interest standard as a principle would allow the concept of the client's best interest to be the guiding principle that serves as guide to regulators' expectations and would allow registrants to take a flexible, tailored and contextual approach when dealing with (i) the varied conduct situations that can arise in respect of their clients, and (ii) the rapid pace of change within Canada's capital markets generally. In addition, the requirement for registrants to act in the best interest of clients and the focus on client outcomes are important elements of the proposed regulatory best interest standard that would support a principle-based approach, rather than a more prescriptive, process-based approach.

- **Investors responsible for investing to fund their retirement.** The savings landscape has changed - amounts invested by investors often constitute a major portion of their wealth and responsibility for funding the costs of living during old age is shifting more to investors. There are various causes for this change, including the shift away from defined benefit retirement plans in Canada. A regulatory best interest standard would acknowledge the critical importance of advice in savings, including retirement, and the enormous financial stakes involved for Canadian investors.

- **Mitigates client-registrant information gap and validates clients' significant trust in registrants**. The adoption of a regulatory best interest standard may help to further mitigate concerns with the lower financial literacy of many investors by ensuring that the registrant has the clients' interests top of mind, rather than requiring clients (who may not be equipped to do so) to attempt to determine whether a particular course of action is in their best interests or not. This would place an appropriate obligation on the party to the relationship who is most often the most knowledgeable and financially literate, namely the adviser or dealer and their representatives. This aligns with what we know about clients' actual ability and/or confidence to manage their own financial affairs. It would also clarify that the registrant would be expected to objectively help formulate the client's best interests, providing a service that is necessary and appropriate for most clients. Since clients already believe that registrants must act in their best interest and place significant trust in registrants, this should not result in investors becoming less engaged in the relationship with their registrant but rather having the confidence to engage in a dialogue with a professional who is required to be unquestionably in the "client's corner".

- **Immediate impact**. The key investor protection concerns identified are so substantial that solutions could not await an iterative process of regulatory amendments if the concerns are not mitigated by such amendments or other initiatives, such as CRM2 and Point of Sale. The regulatory best interest standard would be an overarching principle that would allow swifter regulatory action in the interests of investors where required and where registrants do not live up to the spirit of the proposed targeted reforms. While the CRM2 and the Point of Sale initiatives are important enhancements to our regime, their fundamental focus on disclosure is unlikely to sufficiently address the concerns we have identified in Part 5.

- **Assists in professionalization of advisers, dealers and representatives**. The best interest standard would assist in the progress toward the professionalization of the advisory role in Canada similar to other important services that require practitioners to comply with professional standards of conduct. Similarly, it would support and align with the evolution in organizational culture that regulators, and many registrants, have been encouraging for some time.[36]

- **Aligns with conduct expectations of key international and domestic standard setters**. International bodies such as the International Organization of Securities Commissions (**IOSCO**), the Group of Twenty (**G20**) and the Organisation for Economic Co-operation and Development (**OECD**) are clear that, in the wake of the financial crisis, financial intermediaries, such as advisers and dealers, should act in their clients' best interest.[37] International and domestic standard setters have also identified the over-arching obligation to act in the client's best interest, or to place the client's interest first, as a key component of the conduct expectation for their members.[38]

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[36] See, e.g., IIAC, "Letter from the President: How Investor Psychology is Changing – and Wealth Management Firms and Advisors are Responding" (10 April 2014), online: http://iiac.ca/wp-content/uploads/IIAC-Letter-from-the-President-Volume-73.pdf; The Economist (Intelligence Unit), *A Crisis of Culture: Valuing ethics and knowledge in financial services* (2013), online: http://www.economistinsights.com/sites/default/files/LON%20-%20SM%20-%20CFA%20WEB.pdf.

[37] IOSCO, International Conduct of Business Principles (July 1990), online: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD8.pdf; OECD, G20 High-Level Principles on Financial Consumer Protection (October 2011), online: http://www.oecd.org/dataoecd/58/26/48892010.pdf; G20/OECD Task Force on Financial Consumer Protection, Update Report on the Work to Support the Implementation of the G20 High-Level Principles on Financial Consumer Protection (2013), online: http://www.oecd.org/g20/topics/financial-sectorreform/G20EffectiveApproachesFCP.pdf; G20/OECD Task Force on Financial Consumer Protection, Effective Approaches to Support the Implementation of the Remaining G20/OECD High-Level Principles on Financial Consumer Protection, online: http://www.oecd.org/daf/fin/financial-education/G20-OECD-Financial-Consumer-Protection-Principles-Implementation-2014.pdf. See also Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives, *Financial Advisory and Financial Planning Policy Alternatives: Preliminary Policy Recommendations of the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives* (April 2016), online: http://www.fin.gov.on.ca/en/consultations/fpfa/fpfa-policy-recommendations.pdf.

[38] See, e.g., Advocis, Code of Professional Conduct, online: http://www.advocis.ca/pdf/Advocis-CPC.pdf; CFA Institute, *Statement of Investor Rights*, online: https://www.cfasociety.org/liechtenstein/Documents/statement_of_investor_rights.pdf; CFA Institute, Code of Ethics and Standards of Professional Conduct (2014), online: http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2014.n6.1; CFA Institute, Standards of Practice Handbook (2014), online: http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2014.n4.1; CFA Institute, Asset Manager Code of Professional Conduct, online: http://www.cfainstitute.org/ethics/Documents/amc_outreach_flyer.pdf; Financial Planning Standards Council, Code of Ethics, online: http://www.fpsc.ca/guidance-code-of-ethics; Chartered Investment Manager, Code of Ethics, online: https://www.csi.ca/student/en_ca/designations/pdf/CIM_code_of_Ethics.pdf; Fi360, Prudent Practices for Investment Advisors (2014), online: http://www.fi360.com/main/pdf/handbook_advisor.pdf; Certified International Wealth Manager, Code of Ethics and Standards of

- **Fosters confidence and trust in capital markets and strengthens investor protection**. The introduction of a regulatory best interest standard would increase confidence and trust by investors in Canadian capital markets and would strengthen the protection for such investors. This may have the effect of encouraging investors (i) that are not currently invested in securities products to begin investing in securities products and (ii) that are currently invested in securities products to invest more of their overall financial assets in securities products.

For greater certainty, the proposed regulatory best interest standard is not intended to:

- interfere with the registration categories under Canadian securities legislation or the scope of application of those categories;
- prohibit firms from charging clients for their services;
- prohibit the offering of proprietary products by firms;
- guarantee that clients' securities investments never lose value, result in the "best" or "highest" returns for the client, or result in the lowest risk;
- always result in the lowest cost product on the firm's shelf being recommended to clients since the lowest cost product may not, based on an analysis of a client's investment needs and objectives, always be in the client's best interest; or
- interfere with the ability of courts to apply common law doctrines relating to, for example, fiduciary duty, negligence or contract law principles, to the client-registrant relationship.

Reasons the BCSC Is Not Consulting on a Regulatory Best Interest Standard

The BCSC strongly supports taking action to strengthen the client-registrant relationship. Our objectives are to deliver better regulatory responses, empower investors with better information and improve investor financial outcomes.
The BCSC has considered the feedback from the Original Consultation Paper about the appropriateness of introducing a statutory best interest duty. Together with the ASC, we have also supplemented that information by conducting our own research and consulting with other experts. Further consultation on a best interest standard is not warranted given the extensive consultation already undertaken by the CSA and the work that has been done since then to identify the investor protection issues and craft targeted responses to them.

The BCSC is proposing an alternative approach that in our view will significantly strengthen the standards of conduct, lead to better investor outcomes and advance the best interests of investors. The BCSC is of the view our priority should be focused on consideration of the proposed targeted reforms only. Implementing specific requirements that deal directly with the identified issues in the client-registrant relationship will strengthen investor protection and confidence of investors in our capital markets.

The adoption of a broad, sweeping and vague best interest standard will create uncertainty for registrants and may be unworkable in the current regulatory and business environment. Introducing an over-arching duty called a best interest standard while continuing to permit certain fundamental conflicts to exist between registrants and their clients is not in the public interest. Doing so may exacerbate one of the issues we identified; the expectations gap between clients and registrants and may raise clients' expectations about investor protection that may not be realized under a best interest standard.

The CSA should establish clear requirements for registrants to follow and regulators and courts to enforce. The proposed targeted reforms, followed through with coordinated and focused compliance and enforcement efforts, and full realization of the CRM2 and Point of Sale initiatives, will achieve the best outcomes for investors and advance the best interests of investors.

The concerns of BCSC staff are set out more fully in the next section.

Reasons certain CSA jurisdictions have concerns with the potential regulatory best interest standard

Staff of the BCSC, the AMF, the ASC, the MSC, and the NSSC (the **Jurisdictions with Concerns about a BIS**) have concerns with the proposed best interest standard, as follows:

Professional Conduct, online: https://www.csi.ca/student/en_ca/designations/pdf/CIWM-code-ofethics.pdf.

- **The proposed best interest standard may exacerbate the expectations gap between clients and registrants because of the existing restricted registration categories and proprietary business models permitted in Canada. Clients may expect that all registrants have an unqualified duty to act in their best interests, not understanding that some conflicts would still be permitted.**

  The current Canadian regulatory and business environment for registrants allows for a wide range of business models and registration categories. These range, on one end, from salespeople dedicated to selling only proprietary products to, on the other end, portfolio managers with fiduciary obligations over fully managed accounts. There are a host of business models between these two extremes.

  For those business models that are closer to the "salesperson" end of the spectrum, it would be impossible to impose a regulatory standard on these registrants that is truly a "best interest" standard. That has been borne out through the collective experience in other jurisdictions around the world that have wrestled with fiduciary or regulatory best interest standards. It is simply not possible to require a salesperson of proprietary products only to act in a manner that is truly in an investor's best interest.

  All of this is evident in the best interest standard proposed in this Consultation Paper. The proposed standard will not prohibit certain fundamental conflicts between registrants and their clients. Registrants will continue to be able to:

  - sell a limited range or type of investment products (these registrants have the clear limitation that there may be nothing in the limited range of products they offer that is actually in the investor's "best interest" to buy);
  - be owned by, or affiliated with, businesses that create the investment products they sell; and
  - be compensated by investment product manufacturers rather than the clients they are meant to serve.

  These arrangements are not consistent with what a client would expect from a standard that purportedly requires registrants to act in their "best interest".

  The Jurisdictions with Concerns about a BIS have identified an existing problem of clients misunderstanding the nature of their relationship with their registrant and the corresponding overreliance this produces. If regulators impose a standard that is called a best interest standard, but at the same time permit fundamental conflicts to continue, they run the risk of contributing further to this problem by leading clients to believe that they are getting protections they are not. The proposed standard may therefore exacerbate the gap between what clients expect and what is actually permitted.

  The proposed standard may also lead to client complacency. Trust already plays a significant role in the problem of overreliance. In the recent National Smarter Investor Study commissioned by the BCSC, 90% of respondents described their existing level of trust in their investment representatives as strong or very strong.

  Of those clients whose representative did not discuss with them how they were compensated, 74% of clients said they did not need to know about their registrant's compensation more often because they trusted that it was fair and reasonable. 64% of clients who do not always read their investment statements said they did not need to read their statements very often because they trusted that their representative was taking care of their money. While trust in a representative is of course important and desirable, the proposed best interest standard may cause investors to completely absolve themselves of any responsibility for their investment decisions, on the mistaken belief that registrants will be held to a higher standard of care that will prohibit conflicts that are permitted today. Research shows that engaged and informed investors lead to better investment decisions.

  In the absence of more fundamental changes to restricted registration categories and conflicted business models, the Jurisdictions with Concerns about a BIS think making it our priority to implement the proposed targeted reforms discussed in this Consultation Paper and vigorously enforcing the current conduct standard to "deal fairly, honestly and in good faith" will improve investor protection and investor confidence. The proposed targeted reforms are geared to the realities of our current registrant categories and conflicted business models.

- **The proposed best interest standard will create legal uncertainty. It does not create a clear standard for registrants to follow or for regulators to enforce.**

  Imposing a best interest standard that permits the existing restricted business models and conflicted compensation structures will create legal uncertainty. The proposed standard is expressly not a fiduciary duty, so courts may no longer rely on existing jurisprudence in that area. The Jurisdictions with Concerns about a BIS are uncertain how regulators or the courts will interpret a standard that on the one hand expressly requires conduct in the client's best

interest and the avoidance of material conflicts, but in other cases permits conduct that may not be in the client's best interest as long as there is disclosure.

There are also tensions between the proposed standard and more specific regulatory requirements, which may create uncertainty for registrants. In some cases, specific requirements contemplate conduct that seems inconsistent with the proposed standard. For example, currently firms that sell only proprietary products can meet their suitability requirement provided they ensure any recommendation they make to purchase a security from their product list is suitable for the client. However, under a best interest standard, that recommendation may not be in the client's best interest, as it may be in the client's best interest to invest in a non-proprietary product. The firm's recommendation would therefore appear not to comply with the requirement to act in the client's best interest.

Other regulators that have implemented a best interest standard have faced challenges with the uncertainty it creates. When Australia introduced its statutory best interest standard, it included a "safe harbour" if registrants followed certain prescribed steps. One of the elements of the safe harbour was that registrants take "any other steps that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client's relevant circumstances". In 2014, a new government proposed a bill that included removal of this language, following its commitments to reduce compliance costs for the financial services industry and for consumers who seek advice. The government was concerned that the catch-all provision created significant legal uncertainty and rendered the safe harbour unworkable for registrants because it was too open-ended.

Because it does not establish a clear standard for registrants to follow or for regulators or courts to enforce, it is uncertain whether the proposed standard will drive better behaviour by registrants and at what cost any changes in behaviour will come. It is not clear how registrants would modify their behaviour to comply with their interpretation of what the standard requires or whether their responses will improve outcomes for investors.

- **The CRM2 and Point of Sale Initiatives are intended to improve communication in the client-registrant relationship around costs and investment performance. Their effectiveness should be measured before we consider a best interest standard.**

  Both industry and regulators have made significant effort to implement the CSA's CRM2 and Point of Sale reforms. Before proceeding with consideration of a best interest standard, the Jurisdictions with Concerns about a BIS believe that we should determine whether those reforms are effective. These changes are intended to advance clients' understanding of how their portfolio is performing and what they are paying their registrants. No other regulatory regime has imposed these significant types of reforms.

  The BCSC is leading a CSA project to measure the impact of CRM2 and Point of Sale disclosure reforms, including their impact on registrant behaviour and client understanding of the cost and performance of their investments. This project is in the planning stage and will run through 2018.

  Only if the Jurisdictions with Concerns about a BIS determine that, together, the CRM2, Point of Sale and proposed targeted reforms are not effective, should we then revisit the question of imposing a best interest standard and how that standard should be defined.

- **Other jurisdictions that have implemented a best interest standard have done so in conjunction with targeted reforms prohibiting certain conflicted compensation models.**

  The proposed standard is unlikely to be effective without more fundamental changes to the Canadian securities industry, including reforms to compensation structures. In the U.K. and Australia, for example, reforms specific to compensation structures were implemented in addition to a qualified best interest standard. Work is being done by the CSA's mutual fund fee project in this area.

- **The proposed standard may impact interpretation of existing fiduciary standards for certain registrants, i.e. portfolio managers and investment fund managers.**

  By applying the proposed standard to all registrants, regardless of the actual nature of the relationship between the registrant and its clients, the Jurisdictions with Concerns about a BIS believe that we risk diminishing the standard currently set out in some jurisdictions' securities laws requiring portfolio managers and dealers with discretionary authority and investment fund managers to act in the best interest of their clients.

  These laws refer to registrants having to act in the client's best interest and are intended to establish true fiduciary standards. The Jurisdictions with Concerns about a BIS think adopting a standard that requires other registrants to also act in their client's best interest, but that is qualified to mean something less than a full fiduciary standard may impact the interpretation of the words "best interest" as they apply elsewhere.

Questions

36) Please indicate whether a regulatory best interest standard would be required or beneficial, over and above the proposed targeted reforms, to address the identified regulatory concerns.

37) Please indicate whether you agree or disagree with any of the points raised in support of, or against, the introduction of a regulatory best interest standard and explain why.

38) Please indicate whether there are any other key arguments in support of, or against, the introduction of a regulatory best interest standard that have not been identified above.

Please refer to Appendix H for the potential guidance for the regulatory best interest standard.

PART 9 – IMPACT ON INVESTORS, REGISTRANTS AND CAPITAL MARKETS

The proposals for regulatory action outlined in this Consultation Paper include new requirements and guidance in a number of areas aimed at enhancing the obligations of registrants toward their clients, including the proposed targeted reforms that create new requirements in various areas, such as:

- enhanced conflicts of interest provisions that require registrants to respond to conflicts in a manner that prioritizes clients' interests,
- more specific requirements surrounding collection of KYC information, including the nature of the information required to be collected as well as the frequency of updates,
- creation of a stand-alone KYP requirement, including product list obligations for firms ,
- the components of a suitability review,
- client disclosure by firms in restricted registration categories,
- client disclosure by firms offering only proprietary products, and
- the use of client-facing titles.

In addition to the proposed targeted reforms, certain jurisdictions are also considering enhancing the standard of care applicable to registrants by adding a regulatory obligation to act in their clients' best interests.

We strive to strike a balance between (i) providing protection to investors from unfair, improper or fraudulent practices and (ii) fostering fair and efficient capital markets and confidence in capital markets. In so doing, the business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized. We seek input on the anticipated impact of the proposed targeted reforms and the potential adoption of a regulatory best interest standard on investors, registrants and capital markets generally.

Questions

39) What impact would the introduction of the proposed targeted reforms and/or a regulatory best interest standard have on compliance costs for registrants?

40) What impact would the introduction of the proposed targeted reforms and/or a regulatory best interest standard have on outcomes for investors?

41) What challenges and opportunities could registrants face in operationalizing:

(i) the proposed targeted reforms?

(ii) a regulatory best interest standard?

42) How might the proposals impact existing business models? If significant impact is predicted, will other (new or pre-existing) business models gain more prominence?

43) Do the proposals go far enough in enhancing the obligations of dealers, advisers and their representatives toward their clients?

PART 10 – INTERNATIONAL DEVELOPMENTS

Background

While our core focus is Canada, we also considered certain recent and ongoing developments in the U.S., U.K., Australia and the European Union (**E.U.**) regarding the client-registrant (or equivalent) relationship. All of these jurisdictions have either implemented, or are proposing to implement, a regulatory best interest standard or fiduciary duty. International reforms tend toward a qualified best interest standard, and not an unqualified fiduciary duty. Other jurisdictions that have adopted a qualified best interest standard have also introduced restrictions on certain compensation models that create conflicts between the registrant and client.

During the consultation period, we will continue to monitor international developments.

Reforms and proposals in the U.S.

In the U.S., the Securities and Exchange Commission (**SEC**) has been considering the 2011 staff recommendations from SEC Staff on the adoption of a uniform, statutory fiduciary duty; the Staff recommendations were provided in the context of the *Dodd Frank Wall Street Reform and Consumer Protection Act of 2010* (**Dodd-Frank Act**).[39] No new standard has yet been adopted by the SEC although a notice of rulemaking is expected in October 2016, according to the SEC Office of Management and Budget's agenda.[40]

On March 1, 2013, the SEC issued a request for data in its *Release 34-69013 – Duties of Brokers, Dealers, and Investment Advisers* (**SEC 2013 release**).[41] The purpose of the SEC 2013 Release is to request quantitative data and economic analysis, relating to the benefits and costs that could result from various alternative approaches regarding the standards of conduct and other obligations of broker-dealers and investment advisers. Several comments have been made relative to the SEC 2013 Release and SEC staff have met with industry.
In October 2013, the Financial Industry Regulatory Authority (**FINRA**) issued a report titled *Report on Conflicts of Interest*,[42] in which it indicated that the adoption of a best interest of the customer standard is a key feature of a robust conflicts management framework.

Following President Obama's statement on February 23, 2015, the U.S. Department of Labor made a rulemaking proposal on April 20, 2015 (**DOL Fiduciary Rule**)[43] requiring fiduciary advice for retirement accounts and expanding the types of retirement advice covered by "fiduciary protections". The DOL Fiduciary Rule also prohibits registrants subject to the rule from receiving certain types of commissions, including embedded (trailing) commissions. An important feature of the DOL Fiduciary Rule is the "best interest contract exemption" which allows firms to continue to set their own compensation practices so long as they, among other things, commit by contract with the client to putting their client's best interest first and disclose any conflicts that may prevent them from doing so. On April 6, 2016, the Department of Labor released the final version of the DOL Fiduciary Rule,[44] which provides the U.S. Congress with 60 days to review it.

The Securities Industry and Financial Markets Association (**SIFMA**) proposed, on June 3, 2015, a best interest standard for dealer-brokers.[45] SIFMA proposes, among other things, that the traditional securities regulatory approach of establishing a rules-based, heightened standard be followed, including robust disclosure, coupled with robust examination, oversight, and enforcement by the SEC, FINRA and state securities regulators, as well as a private right of action for investors.

Finally, the Best Practices Board of the Institute for the Fiduciary Standard (**IFS**) published a number of best practices for financial representatives on September 30, 2015,[46] which IFS qualifies as concrete and verifiable, as opposed to aspirational.

39 H.R. 4173, 111th Cong. (2010) (https://www.sec.gov/about/laws/wallstreetreform-cpa.pdf).

40 http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201510&RIN=3235-AL27.

41 http://secsearch.sec.gov/search?utf8=%E2%9C%93&affiliate=secsearch&query=Release+34-69013+-+Duties+of+Brokers%2C+Dealers%2C+and+Investment+Advisers.

42 https://www.finra.org/sites/default/files/Industry/p359971.pdf.

43 Department of Labor, Notice of proposed rulemaking and withdrawal of previous proposed rule, Definition of the Term «Fiduciary»; Conflicts of interest Rule – Retirement Investment Advice, April 20, 2015 http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-08831.pdf.https://www.uschamber.com/sites/default/files/summary_of_dol_fiduciary_proposal.pdf. Under the DOL proposal, any individual receiving compensation for providing advice that is individualized or specifically directed to a particular plan sponsor, plan participant, or investment retirement account owner for consideration in making a retirement investment decision would be a fiduciary.

44 http://www.dol.gov/ebsa/regs/conflictsofinterest.html.

45 Proposed Best Interests of the Customer Standard for Broker-Dealers: http://www.sifma.org/issues/item.aspx?id=8589954937

46 http://www.thefiduciaryinstitute.org/wp-content/uploads/2015/09/BestPracticesSeptember302015.pdf.

The position of IFS rests on the premise that "fiduciary principles broadly include two sets of competence criteria. "Technical" criteria such as education, expertise and experience, and "ethical" criteria such as character, honesty and transparency. Each set of competences is vital." General best practices should therefore, in its view, be based on an affirmation that the fiduciary standard under the *Investment Advisers Act of 1940* and common law principles govern all professional advisory client relationships at all times.

Reforms and proposals in the U.K.

In the U.K., the Financial Conduct Authority (**FCA**) Handbook[47] provides that all registrants must act honestly, fairly and professionally in accordance with the best interest of the client. This best interest standard is qualified, however, since registrants are subject to a spectrum of requirements which vary according to the nature of the advice given to clients (independent, namely unbiased advice on a broad range of products, and restricted, namely advice on mainly proprietary or other specific products).

In December 2012, the FCA prohibited embedded commissions and prescribed higher professional requirements for representatives as part of its Retail Distribution Review.[48] Representatives need to subscribe to a code of ethics, hold an appropriate qualification, carry out at least 35 hours of continuing professional development a year, and hold a statement of professional standing from an accredited body. Representatives that do not meet these standards have not been able to make personal recommendations to retail customers since January 1, 2013.

In December 2014, the FCA published the findings from the first stage of its Post Implementation Review[49] which concluded that the ban on commissions has led to a reduction of product bias in representatives' recommendations, based on evidence such as a decline in the sale of products which had higher commissions pre-reform, as well as an increase in the sale of those which paid lower or no commission pre-reform.

In August 2015, UK HM Treasury and the FCA launched the Financial Advice Market Review (**FAMR**)[50] in order to explore the supply and demand sides of the market for financial advice, with the objective of examining whether there is an advice gap, centred on the supply of financial advice, the cost of advice and the revenue from providing it, and the barriers to firms providing advice, including regulatory costs and liability. The paper indicated a possible reduction in access to advice for less affluent investors. UK HM Treasury published a final report on March 14, 2016 setting out the findings of the FAMR[51] together with a number of recommendations intended to address the barriers to accessing advice, including recommendations to allow for the development by firms of more streamlined services such as mass-market automated advice models.

Reforms and proposals in Australia

In Australia, the Future of Financial Advice Review (**FAR**)[52] became mandatory on July 1, 2013 and included a qualified statutory best interest standard with a safe harbour when reasonable steps relating to know your client, know your product, suitability and proficiency are taken by the registrant. Regulation of fees and a prohibition on conflicted remuneration structures were also introduced. FAR followed in the footsteps of a report issued in 2009 by the Australian Parliamentary Joint Committee on Corporations and Financial Services, which examined the high-profile collapse of two Australian securities firms, and called for stricter regulation of financials registrants.[53]

Reforms and proposals in the European Union (MiFID II)

Amendments to MiFID II were adopted in 2014 with a target date for their coming into force in January 2018 in all E.U. member states.[54] Some of the important measures introduced by MiFID II include:

- a ban on inducements from third parties for services they carry out on behalf of a client for independent advice and portfolio management,
- disclosure of whether or not advice is being provided on an independent basis,

47 Section 2.1.1 of Financial Conduct Authority *Handbook* (http://fsahandbook.info/FSA/html/handbook/COBS).

48 http://www.fsa.gov.uk/static/pubs/guidance/fg12-15.pdf.

49 http://www.fca.org.uk/static/documents/post-implementation-review-rdr-phase-1.pdf.

50 http://www.fca.org.uk/static/documents/famr-cfi.pdf.

51 https://www.fca.org.uk/static/fca/documents/famr-final-report.pdf.

52 http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/.

53 http://www.aph.gov.au/binaries/senate/committee/corporations_ctte/fps/report/report.pdf.

54 Directive 2014/65/EU of the European Parliament and Council of 15 May 2014 on Markets in Financial Instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0065&from=EN. See also: http://europa.eu/rapid/press-release_IP-16-265_en.htm in respect of the postponement of the January 2017 target date, to January 2018.

- a requirement that investment firms providing independent advice must assess a sufficient range of financial instruments,
- restrictions for the distribution of complex products, disclosure of costs and charges, and
- product governance requirements for investment firms.

PART 11 – COMMENT PROCESS AND NEXT STEPS

The issues addressed in this Consultation Paper are important ones which affect all participants in the Canadian capital markets. Due to the broad impact of these proposed changes, we invite all interested parties to make written submissions. Once we have considered feedback received, we will propose the appropriate rule changes, as necessary. Any rule proposal will be published for comment in accordance with the regular rule-making process.

Please submit your comments in writing on or before **August 26, 2016**. If you are sending your comments by email, you should also send an electronic file containing the submissions in Microsoft Word format.

Certain CSA regulators require publication of the written comments received during the comment period. We will publish all responses received on the websites of the AMF (www.lautorite.qc.ca), the OSC (www.osc.gov.on.ca), and the ASC (www.albertasecurities.com). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Please address your comments to each of the following:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
The Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan

Please send your comments only to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

Josée Turcotte, Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario
M5H 3S8
Fax: 416-593-2318
E-mail: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec
H4Z 1G3
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Appendix A

Description of Potential Guidance – Conflicts of Interest

Responding to conflicts of interest

General

When responding to any material conflict of interest, firms and representatives must do so in a manner that prioritizes the interests of the client ahead of the interests of the firm and representative.

Conflicts of interest must either be avoided or disclosed and controlled. When they cannot be disclosed and controlled in a manner that prioritizes the interests of the client ahead of the interests of the firm and representative, conflicts of interest must be avoided. In other circumstances, they can be mitigated by disclosure and controls. However, disclosure alone is a generally inadequate mitigation mechanism because of its limited impact on a client's decision-making process.

Avoiding conflicts of interest

If a firm or a representative is unable to control a material conflict of interest in a manner that prioritizes the interests of the client ahead of the interests of the firm and representative, then the firm and representative must avoid the conflict of interest.

Avoiding a conflict may include ceasing to provide a service, not trading in or advising on a particular product or products, or ending the relationship with the client.

Controlling conflicts of interest

In order to respond to material conflicts in a manner that prioritizes the interest of the client, firms and representatives must be able to identify conflict situations and take measures to appropriately respond to them. Firms should address material conflicts of interest through proactive decision making by reference to thorough and effective conflict of interest policies and procedures. The framework for these policies and procedures will depend on a number of factors for each firm, including the size and complexity of their business and the availability of information about their clients.

The following would be key elements of a reasonable conflict management system for firms in meeting their duties to their clients:

- A tone from the top, set by the firm's UDP, executive management of the firm and the firm's board of directors (or equivalent), that emphasizes the importance of integrity when dealing with clients and the handling of conflicts of interest in a manner that prioritizes the interests of the client ahead of the interests of the firm and representative;
- articulated structures, policies and procedures to identify and respond to conflicts of interest that include:
    - a working description of conflicts of interest that enables the firm and its employees (including representatives) to understand and identify material conflicts of interest that may arise in a firm's business;
    - an internal requirement that when employees or agents of the firm (including representatives) become aware of a potential or actual material conflict of interest, the employee should immediately report the conflict of interest to the CCO of the firm;
    - adoption of a "prioritization of the client's interest" or "client's interest first" standard in a firm's code of conduct;
    - a clear delineation of firm and representatives' responsibilities with respect to identifying and managing conflicts of interest;
    - defined escalation procedures for handling potential conflict situations;
    - proactive and systematic identification of conflicts of interest in a firm's business on an ongoing and periodic basis, for example, by the creation of a conflicts inventory;
    - regular reporting of material conflicts of interest by the CCO to the firm's UDP, executive management and board of directors (or equivalent) including how the firm responded to the conflict;

and

- periodic testing of the firm's conflicts management framework;

- a requirement in the firm's compliance system to avoid material conflicts of interest if this is the only response that would be reasonable and consistent with the obligation to prioritize the interests of the client ahead of the interests of the firm and representative, even if that avoidance means foregoing an otherwise attractive business opportunity or compensation to the firm or representative;

- effective disclosure to clients;

- hiring practices that rigorously review potential representatives' history, when available, of integrity, solvency and demonstrated proficiency, as well as their compliance with Canadian securities legislation and interactions with securities regulators;

- training that focuses on integrity when dealing with clients; and

- a system that is thorough and effective in all locations of business of the firm, not just the firm's head office.

For firms that trade in or advise on proprietary products, the incentive to recommend the proprietary product results in a material conflict of interest which may increase the likelihood that the firm or representative will recommend a product that is not suitable for a client, in breach of its suitability obligation. In addition to ensuring that the products they recommend are suitable for clients, firms and representatives must respond to this conflict with thorough controls that effectively mitigate the conflict, and not rely on disclosure alone to mitigate the conflict. If the firm or a representative acting on its behalf cannot control the conflict raised by the incentive to recommend a proprietary product, it must avoid the conflict and not recommend or trade the product.

When a registrant has decided to control, instead of avoid, a conflict of interest, the onus is on the registrant to demonstrate that the controls in place ensure that the conflict is controlled in a manner that prioritizes the interests of the client ahead of the interests of the firm and representative.

Disclosing conflicts of interest

Subsection 13.4(3) of NI 31-103 requires that, if a reasonable investor would expect to be informed of an actual or potential material conflict of interest in their relationship with their firm and representative, then the firm must provide adequate disclosure to the client in a timely manner. This is in addition to the controls the firm must use to respond to the conflict.

We expect that clients will use disclosure about conflicts of interest to help inform their decision when selecting a registrant and/or evaluating the registrant's business practices, conflicts management and overall performance on an ongoing basis. As a result, the disclosure that clients (and prospective clients) receive is critical to their ability to make an informed decision about whether to engage a registrant and, having engaged the registrant, how to manage and evaluate that relationship. The following sets out certain of our expectations when firms provide disclosure to clients regarding conflicts of interest:

- for new clients, disclosure should be made prior to opening an account for the client;

- for existing clients, appropriate disclosure should be provided either as the conflict of interest occurs or, in the case of a transaction-related conflict of interest, prior to entering into the transaction with the client, such that clients are provided a reasonable amount of time to assess the conflict;

- it is the firm's responsibility to disclose material conflicts of interest in a manner that is prominent, specific, clear and meaningful to the client so that clients may properly understand them;

- firms and representatives should have a reasonable basis for believing that clients fully understand the implications and consequences of the conflict between the firm or representative and the client. This may include:

  - the relative merits and risks of options considered, but not chosen by the representative or the client;

  - any additional fees earned by the firm or representative, whether or not paid out of client funds;

  - any additional expenses incurred which are paid by the client;

  - the potential impact of these fees and expenses on the client, including, for example, the impact on investment returns over time;

- the firm must obtain from the client informed and specific consent before the transaction is entered into or the course of action is undertaken;
- after receiving client consent, the firm and representative must also be able to demonstrate that the transaction or the course of action undertaken prioritizes the interests of the client ahead of the interests of the firm and representative and complies with the registrant's other duties to the client; and
- the disclosure should include all outside business activities of the firm and applicable representatives.

In the case of institutional clients, unless the interests of the registrant are materially opposed to the interests of the institutional client based on the information the firm and representative have about the institutional client, disclosure alone may be sufficient. However, even with institutional clients, certain situations may arise where there can be no other reasonable response than avoidance.

Questions

44) Is it appropriate that disclosure by firms be the primary tool to respond to a conflict of interest between such firms and their institutional clients?

45) Are there other specific situations that should be identified where disclosure could be used as the primary tool by firms in responding to certain conflicts of interests?

For purposes of this Companion Policy, "**institutional client**" means:

(a) a Canadian financial institution or a Schedule III bank;

(b) a registered firm acting as principal;

(c) any of the following if they have waived the suitability requirement pursuant to subsection 13.3(4) of NI 31-103 (or equivalent under Canadian self-regulatory organization rules):

(i) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);

(ii) a subsidiary of any person or company referred to in paragraph (a) or (c)(i), if the person or company owns all of the voting securities of the subsidiary, except for the voting securities required by law to be owned by directors of the subsidiary;

(iii) a pension fund that is regulated by either the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada or a wholly-owned subsidiary of such a pension fund, if the net assets of the pension fund exceed $100 million;

(iv) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (c)(iii);

(v) the Government of Canada or a jurisdiction of Canada, or any Crown corporation, agency or wholly-owned entity of the Government of Canada or a jurisdiction of Canada;

(vi) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government;

(vii) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec, if the net assets of such entity exceed $100 million;

(viii) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a managed account managed by the trust company or trust corporation, as the case may be;

(ix) a person or company acting on behalf of a managed account managed by the person or company, if the person or company is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction;

(x) an investment fund if one or both of the following apply:

(i) the fund is managed by a person or company registered as an investment fund manager under the securities legislation of a jurisdiction of Canada,

(ii) the fund is advised by a person or company authorized to act as an adviser under the securities legislation of a jurisdiction of Canada;

(xi) any other person or company, other than an individual, with financial assets, as defined in section 1.1 of National Instrument 45-106 Prospectus Exemptions, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $100 million;

Questions

46) Is this definition of "institutional client" appropriate for its proposed use in the Companion Policy? For example: (i) where financial thresholds are referenced, is $100 million an appropriate threshold?; (ii) is the differential treatment of institutional clients articulated in the Companion Policy appropriate?; and (iii) does the introduction of the "institutional client" concept, and associated differential treatment, create excessive complexity in the application and enforcement of the conflicts provisions under securities legislation? If not, please explain and, if applicable, provide alternative formulations.

47) Could institutional clients be defined as, or be replaced by, the concept of non-individual permitted clients?

Guidance on specific conflict of interest situations

Compensation

The requirements set out in section 13.4 of NI 31-103 and registrants' other duties to clients do not automatically prohibit registrants from accepting remuneration from a source other than the client, including a trailing commission from a product manufacturer or a new issue commission in respect of the client's investments. Firms must assess whether any remuneration could reasonably be expected to inappropriately influence how representatives deal with their clients. Firms should ensure there are adequate controls and oversight in place to mitigate this conflict. If the conflict cannot be managed, it must be avoided. For greater certainty, if a firm or representative gives priority to maximizing or receiving the non-client source of remuneration over the interests of the client, the firm or representative will be in breach of section 13.4 of NI 31-103 and their general duties to their client.

The framework and practices that firms use to compensate their representatives, including direct tools such as commissions, performance reviews and sales targets, as well as indirect tools such as promotions and valuation of representatives' books of business for various purposes (for example, retirement and awards) (**incentive practices**), may create significant conflicts of interest between firms or representatives and their clients. The following are approaches to incentives for representatives that may support a firm's position that it has sufficiently managed the potential or actual conflicts of interest that may arise from its incentive practices. The firm should:

- properly consider if its incentive practices increase the risk of making recommendations, or accepting client orders, that are unsuitable for the client and, if so, how;
- review whether its governance and controls are adequate to control the conflicts of interest resulting from incentive practices and if governance and controls are not adequate, modify them to ensure adequate controls or modify incentive practices in order to mitigate the conflict of interest;
- maintain appropriate information and economic barriers (also known as ethical walls) between the dealing and advising activities of the firm and:
  - affiliated, related or connected securities issuers; and
  - other divisions within the firm, such as a proprietary trading division and the underwriting division;
- where a compensation grid is used, ensure that the compensation does not create incentives for the firm or representative to prioritize the interests of the firm or representative ahead of the interests of the client, and, if it does, modify the compensation grid;
- if its incentive practices are complex, consider its ability to clearly explain to the regulator the reason for such

complexity and its intended outcomes;

- incorporate incentive practices that allow some compensation for representatives even if they advise a client to "do nothing" if such recommendation is suitable. This may involve, for example, ensuring that clients are in fee-based accounts if the firm offers them and such accounts are, in fact, more suitable for the client than other types of accounts offered by the firm;

- where it offers fee-based accounts, have an internal compliance program that tests that clients are receiving the services they are entitled to under the terms of the account or client agreement with the firm;

- include specialized measures into its supervisory programs to assess whether a representative's recommendations may be influenced by thresholds in the firm's incentive structure. Specialized surveillance should be considered the more the representatives approach thresholds that, for example:

    - move the representative to a higher payout percentage in the firm's compensation grid;

    - qualify a representative to receive a back-end bonus;

    - result in a retroactive increase on the commissions earned for transactions that occurred earlier in the year if a specific target is reached; or

    - qualify a representative to participate in a recognition club, such as a "President's Club"-type recognition;

- heighten the monitoring of the suitability of representatives' recommendations on the basis of key liquidity events in an investor's lifecycle, such as commuted pension, selling a home for retirement, and inheritance, where the impact on clients of those recommendations may be particularly significant;

- maintain controls to mitigate the risk that the firm and its representatives generate more remuneration for themselves or one of their related parties by increasing the volume of transactions in the client's account. The firm should be on alert for this type of behaviour and closely monitor its representatives in order to detect detrimental practices; and

- provide for supervisory or branch management staff compensation that either is not subject to the same conflicts of interest as the representatives, or, failing that, in a manner that incorporates effective controls over potential conflicts of interest, including a mechanism that reduces compensation as a result of compliance issues, such as justified client complaints, internal findings of non-compliant practices, and regulatory or disciplinary action.

Sales practices

Currently, National Instrument 81-105 *Mutual Fund Sales Practices* (**NI 81-105**) regulates the sales practices of industry participants in connection with the distribution of securities of publicly offered mutual funds. The intention of NI 81-105 was to reduce conflicts between the interests of investors and those of dealers, their representatives and investment fund managers. NI 81-105 establishes a minimum standard of conduct to ensure that any compensation or benefits provided to participating dealers and their respective representatives are not in any way excessive so as to improperly influence the selection of mutual funds for distribution by a representative to his or her clients.

We are aware that there are sales practices and compensation arrangements that registrants engage in that are outside the scope of those specifically addressed in NI 81-105 that may give rise to the same types of conflicts of interest and could impact a registrant's ability to comply with their obligations to their clients.

We expect that registrants consider how sales practices that may arise in the distribution of any type of product may impact their ability to meet their client-facing registrant obligations, such as requirements on conflicts of interest, suitability and KYP.

By sales practices, we are referring to activities involved in the distribution of securities, including:

- the payment of money to a registrant in connection with distributing securities of an issuer;

- providing non-monetary benefit to a registrant in connection with distributing securities of an issuer; and

- paying for or making reimbursement of costs or expenses incurred by a registrant distributing securities of an issuer.

Questions

48) Are there other specific examples of sales practices that should be included in the list of sales practices above?

49) Are specific prohibitions and limitations on sales practices, such as those found in NI 81-105, appropriate for products outside of the mutual fund context? Is guidance in this area sufficient?

50) Are limitations on the use of sales practices more relevant to the distribution of certain types of products, such as pooled investment vehicles, or should they be considered more generally for all types of products?

Sales practices, for all types of securities, may create incentives that give rise to material conflicts of interest between the firm, its representatives and the client. The following are examples of sales practices giving rise to conflicts of interest:

- a firm, directly or indirectly, creates incentives for its representatives to recommend proprietary products over third-party products;
- compensation arrangements at dealer firms create incentives for dealing representatives to recommend one product over another;
- issuers or their affiliates sponsor conferences or other educational activities that may influence the products that a dealing representative ultimately recommends to its client;
- registrants receive non-monetary benefits from an issuer, such as gifts or entertainment for representatives of a firm, in connection with the representative distributing securities of the issuer; and
- registrants are paid for or reimbursed for costs or expenses they incur in connection with distributing securities of an issuer.

Registrants should consider their obligation to identify and respond to material conflicts of interest in a manner that prioritizes the interest of the client ahead of the interest of the registrant when deciding which sales practices they will engage in. For example, when considering what type of promotional activities to participate in or gifts to accept, registered firms and their representatives should assess whether such activity could create incentives that may influence recommendations that the firm's representatives would make for its clients. This influence may result in firm representatives making recommendations to their clients that prioritize their interest in receiving the incentive ahead of the client's interest in receiving unbiased advice.

Questions

51) Are there other requirements that should be imposed to limit sales practices currently used to incentivize representatives to sell certain products?

52) What type of disclosure should be required for sales practices involving the distribution of securities that are not those of a publicly offered mutual fund, which are already subject to specific disclosure requirements?

53) Should further guidance be provided regarding specific sales practices and how they should be evaluated in light of a registrant's general duties to his/her/its clients? If so, please provide detailed examples.

Referrals

We expect that, when providing a referral to their client or potential client for a financial product or service, such as products or services relating to insurance, banking and financial planning, firms and representatives will meet their general duties to their clients, the requirements under Division 3 of Part 13 of NI 31-103, and any other applicable obligations under securities legislation.

For example, if a client is invested in securities and the representative refers the client to another service provider with a view to selling the securities currently held by the client, such referral should be handled in a manner that ensures the sale of securities is suitable for the client. Similarly, if a representative, who may also be regulated by other regulatory regimes such as insurance or banking, directs a client to invest in a financial product other than a security, for example a segregated fund, and the client could reasonably assume that securities products were being considered by the representative, the representative must be able to demonstrate that he/she has managed the conflict that arises because of his/her dual licensing.

Appendix B

Description of Potential Guidance – Know Your Client

Section 13.2 of NI 31-103, among other things, requires firms and representatives to take reasonable steps to ensure that they have sufficient information regarding their client's investment needs and objectives, financial circumstances and risk profile, to meet their suitability obligation.

The KYC obligation is a fundamental obligation owed by firms and representatives to their clients and is one of the cornerstones of our investor protection regime. The KYC obligation is an extension of each firm's and representative's duties toward their clients.

Firms and representatives act as gatekeepers of the integrity of the capital markets. As part of this gatekeeper role, they are required to establish the identity of, and conduct due diligence on, their clients under the KYC obligation. KYC information forms the basis for determining whether trades in securities are suitable for investors and, more broadly, help the firm and representative understand what the investment needs and objectives of the client are. This helps protect the client, the registrant and the integrity of the capital markets.

Many clients may need assistance in articulating what their investment needs and objectives are. Clients may also provide instructions that are unclear or seem inconsistent with their KYC information. In these situations, the firm and representative may need to make further inquiries of the client. We expect particular care to be exercised by firms and representatives concerning more vulnerable and less sophisticated investors.

Our expectation is that the KYC process results in a thorough understanding of the client on an individual basis, rather than merely an attempt to stream clients into product categories offered by the firm. Firms and representatives should take the opportunity with the initial KYC review to explain to their clients their role in keeping KYC information current with the firm and representative. We also expect that the KYC process is an ongoing one which does not end after the initial KYC analysis is complete and that requires action and engagement by firms, representatives and their clients.

To meet their KYC obligation, firms and representatives must take reasonable steps to obtain sufficient information about their clients':

- investment needs and objectives, including the client's time horizon for their investments and applicable investment constraints and preferences, for example socially responsible investing and religious constraints;
- financial circumstances, including the amount and nature of all assets and liabilities, including the basic features of the client's indebtedness (such as the applicable interest rate on a loan). Information relating to the client's financial circumstances also includes net worth, income, current investment holdings, employment status, liquidity needs, spousal and dependents status, and basic tax position (we acknowledge that firms and representatives are not engaged in tax planning services unless they undertake this service explicitly); and

Question

54) To what extent should the KYC obligation require registrants to collect tax information about the client? For example, what role should basic tax strategies have in respect of the suitability analysis conducted by registrants in respect of their clients?

- risk profile for various types of securities and investment portfolios, taking into account the client's investment knowledge, experience and vulnerability.

The following sets out various practices that firms and representatives should use to evidence that they are complying with their general duties to their clients in the execution of these obligations:

- the KYC form, both at initial account opening and upon material changes, must be comprehensive, state all of the information gathered as part of the KYC process, and be dated and signed by both the client and the representative. A copy must be provided to the client;
- the KYC form should include plain language explanations of what each entry relates to and what each term means, including financial objectives, risk profile (and related terms), types of assets and liabilities;

- if it is reasonably apparent that information relating to the client's relevant circumstances is incomplete or inaccurate, the representative should make reasonable inquiries of the client to obtain complete and accurate information;

- a procedure whereby the firm or representative makes reasonable attempts to contact the client in order to refresh the client's KYC information at least once every 12 months since without adequate and timely KYC information, registrants cannot meet their suitability obligation to clients;

- a procedure to address situations where a client does not provide some or all of the required KYC information;

Question

55) To what extent should a representative be allowed to open a new client account or move forward with a securities transaction if he or she is missing some or all of the client's KYC information? Should there be certain minimum elements of the KYC information that must be provided by the client without which a representative cannot open an account or process a securities transaction?

- the firm's and representative's approach in ascertaining their clients' relationship toward investment risk (the client's "risk profile") should include a thorough exploration of the relevant subjective and objective factors, preferably through the use of charts, graphs and examples. In addition, we would expect that any explanation of risk should include an explicit explanation of potential financial losses, not just different levels of volatility, and risk-adjusted returns.

  Firms should ensure that, in particular:

  - they have a thorough process for assessing the level of risk a client is willing and able to take, including:
    - assessing a client's capacity for loss;
    - identifying clients that are suited to placing their money in cash deposits or guaranteed products because they are unwilling or unable to accept the risk of loss of capital;
    - appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers;
  - tools (including questionnaires), where used, are well designed to arrive at a meaningful risk profile for the client that the firm and representative can use when making recommendations to the client as part of the suitability process, and any limitations recognised and mitigated;
  - any questions and answers that are used to establish the level of risk a client is willing and able to take, and descriptions used to check this, are fair, clear and not misleading;
  - they have a thorough and flexible process for ensuring investment selections are suitable given a client's investment objectives and financial situation (including the level of risk they are willing and able to take) as well as their investment knowledge and experience;
  - representatives understand the nature and risks of products or assets selected for clients; and
  - representatives avoid assisting clients respond to questions that relate to the personal preferences of the client relating to risk (i.e., the subjective factors) in order to avoid influencing the client's personal preferences in this aspect of the analysis.

  Firms and representatives should use professional judgment to combine all of these various factors to determine a client's risk profile. Arriving at this overall determination is the primary objective of the risk profiling exercise and firms should ensure their process is supportable and reliable;

Question

56) Should additional guidance be provided in respect of risk profiles?

- the firm's and representative's approach in ascertaining their clients' financial objectives should include an opportunity for clients to express their financial objectives in their own terms. Clients' financial objectives, especially for retail clients, are often goal-oriented and outcomes-based objectives, such as saving for retirement to maintain a certain lifestyle, increasing wealth by a certain percentage in a specific number of years, investing for purchasing a home, or investing for post-secondary education of the investor's children. We expect registrants to have a meaningful understanding of what their client's actual investment needs and objectives are, and it is not sufficient to simply ask the client if their investment needs and objectives fall into one of a short list of pre-determined product-focused options, such as "growth", "income" or "balanced", or limiting the KYC process to a mechanical attribution of clients into such limited options;

- the representative's approach in respect of the KYC process should not include attempting to influence a client in a manner that prioritizes the interests of the registrant ahead of the interests of the client. For example, if the representative encourages the client to increase his or her stated capacity for risk in order to achieve the required rate of return so that the client meets his or her stated investment needs and objectives, this would not comply with the KYC and suitability obligations or the general duties owed to clients. We would expect the representative to advise the client that, for example, more saving will be needed to meet his or her stated objectives or the client should lower his or her expectation in respect of the original financial objective;

- the firm's and representative's approach in respect of the KYC process should not be limited to a narrow review of the client's liquid and financial assets. This would likely not comply with the KYC obligation or the general duties owed to clients. Rather, the representative should understand the type and basic terms of the client's financial liabilities; and

- firms and representatives should not simply assume that their client will understand the KYC form and related discussions or interactions. The obligation is on the firm and representative to confirm that the client has a reasonable understanding of the KYC form, including its completed content, and the outcome of the KYC process.

Question

57) Are there circumstances where it may be appropriate for a representative to collect less detailed KYC information? If so, should there be additional guidance about whether more or less detailed KYC information may need to be collected, depending on the context?

Appendix C

Description of Potential Guidance – Know Your Product – Representative

The KYP obligation is a fundamental obligation owed by firms and representatives to their clients and is one of the cornerstones of our investor protection regime. The KYP obligation is an extension of each firm's and representative's general duties to its clients.

Registrants must meet the KYP obligation, together with the KYC obligation, in order to make a suitability determination. To meet the KYP obligation, registrants should have an in-depth knowledge of all securities that they buy and sell for, or recommend to, their clients. The KYP obligation requires not only knowledge of the particular attributes of a security, viewed in isolation, but also an understanding of the impact of the proposed amount of the investment, the proposed investment strategy involving the security, and the role of the security in the client's broader portfolio.

In order to comply with their KYP obligation, representatives must:

- understand the specific structure, features, product strategy, costs and risks of each product their firm trades or advises on, including an understanding of how the products compare to each other;

- understand the specific structure, features, product strategy, costs and risks of each product that they recommend or that their client purchases or sells; and

- understand the impact of all fees, costs and charges connected to the product, the client's account and the investment strategy.

In most cases, each product a representative recommends, or that their client purchases or sells, will be from their firm's approved product list.

If a representative recommends or considers a product that is not on his/her firm's approved product list, he/she must conduct a product review and have the appropriate authorizations and approvals from his/her firm to do so before recommending that the client buy or sell the security.

Appendix D

Description of Potential Guidance – Know Your Product – Firm

Firms must ensure that their representatives have the ability, through policies and procedures, training tools, guides or other methods, to comply with their KYP obligation. This obligation requires an understanding of the impact of the role of any given security in the client's broader portfolio. The firms' product list is in almost all cases determinative for the representatives' recommendations to clients. At the onset, this would also include identifying whether the firm has a proprietary or mixed/non-proprietary product list.

A "proprietary product list" is a product list that only includes proprietary products.

A "mixed/non-proprietary product list" is a product list that includes both proprietary and non-proprietary products, or only non-proprietary products, that the firm is registered to advise on or trade in, which a firm has selected in accordance with policies and procedures that require a fair and unbiased market investigation, a product comparison and an optimization process based on the investment needs and objectives of its clients.

Questions

58) Should we explicitly allow firms that do not have a product list to create a product review procedure instead of a shelf or would it be preferable to require such firms to create a product list?

59) Would additional guidance with respect to conducting a "fair and unbiased market investigation" be helpful or appreciated? If so, please provide any substantive suggestions you have in this regard.

60) Would labels other than "proprietary product list" and "mixed/non-proprietary product list" be more effective? If so, please provide suggestions.

The product list identification does not apply to firms in their dealings with institutional clients, but we expect representatives to have sufficient proficiency to understand the structure, product strategy, features and risks of each security before they make a recommendation to, or accept an instruction from, an institutional client.

Mixed/Non-Proprietary Product Lists

If a firm intends to offer a mixed/non-proprietary product list, such a list must be developed in accordance with policies and procedures that require a fair and unbiased market investigation, a product comparison and an optimization process based on the investment needs and objectives of its clients. The following sets out one possible approach to satisfying this requirement:

- At least once every 12 months, the firm identifies the client profile(s) of its client base by drawing on available KYC information about its clients, or, in cases where KYC information is not collected by firms where clients have waived the suitability requirement in accordance with subsection 13.3(4) of NI 31-103, the terms of engagement of the firm by such client and any other relevant information collected as part of such client relationship.
    - New firms that intend on securing clients that fall within a particular client profile or firms seeking to expand their client profile should establish target client profiles for their new clients and ensure that such clients fall within the parameters of such target client profiles.
    - For dealers offering execution order services only, this should be based on information that the firm has about its client base, acknowledging that it does not have information about the client's investment needs and objectives as they do not collect this information about clients.
- The firm must undertake a fair and unbiased investigation of the market of products that the firm is registered to advise or trade in order to satisfy itself it has a range of products that will most likely meet the investment needs and objectives of its clients based on its client profiles. This investigation should take into account factors including structure, product strategy, features, risks, cost, liquidity, performance, and whether the product manufacturer or issuer is related or connected to the registrant (**market investigation**).
    - Although a market investigation need not take into account the entire universe of products that the firm is registered to advise on and/or trade in, the firm should identify those products on the market that it concludes, using its professional judgment, that are most likely to meet the investment needs and objectives of its clients given the firm's client profiles. For example, if the firm is registered as a

mutual fund dealer and identifies itself as a firm that offers a mixed/non-proprietary product list, it should create this list by objectively evaluating a broad range of mutual funds, for example funds with active and passive investment strategies, funds with higher and lower costs, and proprietary and non-proprietary funds.

- To demonstrate that they have conducted a meaningful market investigation, firms may consider using research reports produced by external research report providers to identify products that may meet the investment needs and objectives of the firm's client profiles. Firms should consider conducting initial and ongoing due diligence on the research report providers they intend to rely on.

- The firm should then evaluate its current product list to determine whether it offers a range and diversity of products that are representative of the range and diversity of products canvassed in the market investigation. The firm should evaluate whether its product list includes a range of products most likely to meet the investment needs and objectives of its clients based on its client profiles (the **product comparison**).

  - One way a firm can conduct a Product Comparison is by benchmarking, at appropriate intervals (e.g., once every 12 months), its shelf of products against the products identified in the market investigation to establish their competitiveness against key criteria, such as the history of risk-adjusted outperformance or underperformance over an appropriate period; features; fees, costs and other charges related to the product or being invested in the product; and risk factors that apply to the security or investment strategy (**benchmarking criteria**).

- If the firm's current product list does not include those products most likely to meet the investment needs and objectives of its clients based on its client profile as identified in the product comparison, it should include those products on its product list, if it is able to do so (**product list optimization**).

Question

61) Is the expectation that firms complete a market investigation, product comparison or product list optimization in a manner that is "most likely to meet the investment needs and objectives of its clients based on its client profiles" reasonable? If not, please explain your concern.

In order to evidence the firm's compliance with these requirements, we expect that the firm prepare a written report that describes:

- its internal processes for the market investigation, product comparison and product list optimization, and

- how such processes result in the firm selecting a product list that meets the definition of a mixed/non-proprietary product list (**product list compliance report**). The initial product list compliance report, and any material amendments made to it, should be approved by the firm's UDP and board of directors (or equivalent) before finalization and implementation.

We also remind firms that in the event of a conflict of interest between the firm and its clients resulting from its product list analysis, the firm must prioritize the interests of its clients ahead of the interests of the firm (or its representatives).

For greater certainty, the mere existence of other products which could be "better" or more suitable for its clients than the products on the firm's shelf would not be considered to be a failure to comply with KYP requirement related to its mixed/non-proprietary product list, if the firm's product list development process is reasonable, unbiased and based on sound, professional judgment.

Proprietary Product Lists

A firm that has identified itself as having a proprietary product list must still compare all of the products on its list against key criteria to establish their relative competitiveness to each other for purposes of assisting its representatives in conducting suitability analysis for their clients. Such key criteria should include, at a minimum, the benchmarking criteria. For a firm that only offers one product on its proprietary product list (e.g., an exempt market dealer that only distributes units of one pooled fund), there is no comparison required of such product.

If a firm's product list meets the definition of a proprietary product list, it should not hold itself out otherwise, either explicitly or implicitly.

General expectations for product lists

In the case of firms that include proprietary products on their product list, the due diligence processes involved in the selection of the products, and in the case of firms that have a mixed/non-proprietary product list, the evaluation of the products on the product list, in the case of all firms, should be conducted with appropriate information and economic barriers between the firm and the issuers of such proprietary products. An appropriate due diligence process is conducted in an objective manner that prioritizes the interests of the clients ahead of the interests of the registrant or the affiliated, related or connected securities issuers.

Firms should allow enough flexibility for representatives to consider other securities products that are not on the firm's product list, under specific circumstances. For example, when a new client's current portfolio of securities products are not on the firm's product list or the client requests the representative to consider a specific securities product not on the list, our expectation is that that the representative would be required to conduct a product review before making a recommendation about the security or advising the client on its relative merits. If a representative of a firm with a proprietary product list considers a non-proprietary securities product as a result of one or more of the reasons above, this does not mean that the firm is expected to meet the shelf development process expected of firms with a mixed/non-proprietary product list.

We expect that larger firms, especially those with a mixed/non-proprietary product list, would need to establish a product review committee to undertake the due diligence required in product list development and product evaluation. It may be impractical for smaller firms to establish a product review committee but, in such cases, they must establish a governance structure that allows them to perform the due diligence process set out above.

For purposes of this Companion Policy:

- "**connected issuer**" has the meaning set out in NI 33-105;
- "**managed account pooled fund**" means, in respect of a firm providing discretionary advice to managed account clients, a proprietary investment fund managed by the firm that allows the firm to provide model portfolio or related advisory services to its clients if all of the following apply:

  (a) the portfolio securities of the pooled fund are selected using the process set out for a mixed/non-proprietary product list;

  (b) the firm qualifies, or could qualify, for the exemption set out in section 8.6 of NI 31-103; and

  (c) there are no fees, charges or commissions payable by the client with respect to the pooled fund;
- "**NI 33-105**" means National Instrument 33-105 *Underwriting Conflicts*;
- "**proprietary product**" of a firm means a security that is issued by the firm or an issuer that is affiliated to, or that is a connected issuer or related issuer of, the firm, or the representative of the firm, but excludes managed account pooled funds; and
- "**related issuer**" has the meaning set out in NI 33-105.

Appendix E

Description of Potential Guidance – Suitability

Section 13.3 of NI 31-103 requires firms and representatives to ensure that, before they make a recommendation to, or accept an instruction from, their clients to buy or sell a security, or make a purchase or sale of a security for their clients' managed account, the purchase or sale is suitable for the clients.

The suitability obligation is a fundamental obligation owed by firms and representatives to their clients and is one of the cornerstones of our investor protection regime. The suitability obligation is an extension of firms' and representatives' duties to their clients.

Components of the suitability obligation

In order for firms and representatives to comply with the suitability obligation, they must ensure that the securities transaction or investment strategy recommended to, or instructed by the client, satisfies the following three components of suitability:

- basic financial suitability;
- investment strategy suitability; and
- product selection suitability.

Basic Financial Suitability

Prior to making a recommendation or accepting an order, the first step of the suitability process should be to conduct an investigation into the basic financial strategies that clients could use to meet their investment needs and objectives, given their financial circumstances and risk profile. This should include basic strategies beyond transacting in securities, such as paying down high interest debt or directing cash into a savings account.

If the representative determines that non-securities product strategies are more aligned with the client's investment needs and objectives, given the client's financial circumstances and risk profile, and therefore better for the client, they should inform their client accordingly.

A representative may in certain circumstances advise that another financial product, such as an insurance or banking product, is the preferred product or strategy, or may refer the client to one of these providers, which results in the client purchasing such products. If the client has a reasonable basis to believe that the representative was also considering securities products or strategies in providing this advice, the representative must be able to substantiate why the recommendation not to buy a securities product is suitable for the client.

Investment Strategy Suitability

If, after having performed a basic financial suitability review, the registrant determines that transacting in securities is most likely to meet the investment needs and objectives of the client, the registrant must:

- formulate a basic asset allocation strategy that is suitable or confirm that the client's existing asset allocation strategy is suitable. This will again require specific consideration of the client's KYC information. We would expect that the representative would analyze whether the client's portfolio will generate an expected risk-adjusted rate of return sufficient to meet the client's investment needs and objectives, taking into account the client's financial circumstances and risk profile. Formulating or confirming an asset allocation strategy for the client will allow firms and representatives who are restricted in the kinds of products that they can offer, for example mutual fund dealers, exempt market dealers, scholarship plan dealers, and restricted dealers, to satisfy themselves that their products would be suitable for the client and that a particular investment would not exceed reasonable concentration limits for that asset class and for any one security in that asset class;
- identify a target rate of return clients will need in order to achieve their investment needs and objectives, assessing the target rate against the clients' risk profile and resolving any mismatches. If the risk required to achieve the investment needs and objectives is higher than the client's risk capacity, the registrant must review the investment needs and objectives together with the client; and
- assess whether any other investment strategy that the client requests, or that the representative recommends, is a suitable investment strategy for the client. The term "investment strategy" is to be interpreted broadly. For example, investment strategies would include a recommendation, or a client request, to purchase securities

using borrowed money or to engage in day trading. These recommendations would fall within the term "investment strategy" irrespective of whether or not they result in a securities transaction or involve specific securities.

Representatives must consider costs when assessing suitability. If a firm offers more than one type of account, it should ensure, in evaluating the suitability of an investment strategy, that clients are in the most suitable account type for them.

Product Selection Suitability

If the client order, or representative recommendation, also involves a specific security, the representative must ensure that the security is (i) suitable, and (ii) most likely to meet the client's investment needs and objectives, given their financial circumstances and risk profile, based on a review of:

- the securities on the firm's approved product list,
- other securities not on the firm's product list that are already in the client's portfolio at the firm, and
- other securities that the client inquires about.

Registrants must consider the impact of any compensation paid to the registrants by the client or a third party in relation to the product in assessing whether the product is suitable for the client.

Question

62) What, if any, unintended consequences could result from setting an expectation in the context of the suitability obligation that registrants must identify products both that are suitable and that are the most likely to achieve the investment needs and objectives of the client? If unintended consequences exist, do the benefits of this proposal outweigh such consequences?

General Suitability Guidance

The obligation to ensure a recommendation is of a product that is most likely to achieve the investment needs and objectives of a client does not necessarily mean that there is only one best strategy or product, as applicable, for the client. There could be several strategies or products that are equally suitable and that are equally effective in meeting the investment needs and objectives of the client.

In cases where a product is recommended, and the product benefits the firm or representative but not the client, such recommendation would not comply with the suitability obligation and the registrant's general duties to his/her clients. Switching clients between series of the same investment fund because this results in higher compensation for the firm or representative, with no benefit to the client would not comply with this requirement either. Similarly, if a product is recommended because it benefits the firm or representative, but there is another equally suitable product on the firm's product list that would be less costly for the client, such recommendation would not comply with the suitability obligation or the registrant's general duties to his/her/its clients.

In most cases, it will be insufficient to conduct a suitability analysis by simply checking that the risk rating of the securities product is consistent with the client's risk profile. We expect firms and representatives to take an account portfolio approach to suitability and that the risk rating of any specific security is only one input in the analysis of the representative in the overall risk of the portfolio held at the firm.

When determining compliance with the suitability requirement, only the information relevant at the time of the suitability analysis will be taken into account by the regulator. Subsequent events or poor performance will not inform whether the suitability analysis at a given time met the statutory requirements. However, subsequent events or poor performance may require a new suitability review: see "Frequency" below.

In order to evidence compliance with the suitability requirement, registrants must be able to produce evidence that they had a reasonable basis for concluding that the suitability analysis was conducted in a manner that complies with the registrants' other duties toward their clients, including their conflict of interest obligations. The scope and nature of the client engagement and a client's investment needs and objectives, financial circumstances and risk profile will be central to the breadth of analysis required. The documentation should record all relevant facts, including key assumptions, the scope of data considered, and the analysis performed.

All firms and representatives, including exempt market dealers and scholarship plan dealers and their representatives, should consider the suitability of the proposed investment in the context of the client's entire financial circumstances as determined through the KYC process. In general, firms and representatives cannot exclude such client information in their suitability analysis and be in compliance with their duties to their clients.

Frequency

In order to comply with their suitability obligation, firms and representatives must perform a suitability analysis of the client's portfolio in the account when:

- accepting an order from the client to buy, sell, hold or exchange securities or using (or ceasing to use) an investment strategy involving a security;
- recommending that the client buy, sell, hold or exchange securities or using (or ceasing to use) an investment strategy involving a security; and
- any of the following events occur while the client retains an account with the firm:
    - securities are received into the client account by deposit or transfer;
    - there is a change in representative or firm for the account;
    - there are material changes in the client's KYC information that the registrant knew or reasonably should have known;
    - a significant market event affecting capital markets to which the client is exposed;
    - a material change in the risk profile of an issuer, the securities of which are held in the client's account, whether determined by external credit ratings or other internal or external risk assessment mechanisms;
- in any case, at least once every 12 months, or more frequently if the investment strategy proposed by the representative requires more frequent monitoring.

Questions

63) Should we provide further guidance on the suitability requirement in connection with ongoing decisions to hold a position?

64) Should we provide further guidance on the frequency of the suitability analysis in connection with those registrant business models that may be based on one-time transactions? For example, when should a person or entity in such a relationship no longer be a client of the registrant for purposes of this ongoing obligation to conduct suitability reviews of the client's account?

Appendix F

Description of Potential Guidance – Relationship Disclosure

Section 14.2 of NI 31-103 requires firms to deliver to their clients all information that a reasonable investor would consider important about the client's relationship with the firm (including the client's relationship with the firm's representatives). Firms must comply with this requirement in a manner that is consistent with the firms' general duties to their clients.

General Nature of Relationship

Firms must provide a description of the actual nature of the client-registrant relationship in easy-to-understand terms.

Firms must provide a description of the conflicts of interest that the firm is required to disclose to a client under securities legislation pursuant to paragraph 14.2(2)(e) of NI 31-103. This description should include, but not be limited to, and to the extent applicable, clear disclosure that the firm:

- has been retained by third party issuers to find buyers for their securities;
- acts as the sole distributor for the issuers;
- offers securities that are generally illiquid and explains the various risk factors related to such illiquidity, for example lack or shallowness of a resale market or less market-driven valuation of the security.

Firms must (where applicable) include disclosure that they have an obligation to assess whether a purchase or sale of a security is suitable for a client prior to executing the transaction or at any other time pursuant to paragraph 14.2(2)(k) of NI 31-103. This disclosure should include:

- a description of the approach used by the firm to assess the client's KYC information and a statement that the client will be provided with a copy of the KYC information that is obtained from the client and documented at time of account opening and when there are material changes to the information; and
- a statement indicating that the firm will assess the suitability of investments in the client's account upon the occurrence of the applicable triggering events (both regulatory and contractual, if any), with such triggering events to be identified.

Proprietary Product List Disclosure

Firms must disclose whether they offer proprietary products only or a mixed/non-proprietary list of products. Firms that offer a mixed/non-proprietary list of products should disclose the proportion of proprietary products they offer. Where the product list of the firm meets the definition of a "proprietary product list", the firm must clearly disclose to its clients, prominently and in plain language at the time of account opening (or before any product or service is provided), that:

- their product list is restricted to proprietary products and it will only recommend proprietary products; and
- as a result, the suitability analysis conducted by the firm and its representatives does not consider:
    - the larger market of non-proprietary products; and
    - whether such non-proprietary products are better, worse or equal in meeting the client's investments needs and objectives.

This obligation does not apply when firms deal with institutional clients.

Restricted Registration Category Disclosure

Firms must clearly identify not only what products or services they can provide to the client pursuant to paragraph 14.2(2)(b) of NI 31-103, but they should also identify in general terms what products and services they do not, or cannot, provide to their clients.

In particular, firms that are mutual fund dealers, exempt market dealers, scholarship plan dealers or restricted dealers/advisers must clearly disclose to their clients, prominently and in plain language at the time of account opening (or before any product or service is provided), that they only offer, as a result of their registration category, a limited range of products and, as a result, the suitability analysis conducted by the firm and its representatives does not consider:

- a full range of securities products; and
- whether such other types of products are better, worse or equal in meeting the client's investments needs and objectives.

General Disclosure Guidance

Any disclosure given to a client must be prominent, specific and clear. The disclosure must be sufficient to be meaningful to the client such that the client fully understands the disclosure, including the implications and consequences for the client of the content being disclosed. Registrants should have a reasonable basis for concluding that a client fully understands the implications and consequences for the client of the content being disclosed.

Appendix G

Description of Potential Guidance – Designations

No representative should hold him or herself out to the public in any manner that deceives or misleads, or could reasonably be expected to deceive or mislead, a client or any other person as to his/her proficiency, qualifications or scope of product or service offering. This includes using designations in client facing communications.

We expect firms to have policies and procedures on financial designations that will promote greater transparency for potential and existing clients, particularly more vulnerable and less sophisticated investors. These policies and procedures should be adapted to the firm's business model and offerings (i.e., products, services and account types) and include guidance on what financial designations representatives may use and any restrictions or prohibitions in this area, including any requirement that firms pre-approve a designation before a representative can use it. These policies and procedures should be clearly communicated to the firm's representatives and enforced by the firm.

Appendix H

Description of Potential Guidance – Proposed Regulatory Best Interest Standard

Table of Contents

Part 1 – Introduction and definitions

This Companion Policy sets out how the **[TBD]** (**we**, **us**, **our**, or the **[x]**) interprets and applies **[insert name and title of legislative reference]** (**[Legislative Reference]**).

For purposes of this Companion Policy:

- "**firm**" means a registered adviser and/or registered dealer firm in **[the jurisdiction]**;
- "**registrant**", unless the context requires otherwise, means a firm and its representatives; and
- "**representative**" has the meaning set out in the **[Acts]**.

Unless defined in **[Legislative Reference]** or in this Companion Policy, terms used in **[Legislative Reference]** and in this Companion Policy have the meaning given to them in Canadian securities legislation, including National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), National Instrument 14-101 *Definitions* and other local rules and instruments.

Part 2 – Standard of care for advisers and dealers and their representatives

2.1 Summary

Firms and their representatives must deal fairly, honestly and in good faith with their clients and act in their clients' best interests (the **Standard of Care**). The conduct expected of a firm and representative in meeting her, his or its Standard of Care is that of a prudent and unbiased firm or representative (as applicable), acting reasonably. In complying with the Standard of Care, registrants must be guided by the following principles:

1. Act in the best interests of the client

2. Avoid or control conflicts of interest in a manner that prioritizes the client's best interests

3. Provide full, clear, meaningful and timely disclosure

4. Interpret law and agreements with clients in a manner favourable to the client's interest where reasonably conflicting interpretations arise

5. Act with care

An explanation of staff's interpretation of the Standard of Care, including the guiding principles, is provided below.

2.2 General

The Standard of Care requires that registrants deal fairly, honestly and in good faith with their clients and act in their clients' best interests. The Standard of Care requires that firms and representatives act in a manner that is focused on achieving what is best for their clients, including placing the interests of their clients ahead of their own.

The conduct expected of firms and representatives in meeting their Standard of Care is that of a prudent and unbiased firm or representative (as applicable) acting reasonably. This is an objective, not a subjective, standard. As such, it is not sufficient for firms and representatives to determine that they personally have the impression that a particular decision, approach or course of action complies with the Standard of Care. Instead, the firm or representative should form an opinion as to what a prudent and unbiased firm or representative (as applicable), acting reasonably, would do in the circumstances in order to comply with the Standard of Care.

The Standard of Care is a general statement of the fundamental obligation of firms and representatives under Canadian securities legislation toward their clients. It derives its authority from the regulator's rule-making powers, and reflects the purposes and principles set out in the Acts.

2.3 Application and scope

The Standard of Care applies to all registrants in **[the Jurisdictions]** in respect of all clients of the registrant, including:

- all registered dealers and registered dealing representatives, whether or not members of any self-regulatory organization (**SRO**), such as the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**), that are dealers (or representatives) in Canada;
- all registered advisers, registered advising representatives and registered associate advising representatives;
- all registrants in a fiduciary relationship with any client or whose client is an accredited investor, permitted client or institutional client;
- firms, not just for their own firm-level activities and behaviour, but also diligently overseeing the activity of their representatives for their compliance with the Standard of Care.

Question

65) Should the Standard of Care apply to unregistered firms (e.g., international advisers and international dealers) that are not required to be registered by reason of a statutory or discretionary exemption from registration, unless the Standard of Care is expressly waived by the regulator?

The scope of the Standard of Care extends to all aspects of the client-registrant relationship. The guidance contained in this Companion Policy, along with the other existing client-related rules and related guidance set out in Canadian securities legislation, should not be viewed as exhaustive of the scope and application of the Standard of Care. In this sense, since these other client-related rules and guidance are extensions of the Standard of Care, such standard supplements, and informs the interpretation of, these other rules and guidance. This requires that registrants comply with the various express regulatory requirements that apply to them under securities legislation (for example, the requirements related to KYC, KYP, suitability and conflicts of interest) in a manner that also complies with the Standard of Care. Any guidance provided in this Companion Policy is supplemental to any other guidance issued in respect of such express regulatory requirements (for example, guidance contained in Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*).

Firms' and representatives' dealings with their clients outside of express regulatory requirements are also subject to the Standard of Care to the extent such dealings involve securities or the client has a reasonable belief that the firm and

representative are considering securities in the dealings with the client. To the extent of any overlap between complying with the Standard of Care and complying with any other regulatory requirement under securities legislation, firms and representatives must comply with both the Standard of Care and such regulatory requirement.

The Standard of Care is a foundational standard of conduct. As such, neither it nor the guidance set out in this Companion Policy explicitly identifies all instances of non-compliant conduct by firms and representatives. However, as a foundational standard of conduct, the Standard of Care establishes the core values against which (i) all client-focused securities rules and guidance are applied (including, for example, the interpretation of KYC, KYP, suitability and conflicts of interest), and (ii) conduct in new and unforeseen client situations should be evaluated.

Question	
66)	**Do you believe that the Standard of Care is inconsistent with any current element of securities legislation? If so, please explain.**

In assessing whether or not the firm or representative has complied with the Standard of Care, we will take into account only the information known by the firm or representative, or which the firm or representative should reasonably have known, at the time of the conduct in question.

In accordance with section 11.5 of NI 31-103, we expect that firms and representatives will be able to proactively demonstrate their compliance with the Standard of Care and will be able to produce books and records to evidence such compliance for compliance reviews of the Jurisdictions and the SROs.

For greater certainty, the Standard of Care does not apply to underwriting activities and corporate finance advisory services in respect of issuer clients, controlling shareholders or persons seeking to influence control of an issuer.

Question	
67)	**Do you agree that the Standard of Care should not apply to the underwriting activity and corporate finance advisory services described above? If not, please explain.**

2.4 Policy objectives

This section sets out the policy objectives of the Standard of Care. The objectives are used by us as a tool to assist in interpreting and applying the Standard of Care and related obligations and should be used by firms and representatives as a guide when applying the Standard of Care to their specific situations.

The Standard of Care is intended to:

- reinforce that, in almost all cases, the firm's and representative's primary role and focus is one of providing advice, which requires fostering a culture of advice that is focused on placing the client's best interests first, not simply product or service sales. This means that in the tension between advice and sales cultures, advice in the client's best interest is paramount;

- be a necessary condition for the provision of advice that is unbiased, client-focused, and portfolio-based, which aims to benefit the client in meeting his, her or its investment needs and objectives, as those are determined by reference to the client's KYC information; and

- enhance and maintain trust and confidence of investors in capital markets in general, and in registrants in particular, so that investors are confident to seek out the advice or other services and products they need to meet their investment needs and objectives.

The Standard of Care is not intended to:

- interfere with the registration categories under Canadian securities legislation or the scope of application of those categories;

- prohibit firms from charging clients for their services;

- prohibit the offering of proprietary products by firms;

- guarantee that clients' securities investments never lose value, result in the "best" or "highest" returns for the client, or result in the lowest risk;

- always result in the lowest cost product on the firm's shelf being recommended to clients since the lowest cost product may not, based on an analysis of a client's investment needs and objectives, always be in the client's best interest; or

- interfere with the ability of courts to apply common law doctrines relating to, for example, fiduciary duty, negligence or contract law principles, to the client-registrant relationship (for further discussion on this point, see below under section 2.5 "Relevance of other legal obligations").

2.5 Relevance of other legal obligations

In addition to the Standard of Care, firms and representatives are required to comply with a variety of other requirements under securities legislation and SRO rules, including:

- NI 31-103,

- National Instrument 33-105 *Underwriting Conflicts*,

- to the extent applicable, IIROC's "Dealer Member Rules" and the MFDA's "MFDA Rules", and

- other securities and derivatives legislation in the jurisdictions.

- Firms and representatives may also be subject to a variety of common law obligations. Depending on the nature of the client-registrant relationship and other factors, these obligations may fall under several different areas of common law, including:

- fiduciary duty,

- tort (e.g., negligence, fraudulent misrepresentation), and/or

- contract law.

A failure by a firm or representative to comply with obligations either under securities legislation or at common law may mean, among other things, that the firm or representative has failed to comply with its Standard of Care. For example, where a court has found that a firm has acted negligently in providing securities investment advice to a client, this may result in us concluding that the firm, and the representative that provided the negligent advice, have breached their Standard of Care.

It is not our intention for the Standard of Care to automatically result in firms and representatives owing a common law fiduciary duty to their clients. The Standard of Care is a regulatory conduct standard, not a statutory fiduciary duty, and as such, we are not intending to define fiduciary duty as it applies to firms and representatives. Whether or not, for purposes of private claims by clients against their firm or representative, a given client-registrant relationship is interpreted as a common law fiduciary relationship will continue to be primarily within the purview of the courts.

Part 3 – Guiding principles

We expect that in complying with the Standard of Care, firms and representatives be guided by five guiding principles. The following sets out our interpretation of the guiding principles.

Principle 1:

Act in the best interests of the client

All registrants must deal with their clients in a manner that is in their clients' best interests and to place their clients' interests ahead of their own. This requires them to always act in a manner that is focused on achieving what is best for their clients, including (where applicable) how best to achieve the clients' investment needs and objectives at the time the dealings with the client occur. While registrants must have policies and procedures whose objective is to deal with their clients in their best interests, registrants should also monitor their clients' outcomes to confirm that their dealings with their clients are in fact achieving what is best for the client in the context of the client-registrant relationship (including meeting the investment needs and objectives of the client).

Principle 2:

Avoid or control conflicts of interest in a manner that prioritizes the client's best interests

The obligation to identify and respond to material conflicts of interest is among the most fundamental obligations owed by firms to their clients and is one of the cornerstones of our investor protection regime. This obligation is expressly prescribed for firms in Division 2 of Part 13 of NI 31-103 and is, for all firms and representatives, an extension of their Standard of Care.

Registrants must respond to conflicts of interest between them and their clients in a manner that (i) is in the best interests of the client, and (ii) prioritizes the best interests of the client over the interests of the registrant. If registrants cannot respond to a conflict of interest in the manner set out above, they must avoid the conflict of interest. Firms should institute policies and procedures to reinforce that client interests are paramount and supersede the firm's and the representative's interests in all aspects of the client-registrant relationship. Registrants must clearly place their clients' interests first.

When deciding how to respond to a conflict of interest involving clients, only avoidance or controls (but not disclosure alone in most cases) are responses that, by themselves, can be fully effective in mitigating conflicts of interest. Disclosure alone is generally inadequate since clients (especially non-institutional clients) are often unable to fully understand such disclosure or effectively incorporate it into their decision-making process.

Principle 3:

Provide full, clear, meaningful and timely disclosure

Firms must provide full, clear, meaningful and timely disclosure of all material facts relating to the client relationship and the products and/or services provided in a manner that is in the best interests of the client and that prioritizes the interests of the client over the interests of the firm and representative. This means that firms should confirm that, among other things, all advertising and promotional material, whether provided to current or prospective clients, is in plain language, balanced and not misleading.

Principle 4:

Interpret law and agreements with clients in a manner favorable to the client's interest where reasonably conflicting interpretations arise

Firms and representatives should comply with the letter, as well as the spirit and intent, of Canadian securities legislation relating to, and contract(s) with, their clients. If there is any material ambiguity or material discretion inherent in such legislation or contracts, the ambiguity should be interpreted, and the discretion should be exercised, in a manner that (i) is in the best interests of the client, and (ii) prioritizes the interests of the client over the interests of the firm and representative.

Question

68) Do you think this expectation is appropriate when the level of sophistication of the firm and its clients is similar, such as when firms deal with institutional clients?

The Standard of Care (and the requirements flowing from it) cannot be excluded by way of contract between the firm and client. Any attempt to do so, whether directly or indirectly, for example by limiting liability in respect of a breach of the Standard of Care, itself constitutes a breach of the Standard of Care.

Principle 5:

Act with care

Firms and representatives should exercise the degree of care, diligence and skill that a reasonably prudent and unbiased firm or representative (as applicable) would exercise in the circumstances. This obligation to act with care recognizes the high risk to the client, including the foreseeability of significant loss, when dealing with a firm or representative who does not comply with this obligation. In order to act with care, a firm or representative should:

- accept instructions from the client, or make recommendations to the client, and carry them out with care, diligence and skill;

- comply with industry and regulatory policies, procedures and requirements that apply to the firm and representative;
- have in place an effective organizational system that promotes compliance with such policies, procedures and requirements; and
- recognize that significantly more care and diligence is required for at-risk or vulnerable clients, such as inexperienced investors, seniors, discretionary clients, etc.

Appendix I

List of Consultation Questions

1. Is this general approach to regulating how registrants should respond to conflicts optimal? If not, what alternative approach would you recommend?

2. Is the requirement to respond to conflicts "in a manner that prioritizes the interest of the client ahead of the interests of the firm and/or representative" clear enough to provide a meaningful code of conduct? If not, how could the requirement be clarified?

3. Will this requirement present any particular challenges for specific registration categories or business models?

4. Do all registrants currently have the proficiency to understand their client's basic tax position? Would requiring collection of this information raise any issues or challenges for registrants or clients?

5. Should the CSA also codify the specific form of the document, or new account application form, that is used to collect the prescribed KYC content?

6. Should the KYC form also be signed by the representative's supervisor?

7. Is this general approach to regulating how representatives should meet their KYP obligation optimal? If not, what alternative approach would you recommend?

8. The intended outcome of the requirement for mixed/non-proprietary firms to engage in a market investigation and product comparison is to ensure the range of products offered by firms that present themselves as offering more than proprietary products is representative of a broad range of products suitable for their client base. Do you agree or disagree with this intended outcome? Please provide an explanation.

9. Do you think that requiring mixed/non-proprietary firms to select the products they offer in the manner described will contribute to this outcome? If not, why not?

10. Are there other policy approaches that might better achieve this outcome?

11. Will this requirement raise challenges for firms in general or for specific registration categories or business models? If so, please describe the challenges.

12. Will this requirement cause any unintended consequences? For example, could this requirement result in firms offering fewer products? Could it result in firms offering more products?

13. Could these requirements create incentives for firms to stop offering non-proprietary products so that they can fit the definition of proprietary firm?

14. Should proprietary firms be required to engage in a market investigation and product comparison process or to offer non-proprietary products?

15. Do you think that categorizing product lists as either proprietary and mixed/non-proprietary is an optimal distinction amongst firm types? Should there be other characteristics that differentiate firms that should be identified or taken into account in the requirements relating to product list development?

16. Do you agree with the requirement to consider other basic financial strategies?

17. Will there be challenges in complying with the requirement to ensure that a purchase, sale, hold or exchange of a product is the "most likely" to achieve the client's investment needs and objectives?

18. Should there be more specific requirements around what makes an investment "suitable"?

19. Will the requirement to perform a suitability assessment when accepting an instruction to hold a security raise any challenges for registrants?

20. Will the requirement to perform a suitability analysis at least once every 12 months raise challenges for specific registrant categories or business models? For example, a client may only have a transactional relationship with a firm.

In such cases, what would be a reasonable approach to determining whether a firm should perform ongoing suitability assessments?

21. Should clients receive a copy of the representative's analysis regarding the client's target rate of return and his or her investment needs and objectives?

22. Will the requirement to perform a suitability review for a recommendation not to purchase, sell, hold or exchange a security be problematic for registrants?

23. Do you agree with the proposed disclosure required for firms registered in restricted categories of registration? Why or why not?

24. Do you agree with the proposed disclosure required for firms that offer only proprietary products? Why or why not?

25. Is the proposed disclosure for restricted registration categories workable for all categories identified?

26. Should there be similar disclosure for investment dealers or portfolio managers?

27. Would additional guidance about how to make disclosure about the relationship easier to understand for clients be helpful?

28. To what extent should the CSA explicitly heighten the proficiency requirements set out under Canadian securities legislation?

29. Should any heightening of the proficiency requirements for representatives be accompanied by a heightening of the proficiency requirements for CCOs and UDPs?

30. Will more strictly regulating titles raise any issues or challenges for registrants or clients?

31. Do you prefer any of the proposed alternatives or do you have another suggestion, other than the status quo, to address the concern with client confusion around representatives' roles and responsibilities?

32. Should there be additional guidance regarding the use of titles by representatives who are "dually licensed" (or equivalent)?

33. Should we regulate the use of specific designations or create a requirement for firms to review and validate the designations used by their representatives?

34. Are these proposed clarifying reforms consistent with typical current UDP and CCO practices? If not, please explain.

35. Is there any reason not to introduce a statutory fiduciary duty on these terms?

36. Please indicate whether a regulatory best interest standard would be required or beneficial, over and above the proposed targeted reforms, to address the identified regulatory concerns.

37. Please indicate whether you agree or disagree with any of the points raised in support of, or against, the introduction of a regulatory best interest standard and explain why.

38. Please indicate whether there are any other key arguments in support of, or against, the introduction of a regulatory best interest standard that have not been identified above.

39. What impact would the introduction of the proposed targeted reforms and/or a regulatory best interest standard have on compliance costs for registrants?

40. What impact would the introduction of the proposed targeted reforms and/or a regulatory best interest standard have on outcomes for investors?

41. What challenges and opportunities could registrants face in operationalizing:

    (i) proposed targeted reforms?

    (ii) a regulatory best interest standard?

42. How might the proposals impact existing business models? If significant impact is predicted, will other (new or pre-existing) business models gain more prominence?

43. Do the proposals go far enough in enhancing the obligations of dealers, advisers and their representatives toward their clients?

44. Is it appropriate that disclosure by firms be the primary tool to respond to a conflict of interest between such firms and their institutional clients?

45. Are there other specific situations that should be identified where disclosure could be used as the primary tool by firms in responding to certain conflicts of interests?

46. Is this definition of "institutional client" appropriate for its proposed use in the Companion Policy? For example: (i) where financial thresholds are referenced, is $100 million an appropriate threshold?; (ii) is the differential treatment of institutional clients articulated in the Companion Policy appropriate?; and (iii) does the introduction of the "institutional client" concept, and associated differential treatment, create excessive complexity in the application and enforcement of the conflicts provisions under securities legislation? If not, please explain and, if applicable, provide alternative formulations.

47. Could institutional clients be defined as, or be replaced by, the concept of non-individual permitted clients?

48. Are there other specific examples of sales practices that should be included in the list of sales practices above?

49. Are specific prohibitions and limitations on sales practices, such as those found in NI 81-105, appropriate for products outside of the mutual fund context? Is guidance in this area sufficient?

50. Are limitations on the use of sales practices more relevant to the distribution of certain types of products, such as pooled investment vehicles, or should they be considered more generally for all types of products?

51. Are there other requirements that should be imposed to limit sales practices currently used to incentivize representatives to sell certain products?

52. What type of disclosure should be required for sales practices involving the distribution of securities that are not those of a publicly offered mutual fund, which are already subject to specific disclosure requirements?

53. Should further guidance be provided regarding specific sales practices and how they should be evaluated in light of a registrant's general duties to his/her/its clients? If so, please provide detailed examples.

54. To what extent should the KYC obligation require registrants to collect tax information about the client? For example, what role should basic tax strategies have in respect of the suitability analysis conducted by registrants in respect of their clients?

55. To what extent should a representative be allowed to open a new client account or move forward with a securities transaction if he or she is missing some or all of the client's KYC information? Should there be certain minimum elements of the KYC information that must be provided by the client without which a representative cannot open an account or process a securities transaction?

56. Should additional guidance be provided in respect of risk profiles?

57. Are there circumstances where it may be appropriate for a representative to collect less detailed KYC information? If so, should there be additional guidance about whether more or less detailed KYC information may need to be collected, depending on the context?

58. Should we explicitly allow firms that do not have a product list to create a product review procedure instead of a shelf or would it be preferable to require such firms to create a product list?

59. Would additional guidance with respect to conducting a "fair and unbiased market investigation" be helpful or appreciated? If so, please provide any substantive suggestions you have in this regard.

60. Would labels other than "proprietary product list" and "mixed/non-proprietary product list" be more effective? If so, please provide suggestions.

61. Is the expectation that firms complete a market investigation, product comparison or product list optimization in a manner that is "most likely to meet the investment needs and objectives of its clients based on its client profiles" reasonable? If not, please explain your concern.

62. What, if any, unintended consequences could result from setting an expectation in the context of the suitability obligation that registrants must identify products both that are suitable and that are the most likely to achieve the investment needs and objectives of the client? If unintended consequences exist, do the benefits of this proposal outweigh such consequences?

63. Should we provide further guidance on the suitability requirement in connection with ongoing decisions to hold a position?

64. Should we provide further guidance on the frequency of the suitability analysis in connection with those registrant business models that may be based on one-time transactions? For example, when should a person or entity in such a relationship no longer be a client of the registrant for purposes of this ongoing obligation to conduct suitability reviews of the client's account?

65. Should the Standard of Care apply to unregistered firms (e.g., international advisers and international dealers) that are not required to be registered by reason of a statutory or discretionary exemption from registration, unless the Standard of Care is expressly waived by the regulator?

66. Do you believe that the Standard of Care is inconsistent with any current element of securities legislation? If so, please explain.

67. Do you agree that the Standard of Care should not apply to the underwriting activity and corporate finance advisory services described above? If not, please explain.

68. Do you think this expectation is appropriate when the level of sophistication of the firm and its clients is similar, such as when firms deal with institutional clients?

1.5 Notices from the Office of the Secretary

1.5.1 Edward Furtak et al.

FOR IMMEDIATE RELEASE
April 21, 2016

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

AND

IN THE MATTER OF
EDWARD FURTAK, AXTON 2010 FINANCE CORP., STRICT TRADING LIMITED, RONALD OLSTHOORN, TRAFALGAR ASSOCIATES LIMITED, LORNE ALLEN and STRICTRADE MARKETING INC.

TORONTO – The Commission issued its Reasons and Decision in the above named matter.

A copy of the Reasons and Decision dated April 20, 2016 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
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)

1.5.2 Argosy Securities Inc. and Keybase Financial Group Inc.

FOR IMMEDIATE RELEASE
April 21, 2016

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

AND

IN THE MATTER OF
ARGOSY SECURITIES INC. AND KEYBASE FINANCIAL GROUP INC.

TORONTO – The Commission issued its Reasons for Decision in the above named matter.

A copy of the Reasons for Decision dated April 20, 2016 is available at www.osc.gov.on.ca.

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1-877-785-1555 (Toll Free)

1.5.3 MM Café Franchise Inc. et al.

FOR IMMEDIATE RELEASE
April 21, 2016

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

AND

IN THE MATTER OF
MM CAFÉ FRANCHISE INC., DCL HEALTHCARE PROPERTIES INC., CULTURALITE MEDIA INC., CAFÉ ENTERPRISE TORONTO INC., TECHOCAN INTERNATIONAL CO. LTD., 1727350 ONTARIO LTD., MARIANNE GODWIN, DAVE GARNET CRAIG, FRANK DELUCA, ELAINE CONCEPCION and HAIYAN (HELEN) GAO JORDAN

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

1. Staff shall disclose to the Respondents documents and things in the possession or control of Staff that are relevant to the hearing by May 20, 2016;

2. Staff shall provide to the Respondents its witness list and witness summaries and indicate any intent to call an expert witness including the name of the expert witness and the issue on which the expert will be giving evidence by August 25, 2016;

3. This proceeding is adjourned to a Second Appearance to be held at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto, Ontario, commencing September 6, 2016 at 3:30 p.m., or as soon thereafter as the hearing can be held.

A copy of the Order dated April 21, 2016 is available at www.osc.gov.on.ca.

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

1.5.4 Weizhen Tang

FOR IMMEDIATE RELEASE
April 22, 2016

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

AND

IN THE MATTER OF
WEIZHEN TANG

TORONTO – The Commission issued its Reasons and Decision and an Order pursuant to Subsections 127(10) and 127(1) of the Securities Act in the above noted matter.

A copy of the Reasons and Decision dated April 21, 2016 and the Order dated April 21, 2016 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
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)

1.5.5 Catalyst Capital Group Inc. and Corus Entertainment Inc.

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

AND

IN THE MATTER OF
AN APPLICATION BY THE CATALYST CAPITAL GROUP INC.

AND

IN THE MATTER OF
CORUS ENTERTAINMENT INC.

TORONTO – The Commission issued its Reasons for Decision in the above named matter.

A copy of the Reasons for Decision dated April 25, 2016 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 AGF Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund mergers – approval required because mergers do not meet the criteria for pre-approved reorganizations and transfers in National Instrument 81-102 – the merger is not a "qualifying exchange" or a tax-deferred transaction under the Income Tax Act – merger to otherwise comply with pre-approval criteria, including securityholder vote, IRC approval.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.5(1)(b), 19.1.

April 18, 2016

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

AND

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

AND

IN THE MATTER OF
AGF INVESTMENTS INC. (AGF) AND THE MERGING FUNDS (as defined below) AND THE CONTINUING FUNDS (as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from AGF, the manager of each of the funds discussed below (AGF, together with the funds discussed below are referred to as the **Filers**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for merger approvals (**Merger Approval**) pursuant to clause 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (**NI 81-102**).

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

(a) the Ontario Securities Commission is the principal regulator for the Application, and

(b) the Filers have provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Yukon and Nunavut.

Interpretation

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

The following terms shall have the following meanings:

AGF AIF	refers to the AGF funds' annual information form dated April 17, 2015, as amended
AGF SP	refers to the AGF funds' simplified prospectus dated April 17, 2015, as amended
Circular	refers to the management information circular described in this Application
Continuing Funds	refers to AGF Canadian Small Cap Fund and AGF Global Equity Fund
Funds	refers, collectively, to the Merging Funds and the Continuing Funds, and each, a **Fund**
IRC	refers to the independent review committee of a Fund or Funds
Merger Effective Date	refers to on or about May 20, 2016 – the expected date for effecting the Proposed Mergers (as defined below)
Merging Funds	refers to AGF Global Value Fund and AGF Canadian Small Cap Discovery Fund
Tax Act	refers to the *Income Tax Act* (Canada)

Representations

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

The Filers

1. The head office of each of the Filers is located in Toronto, Ontario. The Filers are not in default of securities legislation in any jurisdiction of Canada.

2. AGF is the investment fund manager and trustee of each of the Funds.

3. AGF is registered as an investment fund manager in each of Ontario, Québec, Alberta, British Columbia and Newfoundland and Labrador.

4. Each of the Funds is an open-end mutual fund trust established under the laws of Ontario by a declaration of trust pursuant to which AGF is the trustee.

5. Each of the Funds is a reporting issuer under the applicable securities legislation of each jurisdiction in Canada.

6. Various series of the Funds are qualified for distribution pursuant to the AGF SP and AGF AIF.

The Proposed Mergers

7. The Funds proposed to be merged (the **Proposed Mergers**) are set forth below:

MERGING FUND	CONTINUING FUND
AGF Canadian Small Cap Discovery Fund	AGF Canadian Small Cap Fund
AGF Global Value Fund	AGF Global Equity Fund

8. AGF currently proposes to effect the Proposed Mergers on or about May 20, 2016 (the **Merger Effective Date**).

9. AGF has determined that the Proposed Mergers will not be a material change to the Continuing Funds.

10. Unitholders of the Merging Funds will continue to have the right to redeem securities of the Merging Funds at any time up to the close of business immediately before the Merger Effective Date.

11. The Proposed Mergers will not be implemented on a tax-deferred basis as described in paragraph 5.6(1)(b) of NI 81-102.

12. Except as noted above, the Proposed Mergers would otherwise comply with all of the other conditions of section 5.6 of NI 81-102.

Reasons for Merger Approval

13. Section 5.5(1)(b) of NI 81-102 requires the approval of the Principal Regulator before a reorganization or transfer of assets of a mutual fund is implemented, if the transaction will result in the unitholders of the mutual fund becoming unitholders in another mutual fund and the reorganization or transfer of assets does not satisfy the criteria for pre-approved mergers, reorganizations and transfers set out in section 5.6 of NI 81-102.

14. Approval of the Proposed Mergers is required because the Proposed Mergers do not satisfy all of the criteria for pre-approved reorganizations and transfers as set out in section 5.6 of NI 81-102, namely because the Proposed Mergers will not be tax-deferred transactions as described in paragraph 5.6(1)(b) of NI 81-102. Except for this reason, the Proposed Mergers will otherwise comply with all of the other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

15. The Filers have determined that it would not be appropriate to effect the Proposed Mergers as a tax-deferred transaction for the following reasons: (i) each Merging Fund has sufficient loss carry-forwards to shelter any net capital gains that could arise for it on the taxable disposition of its portfolio assets on its Proposed Merger; (ii) effecting each Proposed Merger on a taxable basis would preserve the net losses and loss carry-forwards in the relevant Continuing Fund; and (iii) effecting each Proposed Merger on a taxable basis will have no other tax impact on the relevant Continuing Fund.

Approval of the Mergers

16. Meetings of unitholders of the Merging Funds were held on or about April 13, 2016, and unitholders of the Merging Funds approved the Proposed Mergers.

17. AGF will be responsible for the costs associated with the Proposed Mergers. Costs and expenses associated with the Proposed Mergers, including the costs of the unitholder meetings, will be borne by AGF and will not be charged to the Funds. The costs of the Proposed Mergers include transaction costs associated with any portfolio liquidations, legal, printing, mailing and regulatory fees, as well as proxy solicitation costs.

18. No sales charges will be payable by unitholders of the Funds in connection with the Proposed Mergers.

19. A press release describing the Proposed Mergers has been issued. The press release, material change report and amendments to the simplified

prospectus, annual information form and fund facts, which give notice of the Proposed Mergers, have been filed via SEDAR.

20. AGF is not entitled to seek the approval of the respective IRCs for the Proposed Mergers due to the fact that one or more conditions of section 5.6 of NI 81-102 will not be met as required by section 5.3(2)(c) of NI 81-102.

21. Pursuant to National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**), on March 9, 2016, the IRCs reviewed the Proposed Mergers on behalf of the Merging Funds and the Continuing Funds and the process to be followed in connection with the Proposed Mergers, and have advised AGF that in the IRCs' opinion, having reviewed each of the Proposed Mergers as a potential conflict of interest, following the process proposed, each of the Proposed Mergers achieves a fair and reasonable result for each of the Merging Funds and the Continuing Funds.

22. The relevant notices of the meetings and Circular have been mailed to unitholders of the relevant Funds and filed on SEDAR in accordance with applicable securities legislation. The Circular includes disclosure concerning the Continuing Funds resulting from the Proposed Mergers, including information regarding fees, expenses, investment objectives, the portfolio manager, redemptions, income tax considerations, distribution policies and net asset values. The Circular also includes disclosure where unitholders can obtain the most recent continuous disclosure documents of the Merging Funds and the Continuing Funds. Also accompanying the Circular delivered to unitholders is a Fund Facts document of the relevant Continuing Fund.

23. Following each Proposed Merger, the relevant Continuing Fund will continue as a publicly offered open-end mutual fund and the Merging Fund will be wound up as soon as reasonably practicable.

24. AGF believes that the Proposed Mergers will be beneficial to unitholders of each Fund for the following reasons:

    (a) it is expected that each Proposed Merger will reduce duplication and create operational efficiencies;

    (b) following the Proposed Mergers, each Continuing Fund will have more assets, thereby allowing for increased portfolio diversification opportunities; and

    (c) each Continuing Fund will benefit from its larger profile in the marketplace.

Decision

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

The decision of the principal regulator under the Legislation is that the Merger Approval is granted.

"Darren McKall"
Manager,
Investment Funds Branch and Structured Products
Ontario Securities Commission

2.1.2 1948565 Ontario Inc.

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).

April 20th, 2016

1948565 Ontario Inc.
200 Bay Street
Royal Bank Plaza, South Tower, Suite 3800
Toronto ON M5J 2Z4

Dear Sirs/Mesdames:

Re: 1948565 Ontario Inc. (the Applicant) – application for a decision under the securities legislation of Alberta, Manitoba, Ontario, Québec, and Saskatchewan (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:

(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 of 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.

"Michael Tang"
Acting Manager
Ontario Securities Commission

2.1.3 Viterra Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – issuer deemed to be no longer a reporting issuer under securities legislation – issuer has outstanding debt held by more than 50 securityholders worldwide.

Applicable Legislative Provisions

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

March 31, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NOVA SCOTIA, AND NEWFOUNDLAND AND LABRADOR
(THE JURISDICTIONS)

AND

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

AND

IN THE MATTER OF
VITERRA INC.
(THE FILER)

DECISION

Background

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 Filer is not a reporting issuer in the Jurisdictions (the Requested Relief).

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

(a) the Financial and Consumer Affairs Authority of Saskatchewan is the principal regulator for this application; and

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

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

Representations

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

1. The Filer was originally incorporated under the *Canada Business Corporations Act* (the CBCA) and was continued under the *Business Corporations Act* (Ontario) effective October 1, 2014. Its head office is located at 2625 Victoria Avenue, Regina, Saskatchewan, S4T 7T9;

2. The Filer is a reporting issuer in each of the Jurisdictions. The Filer is not in default of any of the requirements of the Legislation in any of the Jurisdictions;

3. On December 17, 2012, through its indirect wholly-owned subsidiary, 8115222 Canada Inc. (Glencore Purchaser), Glencore plc (Glencore) acquired all of the issued and outstanding common shares of the Filer (the Common Shares) pursuant to a statutory plan of arrangement under the CBCA. On January 1, 2013, the Filer and Glencore Purchaser amalgamated and currently carry on business under the name Viterra Inc. Effective January 1, 2016, the Filer amalgamated with its wholly-owned subsidiary, Twin Rivers Technologies Entreprises de Transformation de Graines Oléagineuses du Québec Inc., with the amalgamated company continuing under the name Viterra Inc.;

4. The authorized capital of the Filer consists of an unlimited number of Common Shares. All of the issued and outstanding Common Shares of the Filer are held by Glencore or its affiliates. There are no outstanding securities of the Filer convertible into Common Shares;

5. As of February 29, 2016, the Filer has one class of debt securities outstanding, being an aggregate US$400,000,000 principal amount of 5.950% unsecured notes due August 1, 2020 (the Notes). The Notes were issued pursuant to a trust indenture dated August 4, 2010 between the Filer, the guarantor parties named therein, and Deutsche Bank Trust Company Americas, as trustee (the Trustee), as supplemented or amended from time to time (the Indenture);

6. The Notes are not convertible or exchangeable into Common Shares. The Notes were initially issued on a private placement basis, primarily in the United States pursuant to exemptions from the registration requirements of the *United States Securities Act of 1933*, with a relatively small

portion sold in Canada to accredited investors pursuant to exemptions from applicable Canadian securities laws. The Notes have not been listed for trading on any stock exchange or marketplace;

7. In July 2012, the Filer and Glencore solicited the consent of the holders of the Notes to amend the Indenture (the Amendments). The Amendments included, among other things, that (a) the Filer would only have to deliver to the Trustee and each holder of Notes a copy of any financial statements that the Filer is required to file on SEDAR; and (b) Glencore and Glencore International AG (GIAG) would provide a full and unconditional guarantee of the payment, within 15 days of when due, of the principal and interest owing by the Filer to holders of the Notes. The Amendments were approved by the holders of Notes and on December 17, 2012, the Amendments were implemented pursuant to the fourth supplemental indenture between the Filer, Glencore, GIAG and the Trustee (the Fourth Supplemental Indenture). As a result, Glencore and GIAG have fully and unconditionally guaranteed the Notes;

8. In approving the Amendments in July 2012, the holders of Notes expressly consented to certain amendments to the reporting obligations set out in the Indenture. The implementation of the Amendments pursuant to the Fourth Supplemental Indenture had the effect of eliminating the contractual obligation of the Filer to provide periodic financial or other reports in the event that the Filer ceased to be a reporting issuer. As a result, the Indenture does not require ongoing reporting to the Trustee or to holders of Notes once the Filer is no longer subject to reporting requirements under applicable Canadian securities laws;

9. On May 30, 2014, the Filer obtained an order from the FCAA (the Prior Order), as principal regulator for and on behalf of the other Jurisdictions, relieving the filer, subject to the conditions and restrictions set out therein, from certain requirements of, inter alia, National Instrument 51-102 *Continuous Disclosure Obligations* including filing financial statements that would otherwise be required under NI 51-102 on the basis that the Filer instead file on SEDAR copies of all financial statements and certain other filings made by Glencore pursuant to the Listing Rules and the Disclosure Rules and the Transparency Rules of the United Kingdom Financial Conduct Authority (the FCA) (collectively, the U.K. Disclosure Rules);

10. Pursuant to the Prior Order, the Filer currently files on SEDAR in electronic format, among other documents, copies of all documents Glencore is required to file with the FCA under the U.K. Disclosure Rules, at the same time or as soon as practicable after such documents are made public on the online facility known as the National Storage Mechanism, provided that the Filer is not required to file on SEDAR prospectuses submitted to the FCA for securities offerings that do not take place in Canada;

11. Upon granting of the Requested Relief, the Filer will no longer be subject to reporting obligations under applicable Canadian securities laws or under the terms of the Indenture;

12. The Notes are issued in book-entry form and are represented by global certificates registered in a nominee name of The Depositary Trust Company (DTC), with beneficial interests therein recorded in records maintained by DTC and its participants as financial intermediaries that hold securities on behalf of their clients. In accordance with industry practice and custom, the Filer has obtained from Broadridge Financial Solutions Inc. (Broadridge) a geographic survey of beneficial holders of Notes as of October 7, 2015 (the Geographic Report), which provides information as to the number of noteholders and Notes held in each jurisdiction of Canada and in the United States and other foreign jurisdictions. Broadridge advises that its reported information is based on securityholder addresses of record identified in the files provided to it by the financial intermediaries holding Notes;

13. The Geographic Report covers approximately 92% of the outstanding principal amount of Notes for a total of US$367,636,000 and reports a total of 118 beneficial holders residing in the following jurisdictions:

    (a) 8 in Ontario holding US$14,675,000 principal amount of Notes;

    (b) 5 in British Columbia holding US$151,000 principal amount of Notes;

    (c) 4 in Quebec holding US$135,000 principal amount of Notes;

    (d) 94 in the United States holding US$349,025,000 principal amount of Notes; and

    (e) 7 in other foreign jurisdictions holding US$3,650,000 principal amount of Notes;

    Broadridge has confirmed that its searches are unable to report on 100% of the geographic ownership of the Notes;

14. In addition to obtaining the Geographic Report, the Filer made diligent enquiry with the Trustee to identify the names and locations of financial intermediaries holding the remaining approximate 8% of Notes not covered by the Geographic Report. In this regard, the Filer obtained from the Trustee a security position report indicating the position of each financial intermediary holding

Notes through DTC as of October 7, 2015 (being the date of the Geographic Report) (the DTC Position Report). The DTC Position Report provides the names of all financial intermediaries that are reported by DTC as holding Notes and covers the entire US$400 million principal amount of Notes;

15. Based on the information contained in the DTC Position Report, to the knowledge of the Filer after diligent enquiry, US$385,969,000 principal amount of Notes (representing approximately 96.4922% of the total principal amount of Notes) are held by financial intermediaries in the United States, and US$14,031,000 principal amount of Notes (representing approximately 3.5077% of the total principal amount of Notes) are held by financial intermediaries in Canada;

16. The DTC Position Report does not provide information as to beneficial ownership of Notes, and the Filer was advised by the Trustee that it is unable to access such information or make further inquiries in this regard. Due to discrepancies between the DTC Position Report and the Geographic Report, the Filer is unable, despite diligent enquiry, to precisely identify the financial intermediaries holding the remaining approximate 8% of the Notes, or to obtain information with respect to the number or jurisdiction of residence of beneficial holders of such Notes;

17. Based on the information contained in the Geographic Report, there are 17 known Canadian beneficial holders of Notes represent approximately 4.0695% of the principal amount of Notes reported, or approximately 3.7402% of the total principal amount of Notes. Extrapolating the reported numbers from the Geographic Report across the full US$400,000,000 principal amount of Notes would imply a total of at least 18 Canadian holders of Notes holding an aggregate of approximately US$16,278,000 principal amount of Notes;

18. The only securities issued by the Filer that are owned by third parties are the Notes, which are fully and unconditionally guaranteed by Glencore and GIAG. The Notes entitle the holders only to the payment of principal and interest, and do not entitle the holders to receive or to convert into other Common Shares (or any other equity securities), or to participate in the distribution of the assets of the Filer upon a liquidation or winding up;

19. The Notes are rated by rating agencies based on the guarantees and credit support provided by Glencore and GIAG rather than by any independent assessment of the condition and performance, financial or otherwise, of the Filer. The Filer has confirmed that the Notes will continue to be rated by at least one recognized rating agency upon the cessation by the Filer of its reporting under Canadian securities laws for the foreseeable future;

20. There is no obligation or covenant in the Indenture for the Filer to maintain its status as a reporting issuer or the equivalent in any of the Jurisdictions or to file financial statements or any other continuous disclosure documentation of itself, Glencore or GIAG on SEDAR;

21. The Filer issued a news release on March 21, 2016 announcing that it has applied to each of the Decision Makers for a decision that it is not a reporting issuer in the applicable Jurisdiction and, if those decisions are granted, the Filer will no longer be a reporting issuer in any jurisdiction of Canada;

22. The Filer is not eligible to surrender its status as a reporting issuer in British Columbia pursuant to British Columbia Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* because the Filer has more than 50 securityholders, being the holders of the Notes. Similarly, and because the Notes are beneficially owned, directly or indirectly, by more than 50 securityholders worldwide, the Filer is not eligible to file under the simplified procedure under CSA Staff Notice 12-307 *Application for a Decision that an Issuer is not a Reporting Issuer*;

23. No securities of the Filer, including debt securities, are listed, traded or quoted in Canada or another country on a marketplace (as defined in National Instrument 21-101 *Marketplace Operations*) or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported. In the 12 months before this application, the Filer has not taken any steps that indicate there is a market for its securities in Canada;

24. The Filer has no current intention to distribute any securities to the public in Canada, nor to seek financing by way of a public offering or private placement of its securities in Canada; and

25. Upon granting of the Requested Relief, the Filer will not be a reporting issuer or the equivalent in any jurisdiction of Canada.

Decision

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

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that the Filer provides a copy of the continuous disclosure documents of Glencore referred to in paragraph 10 upon request of any holder of Notes.

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

2.1.4 EFT Canada Inc.

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).

April 21, 2016

EFT Canada Inc.
801 Eglinton Avenue West, Suite 401
Toronto, Ontario M5N 1E3

Attention: Jonathan Pasternak

Dear Sirs/Mesdames:

Re: EFT Canada Inc. (the Applicant) – Application for a Decision under the Securities Legislation of Ontario and Alberta (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:

(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 of 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.

Yours truly,

"Sonny Randhawa"
Manager, Corporate Finance
Ontario Securities Commission

2.1.5 OANDA Corporation ULC

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application by investment dealer (Filer) for relief from prospectus requirement in connection with distribution of contracts for difference and OTC foreign exchange contracts (collectively, CFDs) to investors, subject to terms and conditions – Filer acts as both market intermediary and as principal or counterparty to CFD transaction with client – Filer registered as investment dealer and a member of the Investment Industry Regulatory Organization of Canada (IIROC) – Filer complies with IIROC rules and IIROC acceptable practices applicable to offerings of CFDs – Filer seeking relief to permit Filer to offer CFDs to investors on the basis of clear and plain language risk disclosure document rather than a prospectus – risk disclosure document contains disclosure substantially similar to risk disclosure document required for recognized options in OSC Rule 91-502 Trades in Recognized Options, the regime for OTC derivatives contemplated by former proposed OSC Rule 91-504 OTC Derivatives (which was not adopted), and the Quebec Derivatives Act – Relief consistent with relief contemplated by OSC Staff Notice 91-702 Offerings of contracts for difference and foreign exchange contracts to investors in Ontario (OSC SN 91-702) – Relief revokes and replaces relief previously granted to Filer in October 2011 in respect of distribution of CFDs – Relief granted, subject to terms and conditions as described in OSC SN 91-702 including four-year sunset clause

Legislation Cited

Securities Act, R.S.O. 1990, c.S.5, as am., s. 53 and 74(1)
NI 45-106 Prospectus Exemptions, s. 2.3
OSC Rule 91-502 Trades in Recognized Options
OSC Rule 91-503 Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario
Proposed OSC Rule 91-504 OTC Derivatives (not adopted)

March 24, 2016

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

AND

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

AND
IN THE MATTER OF
OANDA (CANADA) CORPORATION ULC
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the Filer and its respective officers, directors and representatives be exempt from the prospectus requirement in respect of the distribution of contracts for difference and over-the-counter (**OTC**) foreign exchange contracts (collectively, **CFDs**) to investors resident in Canada (the **Requested Relief**) subject to the terms and conditions below.

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

(a) the Ontario Securities Commission is the principal regulator for this application (the Principal Regulator); and

(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 each of the other provinces and territories of Canada, other than the provinces of Québec and Alberta, (the **Non-Principal Jurisdictions**, and, together with the **Jurisdiction**, the **Applicable Jurisdictions**).

Interpretation

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

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

The Filer

1. The Filer is a corporation incorporated under the laws of Alberta with its principal office in Toronto, Ontario.

2. The Filer is registered as a dealer in the category of investment dealer in each of the provinces and territories of Canada, and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**).

3. The Filer does not have any securities listed or quoted on an exchange or marketplace in any jurisdiction inside or outside of Canada.
4. The Filer is not, to the best of its knowledge, in default of any requirements of securities legislation in Canada or IIROC Rules or IIROC Acceptable Practices (as defined below).

5. The Filer currently offers OTC derivatives in which the underlying interests consist of currencies and other asset classes (**CFDs**) to "accredited investors" as defined in National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) and to retail investors pursuant to *In the Matter of OANDA (Canada) Corporation ULC* dated March 27, 2012 (the **Existing Relief**).

6. The Filer wishes to offer CFDs to investors in the Applicable Jurisdictions on the terms and conditions described in this Decision. For the Interim Period (as defined below), the Filer is seeking the Requested Relief in connection with this proposed offering of CFDs in Ontario and intends to rely on this Decision and the Passport System described in MI 11-102 to offer CFDs in the Non-Principal Jurisdictions.

7. In Québec, the Filer is qualified by the Autorité des marches financiers (**AMF**) pursuant to section 82 of the *Derivatives Act* (Québec) (the **QDA**) and authorized to market certain forward contracts and CFDs offered to the public, subject to the terms and conditions of its qualification decision and related provisions of the QDA.

8. The Filer understands that staff of the Alberta Securities Commission have public interest concerns with CFD trading by retail clients and, accordingly, the Filer intends to offer CFDs to investors in Alberta only in reliance upon available exemptions in NI 45-106 or otherwise in compliance with securities legislation in Alberta. The Filer undertakes not to give notice that subsection 4.7(1) of MI 11-102 is intended to be relied upon in Alberta.

9. As a member of IIROC, the Filer is only permitted to enter into CFDs pursuant to the rules and regulations of IIROC (the **IIROC Rules**).

10. In addition, IIROC has communicated to its members certain additional expectations as to acceptable business practices (**IIROC Acceptable Practices**) as articulated in IIROC's "Regulatory Analysis of Contracts for Differences (CFDs)" published by IIROC on June 6, 2007, as amended on September 12, 2007, for any IIROC member proposing to offer CFDs to investors. To the best of its knowledge, the Filer is in compliance with IIROC Acceptable Practices in offering CFDs. The Filer will continue to offer CFDs in accordance with IIROC Acceptable Practices as may be established from time to time.

11. The Filer is required by IIROC to maintain a certain level of capital to address the business risks associated with its activities. The capital reporting required by IIROC (as per the calculation in the Joint Regulatory Financial Questionnaire (the **JRFQ**) and the Monthly Financial Reports to IIROC) is based predominantly on the generation of financial statements and calculations as to ensure capital adequacy. The Filer, as an IIROC member, is required to have a specified minimum capital which includes having any additional capital required with regards to margin requirements and other risks. This risk calculation is summarized as a risk adjusted capital calculation which is submitted in the firm's JRFQ and required to be kept positive at all times.

Online Trading Platform

12. The Filer's fxTrade platform (the **Trading Platform**) is a proprietary and fully automated internet-based trading platform which allows clients to trade CFDs on an execution-only basis.

13. The Trading Platform is a key component in a comprehensive risk management strategy which will help the Filer's clients and the Filer to manage the risk associated with leveraged products. This risk management system has evolved over many years with the objective of meeting the mutual interests of all relevant parties (including, in particular, clients). These attributes and services are described in more detail below:

    a) *Real-time client reporting*. Clients are provided with a real-time view of their account status. This includes how tick-by-tick price movements affect their account balances and required margins. Clients can view this information at any time by logging into their fxTrade account.

    b) *Fully automated risk management system*. Clients are instructed that they must maintain the required margin against their position(s). The risk management functionality of the Trading Platform ensures that client positions are closed out when the client no longer maintains sufficient margin in their account to support the position; clients are notified when their account drops below the margin requirement. This risk mitigation system prevents the client from being required to provide additional capital to cover the margin deficiency or losing more than their stated risk capital or cumulative loss limit. This functionality also ensures that the Filer will not incur any credit risk vis-à-vis its customers in respect of CFD transactions.

    c) *Wide range of order types*. The Trading Platform also provides risk management tools such as stop loss orders, limit orders, contingent orders and upper and lower bounds on market orders. These tools are designed to help clients reduce the risk of loss.

14. The Trading Platform is similar to those developed for on-line brokerages in that the client trades without other communication with, or advice from, the dealer. The Trading Platform is not a "marketplace" as defined in National Instrument 21-101 *Marketplace Operation* since a marketplace is any facility that brings together multiple buyers and sellers by matching orders in fungible contracts in a nondiscretionary manner. The Trading Platform does not bring together multiple buyers and sellers; rather it offers clients access to interbank prices.

15. The Filer is the counterparty to its clients' CFD trades; it will not act as an intermediary, broker or trustee in respect of the CFD transactions. The Filer does not manage any discretionary accounts, nor does it provide any trading advice or recommendations regarding CFD transactions.

16. The Filer manages the risk in its client positions by simultaneously placing the identical CFD transaction on a back-to-back basis with its parent company, OANDA Corporation, an "acceptable counterparty" (as the term is defined in the JRFQ). OANDA Corporation, in turn, automatically offsets each position against other client positions on a second-by-second basis, and either "hedges" its net exposure by trading with liquidity providers (banks) or using its equity capital, or both. By virtue of this risk management functionality inherent in the Trading Platform, the Filer eliminates both market risk and counterparty risk. This also means that the Filer does not have an inherent conflict of interest with its clients, since it does not profit on a position if the client losses on that position, and vice versa. The Filer is currently compensated by the "spread" between the bid and ask prices it offers. It does not currently charge any account opening or maintenance fees, commissions, or other charges of any kind. In the event the Filer wishes to introduce any fees, commissions or other charges in respect of CFDs, it will provide not less than the minimum prior written notice required of IIROC member firms wishing to do so.

17. The CFDs are OTC contracts and are not transferable.

18. The ability to lever an investment is one of the principal features of CFDs. Leverage allows clients to magnify investment returns (or losses) by reducing the initial capital outlay required to achieve the same market exposure that would be obtained by investing directly in the underlying currency or instrument.

19. IIROC Rules and IIROC Acceptable Practices set out detailed requirements and expectations relating to leverage and margin for offerings of CFDs. The degree of leverage may be amended in accordance with IIROC Rules and IIROC Acceptable Practices as may be established from time to time.

20. Pursuant to section 13.12 Restriction on lending to clients of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, only those firms that are registered as investment dealers (a condition of which is to be a member of IIROC) may lend money, extend credit or provide margin to a client.

Structure of CFDs

21. A CFD is a derivative product that allows clients to obtain economic exposure to the price movement of an underlying instrument, such as a share, index, market sector, currency pair, treasury or commodity, without the need for ownership and physical settlement of the underlying instrument. Unlike certain OTC derivatives, such as forward contracts, CFDs do not require or oblige either the principal counterparty (being the Filer for the purposes of the

Requested Relief) nor any agent (also being the Filer for the purposes of the Requested Relief) to deliver the underlying instrument.

22. CFDs to be offered by the Filer will not confer the right or obligation to acquire or deliver the underlying security or instrument itself, and will not confer any other rights of shareholders of the underlying security or instrument, such as voting rights. Rather, a CFD is a derivative instrument which is represented by an agreement between a counterparty and a client to exchange the difference between the opening price of a CFD position and the price of the CFD at the closing of the position. The value of the CFD is generally reflective of the movement in prices at which the underlying instrument is traded at the time of opening and closing the position in the CFD.

23. CFDs allow clients to take a long or short position on an underlying instrument, but unlike futures contracts, they have no fixed expiry date or standard contract size or an obligation for physical delivery of the underlying instrument.

24. CFDs allow clients to obtain exposure to markets and instruments that may not be available directly, or may not be available in a cost- effective manner.

CFDs Distributed in the Applicable Jurisdictions

25. Certain types of CFDs, such as CFDs where the underlying instrument is a security, may be considered to be "securities" under the securities legislation of the Applicable Jurisdictions.

26. Investors wishing to enter into CFD transactions must open an account with the Filer.

27. Prior to a client's first CFD transaction and as part of the account opening process, the Filer will provide the client with a separate risk disclosure document that clearly explains, in plain language, the transaction and the risks associated with the transaction (the risk disclosure document). The risk disclosure document includes the required risk disclosure set forth in Schedule A to the Regulations to the QDA and leverage risk disclosure required under IIROC Rules. The risk disclosure document contains disclosure that is substantially similar to the risk disclosure statement required for recognized options in OSC Rule 91-502 *Trades in Recognized Options* (which provides both registration and prospectus exemptions) (**OSC Rule 91-502**) and the regime for OTC derivatives contemplated by OSC SN 91-702 (as defined below) and proposed OSC Rule 91-504 *OTC Derivatives* (which was not adopted) (**Proposed Rule 91-504**). The Filer will ensure that, prior to a client's first trade in a CFD transaction, a complete copy of the risk disclosure document provided to that client has been delivered, or has previously been delivered, to the Principal Regulator.

28. Prior to the client's first CFD transaction and as part of the account opening process, the Filer will obtain a written or electronic acknowledgement from the client confirming that the client has received, read and understood the risk disclosure document. Such acknowledgement is prominent and separate from other acknowledgements provided by the client as part of the account opening process.

29. As customary in the industry, and due to the fact that this information is subject to factors beyond the control of the Filer (such as changes in IIROC Rules), information such as the underlying instrument listing and associated margin rates would not be disclosed in the risk disclosure document but will be available on both the Filer's website and the Trading Platform.

Satisfaction of the Registration Requirement

30. The role of the Filer as it relates to the CFD offering (other than it being the principal under the CFDs) will be limited to acting as an execution-only dealer. In this role, the Filer will, among other things, be responsible to approve all marketing, for holding of clients funds, and for client approval (including the review of know-your-client (**KYC**) due diligence and account opening suitability assessments).

31. IIROC Rules exempt member firms that provide execution-only services such as discount brokerage from the obligation to determine whether each trade is suitable for the client. However, IIROC has exercised its discretion to impose additional requirements on members proposing to trade in CFDs and requires, among other things, that:

    a) applicable risk disclosure documents and client suitability waivers provided be in a form acceptable to IIROC;

    b) the firm's policies and procedures, amongst other things, require the Filer to assess whether CFD trading is appropriate for a client before an account is approved to be opened. This account opening suitability process includes an assessment of the client's investment knowledge and trading experience, client identification, screening applicants and customers against lists of prohibited/blocked persons, and detecting and reporting suspicious trading and potential terrorist financing and money laundering activities to applicable enforcement authorities;

c) the Filer's registered supervisors who conduct the KYC and initial product suitability analysis will meet, or be exempted from, the proficiency requirements for futures trading and will be registered with IIROC as Investment Representative for retail customers in the product category of Futures Contracts and Futures Contract Options (IR). The course proficiency requirements for an IR include the completion of the Canadian Securities Course, Conduct and Practices Handbook, the Derivatives Fundamental Course and Futures Licensing Course. In addition, the Filer must have a fully qualified Designated Registered Futures and Options Principal; and

d) cumulative loss limits for each client's account be established (this is a measure normally used by IIROC in connection with futures trading accounts).

32. The CFDs offered in Canada will be offered in compliance with applicable IIROC Rules and other IIROC Acceptable Practices.

33. IIROC limits the underlying instruments in respect which member firm may offer CFDs since only certain securities are eligible for reduced margin rates. For example, underlying equity securities must be listed or quoted on certain "recognized exchanges" (as that term is defined in IIROC Rules) such as the Toronto Stock Exchange or the New York Stock Exchange. The purpose of these limits is to ensure that CFDs offered in Canada will only be available in respect of underlying instruments that are traded in well-regulated markets, in significant enough volumes and with adequate publicly available information, so that clients can form a sufficient understanding of the exposure represented by a given CFD.

34. IIROC Rules prohibit the margining of CFDs where the underlying instrument is a synthetic product (single U.S. sector or "mini-ndices"). For example, Sector CFDs (i.e., basket of equities for the financial institutions industry) may be offered to non-Canadian clients; however, this is not permissible under IIROC Rules.

35. IIROC members seeking to trade CFDs are generally precluded, by virtue of the nature of the contracts, from distributing CFDs that confer the right or obligation to acquire or deliver the underlying security or instrument itself (convertible CFDs), or that confer any other rights of shareholders of the underlying security or instrument, such as voting rights.

36. The Requested Relief, if granted, would (and the Existing Relief does) substantially harmonize the position of the regulators in the Applicable Jurisdictions on the offering of CFDs to investors in the Applicable Jurisdictions with how those products are offered to investors in Québec under the QDA. The QDA provides a legislative framework to govern derivatives activities within the province. Among other things, the QDA requires such products to be offered to investors through an IIROC member and the distribution of a standardized risk disclosure document rather than a prospectus in order to distribute such contracts to investors resident in Québec.

37. The Requested Relief, if granted, would be (and the Existing Relief is) consistent with the guidelines articulated by Staff of the Principal Regulator in OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors* (**OSC SN 91-702**). OSC SN 91-702 provides guidance with regards to the distributions of CFDs, foreign exchange contracts and similar OTC derivative products to investors in the Jurisdiction.

38. The Principal Regulator has previously recognized that the prospectus requirement may not be well suited for the distribution of certain derivative products to investors in the Jurisdiction, and that alternative requirements, including requirements based on clear and plain language risk disclosure, may be better suited for certain derivatives.

39. In Ontario, both OSC Rule 91-502 and OSC Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* (**OSC Rule 91-503**) provide for a prospectus exemption for the trading of derivative products to clients. The Requested Relief is consistent with the principles and requirements of OSC Rule 91-502, OSC Rule 91-503 and Proposed Rule 91-504.

40. The Filer has also submitted that the Requested Relief, if granted, would (and the Existing Relief does) harmonize the Principal Regulator's position on the offering of CFDs with certain other foreign jurisdictions that have concluded that a clear, plain language risk disclosure document is appropriate for retail clients seeking to trade in foreign exchange contracts.

41. The Filer is of the view that requiring compliance with the prospectus requirement in order to enter into CFDs with retail clients would not be appropriate since the disclosure of a great deal of the information required under a prospectus and under the reporting issuer regime is not material to a client seeking to enter into a CFD transaction. The information to be given to such a client should principally focus on enhancing the client's appreciation of product risk including

counterparty risk. In addition, most CFD transactions are of short duration (positions are generally opened and closed on the same day) and are in any event marked to market and cash settled daily.

42. The Filer is regulated by IIROC, which has a robust compliance regime including specific requirements to address market, capital and operational risks.

43. The Filer has submitted that the regulatory regimes developed by the AMF and IIROC for CFDs adequately address issues relating to the potential risk to the clients of the Filer acting as counterparty. In view of these regulatory regimes, investors would receive little or no additional benefit from requiring the Filer to also comply with the prospectus requirement.

44. The Requested Relief in respect of each Applicable Jurisdiction is conditional on the Filer being registered as an investment dealer with the Commission in such Applicable Jurisdiction and maintaining its membership with IIROC and that all CFD transactions be conducted pursuant to IIROC Rules and in accordance with IIROC Acceptable Practices.

Decision

The Principal Regulator is satisfied that the test set out in the Legislation to make the Decision is met.

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

(a) all CFDs traded with residents in the Applicable Jurisdictions shall be executed through the Filer;

(b) with respect to residents of an Applicable Jurisdiction, the Filer remains registered as a dealer in the category of investment dealer with the Principal Regulator and the Commission in such Applicable Jurisdiction and a member of IIROC;

(c) all CFD transactions with clients resident in the Applicable Jurisdictions shall be conducted pursuant to IIROC Rules imposed on members seeking to trade in CFDs and in accordance with IIROC Acceptable Practices, as amended from time to time;

(d) all CFD transactions with clients resident in the Applicable Jurisdictions be conducted pursuant to the rules and regulations of the QDA and the AMF, as amended from time to time, unless and to the extent there is a conflict between i) the rules and regulations of the QDA and the AMF and ii) the requirements of the securities laws of the Applicable Jurisdictions, the IIROC Rules and IIROC Acceptable Practices, in which case the latter shall prevail;

(e) prior to a client first entering into a CFD transaction, the Filer has provided to the client the risk disclosure document described in paragraph 29 and has delivered, or has previously delivered, a copy of the risk disclosure document provided to that client to the Principal Regulator;

(f) prior to the client's first CFD transaction and as part of the account opening process, the Filer has obtained a written or electronic acknowledgement from the client, as described in paragraph 27, confirming that the client has received, read and understood the risk disclosure document;

(g) the Filer has furnished to the Principal Regulator the name and principal occupation of its officers and directors, together with either the personal information form and authorization of indirect collection, use and disclosure of personal information provided for in National Instrument 41-101 *General Prospectus Requirements* or the registration information form for an individual provided for in Form 33-109F4 of National Instrument 33-109 *Registration Information Requirements* completed by any officer or director;

(h) the Filer shall promptly inform the Principal Regulator in writing of any material change affecting the Filer, being any change in the business, activities, operations or financial results or condition of the Filer that may reasonably be perceived by a counterparty to a derivative to be material;

(i) the Filer shall promptly inform the Principal Regulator in writing if a self-regulatory organization or any other regulatory authority or organization initiates proceedings or renders a judgment related to disciplinary matters against the Filer concerning the conduct of activities with respect to CFDs;

(j) within 90 days following the end of its financial year, the Filer shall submit to the Principal Regulator the audited annual financial statements of the Filer; and

(k) the Requested Relief shall immediately expire upon the earliest of

(i) four years from the date that this Decision is issued;

(ii) in respect of a subject Applicable Jurisdiction or Québec, the issuance of an order or decision by a court, the Commission in such Applicable Jurisdiction, the AMF (in respect of Québec) or other similar regulatory body that suspends or terminates the ability of the Filer to offer CFDs to clients in such Applicable Jurisdiction or Québec; and

(iii) with respect to an Applicable Jurisdiction, the coming into force of legislation or a rule by its Commission regarding the distribution of OTC derivatives to investors in such Applicable Jurisdiction,

(the Interim Period).

It is further the Decision of the Principal Regulator that the Existing Relief is hereby revoked.

"Mary Condon"
Commissioner
Ontario Securities Commission

"Deborah Leckman"
Commissioner
Ontario Securities Commission

2.1.6 Robert Sklar

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from ss. 2.1(2) of NI 81-101 to file a prospectus more than 90 days after the date of the receipt for the preliminary prospectus.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, subsection 2.1(2), 6.1.

April 25, 2016

Fidelity Investments Canada ULC

Attention: Robert Sklar

Dear Sirs/Mesdames:

Re: FIDELITY INVESTMENTS CANADA ULC

Preliminary Simplified Prospectus, Annual Information Form and Fund Facts dated December 18, 2015

Fidelity Global Monthly Income Currency Neutral Fund, Fidelity American Balanced Currency Neutral Fund and Fidelity Strategic Income Currency Neutral Fund (collectively, the Funds)

Application under section 6.1 of National Instrument 81-101 – *Mutual Fund Prospectus Disclosure* (NI 81-101) for an extension of the 90 day period under subsection 2.1(2) of NI 81-101

Application No. 2016/0163; SEDAR Project No. 2430583

By letter dated March 11, 2016 (the Application), the Filer, as the manager of the Funds, applied on behalf of the Funds to the Director of the Ontario Securities Commission (the Director) under section 6.1 of NI 81-101 for relief from subsection 2.1(2) of NI 81-101, which prohibits a mutual fund from filing a prospectus more than 90 days after the date of the receipt for the preliminary simplified prospectus.

This letter confirms that, based on the information and representations made in the Application, and for the purposes described in the Application, the Director intends to grant the requested exemption to be evidenced by the issuance of a receipt for the Funds' prospectus, subject to the condition that the prospectus be filed no later than April 30, 2016.

Yours very truly,

"Vera Nunes"
Manager, Investment Funds Branch
Ontario Securities Commission

2.2 Orders

2.2.1 MM Café Franchise 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
MM CAFÉ FRANCHISE INC., DCL HEALTHCARE PROPERTIES INC., CULTURALITE MEDIA INC., CAFÉ ENTERPRISE TORONTO INC., TECHOCAN INTERNATIONAL CO. LTD., 1727350 ONTARIO LTD., MARIANNE GODWIN, DAVE GARNET CRAIG, FRANK DELUCA, ELAINE CONCEPCION and HAIYAN (HELEN) GAO JORDAN

ORDER
(Section 127 of the Securities Act)

WHEREAS

1. on March 23, 2016, 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") in relation to a Statement of Allegations filed by Staff of the Commission ("Staff") on March 23, 2016, to consider whether it is in the public interest to make certain orders against MM Café Franchise Inc. ("MMCF"), DCL Healthcare Properties Inc. ("DCL"), Culturalite Media Inc. ("Culturalite"), Café Enterprise Toronto Inc. ("CET"), Techocan International Co. Ltd. ("Techocan"), 1727350 Ontario Ltd. ("1727350"), Marianne Godwin ("Godwin"), Dave Garnet Craig ("Craig"), Frank DeLuca ("DeLuca"), Elaine Concepcion ("Concepcion") and Haiyan (Helen) Gao Jordan ("Jordan") (the "Respondents");

2. the Notice of Hearing set April 21, 2106 as the hearing date in this matter;

3. on April 21, 2016, counsel for Staff and counsel for DCL, CET, Techocan, 1727350, Godwin, Craig, DeLuca and Jordan appeared before the Commission and made submissions and no one appeared on behalf of MMCF, Concepcion and Culturalite, although properly served;

4. the Commission is of the opinion that it is in the public interest to make this order;

IT IS ORDERED that:

1. Staff shall disclose to the Respondents documents and things in the possession or control of Staff that are relevant to the hearing by May 20, 2016;

2. Staff shall provide to the Respondents its witness list and witness summaries and indicate any intent to call an expert witness including the name of the expert witness and the issue on which the expert will be giving evidence by August 25, 2016;

3. This proceeding is adjourned to a Second Appearance to be held at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto, Ontario, commencing September 6, 2016 at 3:30 p.m., or as soon thereafter as the hearing can be held.

DATED at Toronto this 21st day of April, 2016.

"Janet Leiper"

2.2.2 Weizhen Tang – s. 127(1)

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

AND

IN THE MATTER OF
WEIZHEN TANG

ORDER
(Subsection 127(1) of the Securities Act)

WHEREAS:

1. On September 30, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in respect of a Statement of Allegations filed by Staff of the Commission ("Staff") on the same day (the "Statement of Allegations"), in which Staff sought an order against Weizhen Tang ("Tang") pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act");

2. Tang was convicted in the Superior Court of Justice of Ontario of an offence arising from a transaction, business or course of conduct related to securities, within the meaning of paragraph 1 of subsection 127(10) of the Act;

3. The hearing with respect to the Statement of Allegations was held on February 17 and 18, 2016 and the Reasons and Decision of the Commission relating to the Statement of Allegations are dated April 20, 2016;

4. The Commission is of the view that it is in the public interest to make the following order;

IT IS HEREBY ORDERED THAT:

(a) Pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Tang shall cease permanently;

(b) Pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Tang is prohibited permanently;

(c) Pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Tang permanently;

(d) Pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Tang shall resign any positions that he holds as director or officer of any issuer, registrant or investment fund manager;

(e) Pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Tang is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and

(f) Pursuant to paragraph 8.5 of subsection 127(1) of the Act, Tang is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

DATED at Toronto this 21st day of April, 2016.

"Christopher Portner"

"Deborah Leckman"

"Timothy Moseley"

2.2.3 Willowbridge Associates Inc. – s. 80 of the CFA

Headnote

Section 80 of the Commodity Futures Act (Ontario) – Foreign adviser exempted from the adviser registration requirement in paragraph 22(1)(b) of the Commodity Futures Act (Ontario) where such adviser acts as an adviser in respect of commodity futures contracts or commodity futures options (Contracts) for certain investors in Ontario who meet the definition of "permitted client" in NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Contracts are primarily traded on commodity futures exchanges outside of Canada and primarily cleared outside of Canada

Terms and conditions of exemption correspond to the relevant terms and conditions of the comparable exemption from the adviser registration requirement available to international advisers in respect of securities set out in section 8.26 of NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Exemption also subject to a "sunset clause" condition

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20. as am., ss. 1(1), 22(1)(b) and 80
Securities Act, R.S.O. 1990, c. S.5, as am.
Ontario Securities Commission Rule 13-502 Fees

Instrument Cited

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 1.1 and 8.26

April 22, 2016

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C.20, AS AMENDED
(the CFA)

AND

IN THE MATTER OF
WILLOWBRIDGE ASSOCIATES INC.

ORDER
(Section 80 of the CFA)

UPON the application (the Application) of Willowbridge Associates Inc. (the Applicant) to the Ontario Securities Commission (the Commission) for an order pursuant to section 80 of the CFA that the Applicant and any individuals engaging in, or holding themselves out as engaging in, the business of advising others as to trading in Contracts (as defined below) on the Applicant's behalf (the Representatives) be exempt, for a specified period of time, from the adviser registration requirement in paragraph 22(1)(b) of the CFA, subject to certain terms and conditions;

AND UPON considering the Application and the recommendation of staff of the Commission;

AND WHEREAS for the purposes of this Order:

"CFA Adviser Registration Requirement" means the requirement in the CFA that prohibits a person or company from acting as an adviser with respect to trading in Contracts unless the person or company is registered in the appropriate category of registration under the CFA;

"CFTC" means the Commodity Futures Trading Commission of the United States;

"Contract" has the meaning ascribed to that term in subsection 1(1) of the CFA;

"Foreign Contract" means a Contract that is primarily traded on one or more organized exchanges that are located outside of Canada and primarily cleared through one or more clearing corporations that are located outside of Canada;

"International Adviser Exemption" means the exemption set out in section 8.26 of NI 31-103 from the OSA Adviser Registration Requirement;

"NFA" means the National Futures Association of the United States;

"NI 31-103" means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, as amended from time to time;

"OSA" means the *Securities Act*, R.S.O. 1990, c. S.5, as amended from time to time;

"OSA Adviser Registration Requirement" means the requirement in the OSA that prohibits a person or company from acting as an adviser with respect to investing in, buying or selling securities unless the person or company is registered in the appropriate category of registration under the OSA;

"Permitted Client" means a client in Ontario that is a "permitted client", as that term is defined in section 1.1 of NI 31-103, except that for purposes of this Order such definition shall exclude a person or company registered under the securities or commodities legislation of a jurisdiction of Canada as an adviser or dealer;

"SEC" means the Securities and Exchange Commission of the United States;

"specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*;

"United States" means the United States of America; and

"**United States Advisers Act"** means the *Investment Advisers Act of 1940* of the United States, as amended from time to time.

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a corporation formed under the laws of the State of Delaware in the United States. The head office of the Applicant is located in New Jersey, United States.

2. The Applicant is currently (i) registered with the SEC as an investment adviser under the United States Advisers Act; (ii) registered with the CFTC as a commodity trading adviser and a commodity pool operator; and (iii) a member of the NFA.

3. The Applicant manages client and proprietary capital investment funds and managed accounts using a variety of commodity futures trading strategies and investments.

4. The Applicant is not registered in any capacity under the CFA or the OSA. The Applicant does not rely on the International Adviser Exemption or any other exemption from registration under the OSA.

5. In Ontario, certain institutional investors that are Permitted Clients seek to engage the Applicant as a discretionary investment manager for purposes of implementing certain specialized investment strategies.

6. The Applicant seeks to act as a discretionary commodity futures advisory manager for Canadian institutional investors that are Permitted Clients. The Applicant's advisory services to Permitted Clients would primarily include the use of specialized investment strategies employing Foreign Contracts.

7. Were the proposed advisory services limited to securities, as defined in subsection 1(1) of the OSA, the Applicant could rely on the International Adviser Exemption and carry out such activities for Permitted Clients on a basis that would be exempt from the OSA Adviser Registration Requirement.

8. There is currently no exemption from the CFA Adviser Registration Requirement that is equivalent to the International Adviser Exemption. Consequently, in order to advise Permitted Clients as to trading in Foreign Contracts, in the absence of this Order, the Applicant would be required to satisfy the CFA Adviser Registration Requirement by applying for and obtaining registration in Ontario as an adviser under the CFA in the category of commodity trading manager.

9. To the best of the Applicant's knowledge, the Applicant confirms that there are currently no regulatory actions of the type contemplated by the *Notice of Regulatory Action* attached as Appendix "B".

AND UPON being satisfied that it would not be prejudicial to the public interest for the Commission to make this Order;

IT IS ORDERED, pursuant to section 80 of the CFA, that the Applicant and its Representatives are exempt from the adviser registration requirement in paragraph 22(1)(b) of the CFA in respect of providing advice to Permitted Clients as to the trading of Foreign Contracts provided that:

(a) the Applicant provides advice to Permitted Clients only as to trading in Foreign Contracts and does not advise any Permitted Client as to trading in Contracts that are not Foreign Contracts, unless providing such advice is incidental to its providing advice on Foreign Contracts;

(b) the Applicant's head office or principal place of business remains in the United States;

(c) the Applicant is registered in a category of registration, or operates under an exemption from registration, under the applicable securities or commodity futures legislation of the United States that permits it to carry on the activities in the United States that registration under the CFA as an adviser in the category of commodity trading manager would permit it to carry on in Ontario;

(d) the Applicant continues to engage in the business of an adviser, as defined in the CFA, in the United States;

(e) as at the end of the Applicant's most recently completed financial year, not more than 10% of the aggregate consolidated gross revenue of the Applicant, its affiliates and its affiliated partnerships (excluding the gross revenue of an affiliate or affiliated partnership of the Applicant if the affiliate or affiliated partnership is registered under securities legislation, commodities legislation or derivatives legislation of a jurisdiction of Canada) was derived from the portfolio management activities of the Applicant, its affiliates and its affiliated partnerships in Canada (which, for greater certainty, includes both securities-related and commodity-futures-related activities);

(f) before advising a Permitted Client with respect to Foreign Contracts, the Applicant notifies the Permitted Client of all of the following:

  (i) the Applicant is not registered in Ontario to provide the advice described under paragraph (a) of this Order;

  (ii) the foreign jurisdiction in which the Applicant's head office or principal place of business is located;

  (iii) all or substantially all of the Applicant's assets may be situated outside of Canada;

  (iv) there may be difficulty enforcing legal rights against the Applicant because of the above; and

  (v) the name and address of the Applicant's agent for service of process in Ontario;

(g) the Applicant has submitted to the Commission a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as Appendix "A";

(h) the Applicant notifies the Commission of any regulatory action initiated after the date of this Order with respect to the Applicant or any predecessors or specified affiliates of the Applicant by completing and filing Appendix "B" within 10 days of the commencement of each such action; and

(i) if the Applicant does not rely on the International Adviser Exemption, by December 31st of each year, the Applicant pays a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of Ontario Securities Commission Rule 13-502 *Fees* as if the Applicant relied on the International Adviser Exemption.

IT IS FURTHER ORDERED that this Order will terminate on the earliest of:

(a) such transition period as provided by operation of law after the effective date of the repeal of the CFA;

(b) six months, or such other transition period as provided by operation of law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the ability of the Applicant to act as an adviser to a Permitted Client; and

(c) five years after the date of this Order.

“William Furlong”

Commissioner
Ontario Securities Commission

“Janet Leiper”
Commissioner
Ontario Securities Commission

APPENDIX "A"

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

INTERNATIONAL DEALER OR INTERNATIONAL ADVISER EXEMPTED FROM REGISTRATION UNDER THE COMMODITY FUTURES ACT, ONTARIO

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

Name:

E-mail address:

Phone:

Fax:

6. The International Firm is relying on an exemption order under section 38 or section 80 of the *Commodity Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "Relief Order"):

[ ] Section 8.18 [international dealer]
[ ] Section 8.26 [international adviser]
[ ] Other [specify]:

7. Name of agent for service of process (the "Agent for Service"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator

    a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated;

    b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service; and

    c. a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 30th day after the change.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ [Insert name of International Firm] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of the Agent for Service or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings.

APPENDIX "B"

NOTICE OF REGULATORY ACTION

1. Has the firm, or any predecessors or specified affiliates[1] of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes _____ No _____

If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

	Yes	No
(a) Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?		
(b) Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?		
(c) Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?		
(d) Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?		
(e) Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?		
(f) Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?		
(g) Issued an order (other than an exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?		

If yes, provide the following information for each action:

Name of Entity	
Type of Action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

3.Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliate is the subject?

Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm

[1] In this Appendix, the term "specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*.

Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings.

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Edward Furtak et al. – Rule 4.5 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
EDWARD FURTAK, AXTON 2010 FINANCE CORP., STRICT TRADING LIMITED,
RONALD OLSTHOORN, TRAFALGAR ASSOCIATES LIMITED,
LORNE ALLEN and STRICTRADE MARKETING INC.

REASONS AND DECISION
(Rule 4.5 of the Ontario Securities Commission Rules of Procedure)

Hearing:	April 14, 2016		
Decision:	April 20, 2016		
Panel:	Janet Leiper	–	Chair of the Panel
	D. Grant Vingoe	–	Vice Chair
	AnneMarie Ryan	–	Commissioner
Appearances:	Yvonne B. Chisholm Catherine Weiler	–	For Staff of the Commission
	Julia Dublin	–	For the Respondents

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REASONS AND DECISION

I. INTRODUCTION

[1] On March 30, 2015 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") seeking an order pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O 1990, c. S.5, as amended, regarding Edward Furtak, Axton 2010 Finance Corp., Strict Trading Limited, Ronald Olsthoorn, Trafalgar Associates Limited, Lorne Allen and Strictrade Marketing Inc. (collectively, the "Respondents"). A merits hearing is scheduled to proceed on May 9, 2016.

[2] On September 28, 2015 the Commission made an order requiring the Respondents to provide a list of witnesses and summaries by Monday, October 26, 2015 pursuant to Rule 4.5 of the Ontario Securities Commission *Rules of Procedure* (2014), 47 OSCB 4168 (the "Rules"). The Respondents provided a witness list that included three of the named Respondents and a person who is not a party to the proceedings.

[3] At the final interlocutory appearance on April 14, 2016, Staff filed written argument and correspondence alleging a

refusal by the Respondents to provide witness summaries as required by the Rules and the Order of the Commission of September 28, 2015.

[4] Counsel for the Respondents argued that the Respondents are parties but not witnesses as described in the Rules or in the *Statutory Powers Procedure Act*, R.S.O. c. S.22, as amended (the "SPPA"), and thus ought not to be required to disclose witness summary information as described in the Rules.

[5] On April 14, 2015, after hearing argument and considering the submissions of counsel, the Commission made an order requiring the Respondents to comply with Rule 4.5. These are our reasons for that decision.

II. THE SPPA AND THE RULES: APPLICATION TO THE PROCESS

[6] Counsel for the Respondents referred us to a number of provisions in the SPPA, including the authority granted to tribunals by section 25.1 of the SPPA to make rules.

[7] Section 2 of the SPPA provides:

> 2. This Act, and any rule made by a tribunal under subsection 17.1 (4) or section 25.1, shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits.

[8] Rule 4.5 of the Rules provides:

> **4.5 Witness Lists and Summaries – (1) Provision of a Witness List** – A party to a proceeding shall serve every other party and file with the Secretary a list of the witnesses the party intends to call to testify on the party's behalf at the hearing, at least 10 days before the commencement of the hearing.
>
> **(2) Provision of Witness Summaries** – If material matters to which a witness is to testify have not otherwise been disclosed, a party to a proceeding shall provide to every other party a summary of the evidence that the witness is expected to give at the hearing, at least 10 days before the commencement of the hearing.
>
> **(3) Content of the Witness Summary** – A witness summary shall contain:
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> (a) the substance of the evidence of the witness;
>
> (b) reference to any documents that the witness will refer to; and
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> (c) the witness's name and address or, if the witness's address is not provided, the name and address of a person through whom the witness can be contacted.
>
> **(4) Failure to Provide a Witness List or a Summary** – A party who does not include a witness in the witness list or provide a summary of the evidence a witness is expected to give in accordance with subrules 4.5(1), 4.5(2) and 4.5(3), may not call that person as a witness without leave of the Panel, which may be on any conditions as the Panel considers just.
>
> **(5) Incomplete Witness Summary** – A witness may not testify to material matters that were not previously disclosed without leave of the Panel, which may be on any conditions that the Panel considers just.

[9] The Rules do not define witness, but define "party" to include:

(a) a person recognized as a party by the Act;

(b) a person entitled by law to be a party to the proceeding;

(c) a person granted party status by order of a Panel; and

(d) Staff;

III. POSITION OF THE PARTIES

[10] There was no serious dispute that the Respondents have not fully complied with Rule 4.5. Although some of the Respondent's documents have been marked with the initials of some of the Respondents which purport to link those documents to the proposed evidence of the Respondents, this was not communicated to Staff until oral argument. In addition, during submissions, counsel for the Respondents stated that the Respondents may also refer to additional documents that have been the subject of disclosure. In contrast, Staff have provided a complete list of documents that each of their witnesses will be discussing in their evidence. The submission of Staff is that "full and fair compliance" by the Respondents with the Rule is needed to meet the objective of a well-prepared, and thus expeditious, hearing.

[11] Counsel for the Respondents argued that witnesses who are not parties are different from parties who choose to testify. Counsel pointed to the different rights of representation for parties and witnesses provided for in the SPPA. In essence, counsel argued for two categories, one for parties and one for witnesses, that are separate from one another. Thus, where the Rules or the SPPA use the word "witness" this would always exclude parties to the proceeding.

[12] Counsel for the Respondents argued it would be "absurd" to describe a party as a witness once the party chooses to testify, because this could lead to unfairness, for example by reducing a party's rights to representation, or their right to be heard. Counsel noted that the Respondents have already provided extensive document disclosure and have been interviewed at length under oath.

[13] Staff submitted that the Rules apply to all witnesses whether or not they are parties in the proceedings. Any additional rights to procedural fairness engaged by party witnesses can be applied when and if a remedy is sought under the Rules for non-compliance. Further Staff submits that the prior disclosure and interviews that the Respondents provided means that compliance with Rule 4.5 need not be onerous, in that reference to prior interviews is one method by which Respondents may comply with the summary requirement.

IV. ANALYSIS

[14] The Rules and the SPPA emphasize the importance of doing justice in hearings, in an expeditious and efficient manner. The requirements in the Rules for exchanging documents, witness lists and summaries are there to promote efficient hearings and enable both parties to prepare in advance for matters that often involve multiple transactions and many documents. There is no indication that Respondents who are also witnesses should be excluded from this requirement.

[15] In considering the SPPA provisions that allow different rights to representation for witnesses than for parties, we do not accept the position that this settles the question that parties cannot also be described as witnesses. It will depend on the context and the nature of the provisions. There is more than one type of witness and different rights and obligations will apply depending on whether or not a witness is also a party. This will include considerations relating to the right to be heard and any remedies for non-compliance or partial compliance with the Rules. However, this reality does not exclude a party from also being a witness for the purpose of the Rules.

[16] We conclude that Rule 4.5 applies to all of the Respondents' witnesses, including those Respondents who intend to testify at these proceedings. Accordingly, we ordered that by 4:00 p.m. on April 22, 2016, the Respondents shall provide a written witness summary to Staff for each party and non-party witness that the Respondents intend to call to testify that contains:

a. The substance of the evidence each party and non-party witness intends to give; and

b. Reference to any documents that each party and non-party witness will refer to their evidence.

Dated at Toronto this 20th day of April, 2016.

"Janet Leiper"

"D. Grant Vingoe"

"AnneMarie Ryan"

3.1.2 Argosy Securities Inc. and Keybase Financial Group Inc. – s. 8

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

AND

IN THE MATTER OF
ARGOSY SECURITIES INC. AND
KEYBASE FINANCIAL GROUP INC.

REASONS FOR DECISION
(Section 8 of the Securities Act)

Hearing:	January 15, 18 and 20, 2016		
Decision:	April 20, 2016		
Panel:	Timothy Moseley	–	Commissioner and Chair of the Panel
	Grant Vingoe	–	Vice Chair of the Commission
	Deborah Leckman	–	Commissioner
Appearances:	Joseph Groia Kevin Richard David Sischy	–	For Argosy Securities Inc. and Keybase Financial Group Inc.
	Gavin Smyth Michael Denyszyn	–	For Staff of the Commission

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REASONS FOR DECISION

I. OVERVIEW

[1] On August 18, 2015, a Deputy Director of the Ontario Securities Commission (the "**Commission**") issued a decision[1] (the "**Director's Decision**") in which she found that Argosy Securities Inc. ("**Argosy**"), an investment dealer, and Keybase Financial Group Inc. ("**Keybase**"), a mutual fund dealer and exempt market dealer, had failed to comply with various provisions of Ontario securities law. In particular, she held that the record disclosed a long history of a failure to maintain and carry out an effective compliance program, leading to numerous related contraventions of the rules of the

[1] *Argosy Securities Inc. and Keybase Financial Group Inc. (Re)* (2015), 38 OSCB 7393.

Investment Industry Regulatory Organization of Canada (previously the Investment Dealers Association, and referred to throughout these reasons as "**IIROC**") and the Mutual Fund Dealers Association of Canada ("**MFDA**", and together with IIROC, the "**SROs**"), as well as direct violations of Ontario securities law.

[2] As a result, she imposed terms and conditions upon the registrations of Argosy and Keybase. Among other things, the terms and conditions required each of Argosy and Keybase to retain, at its own expense, an independent consultant to prepare, and assist each firm in implementing, plans to improve the firm's "compliance system"[2] and to review and report upon the firm's progress against the plans.

[3] Argosy and Keybase (together, the "**Applicants**") requested a hearing and review of the Director's Decision. At the conclusion of that hearing and review before us, we concluded that the requirement to retain a consultant as contemplated in the Director's Decision was proper, on terms substantially similar to those imposed by the Deputy Director. We gave an oral decision and issued an order to that effect.[3] We advised that we would produce written reasons for that decision. These are our reasons.

[4] As discussed in detail below, it appears to us that the Applicants have failed to comply with Ontario securities law in many respects over a period of years. In our view, this history results from a number of contributing factors. Significant among these are:

a. inadequate governance of the firms, including the composition of each firm's board of directors;

b. the failure of the firms' owner and principal, Dax Sukhraj, to instil a "culture of compliance", which failure was exemplified in part by an inadequate "tone from the top", both of which are fundamental principles that should be areas of focus for any registered firm that seeks to participate in Ontario's capital markets;

c. inadequate Compliance[4] resources;

d. recurring deficiencies and failures to follow up on and rectify deficiencies; and

e. remedial measures that were often too little and too late, frequently undertaken only when significant regulatory consequences were looming.

[5] As a result, in our view it is necessary for the protection of investors that an independent consultant be retained in respect of each firm, that the consultant have a wide-ranging mandate to review the Applicants' compliance systems, and that the Applicants effect and sustain necessary improvements to those systems.

II. PRELIMINARY MATTER – CONFIDENTIALITY

[6] At the beginning of the hearing before us, the Applicants requested that certain matters and documents likely to come up in the hearing be treated as confidential and not be part of the public record, pursuant to section 9 of the *Statutory Powers Procedure Act*[5] (the "**SPPA**") and Rule 5.2 of the Commission's *Rules of Procedure*[6] (the "**OSC Rules**").

[7] Clause 9(1)(b) of the SPPA requires that an oral hearing be open to the public, except where in the panel's opinion:

> intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

[8] Rule 5.2 of the OSC Rules provides that a panel may order that "any document filed with the Secretary [to the Commission] or any document received in evidence or transcript of the proceeding" be kept confidential pursuant to section 9 of the SPPA.

[9] The Applicants identified three categories of evidence likely to be led at the hearing in respect of which they sought confidentiality protection:

a. certain financial information related to the Applicants;

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2 Within the meaning of section 11.1 of National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. ("**NI 31-103**")

3 *Argosy Securities Inc. and Keybase Financial Group Inc. (Re)* (2016), 39 OSCB 1118.

4 We have used "Compliance" (with a capital "C") throughout these reasons when referring to the Compliance function within a firm.

5 RSO 1990, c S.22.

6 (2014), 37 OSCB 4168.

b. certain information relating to litigation against Keybase; and

c. certain matters relating to the MFDA having placed Keybase in discretionary early warning status.

[10] The Applicants submitted that the information and related documents were "intimate financial … matters" within the meaning of clause 9(1)(b) of the SPPA.

[11] In considering the Applicants' request, we were guided by what the Commission has previously described as the "strong presumption that all matters ought to take place in an open and public manner."[7] We advised counsel that if at any point in the hearing they expected to address matters that might come within the specified categories, we would determine at the time the evidence was to be introduced whether the evidence should be kept confidential. We also directed that opening submissions be made in the absence of the public, in case any of the submissions touched upon the specified categories.

[12] As it turned out, the entire evidence portion of the hearing, with the exception of one question of one witness, and that witness's answer, was conducted in public. The answer given by the witness is of no relevance to our decision in this matter.

[13] At the conclusion of the hearing, Applicants' counsel sought confidentiality protection for certain portions of some documents marked as exhibits during the hearing. We granted that request in respect of limited portions of two documents:

a. a letter dated December 23, 2015, from the MFDA to Mr. Sukhraj; and

b. a letter dated January 11, 2016, from Mr. Sukhraj to the MFDA.

[14] None of the portions subject to the confidentiality order was relevant to our decision. We also ordered that any reference in written submissions relating to those portions be subject to the same protection.

III. EVENTS LEADING TO THIS PROCEEDING

A. Staff recommends terms and conditions

[15] In March 2015, staff of the Commission ("**Staff**"), from the Compliance and Registrant Regulation Branch wrote to the Applicants and advised them that as a result of a review of the Applicants conducted a year earlier (the "**OSC Staff Review**"), Staff had identified a number of deficiencies, including thirteen significant deficiencies for each of Argosy and Keybase. Staff further advised that as a result, it had recommended to the Director that the following terms and conditions be imposed upon the registrations of the Applicants:

a. each of Argosy and Keybase shall, at its own expense, retain a consultant approved by Staff, to prepare and assist each firm in implementing a plan to strengthen its compliance system, to review progress of implementation and to submit written progress reports to Staff and to either IIROC or the MFDA, as the case may be;

b. the Ultimate Designated Person ("**UDP**") and Chief Compliance Officer ("**CCO**") of Argosy and Keybase must review, approve and sign the plan and progress reports;

c. the consultant shall submit progress reports to Staff and to either IIROC or the MFDA every thirty days following approval of the plan until it has been fully implemented;

d. the consultant shall submit an attestation letter verifying that recommendations have been implemented and tested and are working effectively;

e. each of Argosy and Keybase shall give Staff and either IIROC or the MFDA unrestricted access to communicate with the consultant regarding progress; and

f. the consultant shall return one year after full implementation of the plan, at the firm's expense, to complete a review of the firms' compliance systems.

[7] *Re HudBay Minerals Inc.* (2009), 32 OSCB 4427 at paras 22-24.

B. Director's Decision

[16] Section 31 of the *Securities Act*[8] (the "Act") provides that the Director shall not impose terms and conditions upon a registration without giving the registrant an opportunity to be heard. The Applicants exercised that right, and the hearing was held before the Deputy Director on July 20, 2015.

[17] On August 18, 2015, the Deputy Director issued her decision. The Director's Decision listed a number of concerns about the Applicants' past compliance with applicable regulatory requirements.

[18] Acknowledging that the Applicants had implemented certain changes to their operations since the examination findings were made, the Deputy Director decided that an independent consultant would be "best placed to determine the effectiveness of these recent changes".[9] As a result, the Deputy Director decided to impose the terms and conditions recommended by Staff.[10]

[19] The Director's Decision required that the independent consultant be retained by September 15, 2015, and that the consultant provide a compliance plan to Staff by October 15, 2015.[11]

C. Motion for a stay of the Director's Decision

[20] On September 14, 2015, the Applicants wrote to the Secretary of the Commission to request a hearing and review of the Director's Decision, pursuant to subsection 8(2) of the Act, and a stay of the Director's Decision pending the disposition of the hearing and review, pursuant to subsection 8(4) of the Act.

[21] The Commission heard the motion for a stay on November 6, 2015. On November 12, 2015, the Commission ordered that the Director's Decision be stayed effective immediately until further order of the Commission and, in any event, not later than January 18, 2016, subject to a number of conditions.[12]

D. Hearing and Review

[22] The hearing and review of the Director's Decision was held before us on January 15, 18 and 20, 2016.

IV. FACTUAL BACKGROUND

A. Argosy

1. About the firm

[23] Argosy is registered as a dealer in the category of investment dealer and is a dealer member of IIROC. Currently, Argosy has approximately fifteen investment advisors and approximately $220 million of assets under administration.

[24] Until 2015, Mr. Sukhraj was the sole director of Argosy. In response to concerns from Argosy's regulators about the firm's governance structure, new directors were added to the board in 2015.

[25] The record before us contains conflicting information as to who joined the board when.

[26] In Argosy's March 2015 response to the OSC Staff Review, Mr. Sukhraj states that "[o]ur current board consists of my wife, Kim Sukhraj and our two sons, Jason Sukhraj and Justin Sukhraj."

[27] Affidavits sworn July 17, 2015, by Mr. Sukhraj and by Argosy's CCO name three directors of Argosy, being Mr. Sukhraj and his son Jason (who was still in the process of being approved as a director), as well as Donald Cook, who has been Argosy's Chief Financial Officer for many years.

[28] We suspect that Mr. Sukhraj was mistaken in his March 2015 letter, in that he named the members of the board of Keybase (see paragraph [38] below) rather than of Argosy. In any event, nothing turns on it.

2. IIROC reviews and proceeding

[29] IIROC staff conduct regular reviews of Argosy's sales compliance procedures, policies and practices. In reviews

8 RSO 1990, c S.5.
9 Director's Decision at para 17.
10 Ibid at para 1.
11 Ibid at para 1.
12 *Argosy Securities Inc. and Keybase Financial Group Inc. (Re)* (2015), 38 OSCB 9711.

conducted in 2005, 2006 and 2007, numerous deficiencies were found. Those deficiencies, many of which were considered by IIROC staff to be "significant" and recurring, spanned a wide range of areas, including:

a. corporate governance;

b. branch supervision;

c. lack of evidence of supervision;

d. training;

e. verification of client identity;

f. audits of branches and sub-branches;

g. the handling of client complaints;

h. omissions in the National Registration Database;

i. accounts held under codes of registered representatives who had been terminated;

j. inadequate client documentation;

k. outdated and inadequate policies, procedures and manuals;

l. improper handling of out-of-jurisdiction accounts;

m. improper handling of cancellations and corrections;

n. inadequate processes for approval of sales and marketing material; and

o. inadequate supervision.

[30] In 2008, IIROC staff commenced a proceeding against Argosy and Mr. Sukhraj. Following a hearing in September 2008, the IIROC hearing panel found[13] that:

a. over a long period of time, Argosy had serious deficiencies;[14]

b. Mr. Sukhraj and other Argosy officers attempted to address the deficiencies but remedial measures were often insufficient;[15]

c. "the long list of deficiencies which Argosy failed to cure cannot be described in terms other than gross negligence";[16] and

d. "there was a chronic failure to observe" the applicable regulatory requirements.[17]

[31] Following a penalty hearing, an IIROC panel imposed a $150,000 fine on Mr. Sukhraj and required him to successfully complete the Chief Compliance Officer's Qualifying Examination. The panel also required that a compliance consultant be retained for a period of one year, and that the consultant conduct regular evaluations of Argosy's compliance systems.[18]

[32] Between 2010 and 2014, IIROC staff conducted three further reviews of Argosy. In 2015, IIROC staff conducted three separate reviews – one of Argosy's head office and one of each of Argosy's business locations in Ottawa and Ajax.

[33] The reviews of the Ottawa and Ajax business locations resulted in seven significant findings, which related to the suitability and supervision of leveraged and inverse exchange-traded funds, including sales of new and complex products to clients who were near, at, or above the age of retirement.

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13 *Re Argosy Securities Inc. and Dax Sukhraj*, [2008] IIROC No. 22 (the "**2008 IIROC Decision**").
14 Ibid at para 30.
15 Ibid at para 11.
16 Ibid at para 36.
17 Ibid at para 36.
18 *Re Dax Sukhraj*, [2008] IIROC No. 27 at para 12.

[34] The head office review resulted in nine findings, all of which were repeat items, and eight of which were classified as significant. These findings related to:

a. supervision of advertising, marketing and registrant communications;

b. supervision of client name mutual fund accounts (referred to below as "outside holdings");

c. supervision of account activity;

d. outside business activities;

e. delegation of duties;

f. failure to provide books and records to IIROC;

g. supervision of leveraged accounts;

h. Argosy's new account application form; and

i. out of jurisdiction accounts.

3. OSC Staff Review

[35] As noted above in paragraph [15], staff in the Commission's Compliance and Registrant Regulation branch conducted a review of the Applicants. The field review portion of the OSC Staff Review was carried out in March of 2014, although the resulting letter was not issued until March of 2015. We address this delay in paragraphs [74] to [76] below.

[36] The review of Argosy found the following significant deficiencies:

a. an inadequate compliance system and a failure of the CCO to meet the prescribed responsibilities;

b. a failure of the UDP to meet his responsibilities;

c. a failure to establish prudent business practices;

d. inadequate Compliance resources;

e. inadequate monitoring of trade suitability;

f. a failure to enforce policies with respect to identified suitability issues;

g. inadequate supervision of concentration risk;

h. clients bearing losses when unsuitable trades were unwound;

i. inadequate trend analysis and trade review process;

j. inadequate process for updating risk ratings of products;

k. misleading and inaccurate marketing materials;

l. inadequate resolution and tracking of deficiencies identified during branch audits; and

m. an inadequate branch audit program.

B. Keybase

1. About the firm

[37] Keybase is registered as a dealer in the category of mutual fund dealer and exempt market dealer and is a dealer member of the MFDA. Keybase currently has approximately 200 investment advisors and approximately $1.4 billion of assets under administration.

[38] Until 2015, Mr. Sukhraj was the sole member of Keybase's board of directors. In May 2015, in response to regulatory concerns, Mr. Sukhraj's wife and two sons were added to the board.

2. MFDA reviews and proceeding

[39] MFDA staff regularly review Keybase. In 2008, MFDA enforcement staff commenced a disciplinary proceeding against Keybase and Mr. Sukhraj. That proceeding was concluded in 2009 by way of a settlement agreement.[19] In the agreement, Keybase admitted that it had:

a. failed to establish and maintain an appropriate two-tier compliance structure to supervise client account activity;[20]

b. delegated supervisory tasks to a person who was not appropriately qualified;[21]

c. failed to review and approve the opening of new client accounts, and to maintain evidence of reviews and approvals;22[22]

d. failed to ensure that client documentation was sufficient, and had allowed trading in accounts with insufficient documentation;[23]

e. failed to establish, implement and maintain policies and procedures to identify, review and approve dual occupations of its representatives;[24] and

f. failed to establish, implement and maintain policies and procedures relating to the review and approval of marketing materials.[25]

[40] Keybase agreed to pay a $150,000 fine and to retain an independent monitor to resolve outstanding compliance deficiencies. Mr. Sukhraj agreed to pay an additional $50,000 fine and to complete the Partners Directors and Senior Officers course.

[41] Between 2009 and 2015, MFDA staff conducted seven financial reviews and four compliance reviews. As a result of those reviews and client complaints, MFDA staff identified concerns relating to clients' use of leverage and Keybase's handling of client complaints.

[42] MFDA staff also cited concerns regarding a court judgment and numerous pending claims against Keybase relating to alleged unsuitable use of excessive leverage in the accounts of former clients.

3. OSC Staff Review

[43] The OSC Staff Review identified significant deficiencies at Keybase relating to:

a. an inadequate compliance system;

b. the failure of the UDP to meet his responsibilities;

c. Keybase's failure to establish prudent business practices;

d. inadequate Compliance resources;

e. inadequate controls regarding one of Keybase's back office systems;

f. inadequate and inconsistent policies and procedures;

g. inadequate training programs;

h. inadequate procedures and controls regarding the sale of funds with deferred sales charges;

19 *Re Keybase Financial Group Inc.*, 2009 File No. 200823 (Settlement Agreement).
20 Ibid at para 31.
21 Ibid at para 34.
22 Ibid at para 37.
23 Ibid at para 42.
24 Ibid at para 46.
25 Ibid at para 51.

i. inadequate supervision of concentration risk;

j. the absence of the required written agreement in support of referral arrangements;

k. an inadequate sub-branch audit program; and

l. inadequate sub-branch reviews.

[44] Commission Staff also echoed the concerns regarding the court judgment and claims against Keybase referred to in paragraph [42] above.

V. LEGAL FRAMEWORK

A. Nature of hearing and review

[45] Pursuant to subsection 8(3) of the Act, upon a hearing and review of a Director's decision the Commission may "confirm the decision […] or make such other decision as [it] considers proper."

[46] The hearing and review of a Director's decision is a hearing *de novo* and therefore a fresh consideration of the matter.[26] The Commission may substitute its own decision for that of the Director.[27]

[47] Staff bears the onus of establishing that terms and conditions ought to be imposed upon the registrations of Argosy and Keybase.[28]

B. Basis for imposition of terms and conditions

[48] Section 28 of the Act provides that the Director "may impose terms and conditions of registration at any time during the period of registration of [a] company if it appears to the Director" that one or more of the following three tests are satisfied:

a. the company "is not suitable for registration";

b. the company "has failed to comply with Ontario securities law"; or

c. "the registration is otherwise objectionable".

[49] Each one of these tests, if satisfied, is a sufficient basis by itself for the imposition of terms and conditions.[29]

[50] At the hearing before the Director, and at the hearing before us, Staff relied exclusively on the second of the three tests set out in section 28 of the Act; namely, that it is apparent that the Applicants have "failed to comply with Ontario securities law".

C. Provisions of Ontario securities law

[51] Staff submits that the Applicants have failed to comply with numerous provisions of NI 31-103, which forms part of "Ontario securities law", by virtue of its being a "rule" and therefore a "regulation", as those terms are defined in subsection 1(1) of the Act.

[52] The relevant portions of NI 31-103, which are addressed in greater detail in our analysis that follows, include the following:

a. section 5.1, which describes the responsibilities of the UDP;

b. section 5.2, which describes the responsibilities of the CCO;

c. section 11.1, which sets out the requirements of a registered firm's compliance system;

d. section 12, which sets out financial requirements including in relation to capital and insurance;

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26 *Re Sterling Grace & Co.* (2014), 37 OSCB 8298 ("***Sterling Grace***") at para 24.
27 Ibid at para 23; *Re Sawh* (2012), 35 OSCB 7431 ("***Sawh***") at paras 16-17.
28 *Sterling Grace* at para 25; *Sawh* at paras 147-148.
29 *Sterling Grace* at para 150.

e. section 13, which contains various requirements governing the relationship between the firm and its clients, including relating to the obligation to "know your client" ("**KYC**"), to suitability, and to the handling of complaints; and

f. section 14, which includes requirements regarding the handling of client assets and securities.

[53] Subsections 9.3(1) and 9.4(1) of NI 31-103 provide that IIROC- and MFDA-registered firms, respectively, are exempt from certain requirements in sections 12, 13 and 14, but only if the firm complies with the applicable corresponding provision in IIROC or MFDA rules. Further, in our view subsection 2.1(1) of National Instrument 31-505, *Conditions of Registration* ("**NI 31-505**") (the obligation to deal with clients "fairly, honestly and in good faith") requires that a firm substantially comply with SRO rules applicable to it. The firm's clients have a reasonable expectation in this regard for their own protection, and it therefore cannot be said that a firm that fails to comply, in substantial respects, with SRO rules is dealing "fairly" with its clients.

VI. ISSUES

[54] As noted above in paragraph [50], Staff's request that the Applicants be required to retain a consultant was based exclusively on the second of the three tests set out in section 28 of the Act; namely, the Applicants' apparent failure to comply with Ontario securities law.

[55] The Applicants submitted that they have taken many steps to respond to previous regulatory findings, to improve their compliance system and to increase their Compliance resources. The Applicants argued that there was insufficient evidence before us to establish that they should be required to retain a consultant. In response, Staff argued that the Applicants had a long and extensive history of non-compliance with Ontario securities law, and that this record was more than sufficient to warrant the order sought.

[56] When the positions taken by the Applicants and by Staff are contrasted, they raise the question of the role of the Director, and therefore of the Commission on this application. Specifically, is it the Commission's role to engage in an assessment of the current state of compliance at the Applicant firms?

[57] This application therefore presents the following three principal issues:

a. To what extent, if any, does it appear that the Applicants have failed, in the past, to comply with Ontario securities law?

b. If it appears that the Applicants have failed to comply with Ontario securities law, to what extent if at all should we engage in an assessment of the current state of compliance at the Applicant firms?

c. Taking the answers to those two questions into account, is it proper for the Commission to impose terms and conditions upon the registration of each Applicant, as requested by Staff?

VII. ANALYSIS

A. Introduction

[58] Before turning to an analysis of these issues, we review the purposes of the Act, and the purpose of and obligations associated with registration. In addition, we make general comments about two witnesses who testified during the hearing before us, and we consider the implications of the one-year delay between the conclusion of the OSC Staff Review and the issuance of the resulting report.

1. Purposes of the Act

[59] In reaching our decision, we are guided by both of the two purposes of the Act, as set out in section 1.1 of the Act:

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.

2. Registration

[60] The registration requirement for an individual or firm seeking to act as a dealer or dealing representative is set out in subsection 25(1) of the Act.

[61] It is well established that registration is a privilege, not a right, that is granted to individuals and entities that have demonstrated their suitability for registration.[30] Upon being granted registration, the registrant assumes the duty to comply with applicable provisions of Ontario securities law and SRO rules, and must conduct himself, herself or itself accordingly to ensure continual maintenance of the standards expected of a registrant.[31]

3. Witnesses

(a) Noel Sequeira

[62] We consider it important to address an issue raised by Argosy with IIROC and again during the hearing before us, at least by implication. Specifically, Argosy had raised a concern with IIROC that Noel Sequeira, the Manager of Business Conduct Compliance at IIROC who was responsible for reviews of Argosy, might be biased against the firm. That concern eventually led to Argosy asking IIROC to remove Mr. Sequeira as the manager assigned to the firm. IIROC did not accede to Argosy's request.

[63] At the hearing before us, Mr. Sequeira gave evidence regarding IIROC's oversight of Argosy. Counsel for Argosy, in his cross-examination of Mr. Sequeira, referred to Argosy's request that Mr. Sequeira be removed, and asked Mr. Sequeira whether that request caused him to be upset or to offer to resign. Mr. Sequeira answered "no" to both questions.

[64] We reject any suggestion that Mr. Sequeira is biased against Argosy. On the contrary, we found Mr. Sequeira to be professional, candid and forthright. In our view, Mr. Sequeira has been measured in his dealings with Argosy and has neither demonstrated any bias nor acted improperly in any other way.

(b) Leo Purcell

[65] In December 2015, approximately one month after the Commission issued a stay of the Director's Decision and one month before the hearing in this matter was required to occur (see paragraph [21] above), Argosy and Keybase retained Leo Purcell as a consultant. Mr. Purcell delivered two reports dated January 13, 2016 (two days before the commencement of this hearing), one in respect of each firm.

[66] The Applicants called Mr. Purcell as a witness at the hearing before us. Mr. Purcell has worked in various compliance-related roles in the investment industry for approximately 25 years, including three years with IIROC, four years as CCO at a registered dealer, and as a Compliance Officer at bank-owned dealers and small investment firms. Mr. Purcell is currently the principal of his own consulting firm.

[67] We found Mr. Purcell to be a candid and credible witness. Having said that, we are unable to attribute significant weight to the findings in his reports and to his oral testimony in our consideration of two of the principal issues before us, *i.e.*, (i) the extent to which it appears that the Applicants have failed in the past to comply with Ontario securities law; and (ii) whether it is proper for the Commission to impose terms and conditions upon the Applicants' registration as requested by Staff.

[68] Our inability to give Mr. Purcell's findings and testimony much weight is not a reflection on Mr. Purcell; rather it flows primarily from the purpose for which he was called as a witness. We asked counsel for the Applicants whether he sought to put Mr. Purcell forward as an expert witness. He replied that Mr. Purcell was being offered as a "participating expert". Staff counsel acknowledged that Mr. Purcell was "a fact witness", and counsel for the Applicants chose not to respond or to pursue the question.

[69] We accept Mr. Purcell's evidence with respect to strictly factual observations. As a tribunal that is expert in the matters that were the subject of Mr. Purcell's review, the Commission does not need the benefit of his expertise in order to discharge its mandate.

[70] Even if we had been asked to treat Mr. Purcell as a true expert witness and to be persuaded by his conclusions, we would have given his opinions little if any weight due to the scope and timing of his retainer and reports. In our view, his retainer was an example of the Applicants attempting, in a manner that was too little and too late, to paint a more favourable picture of the firms' approach to compliance.

[71] That the work was "too little" is, in our view, demonstrated by numerous limitations on Mr. Purcell's retainer:

a. he did not read the Director's Decision;

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30 *Re Trend Capital Services Inc.* (1992), 15 OSCB 1711 at p 1765; *Re Istanbul* (2008), 31 OSCB 3799 at para 60; *Sawh* at para 142.

31 *Sterling Grace* at para 269.

b. he did not review any pre-2014 examination or audit reports with respect to either Applicant;

c. he did not consult with staff of either SRO or of the Commission to understand their concerns or to help in developing his work plan;

d. he did not review reporting lines;

e. with respect to many written policies and procedures, Mr. Purcell's information was that these were in flux, and he was unable to review the completed versions;

f. significantly, very little if any testing had been conducted by the firms or was conducted by Mr. Purcell, thereby preventing a proper and necessary assessment of the effectiveness of the policies, procedures and corrective actions;

g. he did not assess the adequacy of Compliance resources;

h. he did not assess or comment on the larger governance issues on an enterprise-wide basis or with respect to either firm individually, *e.g.*, the makeup of the boards of directors of the Applicants;

i. he did not consult with any clients who had complained; and

j. in the case of Keybase, Mr. Purcell limited his review to the firm's complaint handling procedures.

[72] As a result of these limitations, Mr. Purcell's work covers only a small portion of the issues and concerns that would be addressed by the consultant contemplated by the Director's Decision, and Mr. Purcell was not asked to conduct, nor did he conduct, the kind of holistic analysis of the Applicants that would increase the likelihood that the Applicants could successfully implement changes to bring the cycle of continuing non-compliance to an end. For these reasons, Mr. Purcell's reports and oral evidence are not of great assistance to us in assessing the need for the terms and conditions requested by Staff.

[73] As noted above, we also consider the retainer of Mr. Purcell to have been "too late". We do not dismiss the potential value in taking remedial steps at any time. However, the fact that such steps were taken does not necessarily demonstrate a proper compliance culture or a commitment to being a responsible registrant. In particular, steps that should be taken (such as the addition of Compliance resources) but are resisted for some time, or that are taken only in the face of imminent and potentially significant regulatory action (as was Mr. Purcell's limited retainer), are of substantially less weight.

4. Timing of the OSC Staff Review

[74] As noted above in paragraph [15], approximately one year elapsed between Commission Staff's review of the two firms, and the delivery of the reports resulting from that review. At the hearing before the Director and at the hearing before us, the Applicants quite fairly complained about this delay.

[75] We heard no evidence that would explain the delay. It is possible that there are good reasons for such a delay in any given case, but because in this instance the concern was raised at the hearing before the Director and again at the hearing before us, and Staff did not offer any explanation, we are left being troubled by the fact that it took a year for Staff to issue its findings.

[76] Having said that, this delay did not cause us to give less weight to Staff's findings. Those findings were entirely consistent with a long history of governance and compliance failures at Argosy and Keybase, and as we conclude below, the findings form part of our overall conclusion that it appears to us that the Applicants have, in the past, failed to comply with Ontario securities law.

B. Analysis of issues

1. Introduction

[77] We now address each of the three principal issues in turn. In doing so, we are mindful of the fact that each of Argosy and Keybase is a separate firm, registered on its own, and that the two firms are regulated by different SROs. It is therefore necessary that we reach independent conclusions with respect to each of them. However, given the commonality of ownership and substantial commonality of governance between the two firms, and given the similarity of compliance failures alleged with respect to both firms, we deal with many of the substantive issues in the context of both firms together, with distinctions drawn where appropriate.

2. To what extent if any does it appear that the Applicants have failed, in the past, to comply with Ontario securities law?

(a) Introduction

[78] The record before us, including the findings of staff of the SROs over the course of their examinations, contained evidence of failures to comply with numerous provisions of NI 31-103, and with the obligation imposed on a dealer by NI 31-505 to deal with its clients "fairly, honestly and in good faith".

(b) "Know your client" and suitability

i. Introduction

[79] Section 13.2 of NI 31-103 requires a registered firm to take reasonable steps to ensure that it has, with respect to each of its clients, information regarding the client's investment needs and objectives, the client's financial circumstances, and the client's risk tolerance. This information must be sufficient to enable the firm to ensure that a recommendation made by the firm to buy or sell a security, or an instruction accepted by the firm from the client to buy or sell a security, would result in a transaction that is suitable for the client, all as required by section 13.3 of NI 31-103.

[80] Once obtained at the beginning of the firm-client relationship, the KYC information must be updated regularly. Information that is inaccurate for any reason, including because it is out of date, can significantly undermine the firm's ability to comply with its suitability obligation.

[81] At a minimum, KYC information must be updated to reflect material changes in a client's circumstances that may have occurred. The existence of such changes can be determined only through regular communication with the client.

[82] In addition, and as a second check to ensure the ongoing accuracy of KYC information, that information should be updated regularly. There is currently no explicit regulatory requirement applicable to IIROC members that prescribes the precise period. However, in general we consider a one-year period to be a prudent minimum. Such a period is consistent with that prescribed for exempt market dealers and portfolio managers[32] and with the requirement that MFDA members contact each client in writing at least annually to determine whether there has been any material change in information or circumstances relating to the client.[33]

ii. Argosy

[83] In the following paragraphs we review seven areas of concern with respect to Argosy's practices in respect of client information and suitability:

a. inadequate processes for updating client information;

b. inadequate processes for assessing the risk associated with specific securities;

c. instances of client investments being materially inconsistent with stated objectives and limitations, accompanied by inadequate responses from dealing representatives to Compliance queries;

d. inadequate oversight of concentration risk;

e. a requirement that clients absorb any loss resulting from the unwinding of unsuitable trades;

f. a recurring failure to obtain adequate information, and a lengthy period of time during which an improved New Account Application Form ("**NAAF**") will not be implemented for existing clients; and

g. inappropriate use of leverage.

[84] First, Argosy's methods of acquiring and updating information regarding clients' risk tolerance and investment objectives were insufficient:

a. A client would indicate his/her investment objectives and the risk tolerance was subsequently assigned automatically.

[32] See CSA Notice 31-336, *Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know Your Client, Know Your Product and Suitability Obligations* ("**CSA Notice 31-336**"); and OSC Staff Notice 33-740, *Report on the results of the 2012 targeted review of portfolio managers and exempt market dealers to assess compliance with the know your client, know your product and suitability obligations*.

[33] MFDA Rule 2.2.4(e).

b. As noted by IIROC staff in reviews conducted in 2012, 2014 and 2015, Argosy's investment holding ranges were too wide to be meaningful. For example, while there were limits on client holdings of high-risk securities, there were no restrictions on exposure to above-average or average-risk securities. The revised NAAF introduced after the 2015 review improves the alignment between client risk tolerance and product risk, but will not be implemented immediately for existing clients. Given Argosy's usual practice of conducting a review of an existing client once every two years, it will take that long before all clients have been transitioned to the new form. In the meantime, deficiencies in Argosy's processes and in its ability to ensure that clients are adequately protected will persist.

[85] Second, as noted in the OSC Staff Review, Argosy lacked adequate policies and procedures to ensure sufficient assessment of risks associated with specific securities and had demonstrated insufficient attention to this issue. Specifically,

a. Argosy's Compliance Officer manually reviewed approximately 1900 products twice a year, which is not sufficiently timely.

b. Argosy failed to incorporate volatility, which is an important factor in assessing risk. Argosy argued that there is a lack of proper data in most cases, which is untrue; there are numerous reliable and widely available measures of volatility. Further, Argosy's new system uses the security's price from the prior quarter and its market capitalization as a proxy for volatility, but these are not factors that necessarily contribute to risk.

c. Despite an April 2013 email to Mr. Sukhraj in which Argosy's CCO highlighted the urgency of updating the risk ranking system and stated that he was prepared to take immediate action from the moment potential approval was granted, the new system was not implemented until June 2015, more than two years later.

[86] Third, there were numerous instances of clients' investments being inconsistent, in material respects, with the risk tolerance recorded for the client. Three of these, queried in the first half of 2015, exemplify the problem:

a. Client W.C.'s maximum high-risk allocation was 30%, whereas 63% of the client's portfolio was in high-risk investments. In response to a Compliance query, the advisor promised "not [to] do any further high risk investments". This response was silent as to whether and how the client's portfolio would be brought into line.

b. Client J.B.'s RRSP account was also limited to 30% high risk, but consisted of 63% high-risk investments. The advisor's response to the Compliance query was: "Get more money during RRSP and refrain from buying high rated equities." This response was also silent as to whether and how the client's portfolio would be brought into line.

c. Client A.P.'s investment objective was recorded as income, with a maximum equity allocation of 40%. The client's actual equity allocation was 100%. In response to the Compliance query, the advisor said: "Talked to [client] on phone. We will be meeting next week to adjust the forms to keep things in line." This response fails to address whether the information on the form was an error, and if not, why it would be appropriate to adjust the information so significantly.

[87] Fourth, Argosy gave insufficient attention to concentration risk. As noted in the OSC Staff Review, Argosy had a policy that limited a client's investment in a single issuer to 25% of the client's total portfolio. While there is no universal maximum prescribed by regulation, it is useful to refer to the relevant Staff Notice issued by the Canadian Securities Administrators:

> Most CSA staff will consider investments (either individually or taken together with prior investments) in securities of a single issuer or group of related issuers that represent more than 10% of the investor's net financial assets as potentially raising suitability concerns due to concentration.[34]

[88] Holding 25% of one's portfolio in a single issuer is significantly riskier than holding 10% in a single issuer. However, while Argosy's policy limit of 25% did not contravene any regulatory requirement, even that limit does not appear to have been enforced by Argosy. Staff concluded that where a client's portfolio exceeded the prescribed limit, Argosy's Compliance staff would send an email to the client's representative, but there was no process in place to ensure that the issue was rectified.

[89] Fifth, where unsuitable trades were identified and unwound, Argosy required the client to absorb any resulting loss. When Staff expressed concern about this practice, Argosy responded that a "balanced and fair approach should also

[34] CSA Notice 31-336, supra note 32.

consider the situations when the outcome of unsuitable trades resulted in profits for the clients which they kept in all cases." We reject this approach as a violation of subsection 2.1(1) of NI 31-505 (the obligation to deal with clients "fairly, honestly and in good faith"). It is not "fair" to require clients to bear such losses, and an internal decision to allow clients to keep gains resulting from unsuitable trades does not absolve the firm of its responsibility for any losses.

[90] Sixth, in 2012 and 2014 IIROC staff found Argosy's processes for determination of client risk tolerance and investment objectives to be deficient. As noted above in paragraph [84], a revised NAAF that sought to address this and other issues would not be fully implemented for two years.

[91] Finally, issues arose regarding leveraged and inverse exchange-traded funds ("**ETFs**") and leveraged (*i.e.*, borrow-to-invest) accounts.

[92] With respect to leveraged products, the 2015 Argosy Compliance Manual correctly states that typically, inverse and/or leveraged ETFs are unsuitable for retail investors whose investment horizon is longer than one day. Yet a significant number of clients had invested in leveraged ETF's in contravention of this restriction.

[93] Despite the warnings and requirements in the manual, advisor practices varied and were often in violation of those requirements. A number of retail clients held these products, sometimes in concentrated amounts. When Compliance queried a transaction, in some instances the representative's response was that the securities were "buy and hold"; in other instances, the query was either not followed up or remained unanswered.

[94] With respect to borrow-to-invest accounts, IIROC staff concluded in 2015 that Argosy had not implemented adequate policies, procedures and controls to supervise accounts in which clients employed such a strategy. The policies and procedures did not contain sufficient detail to alert registrants and supervisors as to the risks of leveraging or the indicators that might indicate that a client was using borrowed funds to invest. Further, the monitoring reports did not always contain information sufficient to allow a proper assessment of whether the strategy was suitable.

[95] In June 2015, Argosy sought to improve its practices with respect to this issue by adding a specific question to its NAAF to determine whether the client was using borrowed funds to invest. However, as with many remedial efforts undertaken by the Applicants, this measure is insufficient, in that it addresses the question at the time of account opening, but has no lasting value through the life of the account. This problem is compounded by the two-year lag referred to in paragraph [84] above.

iii. Keybase

[96] A range of account- and trade-related problems, similar to those described above in paragraph [86], existed at Keybase. This fact was confirmed by Keybase's CCO, who in her March 2015 report to the UDP and board of directors stated that she anticipated that the 2016 MFDA audit would "point out only minor items", such as a high percentage of outdated KYCs and accounts that were inconsistent with the client's stated risk tolerance and investment objectives.

[97] We do not agree that these are minor items, and we are troubled by the assertion that they are.

[98] Like Argosy, Keybase had a practice of updating client information only once every two years. For the reasons set out above, we consider this period to be inadequate.

[99] In addition, Staff found in its review that deferred service charge ("**DSC**") funds were purchased in Registered Retirement Income Funds and other systematic withdrawal plans, to seniors and others whose time horizons were shorter than the DSC term. This resulted in the clients incurring unnecessary additional costs. Keybase's processes to identify, monitor and resolve this issue were inadequate, and clients ended up absorbing related losses.

(c) Training

[100] The record before us with respect to training at the Applicant firms gives rise to two areas of concern:

a. the frequency and content of training of dealing representatives and Compliance staff; and

b. records, or the absence of records, to show completed training.

i. Anti-money laundering and privacy training

[101] In her annual report for the period June 1, 2014, to March 31, 2015, Keybase's CCO expressed serious concern about the lack of annual anti-money laundering ("**AML**") training, and training with respect to privacy, both for dealing representatives and for other staff (including Compliance staff). She noted that the firm had not conducted AML training

since 2008 and that it had never conducted privacy training.

[102] These two topics are areas of significant regulatory risk for any firm handling funds and in possession of private information about individual clients. While the Commission and the SROs are not the primary regulators with respect to AML and privacy, we consider it to be a significant failure by the firm to manage its risk when it demonstrates such a lack of attention to this responsibility.

[103] The seriousness of this lapse is aggravated by the fact that in 2008, IIROC staff found Argosy's AML training to be deficient. In response to this finding, Argosy undertook to deliver the necessary training at a 2009 conference. However, it failed to do so. The independent monitor appointed pursuant to the 2008 IIROC Decision noted this failure in February 2010. The monitor's follow-up report recorded that the training had been completed. That Keybase failed to conduct AML training despite the issue being front and centre at Argosy is particularly troubling, given that Mr. Sukhraj was the UDP, CEO and sole director of both firms.

ii. Other training – Argosy

[104] In its 2015 review, IIROC staff noted that there was no record that Argosy's registrants and supervisors received ongoing training concerning advertising and marketing. In response, Argosy advised that the updated training materials would be available in the last quarter of 2015. The training module was computer-based and testing was to be done immediately. Mr. Sequeira testified that he has no evidence as to whether this testing occurred.

iii. Other training – Keybase

[105] The OSC Staff Review noted deficiencies with respect to the training that Compliance staff would receive regarding back office systems and regarding how to identify, investigate and resolve identified issues. It also noted that the training material had not been updated in ten years and therefore did not reflect current business practices.

iv. Records of attendance

[106] In numerous reviews, IIROC staff reported that Argosy was unable to produce records to demonstrate that employees required to attend various training sessions had in fact attended those sessions. In cross-examining Mr. Sequeira and in oral submissions, counsel for Argosy expressed what in our view are two fundamental misunderstandings about the importance of such records.

[107] First, Mr. Sequeira described the deficiency as being unresolved. This state of affairs continued through several reviews. In cross-examination, Mr. Sequeira refused counsel's repeated invitation to describe the deficiency as "significant", in the sense that term is used by IIROC. Mr. Sequeira testified that it "was significant only insofar as it had transpired for a number of years uncorrected." We accept Mr. Sequeira's characterization. In our view, counsel's line of questioning failed to recognize that a one-time deficiency that may not be significant in and of itself may well become part of a recurring pattern that is itself significant.

[108] Second, counsel attempted, through cross-examination and oral submissions, to dismiss the importance of records that would show the content of training and that would provide some evidence of who had completed the training. Counsel described this obligation as making the representatives "sign an attendance sheet like they're in grade 4 and it's an after school class and they have to show they are actually being there", and akin to teachers awarding "gold stars" for attendance. We categorically reject these suggestions. Taking attendance is a simple matter that helps the firm itself determine whether individuals have completed mandatory training, and helps the firm's regulators assess compliance with these obligations.

[109] While perfection in keeping records of attendance and of the content of training cannot reasonably be expected, Argosy fell well short of a registered firm's obligation in this regard.

(d) Prudent business practices – Keybase

i. Going concern note

[110] In 2015, the MFDA placed Keybase in discretionary early warning status because of a going concern note contained in Keybase's December 2014 financial statements. The note indicated that there was doubt about Keybase's ability to continue as a going concern due to a $1.8 million judgment against the firm in Nova Scotia, as well as 47 claims, as yet unresolved, that alleged unsuitable use of leverage in client accounts.

[111] Keybase appealed the Nova Scotia judgment but settled the claim for approximately $700,000 while the appeal was pending.

[112] In April 2015, Mr. Sukhraj advised the MFDA that despite the discretionary early warning status and the going concern note, he would not inject additional capital, because doing so would negatively affect ongoing settlement discussions with those Keybase clients who were asserting claims.

[113] It was not alleged that Keybase had a capital deficiency at the time of the hearing. Keybase asked the MFDA to remove it from early warning status in light of the Nova Scotia settlement. While MFDA staff acknowledged that the $1.1 million difference between the judgment and the settlement amount was a legitimate addition to available capital, in their view that amount was insufficient to justify the removal of the going concern note. MFDA staff therefore declined the request and pressed Keybase to inject actual new money in the amount of $1.5 million into the firm to address the going concern note.

[114] In the view of MFDA staff, the absence of any sources within the firm from which this amount could be added to the provision for claims necessitated the requested injection of new capital. The going concern note and the remaining claims based on allegations of excessive leverage, in conjunction with our other findings, demonstrate to us that Keybase has not managed and is not currently managing the risks associated with its business in accordance with prudent business practices as is required by section 11.1 of NI 31-103.

ii. Errors and omissions insurance

[115] Both at the hearing before the Director and at the hearing before us, there was some discussion about errors and omissions insurance held by Keybase and its representatives, and the extent to which, if any, that insurance might serve to alleviate concerns regarding the claims against Keybase.

[116] Irene Cheung, Manager of Financial Compliance at the MFDA, testified at the hearing before us. She explained that the availability of insurance does not eliminate or reduce a liability arising from a claim until the claim is actually paid by the insurer.

[117] This is a sound approach, given the uncertainty as to whether a particular claim would in fact be covered by insurance, and if so, to what extent. In our view, therefore, since the existence of errors and omissions insurance would not affect the presence of a going concern note to the financial statements, that insurance does not detract from our conclusion that Keybase has not managed its risks in accordance with prudent business practices.

(e) Acquisition of WH Stuart by Keybase

[118] In May 2013, Keybase acquired substantially all of the assets of W.H. Stuart Mutuals Ltd. ("**WH Stuart**"). There was little evidence in the record as to the details of this acquisition. At the hearing before the Director, counsel for the Applicants alluded to a "hornet's nest" of problems associated with that firm and argued that a number of the problems found at Keybase were legacy issues from WH Stuart.

[119] In our view, a firm that seeks to acquire another must first have conducted sufficient due diligence, and must have sufficient systems and resources in place to effect the acquisition as seamlessly as possible. A failure to do so is a breach of the obligation to follow prudent business practices. Inevitably, following an acquisition, not everything will proceed perfectly. However, significant and enduring problems are strongly indicative of improper diligence and planning prior to the closing of the transaction.

[120] It is clear that Keybase was insufficiently prepared for the acquisition of WH Stuart, and that Keybase did not act quickly enough to rectify problems that were encountered. For example, WH Stuart's back office system did not have adequate controls. Specifically, it had no controls to prevent trades for clients with outdated KYC forms, there was no ability to monitor concentration of securities, and many tasks were performed manually. Staff noted this as a significant deficiency in the OSC Staff Review, and we agree with that characterization. It took fifteen months before clients were transitioned to Keybase's own system.

(f) Supervision of branch offices

[121] Section 11.1 of NI 31-103 requires that a registered firm establish a system of controls and supervision sufficient to "provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation". In the case of a registered firm that has branch offices, this supervisory obligation necessarily extends to those branch offices, which by their very existence make supervision from head office more difficult. The increased difficulty does not relieve the firm of its obligation.

i. Argosy

[122] Argosy has a long history of inadequate supervision of branch offices, as reflected in the 2008 IIROC Decision, which notes recurring deficiencies going back to 2003.

[123] The OSC Staff Review resulted in similar findings. Specifically, Argosy did not receive adequate responses to deficiencies identified in the Ajax and Ottawa branches and did not maintain a tracking mechanism to ensure that each deficiency was resolved adequately and in a timely manner. The branch audit program itself was deficient regarding interviews of dealing representatives and reviews of client files.

[124] In 2015, IIROC staff found that supervisors at two branches had not taken adequate steps to ensure that tasks delegated from each branch to head office were being properly completed. IIROC staff noted that similar concerns had been identified in 2005, 2010, 2012 and 2014.

ii. Keybase

[125] In the OSC Staff Review, Staff found that Keybase's sub-branch audit program was deficient in numerous respects. The program did not:

a. adequately test representatives' understanding of product and suitability obligations;

b. document the client file selection review process;

c. include input from the audit planning process; or

d. verify that dealing representative notes were retained.

[126] Staff had expressed its concern that due in part to the acquisition of WH Stuart, sub-branch audits were not being performed as frequently as was called for by the audit program. In response, Keybase proposed to use dealing representatives who had compliance experience to supplement Keybase's Compliance staff. We share the concern expressed by Staff that doing so would compromise the independence of the reviews.

[127] Moreover, by the time of the OSC Staff Review, Keybase had not assessed the risk associated with each WH Stuart sub-branch. Keybase was therefore not in a position to determine which branches were higher risk and should consequently attract greater scrutiny.

(g) Outside holdings

[128] IIROC's Rule 200.2(e) addresses situations where a member firm's client holds a position outside of the member firm. This rule was relevant for Argosy, some of whose clients held mutual funds directly with the mutual fund company instead of on Argosy's books, but where Argosy received ongoing compensation in respect of those positions.

[129] While Argosy is not alone in having clients who have "outside holdings" (as that term is used in the IIROC rule), and while Argosy had taken steps to reduce its clients' outside holdings, IIROC staff continued to have concerns about Argosy's management of these situations. Specifically, IIROC staff noted that Argosy continuously failed to meet its obligation to:

a. supervise the outside holdings;

b. ensure that the clients received trade confirmations and monthly statements that reflected the outside holdings; and

c. warn clients that outside holdings were not covered by the Canadian Investor Protection Fund.

[130] Argosy notes that it inherited all of the accounts with outside holdings from another firm. That fact does not relieve Argosy of the obligations set out above. Argosy should have had a plan to deal with these accounts from the time that they were taken over.

[131] We are particularly concerned about Argosy's failure to supervise these accounts. As Mr. Sequeira testified, Argosy was required to conduct a monthly review of the accounts as part of its suitability analysis, but this was not being done. Indeed, Argosy's ability to supervise was severely hampered because the accounts were not reflected in the firm's books and records.

[132] Argosy's failure to maintain appropriate records relating to outside holdings appears to us to be a failure to comply with section 11.5 of NI 31-103, which requires a registered firm to maintain records to accurately record client transactions.

Further, the failure to deliver trade confirmations and monthly statements to clients who held positions outside the firm appears to be a failure to comply with IIROC rule 200.2(e) and therefore of sections 14.12 and 14.14 of NI 31-103.

(h) Outside business activities

[133] Section 13.4 of NI 31-103 requires registered firms to take reasonable steps to identify and manage material conflicts of interest. In order to comply with this obligation, a firm must be aware of the outside business activities of its registered employees and must keep that information current. In some cases, firms may be required to prohibit individuals from engaging in certain outside business activities. In other cases, a firm may have to disclose the outside business activity to its clients.

[134] Argosy has a long history of failing to meet its obligations in this regard. In 2015, IIROC staff found that Argosy had failed to have adequate policies and procedures regarding the assessment and management of registrants' outside business activities. This finding echoed similar findings by IIROC staff from 2005, 2010, 2011 and 2012.

[135] As Mr. Purcell testified, Argosy did record some information about outside business activities. However, those records would not be sufficient to enable one to determine whether a real assessment of potential conflict of interest had been carried out, as opposed to a mere recording of the activity.

(i) Out-of-jurisdiction accounts

[136] When an Ontario-registered firm chooses to accept a client who is resident in a jurisdiction outside Ontario and in which the firm is not registered, that firm must ensure that it fully complies with the regulatory requirements that apply in the client's jurisdiction. In some cases, registration of the firm may be required in the other jurisdiction. A failure to comply with regulatory requirements applicable in another jurisdiction would, in our view, constitute a breach of an Ontario registrant's obligations to adopt prudent business practices and to treat its out-of-jurisdiction clients fairly.

[137] In its 2015 examination of Argosy, IIROC staff found, as it had on five previous examinations between 2005 and 2014, that Argosy had inadequate records of any due diligence it had performed regarding its registration obligations in jurisdictions where it was not registered but where its clients resided.

[138] In its response to IIROC, Argosy indicated that it would assess this matter on a case-by-case basis and that it had amended its Compliance Manual to require approval for a change in address of a customer to a new jurisdiction.

[139] Argosy also proposed to rely on Compliance resources provided by its clearing firm to determine its registration obligations. This kind of reliance is not necessarily improper. However, any firm that chooses to rely on outside resources must first, and on an ongoing basis, conduct a proper assessment of whether the resources being relied upon are themselves adequate. We saw no evidence of any such assessment by Argosy.

[140] As to measures that Argosy itself promised to take, it is not clear to us that those measures were indeed implemented, and if so, whether they were effective.

(j) Marketing and advertising

[141] IIROC Dealer Member Rule 29.7 prescribes a number of standards and prohibitions relating to advertising and sales literature. In examinations of Argosy going back to 2005, and continuing through to 2014, IIROC staff repeatedly observed significant deficiencies in Argosy's practices and controls in this regard. Findings included lack of necessary approvals, undated materials, missing disclosures, improper use of designations, and failure to maintain final versions.

[142] Commission Staff reported significant problems in the OSC Staff Review. These included inaccurate and misleading marketing materials, inappropriate use of benchmarks, and marketing of outside business activities.

[143] Inadequate oversight of, and management response to, these deficiencies reflect themes that recur through many of the issues that arise in this case. As noted by Staff, Argosy's Compliance staff purported to carry out a quarterly review of marketing materials, but this review failed to identify any of the problems cited above. In response to all of these concerns, Argosy asserts that the Compliance Manual has been updated and that necessary issues were the subject of training conducted in early 2015. While this may be so, we saw no evidence that these measures have been effective.

(k) Compliance queries

[144] The record before us leads us to the conclusion that there has been a chronic failure at the Applicants to discharge the obligation to maintain robust processes for Compliance oversight of sales activities.

[145] A proper compliance system includes systematic and appropriate generation of queries, with follow-up and remedial actions as necessary. Records must be generated and available so that supervisors, management, Compliance and regulators can determine whether existing issues are being addressed adequately and emerging issues are being identified and are being responded to appropriately.

[146] In 2015, IIROC staff found significant deficiencies in Argosy's follow-up of inquiries sent to individual registrants regarding suitability and other matters. This concern echoed findings from examinations in 2010, 2012, and 2014. Argosy's own CCO stated, in a formal report, that dealing representatives often failed to respond to inquiries from Compliance.

[147] Argosy responded to this concern in 2015 by updating its policies and procedures, and by incorporating those into its 2015 Compliance Manual. Given the history, and in the absence of any evidence that the policy changes have been effective, we have little confidence that Argosy's identification and management of Compliance inquiries meets the necessary standard.

[148] We can only imagine the frustration of Argosy's CCO, who found it necessary to incorporate into a formal report (which, as he knew, would be seen by IIROC) his concern that representatives often failed to respond to inquiries. It is apparent that those representatives knew there would be no consequences for their failure to respond. Responsibility for this state of affairs lies squarely at the feet of Mr. Sukhraj, who would have been the only person with the power to effect the changes required to ensure that queries were properly addressed, whether those changes would come in the form of additional resources, disciplinary consequences for the representatives involved, or otherwise.

(l) Policies and procedures – updating and testing

[149] The enactment of policies and procedures by a registrant firm is only a first step toward the establishment and maintenance of a satisfactory compliance and supervisory system. Such policies and procedures are of no benefit unless they are implemented, a step that itself requires a number of actions (*e.g.*, communication, training, oversight).

[150] Further, a registered firm must conduct monitoring and testing of the firm's activities in order to assess whether the policies and procedures are being implemented properly. To the extent that the monitoring and testing reveals deficiencies, these deficiencies must be rectified promptly, whether through amendment of the policies and procedures, further communication and/or training with respect to the policies and procedures, increased management supervision of firm activity, employee discipline, or other means.

[151] Argosy's response to IIROC's 2015 audit report asserts that various significant concerns had been addressed, in part, by changes to Argosy's Compliance Manual, including in the following areas:

a. supervision of co-op marketing;

b. supervision in advertising and marketing, generally, including social media;

c. supervision and operation of outside holdings;

d. outside business activities;

e. implementation of a NAAF recording a client's risk tolerance and investment objectives, among other information; and

f. registration in jurisdictions where the firm conducts business.

[152] Argosy's response did not describe any meaningful Compliance department testing that had taken place or that was taking place in respect of these concerns or others. In our view, therefore, the response does not demonstrate sufficient remedial measures.

(m) Compliance resources

i. Introduction

[153] The question of whether the Applicants had sufficient resources devoted to the Compliance function was on the minds of both Applicants' CCOs and was a matter of concern for staff of the SROs and of the Commission.

ii. Measuring Compliance resources

[154] The assessment of the adequacy of Compliance resources is not a precise science. In the OSC Staff Review, Staff concluded that the inadequacy of Compliance resources at both Applicants was a problem that contributed to the significant deficiencies found at both firms. In our view, a high number of deficiencies, particularly significant and recurring ones of the kind observed at the Applicants, is often an indicator of inadequate Compliance resources, among other causes.

[155] In response to Staff's conclusion, Mr. Sukhraj stated in his July 2015 affidavit that 40% of payroll costs for Argosy and Keybase were dedicated to the Compliance function. In his view, that ratio is "on the high side relative to other industry members".

[156] We had no evidence before us as to whether that ratio is indeed higher than average. In any event, however, we reject the implication that a ratio that is higher than average demonstrates greater-than-adequate Compliance resources, for a number of reasons:

a. by itself, any arithmetic assessment of Compliance payroll costs as a percentage of total payroll costs tells an incomplete story, in that many factors unrelated to the adequacy of Compliance resources are likely to contribute to a higher or lower ratio – specifically, such factors often include the business mix of a firm (*e.g.*, mutual funds, other securities), the geographic distribution of a firm's business and employees, the basis of employees' compensation (*e.g.*, base salary vs. commission for salespersons or advisors), the compensation of senior non-producing business leaders, and many others;

b. the ratio can be significantly affected by the extent to which employees who are nominally part of the Compliance department are indeed devoted to Compliance-related tasks, as opposed to other functions;

c. the same problems would apply to any other arithmetic assessment of the adequacy of resources (*e.g.*, ratio of Compliance employees to total employees, ratio of Compliance payroll to firm revenues); and

d. inadequacies in a firm's compliance system, *e.g.*, with respect to training, monitoring, testing, or policies and procedures, inevitably lead to a greater number of deficiencies in the first place, with the result that the existing Compliance resources must spend more time addressing client complaints, following up internally on queries and deficiencies, and dealing with regulators, as opposed to performing the tasks required of them in the first place.

iii. History of concerns – Argosy

[157] The record reveals a pattern of concerns about the inadequacy of Compliance resources, and of resistance or neglect on the part of Mr. Sukhraj.

[158] The consultant imposed as a result of the 2008 IIROC Decision found that Argosy did not have sufficient strength in its Compliance function, and therefore recommended that Argosy undertake a search for a qualified CCO. The consultant noted that Mr. Sukhraj disagreed with this recommendation.

[159] In his 2012 annual report, Argosy's CCO wrote:

> The Compliance department continues to face serious challenges due to the limited qualified staff performing this function, while being faced with a higher number of tasks. … The Compliance function continues to be performed by the CCO with only one person licensed and no available alternates … It is imperative to have at least one additional compliance officer in order to ease the pressure on the department and to fulfill the minimum regulatory requirements for backups.

[160] In the OSC Staff Review, Staff found that Argosy's Compliance staff were not issuing branch audit reports in a timely manner. Further, Staff found no evidence of any queries having been made as a result of alerts generated by monthly commission reports.

[161] Argosy added one person to its Compliance department following the conclusion of the OSC Staff Review but before the issuance of the report resulting from that review.

[162] In his annual report for the period April 1, 2014, to March 31, 2015, issued on April 15, 2015, immediately following delivery of the OSC Staff Review report, Argosy's CCO stated: "The Compliance Department is confident that the existing resources are able to support existing registrants and the anticipated business growth in the future." He made similar statements in his affidavit submitted for the hearing before the Director.

[163] It is difficult to give any weight to these assertions. Argosy's CCO states in his January 5, 2016, affidavit filed for the

hearing before us that "[i]n the 5.5 years that I've been the CCO at Argosy I do not recall any instance where I felt that I could not approach the UDP with a compliance concern or where I felt that we did not have a satisfactory discussion about any issue raised." We find it impossible to reconcile the urgent plea referred to in paragraph [159] above with the statement that "we [always had] a satisfactory discussion about any issue raised."

iv. History of concerns – Keybase

[164] In her 2012 annual report, Keybase's CCO wrote:

> Because of the conversion of branches into sub-branches of Head Office, Head Office compliance workload and responsibilities have increased tremendously … Additional resources and support have to be provided to Head Office Compliance Team in order to ensure [that] the effectiveness of compliance supervision will be affected because of restructure. [sic]

[165] She repeated her plea in her 2013 report: "… workload responsibilities have increased a lot … Additional resources and support have to be provided to Head Office Compliance Team in order to ensure the effectiveness of compliance supervision."

[166] Keybase hired nine additional Compliance staff between June 2013 and July 2015. However, we take little comfort from this, for a number of reasons:

a. Keybase acquired WH Stuart in June 2013, so additional Compliance staff would have been necessary in any event;

b. the workload for the additional Compliance staff must have been significantly greater than normal, given the "hornet's nest" of problems at WH Stuart, as referred to in paragraph [118] above;

c. Compliance staff devoted some unknown portion of their time to litigation support, which is not a Compliance function; and

d. it is unclear how many Compliance staff quit or were terminated, which leaves us unable to know whether the net number of additional staff was nine or some smaller number.

[167] Following the conclusion of the OSC Staff Review, and when the hearing before the Director was looming, Keybase's CCO, like her Argosy counterpart, stated that she was "satisfied that Keybase's current compliance resources and staffing levels is sufficient." However, there was little to explain how she reached this conclusion, which at least on its surface was inconsistent with the recurring and unremediated deficiencies.

v. Conclusion

[168] We are troubled by the fact that the CCOs had to insist that additional Compliance resources were required. Our concern is heightened, as it was with respect to the inadequate follow-up of Compliance queries referred to in paragraph [148] above, by the fact that these pleas had to be made by way of the CCOs' annual reports.

[169] We take little comfort from the unsubstantiated assertions, made only once Staff had recommended that the Applicants be required to retain a consultant, that the resources were sufficient. We do not consider ourselves to be in a position to properly assess the adequacy of resources as at the time of the hearing before us. In our view, this is a task that requires analysis by an independent consultant.

(n) Role of the Ultimate Designated Person

[170] Section 11.2 of NI 31-103 requires a registered firm to designate a registered individual as "ultimate designated person". In the case of firms such as the Applicants, the UDP must be either the chief executive officer or the sole proprietor. Section 5.1 of NI 31-103 requires that a UDP "supervise the activities of the firm that are directed towards ensuring compliance with securities legislation by the firm and each individual acting on the firm's behalf", and "promote compliance by the firm, and individuals acting on its behalf, with securities legislation."

[171] The role of UDP is critically important. The UDP bears ultimate responsibility for establishing, maintaining and promoting a culture of compliance and ethical behaviour within the firm.[35] This responsibility can and must be discharged in a number of ways, including by ensuring an appropriate "tone from the top", a tone that the UDP must also satisfy himself/herself is being promulgated throughout the firm by other members of management. This latter

[35] See, *e.g.*, *Re Northern Securities Inc.* (2014), 37 OSCB 8535 at para 168.

obligation is often referred to as "tone from the middle", and is a necessary complement to the tone from the top.

[172] Each of these messages must be communicated frequently and consistently, using different media, and must be reinforced by actions (*e.g.*, decisions as to employee hiring, promotion, discipline and compensation; promotion of industry involvement and continuing education; avoidance and management of conflicts of interest; response to client complaints; co-operation with regulators and SROs).

[173] In its 2016 Priorities Letter, the Financial Industry Regulatory Authority ("**FINRA**") identifies culture as its first area of focus and reiterates many of the same principles set out above. FINRA defines culture as the "set of explicit and implicit norms, practices, and expected behaviours that influence how firm executives, supervisors and employees make and implement decisions in the course of conducting a firm's business." As FINRA notes, "firm culture has a profound influence on how a firm conducts its business and manages conflicts of interest." Two indicators FINRA will assess are if compliance is valued or simply tolerated and if managers are effective role models of appropriate firm culture.

[174] We consider FINRA's comments in this regard to be appropriate definitions of, statements of the importance of, and measures of, a culture of compliance and tone from the top.

[175] In our view, Mr. Sukhraj failed in numerous and material respects to meet the necessary standard in this regard. The record before us told a consistent story, over many years, of:

a. resisting urgent internal requests for necessary Compliance resources (see paragraphs [159], [164] and [168] above);

b. ignoring an urgent request for a proper risk-ranking system for products (see paragraph [85] above);

c. requiring Argosy clients to bear the loss associated with the unwinding of an unsuitable trade (see paragraph [89] above); and

d. apparent antipathy toward regulatory requirements and standards (*e.g.*, his characterization of MFDA standards as "onerous" and "constraining").

[176] The seriousness of Mr. Sukhraj's failure as UDP is compounded by the fact that he was not only the UDP of both firms, but also the firms' CEO and chair of the board of directors. Holders of both those positions bear responsibility for ensuring that the firm adopt and implement appropriate policies, procedures and practices, and for empowering and enabling the UDP to discharge his/her critical compliance-related obligations.

[177] With respect to Argosy, it appears to us that Mr. Sukhraj and the board of directors failed in their obligations:

a. prescribed by IIROC rule 38.1, to ensure that:

   i. Argosy maintained a compliance and supervisory system that would, at a minimum, provide for the establishment and enforcement of appropriate policies and procedures designed to achieve compliance with applicable requirements; and

   ii. Argosy had sufficient personnel and other resources to carry out its obligations; and

b. prescribed by IIROC rule 38.8, to review the CCO's annual report and ensure that appropriate action is taken to rectify any compliance deficiencies identified in that report.

[178] It also appears to us that Keybase, and by extension Mr. Sukhraj and the board of directors, failed in the obligation, prescribed by MFDA Rule 2.5.1, to establish and implement "policies and procedures to ensure the handling of [the firm's] business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation."

(o) Conclusion

[179] As noted above in paragraph [48], the Director (and by extension the Commission) may impose terms and conditions upon a registration if "it appears" that the registrant has failed to comply with Ontario securities law. This is not an enforcement proceeding, and we are not necessarily being asked to conclude, on a balance of probabilities, that the Applicants have contravened Ontario securities law. It is sufficient for us to conclude, as we do, that it appears that there has been a failure to comply with Ontario securities law.

[180] We have no difficulty reaching that conclusion in this case. For the reasons set out above, it appears to us that the

Applicants:

a. failed to comply with various applicable provisions of NI 31-103;

b. failed to comply with various provisions of NI 31-103 from which they would have been exempted had they complied with the applicable SRO rule, except that they did not so comply (see paragraph [53] above); and

c. failed substantially to comply with applicable SRO rules, thereby contravening the requirement in subsection 2.1(1) of NI 31-505 that the firms deal with their clients fairly, honestly and in good faith (see paragraph [53] above).

3. To what extent if at all should we engage in an assessment of the current state of compliance at the Applicant firms?

[181] The Applicants urged us to take into account all of the remedial measures that have been implemented to date. As reviewed above, affidavits from Mr. Sukhraj and from both firms' CCOs describe these measures and give assurances that all is well. In written submissions, the Applicants assert that "the Commission must consider the reality as of the date of the hearing and review".

[182] We have considered all the evidence presented to us, including that which demonstrates measures taken in the weeks and months leading up to the hearing. However, in light of the wide-ranging findings we have made above, and our serious concerns about the state of compliance at Argosy and Keybase, we cannot rely upon promises and assurances. We are not in a position to reach a certain conclusion as to the present state of affairs, in the absence of any evidence that the remedial measures identified have been fully and effectively implemented.

[183] As noted above in paragraphs [48] to [50], section 28 of the Act, which empowers the Director (and by extension the Commission) to impose terms and conditions upon a registration, does not require a current assessment. Instead, our task is to determine whether it appears that the Applicants have, in the past, failed to comply with Ontario securities law. For the reasons set out above, we have no difficulty coming to that conclusion in this case.

4. Is it proper for the Commission to impose terms and conditions upon the registration of the Applicants, as requested by Staff?

(a) Should the Applicants be required to retain a consultant?

[184] The record before us does not allow us to conclude that Mr. Sukhraj is willing or able to take the necessary steps to ensure that the Applicants will be managed in a manner that complies with regulatory requirements and expectations. He has failed to demonstrate an understanding of the importance of the regulatory requirements that exist for the protection of investors, and we have no confidence in his capacity for determining, on his own, what resources, policies, procedures, and other measures are required.

[185] In our view, only an independent consultant can properly assess the state of compliance at Argosy and Keybase and determine what governance and compliance improvements are necessary. Our concerns are heightened by the firms' ambitious growth strategy.

(b) Scope of the consultant's mandate

[186] As is evident from the record before us and from the reasons set out above, the problems at both Argosy and Keybase are wide-spread. The apparent failure to comply with Ontario securities law described above likely stems in significant part from systemic weaknesses in firm governance, oversight by Mr. Sukhraj, and Compliance resources.

[187] While meaningful improvements in these areas would undoubtedly result in fewer specific deficiencies, we have no reason to be confident that the Applicants would, on their own, undertake a diligent, objective and comprehensive assessment of the existing compliance system and determination of the necessary remedial measures.

[188] We think it important that the consultant consider firm governance, including the composition of the boards of directors, and the independence of those directors. Although there is no regulatory requirement that a registered firm have independent directors, it is reasonable to conclude that had the Applicants' boards included independent directors, more attention would have been paid to regulatory obligations, and many of the regulatory difficulties that Mr. Sukhraj and the firms have encountered might have been avoided.

[189] Further, the presence of one or more independent directors better enables a firm's CCO to raise significant concerns, and to see that those concerns are properly addressed.

[190] In our view, therefore, the consultant must examine and consider systemic, structural and governance issues without limitation. The terms and conditions imposed by the Director, and substantially replicated in our decision and order, give the consultant the necessary mandate.

(c) Follow-up report

[191] As we have stated above, implementing an improvement to the compliance system or to a compliance process is only the first step. Proper oversight requires testing the effectiveness of the improvement over a period of time.

[192] In addition, it is essential to assess whether improvements made are sustainable. Improvements will likely have consequences that add to the Compliance burden, so only time will tell if further changes need to be made.

[193] It is therefore necessary, in our view, that the consultant have an opportunity to assess the effectiveness of the recommended changes.

VIII. CONCLUSION

[194] For the reasons set out above, we consider it proper to impose upon the registrations of Argosy and Keybase the terms and conditions set out in the order that we issued at the conclusion of the hearing. Those terms and conditions are appended to these reasons as Schedule 'A' (in respect of Argosy) and Schedule 'B' (in respect of Keybase).

[195] We urge Mr. Sukhraj to:

a. think carefully about the regulatory history of the Applicants;

b. accept that he has chosen to engage in business in an industry that is highly regulated for good reason, given that investors' life savings are at stake;

c. appreciate that many registered firms manage to operate profitably and successfully while being in substantial compliance with regulatory requirements; and

d. be open to the change of mindset that may be required in order for Argosy and Keybase to operate as successful and compliant registrants.

Dated at Toronto this 20th day of April, 2016.

"Timothy Moseley"

"D. Grant Vingoe"

"Deborah Leckman"

SCHEDULE 'A'

Terms and conditions for the registration of Argosy Securities Inc. ("Argosy")

1. By no later than February 19, 2016, Argosy shall retain, at its own expense, the services of an independent consultant (the "Consultant") that is approved by the OSC Manager assigned by the Director from time to time (the "OSC Manager"), to:

   a. prepare and assist Argosy in implementing a plan (the "Plan") to strengthen Argosy's "compliance system" within the meaning of section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, including the expected dates of completion and person(s) responsible for the implementation. In the Plan, the Consultant will examine Argosy's internal policies, practices and procedures, including but not limited to, in relation to:

      i. resources allocated to compliance, including whether appropriate staffing levels are maintained and whether individuals have the education, training and experience that a reasonable person would consider necessary to perform the activity competently; and

      ii. prudent business practices, including developing an enhanced corporate governance structure at Argosy, and at Argosy's affiliate Keybase Financial Group Inc., sufficient to effectively address ongoing compliance with securities legislation; and

   b. review Argosy's progress with respect to implementation of the Plan; and,

   c. submit written progress reports ("Progress Reports") to the OSC Manager and to the Investment Industry Regulatory Organization of Canada ("IIROC") detailing Argosy's progress with respect to the implementation of the Plan and stating whether the specific recommendations included in the Plan have been implemented and, if not, the expected date of completion and person(s) responsible for the implementation.

2. The Consultant shall provide the Plan to the OSC Manager for approval no later than March 21, 2016.

3. The Plan and the Progress Reports must be reviewed and approved by Argosy's ultimate designated person ("UDP") and chief compliance officer ("CCO"), and signed by the UDP and the CCO as evidence of their review and approval.

4. The Consultant shall submit Progress Reports to the OSC Manager and to IIROC every thirty days following approval of the Plan by the OSC Manager until the Plan has been fully implemented.

5. Argosy understands and acknowledges that staff of the Commission expects that substantial progress towards the implementation of the Plan must be demonstrated in each of the Progress Reports.

6. Upon the full implementation of the Plan, the Consultant shall submit an attestation letter for approval by the OSC Manager verifying that the Consultant's recommendations have been implemented and tested, and are working effectively.

7. Argosy shall immediately submit to the Commission a direction from Argosy giving unrestricted permission to staff of the Commission and of IIROC to communicate with the Consultant regarding Argosy's progress with respect to the implementation of the Plan or any of its specific recommendations.

8. One year after the full implementation of the Plan, the Consultant shall return, at Argosy's expense, to complete a review of Argosy's compliance system. The Consultant shall submit a report for the OSC Manager's approval that the Consultant's recommendations continue to be implemented, that the compliance system is working effectively, and shall note any deficiencies.

9. These terms and conditions shall remain in place until they are removed by Staff. Staff will not recommend that the terms and conditions be removed until IIROC confirms that Argosy has addressed its internal policies, practices and procedures in respect of trade review and complaint handling to the satisfaction of IIROC, including in respect of complaints referred to the Ombudsman for Banking Services and Investments.

Schedule 'B'

Terms and conditions for the registration of Keybase Financial Group Inc.

1. By no later than February 19, 2016, Keybase shall retain, at its own expense, the services of an independent consultant (the "Consultant") that is approved by the OSC Manager assigned by the Director from time to time (the "OSC Manager"), to:

    a. prepare and assist Keybase in implementing a plan (the "Plan") to strengthen Keybase's "compliance system" within the meaning of Section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, including the expected dates of completion and person(s) responsible for the implementation. In the Plan, the Consultant will examine Keybase's internal policies, practices and procedures, including but not limited to, in relation to:

        i. resources allocated to compliance, including whether appropriate staffing levels are maintained and whether individuals have the education, training and experience that a reasonable person would consider necessary to perform the activity competently; and

        ii. prudent business practices, including developing an enhanced corporate governance structure at Keybase, and at Keybase's affiliate Argosy Securities Inc., sufficient to effectively address ongoing compliance with securities legislation;

    b. review Keybase's progress with respect to implementation of the Plan; and,

    c. submit written progress reports ("Progress Reports") to the OSC Manager and to the Mutual Fund Dealers Association of Canada (the "MFDA") detailing Keybase's progress with respect to the implementation of the Plan and stating whether the specific recommendations included in the Plan have been implemented and, if not, the expected date of completion and person(s) responsible for the implementation.

2. The Consultant shall provide the Plan to the OSC Manager for approval no later than March 21, 2016.

3. The Plan and the Progress Reports must be reviewed and approved by Keybase's ultimate designated person ("UDP") and chief compliance officer ("CCO"), and signed by the UDP and the CCO as evidence of their review and approval.

4. The Consultant shall submit Progress Reports to the OSC Manager and to the MFDA every thirty days following approval of the Plan by the OSC Manager until the Plan has been fully implemented.

5. Keybase understands and acknowledges that staff of the Commission expects that substantial progress towards the implementation of the Plan must be demonstrated in each of the Progress Reports.

6. Upon the full implementation of the Plan, the Consultant shall submit an attestation letter for approval by the OSC Manager verifying that the Consultant's recommendations have been implemented and tested, and are working effectively.

7. Keybase shall immediately submit to the Commission a direction from Keybase giving unrestricted permission to staff of the Commission and of the MFDA to communicate with the Consultant regarding Keybase's progress with respect to the implementation of the Plan or any of its specific recommendations.

8. One year after the full implementation of the Plan, the Consultant shall return, at Keybase's expense, to complete a review of Keybase's compliance system. The Consultant shall submit a report for the OSC Manager's approval confirming that the Consultant's recommendations continue to be implemented, that the compliance system is working effectively, and shall note any deficiencies.

9. These terms and conditions shall remain in place until they are removed by Staff. Staff will not recommend that the terms and conditions be removed until the MFDA confirms that Keybase has addressed its internal policies, practices and procedures in respect of trade review and complaint handling to the satisfaction of the MFDA, including in respect of complaints referred to the Ombudsman for Banking Services and Investments.

3.1.3 Weizhen Tang – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
WEIZHEN TANG

REASONS AND DECISION
(Subsections 127(10) and 127(1) of the Securities Act)

Hearing:	February 17 and 18, 2016		
Decision:	April 21, 2016		
Panel:	Christopher Portner	–	Commissioner and Chair of the Panel
	Deborah Leckman	–	Commissioner
	Timothy Moseley	–	Commissioner
Appearances:	Brendan Van Niejenhuis	–	For Staff of the Commission
	Weizhen Tang	–	Representing himself

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REASONS AND DECISION

I. BACKGROUND

[1] On March 17, 2009, the Ontario Securities Commission (the "**Commission**") issued a Temporary Order (the "**Temporary Order**") that (i) pursuant to paragraph 2 of subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), all trading in securities of Oversea Chinese Fund Limited Partnership (the "**Oversea Chinese Fund**"), Weizhen Tang and Associates Inc. ("**Tang and Associates**") and Weizhen Tang Corp. ("**Tang Corp.**") shall cease and that all trading by Weizhen Tang ("**Tang**"), Oversea Chinese Fund, Tang and Associates and Tang Corp. shall cease; and (ii) pursuant to paragraph 3 of subsection 127(1) of the Act, the exemptions contained in Ontario's securities law do not apply to Tang, Oversea Chinese Fund, Tang and Associates and Tang Corp.

[2] On March 18, 2009, the Commission issued a Notice of Hearing (the "**Original Notice of Hearing**") which set out the Commission's intention to hold a hearing to consider whether, pursuant to section 127 of the Act, it was in the public interest for the Commission to extend the Temporary Order beyond 15 days. On April 1, 2009, and on numerous subsequent dates, the Temporary Order was extended by Order of the Commission.

[3] On May 24, 2011, Tang was charged with having defrauded members of the public of monies having a value exceeding $5,000 by deceit, falsehood or other fraudulent means during the period from March 1, 1999 to March 31, 2009, contrary to subsection 380(1) of the *Criminal Code*, R.S.C. 1985, c. C-46.

[4] On October 30, 2012, following a 25-day jury trial, Tang was found guilty of fraud as charged. On February 1, 2013, Tang was sentenced by Justice A. O'Marra of the Superior Court of Justice, who presided over the jury trial, to six years imprisonment and to pay a fine in lieu of forfeiture of the proceeds of crime in the amount of $2,849,459.50 within five years of his release from incarceration and, in the event that the fine is not paid, to serve a further five years of imprisonment.

[5] On September 30, 2013, Staff of the Commission ("**Staff**") filed a Statement of Allegations against Tang (the "**Statement of Allegations**") based on Tang's conviction in the Superior Court of Justice as described in paragraph [4] above (the "**Criminal Conviction**") and sought an enforcement order based on the Criminal Conviction.

[6] On the same day, the Commission issued a new Notice of Hearing (the "**Notice of Hearing**") in connection with the Statement of Allegations. The Notice of Hearing replaced the Original Notice of Hearing and set out the Commission's intention to hold a hearing (the "**Hearing**") to consider whether, pursuant to subsections 127(1) and (10) of the Act, it was in the public interest for the Commission to issue an order that:

(a) Trading in any securities by Tang cease permanently or for such period as is specified by the Commission;

(b) Tang be prohibited permanently, or for such other period as is specified by the Commission, from acquiring any securities;

(c) Any exemptions contained in Ontario securities law not apply to Tang permanently or for such period as is specified by the Commission;

(d) Tang be reprimanded;

(e) Tang resign all positions that he may hold as an officer or director of any issuer, registrant or investment fund manager;

(f) Tang be prohibited permanently, or for such other period as is specified by the Commission, from becoming or acting as an officer or director of any issuer, registrant or investment fund manager; and

(g) Tang be prohibited permanently, or for such other period as is specified by the Commission, from becoming or acting as a registrant, an investment fund manager or a promoter.

[7] Tang appealed his conviction and sentence to the Court of Appeal for Ontario, which appeals were dismissed on June 25, 2015 and October 5, 2015, respectively.

[8] The Hearing was held on February 16 and 17, 2016.

II. BASIS OF PROCEEDING

[9] In seeking the order described in paragraph [6] above, Staff relies on paragraph 1 of subsection 127(10) of the Act which provides that an order in the public interest under subsection 127(1) of the Act may be made in respect of a person if:

> The person … has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives.

[10] In his detailed Reasons for Sentence (*R v. Weizhen Tang* (February 1, 2013), Toronto, Ont. Sup. Ct. (Transcript of the Reasons for Sentence)) (the "**Reasons for Sentence**"), Justice O'Marra stated that:

> There was overwhelming evidence presented at trial that Mr. Tang committed fraud:
>
> (1) by making false representations to potential investors as to the nature of the investments he would make for them;
>
> (2) by providing false account statements about the earned returns on the investors' investment contributions;
>
> (3) by using money of recent investors to redeem the accounts of earlier investors, a fraudulent practice referred to as a "Ponzi" scheme; and,
>
> (4) [by] the unwarranted collection of service and commission fees, contrary to representations made to his investors of his "no profit, no fees" policy.
>
> (Reasons for Sentence at page 93)

[11] In dismissing Tang's appeal of his conviction, the Court of Appeal found that:

> The jury heard evidence that was reasonably capable of establishing that Mr. Tang, over a number of years, defrauded hundreds of individual investors by consistently misrepresenting numerous facets and features of the investments those people were making or had made through Mr. Tang and his related corporate entities. On the Crown's evidence, obviously accepted by the jury, this was a straightforward case of fraud by deceit on a massive scale.
>
> (*R v. Tang*, 2015 ONCA 470 at para. 15)

[12] Staff submits that the requirements for the issuance of an order pursuant to subsections 127(1) and (10) of the Act have been satisfied. More specifically, Staff relies on Tang's conviction in Ontario of an offence arising from a transaction, business or course of conduct related to securities. We address the legal issues relating to subsection 127(10) in paragraphs [20] and following below.

III. PRELIMINARY MATTERS

A. Implications of Tang's Appeal to the Supreme Court of Canada

[13] During the Hearing, Tang submitted that he was in the process of appealing the Criminal Conviction, including the sentence, to the Supreme Court of Canada (the "**Supreme Court**") and that he had filed his appeal materials on December 12, 2015. As a result, Tang submitted that it would not be appropriate for the Commission to proceed with the Hearing as his conviction was not final.

[14] Staff submitted that the Court of Appeal's decision relating to Tang's appeal of his conviction was released on June 10, 2015. Subsection 58(1)(a) of the *Supreme Court Act*, R.S.C. 1985, c. S-26, requires that applications for leave to appeal and all materials necessary for the application must be filed within 60 days after the date of the judgment appealed from. Staff submitted that Tang, by his own admission, did not file his application within the prescribed time and, accordingly, the decision of the Court of Appeal with respect to his conviction dated June 25, 2015, is a final order on which the Commission should act.

[15] We were presented with no evidence that Tang's application for leave to appeal to the Supreme Court had been perfected or that the Supreme Court had agreed to waive Tang's failure to file his appeal on time and hear his appeal. In the circumstances, we concluded that it was appropriate to proceed with the Hearing given that the allegations against Tang have been outstanding for more than seven years and the outcome of his application for leave to appeal

to the Supreme Court and of the appeal itself were uncertain. In the event of a successful appeal by Tang to the Supreme Court, Tang would be entitled to make an application to the Commission pursuant to subsection 144(1) of the Act to vary or revoke any order that the Commission might make at the conclusion of the Hearing that was inconsistent with a judgment or order of the Supreme Court.[1]

B. Lack of Legal Counsel

[16] During the Hearing, Tang also submitted that, as a result of his assets being frozen by directions issued by the Commission pursuant to section 126 of the Act following the issuance of the Temporary Order and such freeze directions having subsequently been extended by the Superior Court of Justice, he had been unable to retain legal counsel to represent him in his criminal proceedings and in the current proceeding before the Commission. He further submitted that the Hearing should not continue if he was unable to obtain legal representation.

[17] The Panel informed Tang that the Superior Court of Justice had jurisdiction over the frozen funds in question and that, as the Commission does not have the resources to provide him with legal representation other than through the Commission's Litigation Assistance Program, the Hearing would continue notwithstanding his submission that it should not do so given his lack of legal representation. It should be noted that, notwithstanding the fact that Tang was advised of the Litigation Assistance Program, he did not make an application for legal assistance under the Program. The Commission did, however, exercise its discretion and, given the complexity of the matter and the consequential nature of the sanctions sought by Staff, agreed to Tang's request that he be provided with Mandarin interpretation services for the Hearing at the Commission's expense.

C. Permitted Evidence

[18] As stated by the Commission in *Re Black* (2014), 37 O.S.C.B. 5847 ("***Re Black***"):

> … subsection 127(10) proceedings are not a forum for re-litigating findings made in another jurisdiction. The purpose of such proceedings is to hear evidence and submissions with respect to the terms of an appropriate reciprocal order to protect Ontario's capital markets by ensuring that similar conduct does not occur in Ontario in the future.
>
> (**Re Black**, **supra** at para. 24)

[19] Following a number of instances in which the Panel would not permit Tang to lead evidence that amounted to the re-litigation of issues addressed in connection with the Criminal Conviction, and after hearing submissions from the parties, the Panel advised Tang that he would be permitted to present evidence with respect to the following submissions that he wished to make:

(a) The sentence imposed by Justice O'Marra (as described in the Reasons for Sentence) provided sufficient protection to the public;

(b) Tang had a history of good faith co-operation with government, i.e., the courts and regulatory authorities, following the date on which he was charged with fraud but not prior to such date;

(c) Tang's investors continued to support him; and

(d) It was important to Tang that he be able to make money in the future [from trading securities] so that he could repay his investors.

IV. THE LAW

A. Subsection 127(10) of the Act

[20] As noted in paragraph [9] above, paragraph 1 of subsection 127(10) of the Act provides that an order may be made against a person under subsection 127(1) of the Act if the person has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives.

[21] It is clear, however, that, once the criteria set out in subsection 127(10) of the Act have been satisfied, the Commission must satisfy itself that an order imposing sanctions under subsection 127(1) of the Act is necessary to protect the public interest in Ontario (*Re Elliott*, (2009), 23 O.S.C.B. 6931 at para. 27).

[1] On April 7, 2016, Tang's motion to the Supreme Court for an extension of the time to serve and file his application for leave to appeal was granted. His motions to appoint counsel and adduce fresh evidence were dismissed as was his application for leave to appeal.

B. General Principles Relating to the Exercise by the Commission of its Public Interest Mandate

[22] For the purpose of exercising its public interest jurisdiction under section 127 of the Act, the Commission must consider the purposes of the Act which are set out in section 1.1 of the Act as follows:

(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.

[23] The Commission is required to have regard for a number of fundamental principles in pursuing the purposes of the Act including the following:

> …
>
> ii. restrictions on fraudulent and unfair market practices and procedures, and
>
> iii. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.[2]
>
> (Paragraph 2 of section 2.1 of the Act)

[24] In *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [2001] 2 S.C.R. 132 ("***Asbestos***"), the Supreme Court considered the Commission's public interest mandate and stated that:

> … the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets: *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 ("***Re Mithras***"). In contradistinction, it is for the courts to punish or remedy past conduct under ss. 122 and 128 of the Act respectively: see D. Johnston and K. Doyle Rockwell, *Canadian Securities Regulation* (2nd ed. 1998), at pp. 209-11.
>
> …
>
> … pursuant to s. 127(1), the OSC has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so … In exercising its discretion, the OSC should consider the protection of investors and the efficiency of, and public confidence in, capital markets generally. In addition, s.127(1) is a regulatory provision. The sanctions under the section are preventive in nature and prospective in orientation. [Emphasis added.]
>
> (*Asbestos*, *supra* at paras. 43 and 45)

V. FACTUAL BACKGROUND

[25] The following paragraphs summarize the principal findings of fact on which Tang was convicted. These findings are set out in the Reasons for Sentence and are relevant for the purpose of applying the principles relating to the exercise by the Commission of its public interest mandate.

A. False Representations

[26] Tang solicited funds from investors to trade in the Oversea Chinese Fund, a limited partnership established, controlled and operated by Tang. Investors were encouraged to invest a minimum of $150,000. During the period from January 2006 to March 2009, Tang raised over $50 million from over 200 investors who were resident in Canada, the United States and China. Tang told his investors that he would expose only 1% of their investments to risk and that the remaining 99% would be invested in low risk securities such as government and bank bonds. He referred investors to his book, *The Chinese Warren Buffet, the King of 1% Weekly Returns*, which provided further details of his promised investing strategy and return on investment and included the following statement:

[2] The term market participant is defined in section 1 of the Act and includes a registrant, a person exempted from the requirement to be registered under the Act and a manager of assets of an investment fund.

> In specific operations, I keep 99% of funds outside the market in various financial institutions protected by all kinds of physical or mechanical barriers. By leaving just 1% of the funds in the market for speculation, I have in actuality put a cap on the maximum loss.
>
> (Reasons for Sentence at page 95)

[27] Tang did not invest the funds he received from investors in low risk securities as he had represented. Instead, the funds received from investors were commingled in various accounts of companies operated by Tang and were used to pay earlier investors who sought to redeem or withdraw their funds, or were paid to Tang or companies that he operated or controlled. As stated by Justice O'Marra:

> The funds appeared to be applied simply on an "as needed" basis as determined by Mr. Tang with no protection of any portion of the investors' funds in safe securities. His assertions were patently false. They were dishonest and led to deprivation.
>
> (Reasons for Sentence at page 96)

B. False Account Statements

[28] Investors received a user name and access code with which they could access a personalized online account purporting to show the daily trading activity in their respective accounts. With the exception of three occasions over a three-year period, the investor accounts showed daily increases. On the three occasions in question, Tang conducted live trading sessions in view of investors and accumulated losses which were reflected in the account statements. On every other trading day, the accounts showed daily increases which amounted to a weekly return of approximately 1%. As stated by Justice O'Marra:

> Like Mr. Tang's representations, every investor's account statement was patently false. Indeed, Mr. Tang would simply make up a daily percentage and increase the account accordingly.
>
> (Reasons for Sentence at page 97)

[29] It was quite evident from the testimony of the investors who testified at Tang's trial, that they had placed considerable reliance on the account statements and most of them reviewed the statements online on a daily basis. One investor testified that, on the basis of the statements, she took out a second mortgage on her home and made a further investment with another person.

[30] Tang admitted in a letter to investors after the collapse of the fund that the reason he had falsified the account statements was "to eliminate interference from investors." As noted by Justice O'Marra, "[T]he interference he sought to eliminate was the withdrawal of their funds." (Reasons for Sentence at page 98)

C. Ponzi Scheme

[31] The investors' account statements continued to show positive returns throughout the material time, which included the global financial crisis in 2008. During a wealth summit that he organized in January 2009 and at a meeting with investors the following month, Tang represented that the value of the Oversea Chinese Fund exceeded $70 million and that, as a result of his trading skills and methods, he had been able to earn positive returns during the financial crisis.

[32] In reality, it was clear that Tang had been using the funds of recent investors to satisfy withdrawal and redemption requests by prior investors and, as a result, the Oversea Chinese Fund had become a Ponzi scheme. When more recent investors began to make withdrawal requests, Tang attempted to stall them until he was confronted at a meeting with investors on February 27, 2009 and admitted that there was only $1,400 left in the Oversea Chinese Fund's account.

[33] Tang also admitted at the meeting with investors that the Oversea Chinese Fund had lost $29 million in 2006 and 2007 and that he undertook very little trading in 2008. This admission effectively confirmed that Tang's representations to potential and existing investors described in paragraph [31] above were completely false and intended to mislead such investors.

D. Unwarranted Fees

[34] Tang represented to investors that he would not charge fees or commissions on his trading in investors' accounts unless there was a profit. Tang transferred approximately $2.84 million of investors' funds to himself and to the

accounts of the entities he controlled. The investor account statements reflected fees and commissions being charged on the fictitious gains that he had reflected in the account statements.

VI. ISSUES

[35] The questions that the Panel must answer are as follows:

(a) Was Tang convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities?

(b) Are sanctions necessary to protect the public interest?

(c) If sanctions are considered to be necessary, what sanctions would be appropriate?

VII. ANALYSIS

A. Was Tang convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities?

[36] Tang does not dispute the fact that he was convicted of an offence in Ontario. During the Hearing, however, Tang made the assertion that there was "no … securities or derivatives I really violated [*sic*]" which we understood to mean that he disputed that securities were involved in the commission of the offence. Tang presented no evidence to support that assertion.

[37] The Criminal Conviction arose from the trading business established by Tang and known as the Oversea Chinese Fund. In operating the business, Tang entered into a series of transactions over a period exceeding three years in which over 200 investors invested in the Oversea Chinese Fund. Given the scope and duration of the transactions, they clearly constituted a course of conduct. Whether the business and course of conduct related to securities is addressed in the paragraphs that follow.

[38] The term "security" is defined in subsection 1(1) of the Act to include an "investment contract". Although the term investment contract is not defined in the Act, the Supreme Court held in *Pacific Coast Coin Exchange v. Ontario (Securities Commission)*, [1978] 2 S.C.R. 112 ("***Pacific Coast***") that an investment contract will be found where (i) there is an investment of funds with a view to profit, (ii) in a common enterprise and (iii) the profits are to be derived solely from the efforts of others (*Pacific Coast*, *supra* at page 128).

[39] Investors in the Oversea Chinese Fund entered into their transactions with Tang with an expectation of profit. It is quite evident from paragraphs [26], [28] and [29] above that Tang had represented to investors that they would receive high rates of return with minimal risk of losses and that the investors had relied on such representations when making their respective investments.

[40] In describing the second and third elements of the test to determine the existence of an investment contract, the Supreme Court held that:

> … such an enterprise exists when it is undertaken for the benefit of the supplier of capital (the investor) and of those who solicit the capital (the promoter). In this relationship, the investor's role is limited to the advancement of money, the managerial control over the success of the enterprise being that of the promoter; therein lies the community. In other words the "commonality" necessary for an investment contract is that between the investor and the promoter. There is no need for the enterprise to be common to the investors between themselves.
>
> (*Pacific Coast*, *supra* at page 127)

[41] It was the understanding of the investors in the Oversea Chinese Fund that the transactions were undertaken for their benefit. Tang's investors supplied the capital and nothing more. It was their belief, based on Tang's representations, that the funds would be invested in a manner that would generate returns. Moreover, it was their understanding that the profit realized would be as a result of trading by Tang.

[42] The foregoing facts establish commonality between the investors and Tang, in circumstances where the anticipated profits were to be derived solely from the efforts of others.

[43] The transactions in respect of which Tang was convicted of fraud were investments with a view to profit, in a common enterprise between Tang and the investors, where the profits were to be derived solely from the efforts of someone

other than the investors. As a result, we find that all three elements of the test referred to in paragraph [38] above are satisfied and the investment contracts were securities as that term is defined in the Act.

[44] Based on the foregoing, we find that Tang was convicted in Ontario of an offence arising from a transaction, business or course of conduct related to securities as contemplated by subsection 127(10) of the Act.

B. Are sanctions necessary to protect the public interest?

1. Staff's Submissions

[45] In Staff's submission, there is a firm and, indeed, immovable basis to apprehend future harm arising from Mr. Tang's participation in the capital markets.

[46] Staff submits that, as a result of Tang's (i) continued assertions that the failure of Oversea Chinese Fund was caused by regulators, including the Commission, and by the financial crisis of 2008; and (ii) inability to recognize that the Criminal Conviction resulted from his false representations to investors and false account statements, Tang has demonstrated that he cannot be trusted to participate in any fashion in the securities markets of Ontario in the future.

[47] Staff submits that it is the Commission and not the Superior Court of Justice that has the capacity to protect the investing public from future harm. The Crown in Tang's criminal case was precluded from pursuing additional penalties against Tang pursuant to subsection 380.2(1) of the *Criminal Code* whereby Tang would have been prevented from having authority over the money or valuable security of another person, as the provision only came into force after Tang's conduct at issue. Staff submits that, in light of the foregoing, only the Commission has the ability to protect Ontario's capital markets from Tang in the future.

[48] Staff submits that the sanctions requested in this matter and summarized in paragraph [6] above are consistent with sanctions imposed by the Commission in previous cases involving similar conduct including, in particular, *Paul Camillo DiNardo (Re)* 39 O.S.C.B. 935 ("***DiNardo***").

[49] Staff submits that nearly all of the factors considered by the Commission in *DiNardo* apply to Tang's conduct including the following:

(a) Tang exploited securities (investment contracts) to carry out his frauds;

(b) Tang promised investors high rates of return but used funds received from investors to, among other things, repay earlier investors;

(c) As was evident from the victim impact statements considered by Justice O'Marra, many of Tang's investors were vulnerable and the loss of their funds caused some of them to suffer devastating personal and financial consequences;

(d) Tang exploited his relationships and reputation in the Chinese community and used investor funds to elevate his profile within the Chinese community, ostensibly to perform good works but, in fact, for the purpose of self-aggrandizement which exacerbated the fraud;

(e) The frauds were not simple lapses and were committed over a lengthy period of time; and

(f) Tang improperly diverted approximately $2.84 million dollars to himself and entities that he controlled.

2. Tang's Submissions

[50] Tang submits that the sentence imposed on him by the Superior Court of Justice is sufficient protection for the public and that any additional sanctions imposed by the Commission would be inappropriate or "extra" and "unnecessary".

[51] Tang submits that he should not be subject to any prohibitions from trading or other market bans. Tang submits that he would be willing to trade under any terms and conditions established by the Commission.

[52] Tang submits that he is innocent of any wrongdoing and has suffered financial hardship along with his investors and that he took the same, if not greater, investment risks as his investors and therefore suffered with them in any losses. He submits that as a result of the proceedings initiated against him, he had to mortgage his house, the bank has now foreclosed against him and he is without employment and currently eligible for welfare.

[53] Tang submits that he has been the scapegoat for the losses suffered by his investors. As a result, not only Tang, but also his wife and son, have suffered both financially and psychologically.

[54] Tang submits that he has been unjustly persecuted by a few disgruntled investors, the Commission, the police and the Crown, that he is not deserving of any punishment and that he should be allowed to continue to trade to earn back all of the losses and more.

[55] Tang submits that, as the Court has already asserted jurisdiction over his case, the Commission should be precluded from imposing any additional punishment on him and he should not be subject to any sanctions under section 127 of the Act. Tang referred to the Crown's inability to rely on subsection 380.2(1) of the *Criminal Code* described in paragraph [47] above and submits that, as it was not open to the Crown to pursue trading bans as a part of his sentence, Staff should correspondingly be restricted from seeking such sanctions.

[56] Tang submits that he has a long history of successful trading and that he has been involved in Ontario's capital markets for over 20 years. He submits that his record is one of compliance with the laws and regulations governing Ontario's capital markets and that, to ensure his fund was compliant, he employed a portfolio manager and a compliance officer. Aside from the conduct at issue in this matter, Tang submits that he has never had any issues with the Commission. He submits that all of his trading was undertaken through brokerage firms and banks, none of which has ever complained about his trading activities.

[57] Tang submits that this was his first offence and that he has changed as a result. He submits that his good conduct while on bail and parole should be considered by the Panel as evidence that he can be trusted to be a law-abiding member of society.

[58] Tang submits that his trading activity has been largely successful for his investors. He stated that, from 1993 until 2005, he managed a number of individual accounts on behalf of investors and that he engaged in profitable trading for most of the accounts. He also gave anecdotal evidence of his trading successes, telling the Panel that, in one instance, he used his abilities as a trader to turn $2,000 into $78,000 (although he admitted to having begun with an initial investment of $50,000), and in another instance, turned $1 million into $5 million in five weeks of trading.

[59] Tang submits that he should be allowed to resume trading because his investors want him to be able to do so. Tang submits that he has tried to help his investors in any way he can, including borrowing money from friends and mortgaging his house in order to repay them and that the Panel should consider this as proof of his commitment to his investors.

[60] Mr. W, one of Tang's investors, testified that it would be good news if the Commission were to permit Tang to continue to trade. Tang submits that many more of his investors feel this way, and as evidence, he adduced four letters from investors purporting to support Tang's continued trading on their behalf.

[61] Tang submits that he would like to trade in order to earn back his investors' funds. He submits that if he is allowed to trade under the supervision of the Commission, he would earn back investors' money and that this would be consistent with the investor protection mandate of the Commission.

[62] Tang submits that even considering what he has gone through since he was charged, he remains committed to doing whatever it takes to repay his investors.

[63] Tang also submits that the Panel should consider his community involvement when considering sanctions.

3. Findings

[64] Having considered the evidence and the submissions of the parties, and for the reasons we describe in greater detail below, we find that Tang's conduct as summarized by Justice O'Marra in the Reasons for Sentence was egregious and his continued assertions that he is a victim and not the perpetrator of the fraud on the investors in the Oversea Chinese Fund warrant serious apprehension on our part that his future conduct would be detrimental to the integrity of Ontario's capital markets. In the circumstances, and given our review of the evidence summarized above, we have concluded that sanctions against Tang are appropriate and necessary to protect the integrity of Ontario's capital markets.

C. The appropriate sanctions in this matter

[65] In determining what sanctions would be appropriate, we must consider the specific circumstances of this matter together with any aggravating or mitigating factors to ensure that the sanctions are proportionate to Tang's conduct as well as the range of sanctions ordered in similar cases.

[66] The case law has established a list of factors that are important to consider when imposing sanctions which would also apply in the context of imposing sanctions as part of an order under subsections 127(1) and (10) of the Act. See for example, *Re M.C.J.C. Holdings*, (2002) 25 O.S.C.B. 1133 at 1136 and *Re Belteco Holdings Inc.*, 21 O.S.C.B. 7743 at 7746. Of such factors, we consider the following to be of particular relevance in determining the appropriate sanctions in this matter:

(a) The seriousness of the criminal offence of which Tang was convicted;

(b) Tang's experience in the marketplace;

(c) Whether or not there has been any recognition by Tang of the seriousness of the misconduct;

(d) The need to deter Tang and other like-minded individuals from engaging in similar abuses of the capital markets in the future;

(e) Whether the offence was isolated or recurrent; and

(f) Any mitigating factors, including Tang's remorse.

[67] The relevance and relative importance of each factor will vary according to the facts and circumstances of the case. We will consider each of the foregoing factors in the paragraphs that follow.

1. The seriousness of the criminal offence for which Tang was convicted

[68] Tang was convicted in the Superior Court of Justice of having committed fraud by (i) making false representations as to the nature of the investments he sold to unsuspecting investors; (ii) providing the investors with false and seriously misleading account statements on which they relied to their detriment; (iii) misappropriating a significant portion of the funds provided by investors; and (iv) improperly compensating himself out of the funds provided by investors.

[69] Fraud is undoubtedly a serious offence, particularly in a matter involving securities, and in the words of the Court of Appeal:

> On the Crown's evidence, obviously accepted by the jury, this was a straightforward case of fraud by deceit on a massive scale. Clearly, we do not accept Mr. Tang's submission that "there is no evidence there was a crime".
>
> (*R v. Tang*, *supra* at para. 15)

2. Tang's experience in the marketplace

[70] Tang was involved in the investment industry for more than 15 years[3] and testified at the Hearing that he had traded "billions of dollars in the industry" and was well known by the banks and brokerage firms. Regardless of the volume of his trades or the length of his involvement, Tang operated in the industry for long enough to have acquired extensive experience and an understanding of the psychology of investors, particularly investors from the Chinese community.

3. Whether or not there has been any recognition by Tang of the seriousness of his misconduct

[71] Tang's submission that he is the victim of persecution as described in paragraphs [53] and [54] above reflects a pattern of behavior by Tang to which Justice O'Marra refers in the Reasons for Sentence and which the Panel observed during the Hearing. Whether Tang is incapable of appreciating the fact that the financial and emotional harm that was suffered by many of his investors and his own family was caused by his commission of fraud over a lengthy period of time, or relies on his incessant efforts to ascribe blame to others to obscure his own culpability, is not relevant. What is relevant, is that Tang demonstrates absolutely no recognition of the seriousness of his misconduct or the financial ruin and emotional devastation that was suffered by many of his investors at his hands.

4. The need to deter Tang and other like-minded individuals from engaging in similar abuses of the capital markets in the future

[72] In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 ("***Cartaway***"), the Supreme Court stated that deterrence is "… an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventive" (at

[3] The number of years is based on his testimony at the Hearing. Elsewhere (see paragraph [56] above, for example), he stated that he had been involved in the investment industry for more than 20 years.

para. 60). The Supreme Court also emphasized that deterrence may be specific to the respondent or general so as to deter the public at large:

> Deterrent penalties work on two levels. They may target society generally, including potential wrongdoers, in an effort to demonstrate the negative consequences of wrongdoing. They may also target the individual wrongdoer in an attempt to show the unprofitability of repeated wrongdoing. The first is general deterrence; the second is specific or individual deterrence: see C. C. Ruby, *Sentencing* (5th ed. 1999). In both cases deterrence is prospective in orientation and aims at preventing future conduct.
>
> (*Cartaway*, *supra* at para. 52)

[73] Both general and specific deterrence are important considerations when imposing sanctions. General deterrence requires the imposition of sanctions that will send a strong message to any other like-minded individuals that the misconduct engaged in by Tang is unacceptable and will not be tolerated by the Commission.

5. Whether the offence was isolated or recurrent

[74] The evidence in this matter has established that Tang's fraud was not an isolated event but was undertaken and implemented over a period exceeding three years and involved more than 200 investors. As noted by Justice O'Marra:

> There was a considerable degree of planning and sophistication involved in the fraud committed by Mr. Tang. He organized events, such as the Wealth Summits, and he wrote and promoted his book to entice investors into his investment fund. He created investor accounts and arranged to input each trading day false returns and profits. In effect, for every trading day over a three-year period, other than a few, Mr. Tang falsified the account reports, hiding the true status of the investor funds, the purpose of which was to prevent, as he himself said, investor interference.
>
> (Reasons for Sentence at page 111)

6. Any mitigating factors, including remorse

[75] The fact that a respondent in a proceeding contested in good faith would not express remorse or contrition is not remarkable and would not ordinarily be an aggravating factor in the Commission's determination of sanctions. However, Tang's persistent and belligerent defiance in the face of incontrovertible evidence, including admissions by Tang, that he committed, in the words of the Court of Appeal, fraud on a massive scale (see paragraph [11] above) with no regard for the harm he caused to investors, and his insistence that he should be permitted to resume trading in Ontario's capital markets, raise a significant concern in our minds about the harm that he is likely to cause to investors in the future if given the opportunity.

[76] In our view, there are no mitigating factors that we should consider including the facts, according to Tang, that the Criminal Conviction was his first offence and that there have been no issues of non-compliance with the terms of his parole.

7. Findings

[77] We find that the misconduct for which Tang was convicted was so abusive that, when considered in the context of his response to the Criminal Conviction during the Hearing described above, we are compelled to conclude that, unless he is permanently banned, his future conduct would be detrimental to the integrity of Ontario's capital markets. We agree with Staff that specific and general deterrence are required to maintain the high standards of fitness and business conduct expected of market participants.

[78] As stated by the Commission in *Re Mithras* (referred to in paragraph [24] above and cited with approval by the Supreme Court in *Asbestos*), the role of the Commission is "to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so, we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be…" (*Re Mithras*, *supra* at page 1611).

[79] Tang submits that permitting him to trade in a manner that would allow him to earn back his investors' money would be consistent with the Commission's investor protection mandate. Tang also testified that many of his investors want him to trade again. Mr. W, the only investor to testify at the Hearing (see also paragraph [60] above), was asked by counsel to Staff if he would give Tang more money to invest in the future. Mr. W's reply was "No, that's impossible."

[80] Given that the Oversea Chinese Fund had a remaining balance of only $1,400, if Tang were permitted to trade again, he would have to solicit funds from a new generation of investors who need to be protected by the Commission from the serious risk of fraud.

[81] Although Tang was sentenced in the Superior Court of Justice to a term of imprisonment for fraud, the Commission retains jurisdiction to make orders in the public interest under section 127 of the Act relating to the same misconduct. (*Re Yoannou*, (2014) 37 O.S.C.B. 10762)

VIII. CONCLUSION

[82] Based on the foregoing, we have concluded that the requirements for the imposition of an order under subsection 127(10) of the Act have been satisfied and that it is in the public interest to make an order under subsection 127(1) of the Act banning any future participation by Tang in Ontario's capital markets. We will issue a separate order giving effect to our decision as set out below.

IX ORDER

[83] We will therefore issue an order that provides that:

(a) Pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Tang shall cease permanently;

(a) Pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Tang is prohibited permanently;

(b) Pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Tang permanently;

(c) Pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Tang shall resign any positions that he holds as director or officer of any issuer, registrant or investment fund manager;

(d) Pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Tang is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and

(e) Pursuant to paragraph 8.5 of subsection 127(1) of the Act, Tang is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

Dated at Toronto this 21st day of April, 2016.

"Christopher Portner"

"Deborah Leckman"

"Timothy Moseley"

3.1.4 Catalyst Capital Group Inc. and Corus Entertainment Inc.

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

AND

IN THE MATTER OF
AN APPLICATION BY THE CATALYST CAPITAL GROUP INC.

AND

IN THE MATTER OF
CORUS ENTERTAINMENT INC.

REASONS FOR DECISION

Hearing:	March 4 and March 7, 2016		
Decision:	April 25, 2016		
Panel:	D. Grant Vingoe	_	Vice-Chair and Chair of the Panel
	Mary G. Condon	_	Commissioner
	Judith N. Robertson	_	Commissioner
Appearances:	Robert W. Staley Derek J. Bell Kristopher Hanc Jason Berall James Riley	_	For the Applicant (the Catalyst Capital Group Inc.)
	Larry Lowenstein Mark A. Gelowitz Shawn T. Irving Douglas Bryce Evan Thomas	_	For the Respondent (Corus Entertainment Inc.)
	Pamela Foy Naizam Kanji Jason Koskela Swapna Chandra	_	For Staff of the Commission
	Vincent A. Mercier Andrea L. Burke Matthew Milne-Smith	_	For Intervener (Shaw Communications Inc.)
		_	

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REASONS FOR DECISION

I. BACKGROUND

A. The Application and Motions

[1] On March 4, 2016, a hearing was held before the Ontario Securities Commission (the "**Commission**") with respect to scheduling, preliminary matters, and motions in relation to an application dated March 4, 2016 (the "**Application**") filed by the Catalyst Capital Group Inc. (the "**Applicant**" or "**Catalyst**") in connection with the special meeting (the "**Meeting**") of holders of Class A participating shares and Class B non-voting participating shares of Corus Entertainment Inc. ("**Corus**") called to consider, and if deemed advisable, to approve, the proposed purchase (the "**Acquisition**") by Corus of Shaw Media Inc. ("**Shaw Media**") from Shaw Communications Inc. ("**Shaw Communications**").

[2] The Application was made pursuant to subsection 127(1) of the Ontario Securities Act, R.S.O. 1990, c.S.5, as amended (the "Act"). The Applicant sought the following relief:

(a) an order permitting the application to be heard;

(b) an order pursuant to section 127(1)5 of the Act that Corus (i) amend or supplement its management information circular dated February 9, 2016 relating to the Meeting (the "**Management Circular**") to correct the materially misleading disclosure defects described further [in the Application], (ii) issue a press release correcting such materially misleading disclosure defects, and (iii) send such amended or supplemented Management Circular to shareholders of Corus investors as of the record date for the Meeting not less than 10 days prior to the Meeting, as adjourned or postponed;

(c) an order pursuant to section 127(1)2 of the Act that trading cease in respect of any shares of Corus issued, or to be issued, under or in connection with the Acquisition, unless and until Corus satisfies the Commission that the provisions of section (b) above have been complied with;

(d) an order pursuant to section 127(1)2.1 of the Act that the acquisition of any shares of Shaw Media by Corus is prohibited unless and until Corus satisfies the Commission that the provisions of section (b) above have been complied with; and

(e) such alternative or further and other relief as counsel for the Applicant may request and the Commission may order.

[3] On March 4, 2016, Corus filed a motion in relation to the Applicant's standing to bring the Application and sought an order from the Commission declaring that the Applicant lacked standing and is not entitled to bring an application under section 127 of the Act in the circumstances (the "**Corus Motion**").

[4] On March 4, 2016, Shaw Communications filed a motion seeking an order from the Commission that Shaw Communications be granted leave to have full intervenor status as a party, including the right to adduce evidence and make submissions, on the Corus Motion and the hearing of the Application (should the Application proceed to a hearing on the merits) (the "**Shaw Motion**").

[5] Staff of the Commission ("**Staff**") took the position that the Commission should not exercise its discretion to hear the merits of the Application. In supporting the Corus Motion to deny Catalyst standing, Staff focused its submissions on the issues raised by the Applicant and the timeliness of the Application. Staff submitted that the Application raises no novel or complex issues that would warrant the intervention of the Commission so close to the Meeting.

B. The Parties

[6] Corus is a federally incorporated company with its registered office in Alberta and its shares are listed on the Toronto Stock Exchange. Corus indicates in the Management Circular that it creates, broadcasts, licenses and delivers content across a variety of platforms for audiences around the world.

[7] Shaw Communications is an Alberta corporation with its registered office in Alberta and its shares are listed on the Toronto Stock Exchange and New York Stock Exchange. A news release from Shaw Communications dated March 1, 2016 indicates that Shaw Communications is a "pure-play connectivity provider focused on delivering superior consumer and business broadband communications over its wireline, WiFi and wireless infrastructure".

[8] Shaw Media, the subject of the Acquisition, is a wholly owned subsidiary of Shaw Communications with its registered office in Alberta. The Management Circular states that Shaw Media provides programming content through Global Television, speciality networks and digital platforms.

[9] The Applicant, Catalyst, is a private equity investment firm founded in June 2002. According to its website, the Applicant "specializes in control and/or influence investments in distressed and undervalued Canadian situations". According to the Applicant's dissident Proxy Circular, dated March 1, 2016 (the "Dissident Proxy Circular"), the Applicant has more than U.S. $6 billion in assets under management.

[10] In the Dissident Proxy Circular, the Applicant indicates that it directly or indirectly beneficially owns over 321,800 Class B shares in Corus representing approximately a 0.4% interest in the issued and outstanding shares of Corus. It was not disputed that this position was acquired at some point in time after the announcement of the Acquisition.

[11] Staff also appeared before the Commission and made submissions as set out in paragraph [5] of these reasons.

C. The Shaw Motion

[12] As described in paragraph [4] above, Shaw Communications filed the Shaw Motion in order to intervene as a full participant at the hearing. At the hearing on March 4, 2016, we granted Shaw Communications limited leave to intervene for the purpose of filing written submissions on both the Corus Motion and the merits of the Application and to respond to any questions from the Panel.

[13] In coming to this decision, we considered Rule 1.8 of the Commission's *Rules of Procedure* (2014), 37 OSCB 4168 and the factors set out therein to be considered in a motion to intervene, including:

(a) the nature of the matter;

(b) the issues;

(c) whether the person or company is directly affected;

(d) the likelihood that the person or company will be able to make a useful and unique contribution to the Panel's understanding of the issues;

(e) any delay or prejudice to the parties; and

(f) any other factor the Panel considers relevant.

[14] These factors codify those considered by the Commission in granting intervenor status in other cases (see *Torstar Corporation and Southam Inc.* (1985), 8 OSCB 5068, *Hollinger* (2005), 29 OSCB 7071 at para. 44 citing *Albino* (1991), 14 OSCB 365 and *Magna International Inc.* (2011), 34 OSCB 800).

[15] Catalyst argued against the intervention of Shaw Communications, principally because the Application was limited to financial disclosures which were within Corus's control. Catalyst did not take issue in its Application with Shaw Communications' involvement in the process leading up to the Acquisition.

[16] We determined that granting limited intervenor status to Shaw Communications was appropriate considering that (i) Shaw Communications is directly affected by the Application by virtue of a potential delay in the Meeting, and (ii) Shaw Communications and Corus have different shareholders, their boards of directors owe duties to different corporations, and therefore, their submissions may differ. In light of these factors, it was sufficient for us to afford Shaw Communications with the opportunity to make written submissions and answer questions from the Panel in order to provide relevant information. Our decision not to grant full intervenor status also reflected the nature of the relief sought by the Applicant. In particular, the Applicant stated at the hearing that the requested relief was limited to additional or corrective disclosure concerning certain financial metrics in the Management Circular which would not be within the knowledge or responsibility of Shaw Communications. In our view, this approach was also appropriate given the time constraints to hear this matter expeditiously.

D. Process for Addressing the Corus Motion and the Application

[17] At the hearing on March 4, 2016, we invited the parties to make submissions on the proposed procedure for hearing the Corus Motion and the Application. In light of the Corus Motion challenging the standing of the Applicant to bring the Application, we invited the parties to make submissions on whether a hearing should be held to consider the Corus Motion on standing and the merits of the Application together, or whether the Corus Motion and Application should be heard sequentially.

[18] Upon hearing submissions, we determined that it was appropriate in this specific case to bifurcate the hearing and consider the Corus Motion and Application on the merits separately for the reasons discussed in Part IV.B below. We issued an order to this effect (*Catalyst Capital Group Inc.* (2016), 39 OSCB 2230), and set a filing schedule for submissions. The order and the Notice of Hearing issued on March 4, 2016 set the hearing date as March 7, 2016 to consider the Corus Motion, and the merits of the Application, if necessary.

E. The Corus Motion

[19] On March 7, 2016, we heard the Corus Motion and determined that the Applicant lacked standing to bring the Application. Accordingly, the Corus Motion was granted, and the Application was dismissed without a consideration of the merits.

[20] On March 7, 2016, we issued an order (*Catalyst Capital Group Inc.* (2016), 39 OSCB 2238) granting the Corus Motion and dismissing the Application, which stated that our reasons were to follow. These are our reasons for denying the Applicant standing to bring the Application.

II. THE ISSUE

[21] The Corus Motion raises the sole issue of whether the Commission ought to exercise its discretion to allow the Applicant, a private party, to bring an application under section 127 of the Act in the circumstances of this case.

[22] If decided in the affirmative, the Commission would hear the merits of the Application.

III. THE LEGAL TEST

[23] Section 127 of the Act grants the Commission jurisdiction to intervene in the capital markets and make certain orders when the Commission determines that it is in the public interest to do so.

[24] The Supreme Court of Canada (the "**Court**") has stated that "the [Commission] has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so" (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 ("**Asbestos**") at para. 45). The Commission's public interest jurisdiction allows the Commission to intervene in circumstances where there is no breach of the Act, the regulations or any policy statement (*Canadian Tire Corp.* (1987), 10 OSCB 857 at para. 130, and *Patheon Inc.* (2009), 32 OSCB 6445 at para. 114).

[25] However, a private party cannot bring an application as a matter of right under section 127 of the Act (*MI Developments Inc.* (2009), 32 OSCB 126 at para. 248 ("**MI Developments**")). Rather, in the extraordinary circumstance in which a private party chooses to bring an application under section 127 of the Act, the Commission has the discretion whether or not to permit it to do so (MI Developments, supra at paras. 108 and 127).

[26] In MI Developments, the Commission considered the following factors when deciding whether to exercise its discretion in favour of permitting an application by a private party, and these factors were considered and applied most recently in *Central GoldTrust (Central GoldTrust (Trustees of)* 2015, 38 OSCB 10768 ("**Central GoldTrust**"):

(i) the applications related to both past and future conduct regulated by Ontario securities law;

(ii) the applications were not, at their core, enforcement in nature;

(iii) the relief sought is future looking;

(iv) the Commission has the authority to grant an appropriate remedy;

(v) the applicants were directly affected by the conduct (past and future); and

(vi) the Commission concluded it was in the public interest to hear the applications.

(MI Developments, supra at paras. 109-110 and Central GoldTrust, supra at para. 16).

[27] In Asbestos, the Court also identified limits on the public interest jurisdiction of the Commission stating that:

> …the public interest jurisdiction of the [Commission] is not unlimited. Its precise nature and scope should be assessed by considering s. 127 in context…Therefore, in considering an order in the public interest, it is an error to focus only on the fair treatment of investors. The effect of an intervention in the public interest on capital market efficiencies and public confidence in the capital markets should also be considered.
>
> (*Asbestos, supra* at para. 41)
>
> …
>
> In exercising its discretion, the [Commission] should consider the protection of investors and the efficiency of, and public confidence in, capital markets generally.
>
> (*Asbestos, supra* at para. 45)

[28] The Commission has similarly considered its discretion to hold a hearing on the merits of an application under section 104 of the Act, and has declined to hear such an application. Notwithstanding that section 104 has a more limited application (i.e. invoked when an application is made by an 'interested person') and that such section does not directly apply to the Application at issue in this matter, it should be noted that even on an application made pursuant to section 104, the Commission has exercised its discretion to decline hearing an application in the exercise of its authority to govern its own processes. As explained at paragraphs 46 and 47 of *Western Wind Energy Corp.* (2013), 36 OSCB 6749 ("**Western Wind**"):

> In our view, the Commission may decline to hear an application brought under section 104 of the Act. As stated in *Fibrek* (at paragraph 49):
>
> > In our view, the Commission is not required to hold a hearing on the merits simply because an interested person has made an application under subsection 104(1) of the Act. We are required to consider that application and to give an applicant an opportunity to be heard. However, our inherent authority to govern our own processes allows us to dismiss an application on any appropriate grounds, including a decision not to assert our jurisdiction. An opportunity to be heard on the Application has been given to Mercer in this matter.
>
> Accordingly, the Commission can decline to hold a hearing on the merits in respect of an application brought under section 104 for any appropriate reason, including because the application is prima facie without merit, because no useful purpose would be served by the hearing or because holding such a hearing is not in the public interest.
> [Emphasis Added.]

[29] Further, in paragraph 38 of *Western Wind*, the Commission stated:

> An important part of the Commission's mandate is to provide protection to investors from unfair, improper or fraudulent practices. The Commission's mandate also requires it to foster fair and efficient capital markets and confidence in capital markets. The Commission will intervene in situations where [a transaction] is abusive,

contravenes Ontario securities law or an animating principle underlying that law, or brings the integrity of the capital markets into disrepute.

[30] Finally, in paragraph 44 of *Western Wind*, the Panel noted that the applicant "has the onus of establishing that it is in the public interest to grant such an extraordinary remedy" and must tender "sufficient *prima facie* evidence to satisfy that onus." While the Application before us is brought under section 127 of the Act, we find the principles cited in *Western Wind* to be instructive in the present circumstances.

IV. ANALYSIS

A. History of the Acquisition

[31] Before applying the legal test, it is helpful to review the chronology of events leading to the Application.

[32] On January 13, 2016, Corus announced that it had entered into a share purchase agreement to purchase all of the shares of Shaw Media from Shaw Communications for $2.65 billion. Corus would satisfy the purchase price for this Acquisition in cash and by the issuance of shares.

[33] This Acquisition is a related party transaction pursuant to Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") as Shaw Communications and Corus are each controlled by a common security holder, the Shaw Family Living Trust. Pursuant to MI 61-101, related party transactions generally require a formal valuation (section 5.4 of MI 61-101) and minority approval (section 5.6 of MI 61-101). This related party transaction required a formal valuation and minority approval.

[34] On January 29, 2016, Corus filed a notice to hold the Meeting on March 9, 2016, seeking minority approval of the Acquisition.

[35] On February 5, 2016, the Applicant contacted Corus and spoke with the Chair of the Special Committee of Corus. The Applicant expressed concerns about the financial reporting and the process leading to the transaction.

[36] Corus issued the Management Circular dated February 9, 2016 in respect of the Meeting. The formal valuation was included in the Management Circular.

[37] On February 19, 2016, the Applicant sent a letter of complaint to Staff seeking Staff intervention. The letter alleged various deficiencies in Corus's disclosures in respect of the Acquisition.

[38] On February 22, 2016, Corus issued a press release indicating that Institutional Investor Services ("**ISS**"), a proxy advisory research firm, recommended that shareholders of Corus vote in favour of the Acquisition.

[39] On February 26, 2016, the Applicant published a presentation providing further analysis and details of its concerns regarding the Acquisition. It set up a website and held conference calls for the purpose of providing information and concerns relating to the Acquisition from the perspective of minority shareholders.

[40] On February 26, 2016, Corus issued a press release indicating that Glass Lewis, a proxy advisory research firm, recommended that shareholders of Corus vote in favour of the Acquisition.

[41] On March 1, 2016, the Applicant sent a Dissident Proxy Circular to Corus's shareholders opposing the Acquisition and soliciting proxies by and on behalf of the Applicant for the Meeting.

[42] On March 2, 2016, ISS reaffirmed its original recommendation that shareholders of Corus vote in favour of the Acquisition.

[43] On March 4, 2016, the Applicant filed its Application with the Commission.

B. Decision to Bifurcate the Hearing

[44] On March 4, 2016, Corus brought a motion to deny Catalyst's standing to bring the Application. As noted above, we decided to bifurcate the hearing of Catalyst's standing from a hearing on the merits of Catalyst's Application and to address the standing issue first on March 7, 2016. We allotted time for the hearing of this issue and then time for hearing on the merits to follow, if required. Given the timing of the Meeting, this process was expected to be concluded on March 7, 2016. Submissions on this issue and on the merits were filed by the evening of March 5, 2016.

[45] We acknowledge that in some instances, because of the possible interrelationship of the evidence and considerations relating to standing and the merits or because of a very compressed hearing schedule, it may be appropriate to hear all the evidence before deciding the issue of standing. In other cases, the evidence and submissions concerning standing, and particularly the public interest factors involved, will be sufficiently distinct that the possibility of an expeditious outcome, should the issue of standing conclude the matter, will favour bifurcating the hearing. In this case, we decided to bifurcate the standing issue and a hearing on the merits since there were sufficient public interest considerations arising from the evidence and submissions on the issue of standing to make a sequential process preferable.

C. Application of the Legal Test to the Facts

[46] We reviewed the factors which we set out in paragraph [26] above and we determined, in the exercise of our discretion, to deny the Applicant standing to bring a section 127 application.

[47] As we have noted, the Application concerns a proposed related party transaction regulated under MI 61-101. The Application relates to past conduct in that it alleges material misstatements in the Management Circular and other public disclosures of Corus. The relief seeking corrective disclosure is forward-looking. While it is within the authority of the Commission to grant the relief sought pursuant to the powers granted to the Commission under section 127 of the Act, this alone does not determine whether standing to bring the Application should be granted.

[48] Although a number of the factors identified in MI Developments would not necessarily preclude Catalyst from bringing an Application, we determined that, in this case, the question of whether it is in the public interest to hear the Application was determinative.

(a) The basis for the complaint

[49] We are of the view that the Application before us raises no novel issues. Although we agree that the protection of minority shareholders in related party transactions is central to the Commission's mandate, in this particular case we are not persuaded that the relief requested by the Applicant would better serve the minority shareholders than proceeding to the scheduled vote.

[50] The Management Circular was issued on February 9, 2016 in relation to the Meeting. This period of time complies with applicable corporate law. In accordance with MI 61-101, the votes of certain related persons of the company, consisting of shareholders aligned with Shaw family interests are to be excluded in seeking minority approval. Corus sought to comply with the elements of this Instrument, including the review of the transaction by a Special Committee composed of independent directors, the preparation of a fairness opinion, the securing of an independent valuation, and obtaining minority approval.

[51] Catalyst conducted a very active campaign opposing the Acquisition and proposing alternative courses of action both before and after the issuance of the Management Circular. Shortly after the Management Circular was issued, Catalyst began questioning the process that resulted in the Acquisition and certain financial metrics set out in the Management Circular. The complaints concerning financial disclosures focused on (i) alleged material overstatements of EBITDA of Shaw Media and the combined EBITDA of the resulting enterprise, (ii) alleged misstatements regarding the ratio of Enterprise Value to EBITDA, and (iii) alleged misstatements regarding whether the Acquisition would be immediately accretive.

[52] At the hearing, Catalyst's arguments were based upon these alleged deficient financial disclosures and not the process leading to the negotiated Acquisition. On the basis of these allegations, Catalyst was seeking corrective disclosures and a delay of the Meeting through the exercise of our authority to cease trade a transaction under section 127.

[53] These matters were the subject of continuing discussions between representatives of Catalyst and Corus, correspondence with Staff, public pronouncements and media reports. Each item involved judgments concerning the value of the transaction based upon information contained in the Management Circular and the public record. The Acquisition was also reviewed and assessed by numerous financial analysts and by proxy advisory firms who made their own assessments of these financial disclosures.

[54] Catalyst issued the Dissident Proxy Circular and at pages 2-4 specifically addressed these financial disclosure issues. There was a very active public debate between Corus and Catalyst, and within the financial community, concerning these financial disclosures. Staff also received complaints, asked questions and assessed responses from Corus and Catalyst.

[55] The disclosure obligations in related party transactions are set out in section 5.3(3) of MI 61-101 and they fall on the issuer. In this case, we find that there was no *prima facie* case of inadequate or materially misleading disclosure. In fact, as described above, there was detailed information and analysis available to investors included in the

Management Circular, the Dissident Proxy Circular, analyst, proxy advisory firm and other reports to enable shareholders to make informed investment decisions. We accept Corus's submission that this case is really a "debate about the meaning and significance of disclosed financial ratios and data, which is drawn from the Management Circular and sliced and diced by Catalyst" (Transcript of March 7, 2016, page 27, lines 4-9).

[56] The ability of a private party to bring an application under section 127 is intended to be an extraordinary circumstance. We would not shy away from granting standing where an application may reasonably prevent unfair, improper or fraudulent practices or offer redress for minority shareholders involving disclosure or otherwise. In our view, this case does not involve issues rising to this level. Unlike *Central GoldTrust*, this case did not present fundamental issues related to the requirements for implementing M&A transactions, such as the "identical consideration" requirement or novel issues such as the application of bid processes to business trusts. Instead, the Applicant's concerns were limited to complaints about disclosure that had already been widely considered in an active public debate. Further, the disputed items primarily arose from an analysis of information disclosed in the Management Circular. In our view, the range of issues raised by the Application do not require invoking the full machinery of a public interest hearing when the information complained of was otherwise known, analyzed and disseminated.

[57] In making this determination, the Commission is not concluding that it will never take action on matters involving disclosure of financial metrics, and may well do so late in a corporate process if we find that there is material confusion about or misunderstanding of the circumstances prevailing in the market. However, in this particular case, the nature of the alleged deficiencies in disclosure and the relief sought does not, in our view, warrant invoking the public interest.

[58] While inadequate disclosure is not cured by information disseminated by persons other than the issuer, it is appropriate for us to consider the information available in the marketplace in considering whether to take action in the public interest. This is a separate matter from whether an issuer is in full compliance with its disclosure responsibilities. The quality of disclosure is certainly the responsibility of the issuer in accordance with its processes. A panel hearing a section 127 application should not generally act as examiners late in the implementation of a corporate transaction where there is no convincing prima facie case of material inadequacies.

[59] For us to entertain the Application seeking to have the Meeting delayed so that Catalyst's views could be incorporated in the Management Circular after they had been so completely described in Catalyst's own Dissident Proxy Circular and other communications would not be of sufficient benefit to minority shareholders to justify our intervention.

(b) Timing of the Application

[60] To permit the Application at this late stage would interfere unduly with the justified expectations of participants in our marketplace, including minority shareholders, regarding the timetable for implementing corporate transactions. Such a late intervention could affect fairness, efficiency and confidence in our capital markets. Consistent with our holding in *Western Wind*, the Applicant did not satisfy its onus of demonstrating that such a hearing is in the public interest.

[61] The Commision is prepared to intervene in situations where an offer is abusive, contravenes Ontario securities law or an animating principle underlying that law, or brings the integrity of the capital markets into disrepute including, involving disclosure or otherwise (see reference to *Western Wind* cited above in these reasons at paragraph [29]). However, when an application is brought late in the process without new information or without critical issues being raised relating to the transaction in question, we will need more convincing evidence showing that the public interest is at stake than was offered by the Applicant.

[62] During the hearing, submissions were made regarding the nature of Catalyst as an "activist investor". An activist investor may bring forward concerns implicating the public interest as readily as any other investor and we are not influenced by this designation. We are also not influenced in this case by the relatively small size of Catalyst's holdings in relation to its aggregate holdings or the fact that Catalyst was not apparently a long-term holder. The significance of the size of a shareholding or timing of a share acquisition, if it bears any significance, will vary from case to case and cannot be stated as a general principle.

[63] As stated above, the disclosures sought by the Applicant primarily involve analysis of previously disclosed information. In our view, the information sought by the Applicant has already been disseminated to Corus's shareholders through a variety of means. Therefore, no purpose would be achieved by holding a hearing on the merits of the Application. Rather, we are of the view that Corus's shareholders should be permitted to vote on the Acquisition in accordance with the established schedule.

D. Comment on Staff's Role with Respect to an Application by a Private Party

[64] The Panel notes that submissions were made at the hearing with respect to the role of Staff in the context of an application brought by a private party. We accept the submission of Staff that a third party should not expect Staff to

inform them as to their conclusions in relation to their reviews. Further, we acknowledge that Staff are not gatekeepers with respect to a party's decision whether or not to bring an application before the Commission. The decision whether to bring an application and on what basis, including the timing of the application, must be the private party's own decision. The consequences of this decision are then appropriately weighed by the Commission in relation to the issues raised by the applicant, and the need for, and availability of, remedies that will afford appropriate redress to affected investors and other affected persons.

V. CONCLUSION

[65] Therefore, in the circumstances of this case, we decline to grant standing to the Applicant, a private party, to bring a section 127 application.

Dated at Toronto this 25th day of April, 2016.

"D. Grant Vingoe"

"Mary Condon"

"Judith Robertson"

3.2 Director's Decisions

3.2.1 John Doe

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

AND

IN THE MATTER OF
AN APPLICATION FOR REGISTRATION BY JOHN DOE

SETTLEMENT AGREEMENT

Names and certain dates have been presented below in a manner designed to protect the privacy interests of persons having involvement in, or affected by, this matter.

I. INTRODUCTION

1. This settlement agreement (the "**Settlement Agreement**") relates to an application (the "**Application**") for a reactivation of registration as an advising representative under the *Securities Act* (Ontario) (the "**Act**") by John Doe with the Firm.

2. In reviewing the Application, staff of the Ontario Securities Commission ("**Staff**") became aware of information which could impugn John Doe's suitability for registration under the Act, and which could form the basis of a recommendation by Staff to the Director that the Application be refused.

3. In the event that Staff recommended to the Director that the Application be refused, John Doe would be entitled to an opportunity to be heard (an "**OTBH**") pursuant to section 31 of the Act in respect of Staff's recommendation.

4. Staff and John Doe have agreed to make a joint recommendation to the Director regarding the Application, as more particularly described in this Settlement Agreement.

II. AGREED STATEMENT OF FACTS

5. The parties agree to the facts as stated below.

A. Registration History

6. John Doe has been registered as follows:

   (a) A period of approximately two years and three months: advising representative, Previous Employer 1.

   (b) A period of approximately five years and six months: advising representative, Previous Employer 2.

7. There has been no disciplinary action against John Doe by any securities commission, self-regulatory organization, or any firm registered under the Act, except as referred to in this Settlement Agreement.

B. Misstatements by John Doe to Persons Investigating his Conduct

i. The Personal Relationship with Jane Doe

8. In 2014, John Doe commenced an extra-marital affair with Jane Doe.

9. After a period of approximately three months, John Doe began the process of ending his relationship with Jane Doe. John Doe states that Jane Doe grew angry that he was ending the relationship, and that as a result she directed numerous harassing texts, emails, social media messages, and telephone calls to John Doe, members of his family, and others, some of which are more particularly described below.

10. John Doe states that on the evening of Day 1, Jane Doe directed several harassing text messages and telephone calls to him and his wife. Later that night, Jane Doe sent emails to various co-workers of John Doe that made allegations of

a personal nature against him. Two of the recipients of these emails were Supervisor 1 and Supervisor 2, both of whom were individuals John Doe reported to at Previous Employer 2.

ii. First Misstatement: Supervisor 1 and Supervisor 2

11. On the morning of Day 2, Supervisor 1 and Supervisor 2 met with John Doe regarding the emails that had been received from Jane Doe the previous night. During this meeting, John Doe lied about the true nature of his relationship with Jane Doe.

12. Shortly after his meeting with John Doe, Supervisor 2 informed John Doe that Jane Doe had sent another email about him.

13. After being advised by Supervisor 2 of the further email from Jane Doe, John Doe informed Previous Employer 2's human resources department about his relationship with Jane Doe, and that he had not been truthful with Supervisor 1 or Supervisor 2. On the advice of a member of the human resources department, John Doe called Supervisor 2 and told him the truth about his relationship with Jane Doe.

iii. Second Misstatement: Toronto Police Services

14. John Doe states that on the afternoon of Day 2, Jane Doe sent a harassing email to his wife and others.

15. On the evening of Day 2, the police attended at John Doe's house at the request of his wife, who believed Jane Doe was harassing her.

16. During their attendance at John Doe's house to investigate his wife's complaint, the police asked John Doe about his relationship with Jane Doe, and he lied to the police about the true nature of his relationship with Jane Doe.

17. During the night of Day 2, the police called John Doe and informed him that since their questioning of him earlier that day, Jane Doe had shown them text messages between her and John Doe. The police also informed John Doe that Jane Doe had alleged that he made a death threat against her. At that time, John Doe admitted his relationship with Jane Doe to the police (contrary to his previous representations to them), but denied that he had made any death threats against her. The police informed John Doe that he would be arrested and charged with uttering a death threat.

iv. John Doe is Arrested

18. During the morning of Day 3, John Doe surrendered himself at the police station and was charged with uttering a death threat, a charge that was subsequently withdrawn at the request of the Crown upon John Doe entering into a peace bond.

v. Careless Response to Staff

19. As a part of Staff's review of the Application, John Doe attended a voluntary interview with Staff regarding the Application (the "**Interview**").

20. At the commencement of the Interview, John Doe swore an oath to tell the truth, and was also cautioned by Staff about the importance of being truthful in responding to Staff's questions.

21. During the Interview, John Doe was asked the following questions and gave the following answers:

> Q. What is the statement that's alleged to be the death threat?
>
> [. . .]
>
> A. Yeah. I said, "Don't please don't call my home. Never call my home again . . ." Like, this is what I remember: "If you call my home again, I will phone the police." [. . .]
>
> [. . .]
>
> Q. So your best information is that the alleged death threat is your call to her on the Sunday night: "Please don't ever contact my house again or I'll report it to the police"?
>
> A. That's right.

[. . .]

Q. Do you have any knowledge that [Jane Doe] told [the police] there was a threat other than the threat you've described to me?

A. No, I'm not aware of it, and I don't – I don't have the letter here today, but if you could call the constable or the detective . . .

22. Later during the Interview, Staff informed John Doe that they were troubled by the fact that he had not been truthful with his employer or the police regarding his relationship with Jane Doe.

23. Following the Interview, Staff, with the consent of John Doe, contacted the police regarding their investigation into his alleged conduct. Staff was informed by the police that the alleged death threat was not as had been represented to Staff by John Doe. Rather, the police informed Staff that the alleged threat by John Doe to Jane Doe was a different statement, and that John Doe was specifically informed that this different statement was the alleged threat at the time of his arrest.

24. It is John Doe's position that he did not utter a death threat to Jane Doe or intentionally mislead Staff when he responded to their question about the alleged threat. However, John Doe acknowledges that:

(a) Staff asked him what Jane Doe alleged the threat was and not only whether he threatened her;

(b) he was specifically informed by Staff at the Interview that his history of being untruthful with Previous Employer 2 and the police were concerning to Staff; and

(c) he should have been more careful in his response about the alleged threat and should not have responded definitively where his memory did not allow for it.

C. Unauthorized Disclosure of Proprietary Information

25. During his employment at Previous Employer 2, John Doe and Colleague worked on the development of a new investment fund for the firm (the "**Fund**").

26. The Fund was never developed to the stage that it was ready to be marketed by Previous Employer 2 to the public, and as such, it remained the confidential and proprietary work product of Previous Employer 2.

27. While at Previous Employer 2, John Doe and Colleague discussed the possibility of leaving the firm to create their own investment fund.

28. In 2014, Colleague left Previous Employer 2, which John Doe states made his work towards developing the Fund more difficult.

29. After Colleague left Previous Employer 2, a representative of Previous Employer 2 sent John Doe an email setting out various detailed requests for information regarding the Fund (the "**Request Email**"). The purpose of these requests was to assist Previous Employer 2 in its assessment of the Fund.

30. Upon receiving the Request Email, John Doe forwarded it to a personal friend not employed by Previous Employer 2 or any of its affiliates, with a message that John Doe states was his expression of frustration over the amount of work he was being asked to do.

31. Throughout the fall of 2014, John Doe sent a series of emails to Colleague which included confidential performance data for the Fund. By the time these emails were sent to Colleague, Colleague had left Previous Employer 2. John Doe states that the purpose of providing this confidential performance data to Colleague was to have Colleague assist John Doe in responding to the requests set out in the Request Email.

32. Throughout the fall of 2014, while he was sending the Fund's confidential performance data to Colleague, John Doe also sent communications to Colleague in relation to their desire to establish their own investment fund. These communications included the following:

(a) John Doe forwarded to Colleague an email that contained certain research regarding the potential market for the Fund that had been obtained by John Doe at Previous Employer 2's request.

(b) John Doe exchanged text messages with Colleague during which he advised Colleague that he was meeting with a potential investor, and asked Colleague how much money he thought they would need to get started. John Doe did in fact meet with this potential investor, but no investment was ever made.

33. John Doe also sent at least three emails to a personal friend who worked as an investment banker at another firm, and in these emails John Doe forwarded confidential performance data regarding the Fund.

34. John Doe admits that he was not authorized by Previous Employer 2 to forward the Request Email to anyone outside the firm, nor was he authorized to send any of the confidential performance data or other research relating to the Fund to anyone outside the firm. John Doe admits that his disclosure of this information was contrary to Previous Employer 2's code of conduct and his duty of loyalty to the firm.

D. Dismissal for Cause and the Application

35. On Notification Date, Previous Employer 2 delivered a Form 33-109F1 *Notice of Termination of Registered Individuals and Permitted Individuals* (the "**Form F1**") informing Staff that the firm had terminated John Doe's employment for cause, effective on Termination Date.

36. On Application Date, John Doe submitted the Application.

37. Prior to submitting the Application, John Doe, through his counsel, requested a meeting with Staff to discuss the possibility of him applying to reactivate his registration. At this meeting, John Doe proactively provided Staff with a detailed written chronology of the events surrounding his relationship with Jane Doe, and discussed both the relationship with Jane Doe, the misstatements to Supervisor 1, Supervisor 2, and the police, and his unauthorized disclosure of Previous Employer 2's confidential information.

III. ADMISSIONS AND REPRESENTATIONS BY JOHN DOE

38. John Doe admits to the conduct described in this Settlement Agreement.

39. John Doe admits that the conduct described in this Settlement Agreement impugns his integrity for the purpose of registration under the Act.

40. John Doe represents as follows:

(a) he takes full responsibility for his conduct described in this Settlement Agreement, is remorseful for that conduct, understands how it has negatively impacted on his career in the capital markets, and will not engage in misconduct in the future;

(b) his conduct did not directly affect any client of Previous Employer 2;

(c) he has obtained counseling to assist him in dealing with the personal issues that he believes contributed to the conduct described in this Settlement Agreement; and

(d) he recognizes and acknowledges that the reactivation of his registration on the terms described in this Settlement Agreement represents a second chance for him to pursue a career in the capital markets, and that further misconduct by him could result in a permanent loss of his registration.

IV. JOINT RECOMMENDATION TO THE DIRECTOR

41. In order to resolve the matter of the Application, and on the basis of the Agreed Statement of Facts and the Admissions and Representations by John Doe set out in this Settlement Agreement, Staff and John Doe make the following joint recommendation to the Director:

(a) John Doe will withdraw the Application and will not reapply for a minimum period of 12 months from the Application Date.

(b) Before reapplying for registration, John Doe will successfully complete the Conduct and Practices Handbook Course.

(c) The Firm shall submit a supervisory plan for John Doe (the "Plan") to the Deputy Director, Registrant Conduct Team, Compliance and Registration Regulation Branch (the "Deputy Director"). John Doe shall not apply for registration until the Deputy Director has approved the Plan. For each investment fund to which John Doe

intends to provide services, the Plan must describe the investment fund, John Doe's role with respect to the investment fund, and how the Firm's chief compliance officer and ultimate designated person will oversee John Doe's activities and the investment fund to provide reasonable assurance that the investment fund is functioning properly and in accordance with its constating documents.

(d) If paragraphs (a), (b), and (c) above are complied with, then upon John Doe reapplying for registration in the future with the Firm, Staff will not recommend to the Director that his application be refused unless Staff becomes aware after the date of this Settlement Agreement of conduct impugning John Doe's suitability for registration, and provided he meets all other applicable criteria for registration at the time he applies for registration.

(e) For a period of not less than one year from the date John Doe becomes registered, the Firm shall submit quarterly reports regarding the administration of the Plan.

42. The Parties submit that their joint recommendation is reasonable, having regard to the following factors:

(a) John Doe has recognized and acknowledged his misconduct, has represented that he will not engage in misconduct in the future, and acknowledges the consequences of any future misconduct by him.

(b) Staff is not aware of any investor harm caused by John Doe's misconduct.

(c) John Doe has generally been cooperative with Staff both before the submission of his Application and during Staff's review of the Application.

(d) John Doe has taken remedial steps regarding his personal issues in an effort to minimize the possibility of further misconduct occurring in the future.

(e) By agreeing to this Settlement Agreement, John Doe has saved Staff and the Director the time and resources that would have been required for an OTBH.

43. Staff and John Doe acknowledge that if the Director does not accept this joint recommendation:

(a) this joint recommendation and all discussions and negotiations between Staff and John Doe in relation to this matter shall be without prejudice to the parties; and

(b) John Doe will be entitled to an OTBH in accordance with section 31 of the Act in respect of any recommendation that may be made by Staff regarding his registration status.

44. The parties agree that this Settlement Agreement, and any Director's decision approving of it, will be published on the OSC's website and in the OSC Bulletin in a format that will not divulge the identity of any of the parties referred to in this Settlement Agreement because of the sensitive personal information it contains.

"Marrianne Bridge", FCPA, FCA
Deputy Director
Compliance and Registrant Regulation

John Doe"

3.2.2 Jarnail Kahlon

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

AND

IN THE MATTER OF
AN APPLICATION FOR REGISTRATION BY JARNAIL KAHLON

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. This settlement agreement (the **Settlement Agreement**) relates to an application (the **Application**) for a reactivation of registration under the *Securities Act* (Ontario) (the **Act**) by Jarnail Kahlon (**Kahlon**), to be sponsored by Carte Wealth Management Inc. (**Carte Wealth**).

2. In reviewing the Application, staff of the Ontario Securities Commission (**Staff**) became aware of information regarding Kahlon's conduct as a registrant which could form the basis for a recommendation by Staff to the Director that the Application be refused pursuant to section 27 of the Act.

3. In the event that Staff recommended to the Director that the Application be refused, Kahlon would be entitled to an opportunity to be heard (an **OTBH**) pursuant to section 31 of the Act in respect of Staff's recommendation.

4. In lieu of pursuing an OTBH, Staff and Kahlon have agreed to make a joint recommendation to the Director regarding the Application, as more particularly described in this Settlement Agreement.

II. AGREED STATEMENT OF FACTS

5. The parties agree to the facts as stated herein.

A. Kahlon's Registration History

6. Kahlon has been registered as a dealing representative in the category of mutual fund dealer (and prior to September 28, 2009, a salesperson in the category of mutual fund dealer) with the following registered firms:

   (a) November 1995 to October 1998: IPC Investment Corporation (**IPC**, and a predecessor entity, Practitioners Mutual Planning Inc.)

   (b) May 1995 – April 2003: Assante Financial Management Ltd. (Assante, and a predecessor entity, Investment and Tax Counsel Corp.)

   (c) May 2003 – September 2009: Cartier Partners Financial Group Inc., from which Mr. Kahlon's registration transitioned through acquisition in June 2004 to Dundee Private Investors Inc. (collectively, Dundee, which is now known as HollisWealth Advisory Services Inc.)

   (d) September 2009 – June 2014: Investia Financial Services Inc. (Investia)

B. Conduct at Investia

7. Kahlon failed to disclose his involvement with seven corporations while registered at Investia, including his controlling shareholder position in five of these corporations. Kahlon was required to disclose this information as outside business activity to his employer and on his Form 33-109F4 Registration of Individuals and Review of Permitted Individuals.

8. While registered at Investia, Kahlon failed to disclose, as required, his outside business activities and controlling interests in unrelated corporations on Investia's annual compliance questionnaires.

9. In 2011, an Investia branch audit found that Kahlon did not keep adequate documentary records of client notes, and Investia issued Kahlon a warning letter in 2012 for this reason. Nevertheless, in 2014, a subsequent Investia branch audit again found that Kahlon had failed to adequately document client notes.

10. These branch audits also found that Kahlon did not respond to inquiries from Investia's compliance staff in a timely manner.

11. In a settlement agreement with the Mutual Fund Dealers Association of Canada dated February 23, 2015 (the MFDA Settlement Agreement), Kahlon admitted to obtaining and maintaining 21 pre-signed forms in respect of 16 clients, some of which were used to process trades. Pursuant to the MFDA Settlement Agreement, Kahlon agreed to pay a fine and costs totaling $7,500.

C. Resignation from Investia and Submission of Application

12. Investia provided Kahlon with a 30 day notice of termination in good standing on May 30, 2014. Kahlon resigned from Investia effective June 5, 2014.

13. On June 12, 2014, Kahlon submitted the Application, which was reviewed by Staff as described herein.

14. Pending the outcome of Staff's review of the Application, Kahlon has not worked in the securities industry since his employment with Investia was terminated.

D. Review of Application

15. Staff reviewed the Application by consulting documents provided by Investia, examining client files, and interviewing Kahlon. This review found the following:

    (a) Kahlon also failed to disclose many of his outside business activities to Assante, and Dundee;

    (b) Kahlon advised Staff that he did not disclose his outside business activities because he received compensation in a corporate capacity rather than in an individual capacity;

    (c) Kahlon did not correct the Application to include all relevant outside business activities until November 5, 2014;

    (d) Rather than respond in a timely manner to Investia's "Sales Compliance Review Tracking Report" in 2014, Kahlon proposed to submit responses more than three months late, ultimately resigning before providing those responses; and

    (e) Despite receiving specific training at an Investia compliance conference in 2012 that Investia prohibited its dealing representatives from maintaining or using pre-signed forms, Kahlon continued to use pre-signed forms where his clients requested or proposed that they be used.

III. ADMISSIONS AND REPRESENTATIONS BY KAHLON

16. Kahlon admits that he obtained and used pre-signed forms as described in the MFDA Settlement Agreement.

17. Kahlon admits that by obtaining and using pre-signed forms, he failed to deal fairly, honestly, and in good faith with his clients, contrary to OSC Rule 31-505 *Conditions of Registration*.

18. Kahlon represents as follows:

    (a) his misconduct with respect to pre-signed forms was not done to defraud his clients, but rather he believed that he was doing so for his clients' convenience and upon their request;

    (b) he takes full responsibility for his actions and regrets his misconduct;

    (c) he has suffered financial and reputational harm as a result of his misconduct;

    (d) if he is registered in the future, he will comply with all applicable provisions of Ontario securities law and the rules of any self-regulatory organization to which he may be subject, and will observe high standards of honest and responsible business conduct; and

    (e) he recognizes and acknowledges that additional instances of non-disclosure or the further use of pre-signed forms could result in the permanent loss of his registration.

IV. JOINT RECOMMENDATION TO THE DIRECTOR

19. In order to resolve the matter of the Application, and on the basis of the Agreed Statement of Facts and the Admissions and Representations by Kahlon set out in this Settlement Agreement, Staff and Kahlon make the following joint recommendation to the Director:

    (a) Kahlon will withdraw the Application and will not reapply for a minimum period of 18 months from November 5, 2014, the date on which he corrected the Application to include all relevant disclosures;

    (b) before reapplying for registration, Kahlon will successfully complete the *Conduct and Practices Handbook Course*;

    (c) before reapplying for registration, Kahlon will fully discharge his payment obligations for the fine and costs agreed to in the MFDA Settlement Agreement;

    (d) if Kahlon complies with paragraphs 19(a), (b) and (c) above, then upon Kahlon reapplying for registration in the future with a registered mutual fund dealer, Staff will not recommend to the Director that his application be refused unless Staff becomes aware after the date of this Settlement Agreement of conduct impugning Kahlon's suitability for registration or rendering his registration objectionable, and provided he meets all other applicable criteria for registration at the time he applies for registration; and

    (e) in the event Kahlon's registration is reactivated his registration shall be subject to the terms and conditions set out in Schedule "A" for a period of at least one year.

20. The Parties submit that their joint recommendation is reasonable, having regard to the following factors:

    (a) Kahlon has recognized and acknowledged his misconduct, and has provided assurances to Staff that he will conduct himself appropriately if he is registered again in the future;

    (b) The joint recommendation requires Kahlon to obtain additional education about his professional responsibilities as a registrant;

    (c) The period of time Kahlon is to be without registration under the Settlement Agreement is consistent with other relevant decisions of the Director;

    (d) The terms and conditions proposed by the Settlement Agreement provide a means to detect or prevent future misconduct of a similar nature by Kahlon;

    (e) Kahlon has suffered financial and reputational harm as a result of his misconduct;

    (f) Kahlon has been co-operative with Staff in its review of the Application; and

    (g) By agreeing to this Settlement Agreement, Kahlon has saved Staff and the Director the time and resources that would have been required for an OTBH.

21. Staff and Kahlon acknowledge that if the Director does not accept this joint recommendation:

    (a) this joint recommendation and all discussions and negotiations between Staff and Kahlon in relation to this matter shall be without prejudice to the parties; and

    (b) Kahlon will be entitled to an OTBH in accordance with section 31 of the Act in respect of any recommendation that may be made by Staff regarding his registration status.

22. The parties agree that this Settlement Agreement, and any Director's decision approving of it, will be published on the OSC's website and in the OSC Bulletin.

"Debra Foubert"
Director
Compliance and Registrant Regulation

April 21, 2016

"Jarnail Kahlon"

April 20, 2016

Schedule "A"

Terms and Conditions

The registration of Jarnail Kahlon (the "Registrant") under the *Securities Act* (Ontario) (the "Act") is subject to the following terms and conditions, which were imposed by the Director pursuant to section 27 of the Act:

Strict Supervision

1. For a period of at least twelve months from the date these terms and conditions are imposed:

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

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

   (c) The Registrant must immediately report to the OSC'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.

Delivery of Documents

2. For a period of at least twelve months from the date these terms and conditions are imposed:

   (a) The Registrant may not process any transactions for a client without the client's written authorization, which must be delivered to the Registrant's sponsoring firm at the time the Registrant processes the transaction.

   (b) If the Registrant processes a transaction for a client using a document that is signed or initialed by a client and that is not the original version of the document (a "**Copied Document**"), the Registrant 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.

Outside Business Activity

3. Any marketing material in respect of Peel Tax & Accounting (PT&A), including but not limited to any content on the PT&A website, must be reviewed and approved by the Registrant's sponsoring firm before being published or otherwise disseminated.

These terms and condition of registration constitute Ontario securities law, and a failure by the Registrant to comply with these terms and conditions may result in further regulatory action against him, including a suspension of his registration.

Appendix "A"

Strict Supervision Report

I hereby certify that supervision has been conducted for the month ending _____, 201_ of the trading activities of Jarnail Kahlon (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 Carte Wealth 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 dealing representative'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 or the mutual fund company. 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 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.

* In the event of client complaints or violations of securities legislation and/or the dealer's internal policies and procedures, the Ontario Securities Commission must be notified immediately.

_____
Date

_____
Signature of Supervising Officer

_____
Name of Supervising Officer

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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

THERE IS NOTHING TO REPORT THIS WEEK.

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Mainstream Minerals Corporation	25 April 2016	

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 IS NOTHING 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
Axios Mobile Assets Corp.	15 April 2016	27 April 2016			
Enerdynamic Hybrid Technologies Corp.	4 November 2015	16 November 2015	16 November 2015		
Enerdynamic Hybrid Technologies Corp.	22 October 2015	4 November 2015	4 November 2015		
Enerdynamic Hybrid Technologies Corp.	15 October 2015	28 October 2015	28 October 2015		
GeneNews Limited	31 March 2016	13 April 2016	13 April 2016		
Northern Power Systems Corp.	31 March 2016	13 April 2016	13 April 2016		
Starrex International Ltd.	30 December 2015	11 January 2016	11 January 2016		
Valeant Pharmaceuticals International, Inc.	31 March 2016	13 April 2016	13 April 2016		

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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 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Altius Minerals Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated April 19, 2016
NP 11-202 Receipt dated April 19, 2016
Offering Price and Description:
$35,010,000.00 - 3,112,000 Common Shares
Price: $11.25 per Common Share
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
SCOTIA CAPITAL INC.
RAYMOND JAMES LTD.
BMO NESBITT BURNS INC.
HAYWOOD SECURITIES INC.
Promoter(s):
-
Project #2469334

Issuer Name:
Blackbird Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated April 25, 2016
NP 11-202 Receipt dated April 25, 2016
Offering Price and Description:
Offering: $20,010,000.00 - 120,000,000 Units and 13,400,000 Flow-Through Shares
Price: $0.15 per Unit and $0.15 per Flow-Through Share
Underwriter(s) or Distributor(s):
DUNDEE SECURITIES LTD.
HAYWOOD SECURITIES INC.

Promoter(s):
-
Project #2473227

Issuer Name:
Capital Power Corporation
Principal Regulator - Alberta
Type and Date:
Preliminary Base Shelf Prospectus dated April 25, 2016
NP 11-202 Receipt on April 25, 2016
Offering Price and Description:
$3,000,000,000.00
Common Shares
Preference Shares
Subscription Receipts
Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2473342

Issuer Name:
Dividend Growth Split Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated April 22, 2016
NP 11-202 Receipt dated April 25, 2016
Offering Price and Description:
Offering: $300,000,000 - Preferred Shares and Class A Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2472931

Issuer Name:
Endeavour Silver Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Base Shelf Prospectus dated April 22, 2016
NP 11-202 Receipt on April 25, 2016
Offering Price and Description:
$175,000,000.00
Common Shares
Warrants
Subscription Receipts
Debt Securities
Units **Underwriter(s) or Distributor(s):**
-
Promoter(s):
-
Project #2473338

Issuer Name:
Franco-Nevada Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated April 22, 2016
NP 11-202 Receipt dated April 25, 2016
Offering Price and Description:
US$2,000,000,000.00
Common Shares
Preferred Shares
Debt Securities
Warrants
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2472754

Issuer Name:
LDIC North American Small Business Fund (Corporate Class)
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated April 21, 2016
NP 11-202 Receipt dated April 25, 2016
Offering Price and Description:
Series F1 Shares
Underwriter(s) or Distributor(s):
LDIC Inc.
Promoter(s):
LDIC Inc.
Project #2472748

Issuer Name:
Legacy Ventures International Inc.
Type and Date:
Preliminary Long Form Non-Offering Prospectus dated April 20, 2016
Receipted on April 22, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Rehan Saeed
Project #2472569

Issuer Name:
Mainstreet Health Investments Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated April 21, 2016
NP 11-202 Receipt dated April 22, 2016
Offering Price and Description:
US$ * - * Common Shares
Price: US$ * per Common Shares
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
Promoter(s):
MAINSTREET INVESTMENT COMPANY, LLC
Project #2472451

Issuer Name:
Mettrum Health Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated April 22, 2016
NP 11-202 Receipt dated April 22, 2016
Offering Price and Description:
$7,500,000.00 - 5,000,000 Common Shares
Price: $1.50 per Common Share

Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Mackie Research Capital Corporation
Canaccord Genuity Corp.
GMP Securities L.P.
Promoter(s):
-
Project #2470703

Issuer Name:
Nevada Copper Corp.
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated April 22, 2016
NP 11-202 Receipt dated April 22, 2016
Offering Price and Description:
$ * - * Subscription Receipt
Price: $ * per Subscription Receipt, each representing the right to receive one Unit
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Dundee Securities Ltd.
Haywood Securities Inc.
Promoter(s):
-
Project #2442227

Issuer Name:
Sienna Senior Living Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated April 22, 2016
NP 11-202 Receipt dated April 22, 2016
Offering Price and Description:
$120,301,500.00 - 7,590,000 Subscription Receipts each representing the right to receive one Common Share
Price: $15.85 per Subscription Receipt
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
CANACCORD GENUITY CORP.
RAYMOND JAMES LTD.
NATIONAL BANK FINANCIAL INC.
DUNDEE SECURITIES LTD.
LAURENTIAN BANK SECURITIES INC.
Promoter(s):
-
Project #2470951

Issuer Name:
True North Commercial Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated April 19, 2016
NP 11-202 Receipt dated April 19, 2016
Offering Price and Description:
$200,000,000.00
Trust Units
Debt Securities
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2471176

Issuer Name:
U.S. Banks Income & Growth Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated April 19, 2016
NP 11-202 Receipt dated April 20, 2016
Offering Price and Description:
Offering: $500,000,000.00 - Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Porpose Investments Inc.
National Bank Financial Inc.
Project #2471662

Issuer Name:
VersaPay Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated April 22, 2016
NP 11-202 Receipt dated April 22, 2016
Offering Price and Description:
$4,000,000.00 - 4,000,000 Common Shares
Price: $1.00 per Offered Share
Underwriter(s) or Distributor(s):
HAYWOOD SECURITIES INC.
CORMARK SECURITIES INC.
PI FINANCIAL CORP.
Promoter(s):
-
Project #2471303

Issuer Name:
WisdomTree Emerging Markets Dividend Fund
WisdomTree Europe Hedged Equity Fund
WisdomTree International Quality Dividend Growth Fund
WisdomTree U.S. Earnings 500 Fund
WisdomTree U.S. High Dividend Fund
WisdomTree U.S. MidCap Dividend Fund
WisdomTree U.S. Quality Dividend Growth Fund
WisdomTree U.S. SmallCap Dividend Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated April 21, 2016
NP 11-202 Receipt dated April 22, 2016
Offering Price and Description:
Hedged Units and Non-Hedged Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
WisdomTree Asset Management Canada, Inc.
Project #2472242

Issuer Name:
Quadrus series, H series, L series and N series securities (unless otherwise noted)
Mackenzie Canadian Concentrated Equity Fund (also offering D5 series, D8 series, H5 series,
H8 series, L5 series, L8 series, N5 series and N8 series securities)
Mackenzie U.S. Mid Cap Growth Class
Mackenzie Ivy European Class
Mackenzie Strategic Income Class (also offering D5 series and L5 series)
Mackenzie Global Growth Class
Mackenzie Emerging Markets Class
Mackenzie Precious Metals Class
(Classes of shares of Mackenzie Financial Capital Corporation)
Cash Management Class
Canadian Equity Class (also offering D5 series, D8 series, H5 series, H8 series, L5 series, L8
series, N5 series and N8 series securities)
North American Specialty Class
U.S. and International Equity Class (also offering D5 series, D8 series, H5 series, H8 series, L5
series, L8 series, N5 series and N8 series securities)
U.S. and International Specialty Class
Growth and Income Class (GWLIM) (also offering D5 series, D8 series, H5 series, H8 series, L5
series, L8 series, N5 series and N8 series securities)
Dividend Class (GWLIM) (also offering D5 series, D8 series, H5 series, H8 series, L5 series, L8
series, N5 series and N8 series securities)
Canadian Value Class (FGP) (also offering D5 series, D8 series, H5 series, H8 series, L5 series,
L8 series, N5 series and N8 series securities)
Focused Canadian Equity Class (CGOV)
U.S. Dividend Class (GWLIM) (also offering D5 series, D8 series, H5 series, L5 series, L8 series,
N5 series and N8 series securities)
U.S. Value Class (Putnam) (also offering D5 series, D8 series, H5 series, L5 series, L8 series,
N5 series and N8 series securities)
Global Dividend Class (Setanta) (also offering D5 series, D8 series, H5 series, H8 series, L5
series, L8 series, N5 series and N8 series securities)
Global Equity Class (Setanta)
International Equity Class (Putnam) (also offering D5 series, D8 series, H5 series, L5 series, L8
series, N5 series and N8 series securities)
(Classes of shares of Multi-Class Investment Corp.)
Principal Regulator - Ontario

Type and Date:
Amendment No. 4 dated April 15, 2016 to the Simplified Prospectuses of the above issuers, except Mackenzie Canadian Concentrated Equity Fund, dated June 26, 2015, and Amendment No. 5 dated April 15, 2016 to the Annual Information Form dated June 26, 2015 (amendment no. 5NP 11-202 Receipt dated April 25, 2016

Offering Price and Description:
-

Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd.

Promoter(s):
Mackenzie Financial Corporation

Project #2353705

Issuer Name:
AGF Canada Class* (Mutual Fund Series, Series F, Series O, Series T and Series V Securities)
AGF Canadian Growth Equity Class* (Mutual Fund Series, Series F and Series O Securities)
AGF Canadian Large Cap Dividend Class* (Mutual Fund Series, Series F, Series O, Series Q,
Series T and Series V Securities)
AGF Canadian Large Cap Dividend Fund (Mutual Fund Series, Series D, Series F, Series O,
Series Q, Series T, Series V and Classic Series Securities)
AGF Canadian Small Cap Discovery Fund (Mutual Fund Series, Series F and Series O
Securities)
AGF Canadian Small Cap Fund (Mutual Fund Series, Series F and Series O Securities)
AGF Canadian Stock Fund (Mutual Fund Series, Series D, Series F, Series O, Series Q, Series T
and Series V Securities)
AGF Dividend Income Fund (Mutual Fund Series, Series D, Series F, Series O, Series Q and
Series V Securities)
AGF American Growth Class* (Mutual Fund Series, Series D, Series F, Series O, Series Q,
Series T and Series V Securities)
AGF American Growth Fund (Series S Securities)
AGF Asian Growth Class* (Mutual Fund Series, Series F and Series O Securities)
AGF Asian Growth Fund (Series S Securities)
AGF China Focus Class* (Mutual Fund Series, Series F and Series O Securities)
AGF EAFE Equity Fund (Mutual Fund Series, Series F and Series O Securities)
AGF Emerging Markets Class* (Mutual Fund Series, Series F, Series O and Series Q Securities)
AGF Emerging Markets Fund (Mutual Fund Series, Series F, Series O and Series Q Securities)
AGF European Equity Class* (Mutual Fund Series, Series F, Series O, Series T and Series V
Securities)
AGF European Equity Fund (Series S Securities)
AGF Global Dividend Class* (Mutual Fund Series, Series F, Series O, Series Q, Series V and
Series W Securities)
AGF Global Dividend Fund (Mutual Fund Series, Series F, Series O, Series Q, Series T, Series V
and Series W Securities)
AGF Global Equity Class* (Mutual Fund Series, Series F, Series O, Series Q, Series T, Series V
and Series W Securities)
AGF Global Equity Fund (Mutual Fund Series, Series F, Series O, Series Q and Series W
Securities)
AGF Global Select Fund (Mutual Fund Series, Series F and Series O Securities)
AGF Global Value Class* (Mutual Fund Series, Series F, Series O, Series T and Series V
Securities)
AGF Global Value Fund (Mutual Fund Series, Series D, Series F, Series O, Series T and Series
V Securities)
AGF International Stock Class* (Mutual Fund Series, Series F, Series O, Series T and Series V
Securities)
AGF U.S. Risk Managed Fund (Series S Securities)
AGF U.S. Sector Class* (Mutual Fund Series, Series F, Series O, Series Q and Series W
Securities)
AGF U.S. Small-Mid Cap Fund (Mutual Fund Series, Series F, Series O and Series Q Securities)
AGF Global Resources Class* (Mutual Fund Series, Series F and Series O Securities)
AGF Global Resources Fund (Series S Securities)
AGF Global Sustainable Growth Equity Fund (Mutual Fund Series, Series F and Series O
Securities)
AGF Precious Metals Fund (Mutual Fund Series, Series F and Series O Securities)
AGF Canadian Asset Allocation Fund (Mutual Fund Series, Series D, Series F, Series O, Series
T and Series V Securities)
AGF Diversified Income Class* (Mutual Fund Series, Series F, Series O and Series Q Securities)
AGF Diversified Income Fund (Mutual Fund Series, Series F, Series O and Series Q Securities)
AGF Monthly High Income Fund (Mutual Fund Series, Series F, Series O, Series Q and Series T
Securities)
AGF Tactical Income Fund (Mutual Fund Series, Series F, Series O and Series Q Securities)
AGF Traditional Income Fund (Mutual Fund Series, Series D, Series F, Series O, Series Q,
Series T and Series V Securities)
AGF Emerging Markets Balanced Fund (Mutual Fund Series, Series F and Series O Securities)
AGF Flex Asset Allocation Fund (Mutual Fund Series, Series F, Series O, Series Q and Series W
Securities)
AGF Global Balanced Fund (Mutual Fund Series, Series F, Series O, Series T and Series V
Securities)
AGF Tactical Fund (Series S Securities)
AGF Canadian Bond Fund (Mutual Fund Series, Series D, Series F and Series O Securities)
AGF Canadian Money Market Fund (Mutual Fund Series, Series F and Series O Securities)
AGF Fixed Income Plus Class* (Mutual Fund Series, Series F, Series O, Series Q and Series W
Securities)
AGF Fixed Income Plus Fund (Mutual Fund Series, Series F, Series O, Series Q and Series W
Securities)
AGF Inflation Plus Bond Fund (Mutual Fund Series, Series F and Series O Securities)
AGF Short-Term Income Class* (Mutual Fund Series, Series F and Series O Securities)
AGF Emerging Markets Bond Fund (Mutual Fund Series, Series F, Series O and Series Q
Securities)
AGF Floating Rate Income Fund (Mutual Fund Series, Series F, Series O, Series Q, Series T,
Series V and Series W Securities)
AGF Global Bond Fund (Mutual Fund Series, Series F, Series O and Series Q Securities)
AGF Global Convertible Bond Fund (Mutual Fund Series, Series F, Series O, Series Q, Series V

and Series W Securities)
AGF High Yield Bond Fund (Mutual Fund Series, Series F, Series O and Series Q Securities)
AGF Total Return Bond Class* (Mutual Fund Series, Series F, Series O and Series Q Securities)
AGF Total Return Bond Fund (Mutual Fund Series, Series F, Series O and Series Q Securities)
AGF Elements Balanced Portfolio (Mutual Fund Series, Series D, Series F, Series J, Series O,
Series Q, Series T and Series V Securities)
AGF Elements Conservative Portfolio (Mutual Fund Series, Series D, Series F, Series J, Series
O and Series Q Securities)
AGF Elements Global Portfolio (Mutual Fund Series, Series D, Series F, Series J, Series O and
Series Q Securities)
AGF Elements Growth Portfolio (Mutual Fund Series, Series D, Series F, Series J, Series O,
Series Q, Series T and Series V Securities)
AGF Elements Yield Portfolio (Mutual Fund Series, Series F, Series J, Series O, Series Q and
Series W Securities)
AGF Elements Balanced Portfolio Class* (Mutual Fund Series, Series D, Series F, Series O,
Series Q, Series T, Series V and Series W Securities)
AGF Elements Conservative Portfolio Class* (Mutual Fund Series, Series D, Series F, Series O,
Series Q and Series W Securities)
AGF Elements Global Portfolio Class* (Mutual Fund Series, Series D, Series F, Series O, Series
Q and Series W Securities)
AGF Elements Growth Portfolio Class* (Mutual Fund Series, Series D, Series F, Series O,
Series Q, Series T, Series V and Series W Securities)
AGF Elements Yield Portfolio Class* (Mutual Fund Series, Series F, Series O, Series Q, Series V
and Series W Securities)
AGF Equity Income Focus Fund (Mutual Fund Series, Series F, Series O, Series Q and Series T
Securities)
AGF Income Focus Fund (Mutual Fund Series, Series F, Series O, Series Q, Series T and Series
V Securities)
* Class of AGF All World Tax Advantage Group Limited
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated April 18, 2016
NP 11-202 Receipt dated April 20, 2016
Offering Price and Description:
Mutual Fund Series, Series D, Series F, Series J, Series O, Series Q, Series S, Series T, Series V, Series W and Classic Series Securities
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
-
Project #2455518

Issuer Name:
Phillips, Hager & North High Yield Bond Fund
(Series C, Advisor Series, Series D, Series F and Series O units)
Principal Regulator - Ontario
Type and Date:
Amendment #4 dated April 14, 2016 to the Simplified Prospectus and Annual Information Form dated June 26, 2015
NP 11-202 Receipt dated April 19, 2016
Offering Price and Description:
Series C, Advisor Series, Series D, Series F and Series O units
Underwriter(s) or Distributor(s):
Phillips, Hager & North Investment Funds Ltd.
RBC Global Asset Management Inc.
Phillips, Hager & North Investment Funds Ltd.
Promoter(s):
RBC Global Asset Management Inc.
Project #2352048, 2352054

Issuer Name:
Series A, D and E Securities (unless otherwise indicated)
Counsel Conservative Portfolio Class (also offering Series ET, I and T)
Counsel Balanced Portfolio Class (also offering Series ET, I and T)
Counsel Growth Portfolio Class (also offering Series ET, I and T)
Counsel All Equity Portfolio Class
Counsel Short Term Fixed Income Class
Counsel Canadian Dividend Class (also offering Series ET, I and T)
Counsel Canadian Value Class (also offering Series I)
Counsel Canadian Growth Class (also offering Series I)
Counsel U.S. Value Class
Counsel U.S. Growth Class
Counsel International Value Class
Counsel International Growth Class
Counsel Global Small Cap Class
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 15, 2016 to the Simplified Prospectuses and Annual Information Form dated October 29, 2015
NP 11-202 Receipt dated April 25, 2016
Offering Price and Description:
Series A, D, E, ET, I and T securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
Counsel Portfolio Services Inc.
Project #2397770

Issuer Name:

Dynamic Blue Chip U.S. Balanced Class* (Series A, E, F, FH, FI, H, I, O and T shares)
Dynamic Dividend Income Class* (Series A, E, F, I, O and T shares)
Dynamic Preferred Yield Class* (Series A, E, F, FH, FI, H, I and O shares)
Dynamic Strategic Yield Class* (Series A, E, F, FH, FI, FT, G, H, I, IT and T shares)
Dynamic Advantage Bond Class* (Series A, E, F, FH, FT, H, I, IT and T shares)
Dynamic Corporate Bond Strategies Class* (Series A, E, F, H, I and T shares)
Dynamic Money Market Class* (Series C and F shares)
Dynamic Power American Growth Class* (Series A, F, IP, O, OP and T shares)
Dynamic Power Balanced Class* (Series A, F, FT, G, I, IP, IT, O, OP and T shares)
Dynamic Power Canadian Growth Class* (Series A, E, F, G, I, IP, O, OP and T shares)
Dynamic Power Global Balanced Class(Series A, F, IP, O, OP and T shares)
Dynamic Power Global Growth Class* (Series A, F, G, IP, O, OP and T shares)
Dynamic Power Global Navigator Class* (Series A, E, F, FI, I, IP, O, OP and T shares)
Dynamic Power Dividend Growth Class* (Series A, F, I, O and T shares)
Dynamic American Value Class* (Series A, E, F, I, O and T shares)
Dynamic Canadian Value Class* (Series A, E, F, G, I, IP, O, OP and T shares)
Dynamic Dividend Advantage Class* (Series A, E, F, FH, FI, FT, H, I, O and T shares)
Dynamic EAFE Value Class* (Series A, F, I, O and T shares)
Dynamic Emerging Markets Class* (Series A, F, I, IP and OP shares)
Dynamic Global Asset Allocation Class* (Series A, E, F, I, O and T shares)
Dynamic Global Discovery Class* (Series A, E, F, I, O and T shares)
Dynamic Global Dividend Class* (Series A, E, F, FT, I, O and T shares)
Dynamic Global Value Class* (Series A, E, F, I, IP, O, OP and T shares)
Dynamic Income Growth Opportunities Class* (Series A, E, F, I, O and T shares)
Dynamic Value Balanced Class* (Series A, E, F, FT, G, I, IT, O and T shares)
Dynamic Alternative Yield Class* (Series A, E, F, FH, FT, H, IP and T shares)
Dynamic Strategic Energy Class* (Series A, F, I, IP, O, OP and T shares)
Dynamic Strategic Gold Class* (Series A, E, F, FI, G, I and O shares)
Dynamic Strategic Resource Class* (Series A, F, I, IP and OP shares)
Dynamic U.S. Sector Focus Class* (Series A, F, I and O shares)
DynamicEdge Balanced Class Portfolio* (Series A, E, F, FT, G, I, IT, O and T shares)
DynamicEdge Balanced Growth Class Portfolio* (Series A, E, F, FT, G, I, IT, O and T shares)
DynamicEdge Conservative Class Portfolio* (Series A, E, F, I, O and T shares)
DynamicEdge Equity Class Portfolio* (Series A, E, F, FT, I, IT, O and T shares)
DynamicEdge Growth Class Portfolio* (Series A, E, F, FT, I, IT, O and T shares)
Dynamic Aurion Tactical Balanced Class* (Series A, E, F, FT, I, O and T shares)
Dynamic Aurion Total Return Bond Class* (Series A, E, F, FH, FT, H, I, IT and T shares)
DMP Power Global Growth Class** (Series A and F shares)
DMP Resource Class** (Series A, F and G shares)
DMP Value Balanced Class** (Series A and F shares)
* each is a class of Dynamic Global Fund Corporation
** each is a class of Dynamic Managed Portfolios Ltd.
Principal Regulator - Ontario
Type and Date:
Amendment #4 dated April 8, 2016 to the Simplified Prospectuses and Annual Information Form dated November 18, 2015
NP 11-202 Receipt dated April 18, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
GCIC Ltd.
1832 Asset Management L. P.
Promoter(s):
-
Project #2405037

Issuer Name:
Dundee Global™ Resource Class
(Series A Shares, Series D Shares and Series F Shares)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated April 15, 2016
NP 11-202 Receipt dated April 18, 2016
Offering Price and Description:
Series A Shares, Series D Shares and Series F Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2454274

Issuer Name:
Dynamic Conservative Yield Private Pool Class
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated April 8, 2016 to Final Simplified Prospectus and Annual Information Form dated February 26, 2015
NP 11-202 Receipt dated April 18, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
Promoter(s):
1832 Asset Management L.P.
Project #2302272

Issuer Name:
Dynamic Global Infrastructure Class
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 8, 2016 to the Simplified Prospectus and Annual Information Form dated September 1, 2015
NP 11-202 Receipt dated April 18, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
Promoter(s):
1832 Asset Management L.P.
Project #2374127

Issuer Name:
Dynamic Premium Bond Private Pool Class
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 8, 2016 to the Simplified Prospectus and Annual Information Form dated January 14, 2016
NP 11-202 Receipt dated April 18, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
Promoter(s):
1832 Asset Management L.P.
Project #2419512

Issuer Name:
Dynamic Premium Yield Class
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 8, 2016 to the Simplified Prospectus and Annual Information Form dated February 29, 2016
NP 11-202 Receipt dated April 18, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
Promoter(s):
1832 Asset Management L.P.
Project #2429279

Issuer Name:
Enbridge Pipelines Inc.
Principal Regulator - Alberta
Type and Date:
Final Base Shelf Prospectus dated April 21, 2016
NP 11-202 Receipt dated April 21, 2016
Offering Price and Description:
$2,500,000,000.00 - MEDIUM TERM NOTES (UNSECURED)
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
Merrill Lynch Canada Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #2469624

Issuer Name:
TD Precious Metals Fund
TD Resource Fund
Principal Regulator - Ontario
Type and Date:
Amendment #4 dated April 15, 2016 to the Simplified Prospectuses and Annual Information Form dated July 23, 2015
NP 11-202 Receipt dated April 25, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
TD Waterhouse Canada Inc.
TD Investment Services Inc. (for Investor Series units)
TD Investment Services Inc. (for Investor Series and e-Series units)
TD Investment Services Inc.(for Investor Series units)
TD Investment Services Inc. (for Investor Series and e-Series Units)
TD Waterhouse Canada Inc.
TD Waterhouse Canada Inc. (W-Series and WT-Series only)
TD Investment Services Inc. (for Investor Series)
TD Investment Services Inc. (for Investor Series and Premium Series units)
Promoter(s):
TD Asset Management Inc.
Project #2363093

Issuer Name:
Excel India Balanced Fund
Excel New India Leaders Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated April 20, 2016
NP 11-202 Receipt dated April 22, 2016
Offering Price and Description:
Series A, Series F and PM Series units
Underwriter(s) or Distributor(s):
Excel Funds Management Inc.
Promoter(s):
Excel Funds Management Inc.
Project #2437769

Issuer Name:
Global Iman Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated April 13, 2016
NP 11-202 Receipt dated April 18, 2016
Offering Price and Description:
Series A and F Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Global Growth Assets Inc.
Project #2454369

Issuer Name:
Guardian Balanced Fund (Series W and Series I units)
Guardian Balanced Income Fund (Series W and Series I units)
Guardian Canadian Bond Fund (Series W and Series I units)
Guardian Canadian Equity Fund (Series W and Series I units)
Guardian Canadian Focused Equity Fund (Series W and Series I units)
Guardian Canadian Growth Equity Fund (Series W and Series I units)
Guardian Canadian Short-Term Investment Fund (Series W and Series I units)
Guardian Canadian Small/Mid Cap Equity Fund (Series W and Series I units)
Guardian Emerging Markets Equity Fund (Series W and Series I units)
Guardian Equity Income Fund (Series W and Series I units)
Guardian Fundamental Global Equity Fund (Series W and Series I units)
Guardian Global Dividend Growth Fund (Series W and Series I units)
Guardian Global Equity Fund (Series W and Series I units)
Guardian Growth & Income Fund (Series W and Series I units)
Guardian High Yield Bond Fund (Series W and Series I units)
Guardian International Equity Fund (Series W and Series I units)
Guardian Managed Income & Growth Portfolio (Series W, Series I and Series C units)
Guardian Managed Income Portfolio (Series W, Series I and Series C units)
Guardian Private Wealth Bond Fund (Series W and Series I units)
Guardian Private Wealth Equity Fund (Series W and Series I units)
Guardian Short Duration Bond Fund (Series W and Series I units)
Guardian U.S. Equity Fund (Series W and Series I units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated April 20, 2016
NP 11-202 Receipt dated April 22, 2016
Offering Price and Description:
Series C, I and W units
Underwriter(s) or Distributor(s):
Worldsource Financial Management Inc.
Worldsource Securities Inc.
Guardian Capital LP
Worldsource Financial Management Inc.
Promoter(s):
Guardian Capital LP
Project #2456450

Issuer Name:
Kelt Exploration Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated April 22, 2016
NP 11-202 Receipt dated April 22, 2016
Offering Price and Description:
$75,000,000.00 - 5.00% Convertible Unsecured Subordinated Debentures Due May 31, 2021
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
PETERS & CO. LIMITED
FIRSTENERGY CAPITAL CORP.
NATIONAL BANK FINANCIAL INC.
CORMARK SECURITIES INC.
TD SECURITIES INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
GMP SECURITIES L.P.
MACQUARIE CAPITAL MARKETS CANADA LTD.
RAYMOND JAMES LTD.
SCOTIA CAPITAL INC.
ALTACORP CAPITAL INC.
BMO NESBITT BURNS INC.
Promoter(s):
-
Project #2468722

Issuer Name:
Mackenzie Cundill Canadian Balanced Fund (Series AR, Series C, Series D, Series F, Series F8, Series FB, Series FB5, Series G, Series I, Series O, Series O6, Series PW, Series PWF, Series PWF8, Series PWT8, Series PWX, Series PWX8, Series T6 and Series T8)
Mackenzie Canadian Concentrated Equity Fund (Series A, Series D, Series F, Series FB, Series O, Series PW, Series PWF and Series PWX)
Mackenzie Cundill Canadian Security Fund (Series AR, Series C, Series D, Series F, Series F8, Series FB, Series FB5, Series G, Series I, Series O, Series PW, Series PWF, Series PWX, Series T6 and Series T8)
Mackenzie Canadian Money Market Class* (Series A and Series F)
Mackenzie Canadian All Cap Balanced Class* (Series A, Series D, Series F, Series F8, Series FB, Series FB5, Series O, Series O6, Series PW, Series PWF, Series PWF8, Series PWT8, Series PWX, Series PWX8, Series T6 and Series T8)
Mackenzie Strategic Income Class* (Series A, Series F, Series F6, Series F8, Series O, Series O6, Series T6 and Series T8)
Mackenzie All Cap Dividend Class* (Series A, Series D, Series F, Series F6, Series FB, Series FB5, Series O, Series PW, Series PWF, Series PWT8, Series PWX, Series PWX8, Series T6 and Series T8)
Mackenzie Canadian All Cap Dividend Class* (Series A, Series D, Series F, Series F6, Series FB, Series FB5, Series O, Series O6, Series PW, Series PWF, Series PWF8, Series PWT8, Series PWX, Series PWX8 and Series T6)
Mackenzie Canadian All Cap Value Class* (Series A, Series D, Series F, Series FB, Series O, Series PW, Series PWF, Series PWX and Series T8)
Mackenzie Canadian Large Cap Dividend Class* (Series A, Series D, Series F, Series FB, Series O, Series O6, Series PW, Series PWF, Series PWT8, Series PWX, Series T6 and Series T8)
Mackenzie Canadian Small Cap Value Class* (Series A, Series D, Series F, Series FB, Series O, Series PW, Series PWF and Series PWX)
Mackenzie Cundill Canadian Security Class* (Series A, Series D, Series F, Series FB, Series O, Series PW, Series PWF, Series PWF8, Series PWT8, Series PWX, Series PWX8, Series T6 and Series T8)
Mackenzie Cundill US Class* (Series A, Series D, Series F, Series F8, Series FB, Series FB5, Series O, Series PW, Series PWF, Series PWF8, Series PWX, Series T6 and Series T8)
Mackenzie US Growth Class* (Series A, Series D, Series F, Series FB, Series G, Series O, Series PW, Series PWF, Series PWX and Series T8)
Mackenzie US Large Cap Class* (Series A, Series D, Series F, Series F8, Series FB, Series FB5, Series I, Series O, Series PW, Series PWF, Series PWF8, Series PWT8, Series PWX, Series PWX8, Series T6 and Series T8)

Mackenzie US Mid Cap Growth Class* (Series A, Series AR, Series D, Series F, Series FB,
Series I, Series O, Series PW, Series PWF, Series PWF8, Series PWT8, Series PWX, Series
PWX8, Series T6 and Series T8)
Mackenzie US Mid Cap Growth Currency Neutral Class* (Series A, Series AR, Series D, Series
F, Series FB, Series I, Series O, Series PW, Series PWF, Series PWT8, Series PWX, Series
PWX8, Series T6 and Series T8)
Mackenzie Cundill Recovery Class* (Series A, Series D, Series F, Series FB, Series O, Series
PW, Series PWF and Series PWX)
Mackenzie Cundill Value Class* (Series A, Series AR, Series D, Series F, Series F8, Series FB,
Series FB5, Series O, Series O6, Series PW, Series PWF, Series PWF8, Series PWT8, Series
PWX, Series PWX8, Series T6 and Series T8)
Mackenzie Emerging Markets Class* (Series A, Series D, Series F, Series FB, Series O, Series
PW, Series PWF, Series PWX and Series U)
Mackenzie Emerging Markets Opportunities Class* (Series A, Series D, Series F, Series FB,
Series O, Series PW, Series PWF and Series PWX)
Mackenzie Global Concentrated Equity Class* (Series A, Series D, Series F, Series FB, Series
O, Series PW, Series PWF, Series PWT8, Series PWX, Series T6 and Series T8
Mackenzie Global Diversified Equity Class* (Series A, Series AR, Series D, Series F, Series FB,
Series O, Series O6, Series PW, Series PWF, Series PWF8, Series PWT8, Series PWX, Series T6
and Series T8)
Mackenzie Global Growth Class* (Series A, Series D, Series F, Series FB, Series G, Series O,
Series PW, Series PWF, Series PWT8, Series PWX and Series T8)
Mackenzie Global Small Cap Growth Class* (Series A, Series D, Series F, Series FB, Series O,
Series PW, Series PWF, Series PWF8, Series PWX, Series PWX8 and Series T8)
Mackenzie International Growth Class* (Series A, Series D, Series F, Series FB, Series O, Series
PW, Series PWF, Series PWF8, Series PWT8, Series PWX, Series PWX8, Series T6 and Series
T8)
Mackenzie Ivy European Class* (Series A, Series D, Series F, Series FB, Series O, Series PW,
Series PWF, Series PWX, Series T6 and Series T8)
Mackenzie Ivy Foreign Equity Class* (Series A, Series D, Series F, Series F8, Series FB, Series
FB5, Series O, Series O6, Series PW, Series PWF, Series PWF8, Series PWT8, Series PWX,
Series PWX8, Series T6 and Series T8)
Mackenzie Ivy Foreign Equity Currency Neutral Class* (Series A, Series AR, Series D, Series F,
Series FB, Series O, Series PW, Series PWF, Series PWF8, Series PWT8, Series PWX, Series
PWX8, Series T6 and Series T8)
Mackenzie Global Resource Class* (Series A, Series D, Series F, Series FB, Series O, Series
PW, Series PWF, Series PWX and Series U)
Mackenzie Gold Bullion Class* (Series A, Series D, Series F, Series FB, Series O, Series PW,
Series PWF and Series PWX)
Mackenzie Precious Metals Class* (Series A, Series D, Series F, Series FB, Series O, Series PW,
Series PWF and Series PWX)
Symmetry Balanced Portfolio Class* (Series A, Series F, Series F8, Series FB, Series FB5,
Series O, Series O6, Series PW, Series PWF, Series PWF8, Series PWT8, Series PWX, Series
PWX8, Series T6 and Series T8)
Symmetry Conservative Income Portfolio Class* (Series A, Series F, Series F8, Series FB,
Series FB5, Series O, Series O6, Series PW, Series PWF, Series PWF8, Series PWT8, Series
PWX, Series PWX8, Series T6 and Series T8)
Symmetry Conservative Portfolio Class* (Series A, Series F, Series F8, Series FB, Series FB5,
Series O, Series PW, Series PWF, Series PWF8, Series PWT8, Series PWX, Series PWX8, Series
T6 and Series T8)
Symmetry Equity Portfolio Class* (Series A, Series AR, Series D, Series F, Series F6, Series FB,
Series FB5, Series G, Series O, Series PW, Series PWF, Series PWT8, Series PWX, Series
PWX8, Series T6, Series T8 and Series W)
Symmetry Growth Portfolio Class* (Series A, Series F, Series F8, Series FB, Series FB5, Series
O, Series PW, Series PWF, Series PWF8, Series PWT8, Series PWX, Series T6 and Series T8)
Symmetry Moderate Growth Portfolio Class* (Series A, Series F, Series F8, Series FB, Series
FB5, Series O, Series O6, Series PW, Series PWF, Series PWF8, Series PWT8, Series PWX,
Series T6 and Series T8)
* Each is a class of Mackenzie Financial Corporation
Principal Regulator - Ontario

Type and Date:
Amendment No. 4 dated April 15, 2016 to the Simplified Prospectuses of the above Issuers, except Mackenzie Canadian Concentrated Equity Fund, dated September 29, 2015, and Amendment No. 5 dated April 15, 2016 to the Annual Information Form dated September 29, 2015 (amendment no. 5).NP 11-202 Receipt dated April 25, 2016

Offering Price and Description:
-

Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd.
LBC Financial Services Inc.

Promoter(s):
Mackenzie Financial Corporation

Project #2380257

Issuer Name:
Mackenzie Canadian Money Market Class (Series LB securities)
Mackenzie Strategic Income Class (Series LB and LX securities)
Mackenzie Canadian All Cap Dividend Class (Series LB and LX securities)
Mackenzie Canadian All Cap Value Class (Series LB securities)
Mackenzie Canadian Small Cap Value Class (Series LB securities)
Mackenzie US Mid Cap Growth Class (Series LB securities)
Mackenzie Global Diversified Equity Class (Series LB securities)
Mackenzie Global Growth Class (Series LB securities)
Symmetry Conservative Income Portfolio Class (Series LB, LM and LX securities)
Symmetry Conservative Portfolio Class (Series LB, LM and LX securities)
Symmetry Balanced Portfolio Class (Series LB, LM and LX securities)
Symmetry Moderate Growth Portfolio Class (Series LB, LM and LX securities)
Symmetry Growth Portfolio Class (Series LB, LM and LX securities)
Symmetry Equity Portfolio Class (Series LB, LM and LX securities)
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated April 15, 2016 to the Simplified Prospectuses and Annual Information Form dated November 26, 2015
NP 11-202 Receipt dated April 25, 2016
Offering Price and Description:
Series LB, LM, LP and/or LX Securities
Underwriter(s) or Distributor(s):
LBC Financial Services Inc.
LBC Financial Services Inc
LBC Financial Services Inc.
Promoter(s):
Mackenzie Financial Corporation
Project #2404100

Issuer Name:
Mackenzie Private Income Balanced Pool Class
(Series PW and PWF Securities)
Mackenzie Private Canadian Focused Equity Pool Class
(Series PW, PWF, PWF5 and PWT5 Securities)
Mackenzie Private US Equity Pool Class
(Series PW, PWF, PWF5 and PWT5 Securities)
Mackenzie Private Global Equity Pool Class
(Series PW, PWF, PWF5 and PWT5 Securities)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 15, 2016 to the Simplified Prospectuses and Annual Information Form dated November 20, 2015
NP 11-202 Receipt dated April 25, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Mackenzie Financial Corporation
Project #2399699

Issuer Name:
Manulife Canadian Focused Class (Advisor Series, Series D, Series F, Series FT6, Series I and Series T6 securities)
Manulife Canadian Investment Class (Advisor Series, Series F, Series FT6, Series I and Series T6 securities)
Manulife Canadian Opportunities Class (Advisor Series, Series D, Series F, Series FT6, Series I and Series T6 securities)
Manulife Canadian Stock Class (Advisor Series, Series F, Series FT6, Series I and Series T6 securities)
Manulife Dividend Income Class (Advisor Series, Series F, Series FT6, Series I and Series T6 securities)
Manulife Growth Opportunities Class (Advisor Series, Series F, Series FT6, Series I and Series T6 securities)
Manulife Preferred Income Class (Advisor Series, Series F, Series FT6, Series I and Series T6 securities)
Manulife Covered Call U.S. Equity Class (Advisor Series, Series F, Series FT6, Series I and Series T6 securities)
Manulife U.S. All Cap Equity Class (Advisor Series, Series F, Series FT6, Series I Series T6 securities)
Manulife U.S. Dividend Income Class (Advisor Series, Series F, Series FT6, Series I Series T6 securities)
Manulife Global Dividend Class (Advisor Series, Series F, Series FT6, Series I Series T6 securities)
Manulife Global Equity Class (Advisor Series, Series F, Series FT6, Series I Series T6 securities)
Manulife World Investment Class (Advisor Series, Series F, Series FT6, Series I Series T6 securities)
Manulife Asia Equity Class (Advisor Series, Series F and Series I securities)
Manulife China Class (Advisor Series, Series F and Series I securities)
Manulife Global Infrastructure Class (Advisor Series, Series F, Series FT6, Series I Series T6 securities)
Manulife Global Real Estate Unconstrained Class (Advisor Series, Series F and Series I securities)
Manulife Canadian Equity Balanced Class (Advisor Series, Series F, Series FT6, Series I and Series T6 securities)
Manulife Canadian Opportunities Balanced Class (Advisor Series, Series F, Series FT6, Series I and Series T6 securities)
Manulife Monthly High Income Class (Advisor Series, Series F, Series FT6, Series I and Series T6 securities)
Manulife Value Balanced Class (Advisor Series, Series F, Series FT6, Series I and Series T6 securities)
Manulife Short Term Yield Class (Advisor Series, Series F and Series I securities)
Manulife Canadian Equity Private Pool (Advisor Series, Series C, Series CT6, Series F, Series FT6, Series L, Series LT6 and Series T6 securities)
Manulife Dividend Income Private Pool (Advisor Series, Series C, Series CT6, Series F, Series FT6, Series L, Series LT6 and Series T6 securities)
Manulife Global Equity Private Pool (Advisor Series, Series C, Series CT6, Series F, Series FT6, Series L, Series LT6 and Series T6 securities)
Manulife U.S. Equity Private Pool (Advisor Series, Series C, Series CT6, Series F, Series FT6, Series L, Series LT6 and Series T6 securities)
Manulife Balanced Equity Private Pool (Advisor Series, Series C, Series CT6, Series F, Series FT6, Series L, Series LT6 and Series T6 securities)
Manulife Canadian Balanced Private Pool (Advisor Series, Series C, Series CT6, Series F, Series FT6, Series L, Series LT6 and Series T6 securities)
Principal Regulator - Ontario
Type and Date:
Amendment No. 3 dated April 15, 2016 to the Simplified Prospectuses (amendment no. 4) and Amendment No. 4 dated April 15, 2016 to the Annual Information Form (amendment no. 4, together with amendment no. 3, "amendment no. 4") dated July 31, 2015NP 11-202 Receipt dated April 21, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Manulife Asset Management Investments Inc.
Manulife Asset Management Investments Inc.
Manulife Asset Management Limited
Promoter(s):
Manulife Asset Management Limited
Project #2361808

Issuer Name:
Standard Life Short Term Yield Class* (Advisor Series securities)
Manulife Canadian Monthly Income Class* (Advisor Series securities, Series F securities,
Series FT8 securities, Series I securities and Series T8 securities)
Manulife Canadian Dividend Income Class* (Advisor Series securities, Series F securities,
Series FT6 securities, Series I securities and Series T6 securities)
Manulife Canadian Dividend Growth Class* (Advisor Series securities, Series F securities,
Series FT8 securities, Series I securities and Series T8 securities)
Manulife Global Dividend Growth Class* (Advisor Series securities, Series F securities, Series
FT8 securities, Series I securities and Series T8 securities)
Manulife Global Equity Unconstrained Class* (Advisor Series securities, Series F securities,
Series FT6 securities, Series I securities and Series T6 securities)
Manulife Emerging Markets Class* (Advisor Series securities and Series F securities)
Standard Life Conservative Portfolio Class* (Advisor Series securities)
Standard Life Moderate Portfolio Class* (Advisor Series securities)
Manulife Portrait Growth Portfolio Class* (Advisor Series securities, Series F securities, Series
FT7 securities, Series I securities and Series T7 securities)
Manulife Portrait Dividend Growth & Income Portfolio Class* (Advisor Series securities, Series
F securities, Series FT8 securities, Series I securities and Series T8 securities)
(*Shares of Manulife Investment Exchange Funds Corp.)
Principal Regulator - Ontario
Type and Date:
Amendment #4 dated April 15, 2016 to the Simplified Prospectuses and Annual Information Form dated November 9, 2015
NP 11-202 Receipt dated April 21, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Manulife Asset Management Investments Inc.
Manulife Asset Management Investments Inc.
Manulife Asset Management Investment Inc.
Manulife AssetManagement Investments Inc.
Promoter(s):
Manulife Asset Management Limited
Project #2393585

Issuer Name:
Marquis Balanced Class Portfolio (Series A, E, F, I and T shares)
Marquis Balanced Growth Class Portfolio (Series A, E, F, I and T shares)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 8, 2016 to the Simplified Prospectuses and Annual Information Form dated November 25, 2015
NP 11-202 Receipt dated April 18, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
Promoter(s):
1832 Asset Management L.P.
Project #2404600

Issuer Name:
New Leaders Class
Principal Regulator - Ontario
Type and Date:
Final Long Form Non-Offering Prospectus dated April 22, 2016
NP 11-202 Receipt dated April 22, 2016
Offering Price and Description:
Non-offering prospectus
Underwriter(s) or Distributor(s):
-
Promoter(s):
EXCEL FUNDS MANAGEMENT INC.
Project #2437771

Issuer Name:
Petrowest Corporation
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated April 20, 2016
NP 11-202 Receipt dated April 20, 2016
Offering Price and Description:
28,571,500 Class A Common Shares
$10,000,025.00 - $0.35 per Offered Share
Underwriter(s) or Distributor(s):
BEACON SECURITIES LIMITED
DUNDEE SECURITIES LTD.
HAYWOOD SECURITIES INC.
PI FINANCIAL CORP.
CANACCORD GENUITY CORP.
MACKIE RESEARCH CAPITAL CORPORATION
CORMARK SECURITIES INC.
Promoter(s):
-
Project #2469511

Issuer Name:
Phillips, Hager & North High Yield Bond Fund
(Series C, Advisor Series, Series D, Series F and Series O units)
Principal Regulator - Ontario
Type and Date:
Amendment #4 dated April 14, 2016 to the Simplified Prospectus and Annual Information Form dated June 26, 2015
NP 11-202 Receipt dated April 19, 2016
Offering Price and Description:
Series C, Advisor Series, Series D, Series F and Series O units
Underwriter(s) or Distributor(s):
Phillips, Hager & North Investment Funds Ltd.
RBC Global Asset Management Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #2352054

Issuer Name:
RBC Quant Canadian Dividend Leaders ETF (CAD Units)
RBC Quant U.S. Dividend Leaders ETF (CAD and USD Units)
RBC Quant U.S. Dividend Leaders (CAD Hedged) ETF (CAD Units)
RBC Quant European Dividend Leaders ETF (CAD and USD Units)
RBC Quant European Dividend Leaders (CAD Hedged) ETF (CAD Units)
RBC Quant EAFE Dividend Leaders ETF (CAD and USD Units)
RBC Quant EAFE Dividend Leaders (CAD Hedged) ETF (CAD Units)
RBC Quant Emerging Markets Dividend Leaders ETF (CAD and USD Units)
RBC Strategic Global Dividend Leaders ETF (CAD Units)
RBC Quant Canadian Equity Leaders ETF (CAD Units)
RBC Quant U.S. Equity Leaders ETF (CAD and USD Units)
RBC Quant U.S. Equity Leaders (CAD Hedged) ETF (CAD Units)
RBC Quant EAFE Equity Leaders ETF (CAD and USD Units)
RBC Quant EAFE Equity Leaders (CAD Hedged) ETF (CAD Units)
RBC Quant Emerging Markets Equity Leaders ETF (CAD and USD Units)
RBC Strategic Global Equity Leaders ETF (CAD Units)
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated April 15, 2016
NP 11-202 Receipt dated April 18, 2016
Offering Price and Description:
Exchange traded securities at net asset value
Underwriter(s) or Distributor(s):
-A
Promoter(s):
-
Project #2448013

Issuer Name:
Renaissance Multi-Sector Fixed Income Private Pool
(Premium Class, Premium-T4 Class, Premium-T6 Class, Class H-Premium, Class H-Premium
T4,
Class H-Premium T6, Class F-Premium, Class F-Premium T4, Class F-Premium T6,
Class FH-Premium, Class FH-Premium T4, Class FH-Premium T6, Class N-Premium,
Class N-Premium T4, Class N-Premium T6, Class NH-Premium, Class NH-Premium T4,
Class NH-Premium T6, Class O, Class OH, and Class S units)
Renaissance Multi-Asset Global Balanced Income Private Pool
(Premium Class, Premium-T4 Class, Premium-T6 Class, Class F-Premium,
Class F-Premium T4, Class F-Premium T6, Class N-Premium,
Class N-Premium T4, Class N-Premium T6, and Class O units)
Renaissance Multi-Asset Global Balanced Private Pool
(Premium Class, Premium-T4 Class, Premium-T6 Class, Class F-Premium,
Class F-Premium T4, Class F-Premium T6, Class N-Premium,
Class N-Premium T4, Class N-Premium T6, and Class O units)
Renaissance Global Equity Private Pool
(Premium Class, Premium-T4 Class, Premium-T6 Class, Class H-Premium, Class H-Premium
T4,
Class H-Premium T6, Class F-Premium, Class F-Premium T4, Class F-Premium T6,
Class FH-Premium, Class FH-Premium T4, Class FH-Premium T6, Class N-Premium,
Class N-Premium T4, Class N-Premium T6, Class NH-Premium, Class NH-Premium T4,
Class NH-Premium T6, Class O, and Class OH units)
Renaissance Real Assets Private Pool
(Premium Class, Premium-T4 Class, Premium-T6 Class, Class H-Premium, Class H-Premium
T4,
Class H-Premium T6, Class F-Premium, Class F-Premium T4, Class F-Premium T6,
Class FH-Premium, Class FH-Premium T4, Class FH-Premium T6, Class N-Premium,
Class N-Premium T4, Class N-Premium T6, Class NH-Premium, Class NH-Premium T4,
Class NH-Premium T6, Class O, Class OH, and Class S units)
Renaissance Flexible Yield Fund
(Class A, Class H, Premium Class, Class H-Premium, Class F, Class FH,
Class F-Premium, Class FH-Premium, Class O, and Class OH units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated April 19, 2016
NP 11-202 Receipt dated April 20, 2016
Offering Price and Description:
Premium Class, Premium-T4 Class, Premium-T6 Class, Class H-Premium, Class H-Premium T4, Class H-Premium

T6, Class F-Premium, Class F-Premium T4, Class F-Premium T6, Class FH-Premium, Class FH-Premium T4, Class FH-Premium T6, Class N-Premium, Class N-Premium T4, Class N-Premium T6, Class NH-Premium, Class NH-Premium T4, Class NH-Premium T6, Class O, Class OH, and Class S, Class A, Class H, Class FH units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
CIBC Asset Management Inc.
Project #2446005

Issuer Name:
Scotia Conservative Government Bond Capital Yield Class (Series A shares)
Scotia Fixed Income Blend Class (Series A shares)
Scotia Canadian Dividend Class (Series A shares)
Scotia Canadian Equity Blend Class (Series A shares)
Scotia U.S. Equity Blend Class (Series A shares)
Scotia Global Dividend Class (Series A shares)
Scotia International Equity Blend Class (Series A shares)
Scotia INNOVA Income Portfolio Class (Series A shares)
Scotia INNOVA Balanced Income Portfolio Class (Series A and Series T shares)
Scotia INNOVA Balanced Growth Portfolio Class (Series A and Series T shares)
Scotia INNOVA Growth Portfolio Class (Series A and Series T shares)
Scotia INNOVA Maximum Growth Portfolio Class (Series A and Series T shares)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 8, 2016 to the Simplified Prospectuses and Annual Information Form dated May 15, 2015
NP 11-202 Receipt dated April 18, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Scotia Securities Inc. (Series A shares only)
Scotia Securities Inc.
Scotia Securities Inc. (Series A shares)
Promoter(s):
1832 Asset Management L.P.
Project #2332872

Issuer Name:
Scotia Partners Balanced Income Portfolio Class (Series A and Series T shares)
Scotia Partners Balanced Growth Portfolio Class (Series A and Series T shares)
Scotia Partners Growth Portfolio Class (Series A and Series T shares)
Scotia Partners Maximum Growth Portfolio Class (Series A and Series T shares)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated April 8, 2016 to the Simplified Prospectuses and Annual Information Form dated January 21, 2016
NP 11-202 Receipt dated April 18, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Scotia Securities Inc.
Scotia Securities Inc.
Promoter(s):
1832 Asset Management L.P.
Project #2427483

Issuer Name:
Sherritt International Corporation
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated April 15, 2016
NP 11-202 Receipt dated April 18, 2016
Offering Price and Description:
$500,000,000.00
Common Shares
Debt Securities
Subscriptiopn Receipts
Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2467001

Issuer Name:
Sterling Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated April 20, 2016
NP 11-202 Receipt dated April 20, 2016
Offering Price and Description:
UP TO $219,845,339.00 - 441,572,956 RIGHTS TO SUBSCRIBE FOR UP TO 14,277,525,577 COMMON SHARES AT A PRICE OF
$0.015398 PER SHARE
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2456989

Issuer Name:
The Descartes Systems Group Inc.
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated April 18, 2016
NP 11-202 Receipt dated April 18, 2016
Offering Price and Description:
US$500,000,000.00
Common Shares
Preferred Shares
Debt Securities
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2468623

Issuer Name:
Trillium Credit Card Trust II
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated April 21, 2016
NP 11-202 Receipt dated April 22, 2016
Offering Price and Description:
Up to $5,000,000,000 Credit Card Receivables-Backed Notes
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Promoter(s):
The Bank of Nova Scotia
Project #2447904

Issuer Name:
U.S. Tactical Allocation Fund (formerly Gold Participation and Income Fund)
(Class A and Class F units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated April 20, 2016
NP 11-202 Receipt dated April 20, 2016
Offering Price and Description:
Series A and F mutual fund units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Strathbridge Asset Management Inc.
Project #2435411

Issuer Name:
Wesdome Gold Mines Ltd.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated April 22, 2016
NP 11-202 Receipt dated April 22, 2016
Offering Price and Description:
$15,015,000.00 - 9,100,000 Common Shares
Price: $1.65 per Common Share
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
MACKIE RESEARCH CAPITAL CORPORATION
DUNDEE SECURITIES LTD.
CLARUS SECURITIES INC.
M PARTNERS INC.
Promoter(s):
-
Project #2468894

Issuer Name:
Renaissance Canadian Equity Private Pool Class
Renaissance Emerging Markets Equity Private Pool Class
Renaissance Equity Income Private Pool Class
Renaissance Global Equity Private Pool Class
Renaissance International Equity Private Pool Class
Renaissance Multi-Asset Balanced Growth Private Pool Class
Renaissance U.S. Equity Private Pool Class
Renaissance Ultra Short Term Income Private Pool Class
Principal Jurisdiction - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated February 22, 2016
Withdrawn on April 20, 2016
Offering Price and Description:
Premium Class, Premium-T4 Class, Premium-T6 Class, Class H-Premium, Class H-Premium T4, Class H-Premium T6, Class F-Premium, Class F-Premium T4, Class F-Premium T6, Class FH-Premium, Class FH-Premium T4, Class FH-Premium T6, Class N-Premium, Class N-Premium T4, Class N-Premium T6, Class NH-Premium, Class NH-Premium T4, Class NH-Premium T6, Class O, Class OH, and Class S, Class A, Class H, Class FH units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
CIBC Asset Management Inc.
Project #2446005

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Tempered Investment Management Ltd.	From: Portfolio Manager To: Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	April 19, 2016
Voluntary Surrender	Propel Capital Corporation	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	April 20, 2016
Voluntary Surrender	Wealth Advisory Services Ltd.	Mutual Fund Dealer and Exempt Market Dealer	April 21, 2016
Change in Registration Category	Linde Equity Inc.	From: Portfolio Manager To: Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	April 21, 2016
Consent to Suspension (Pending Surrender)	BNP Paribas Investment Partners Canada Ltd.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	April 22, 2016
Voluntary Surrender	Santa Fe Partners LLC	Restricted Portfolio Manager	April 22, 2016

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 IIROC – Proposed amendments to Dealer Member Rule 1200 and to Form 1 relating to the client free credit cash usage limit and client free credit segregation requirements – OSC Staff Notice of Request for Comment

OSC STAFF NOTICE OF REQUEST FOR COMMENT

THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

PROPOSED AMENDMENTS TO DEALER MEMBER RULE 1200 AND TO FORM 1 RELATING TO CLIENT FREE CREDIT CASH USAGE LIMIT AND CLIENT FREE CREDIT SEGREGATION REQUIREMENTS

On March 30, 2016, the Board of Directors (the Board) of the Investment Industry Regulatory Organization of Canada (IIROC) approved the republication for comment of the proposed amendments to Dealer Member Rules 1200 and to Form 1 relating to the client free credit cash usage limit and client free credit segregation requirements (collectively, the "Proposed Amendments"). The Proposed Amendments were originally published for public comment in IIROC Rules Notice 14-0298 as part of a more comprehensive proposal ("Original Proposal") that also included proposed amendments to the securities concentration test. IIROC has materially changed the Original Proposal by withdrawing the proposed amendments to the securities concentration test, which require further refinement, and will be pursued as a separate proposal.

The primary objective of the Proposed Amendments is to strengthen the prudential framework for IIROC Dealer Members for ensuring the safeguarding of and timely client access to client assets. The Proposed Amendments to the client free credit cash usage limit and client free credit segregation requirements seek to appropriately restrict a Dealer Member's ability to use client free credit cash balances in the conduct of its business, by reducing the allowable usage ratio to a more appropriate ratio of client free credits to liquid capital (i.e. early warning reserve (EWR)). The Proposed Amendments also make changes to the qualification standards for securities eligible for client free credit segregation purposes and to the client free credit monitoring requirements.

A copy of the IIROC Notice with the Proposed Amendments, including the changes to the Original Proposal is published on our website at http://www.osc.gov.on.ca. The comment period ends on May 30, 2016.

13.2 Marketplaces

13.2.1 TSX – Amendments to TSX Company Manual – Request For Comments

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 introduce TSX requirements regarding Dividend / Distribution Reinvestment Plans ("**DRIPs**") in Part VI of the TSX Company Manual (the "**Manual**"). The proposed amendments provide for public interest changes and ancillary changes, collectively referred to as the "**Amendments**". The public interest changes will be published for public comment for a thirty (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 May 28**,** 2016 to:

Catherine De Giusti
Legal Counsel
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 determine whether to proceed with the Amendments, as proposed, or as modified as a result of comments.

Rationale for the Amendments

DRIPs have been adopted by many TSX listed issuers to allow their existing holders to re-invest their cash dividends or distributions by purchasing additional securities. In certain instances, DRIPs may also allow security holders to purchase additional securities, in excess of the dividend or distribution, in compliance with applicable securities laws. These purchases are referred to as "optional cash payments".

There are many benefits to DRIPs. They allow listed issuers to preserve cash and encourage long-term investment in their securities. DRIPs are also a means for security holders to increase their investment in an issuer in a convenient and efficient way through commission-free purchases of securities, often at a discount to the market price. We estimate that close to 200 TSX-listed issuers have implemented DRIPs.

The Manual does not currently contain specific requirements relating to DRIPs. DRIPs that provide for the issuance of securities from treasury are treated as additional listings of securities under the general provisions of Section 615 of the Manual. Section 616 of the Manual sets out the customary documentation required for additional listings. TSX has historically relied on these provisions to approve DRIPs and list the securities issuable in connection with DRIPs. However, these requirements are general in nature and not specifically tailored to DRIPs.

As there are no specific requirements applicable to DRIPs in the Manual, TSX is frequently contacted by issuers or their legal advisors to understand how to implement a DRIP, list additional securities pursuant to a DRIP or amend a DRIP.

Section 617.1 is being proposed to provide a complete set of standards and practices applicable to DRIPs. We believe the introduction of these requirements in the Manual will provide greater transparency and a more efficient process for adopting DRIPs. This may ultimately translate into time and cost savings for listed issuers. The introduction of Section 617.1 is further warranted given the prevalence of DRIPs among TSX listed issuers.

Summary of the Proposed Amendments

TSX is proposing a new Section 617.1 to explicitly set out the requirements regarding DRIPs in the Manual. As ancillary matters, the Exchange is also proposing to amend Section 329 – *Outstanding and Employee Incentive Plans,* Section 423.12 – *Electronic Communications Guidelines* and Part XI of the Manual.

The new Section 617.1 will provide for the following:

1. Implementing a DRIP

   Listed issuers will be required to pre-clear any new DRIPs that provide for the issuance of additional listed securities from treasury. Section 617.1 sets out the documentation required for TSX to finalize the acceptance of the plan and list the additional securities issuable under the DRIP once it has been approved by the listed issuer's board of directors.

2. Requirements Applicable to DRIPs

   New requirements will be introduced that specifically apply to DRIPs, as follows:

   - the price at which securities can be issued under a DRIP must not be lower than the market price, less a 5% discount;
   - the maximum number of additional securities that can be listed under a DRIP;
   - all security holders in Canada must be eligible to participate in the DRIP; and
   - DRIPs must include a provision to pre-clear all amendments with TSX.

3. Listing Additional Securities under an Existing DRIP

   Listed issuers must have a sufficient number of securities listed to cover issuances under a DRIP, including pursuant to optional cash payments. This section also specifies the process and documentation required to list additional securities under an existing DRIP.

4. Amending a DRIP

   Listed issuers must pre-clear any amendments with TSX. This section also specifies the documentation required to obtain TSX approval for amendments.

5. Suspending or Terminating / Resuming or Re-instating a DRIP

   Listed issuers wishing to suspend or terminate a DRIP must promptly notify TSX and advise their security holders by way of issuing a news release. The same procedure applies when an issuer wants to resume or re-instate a DRIP.

Please refer to the text of new Section 617.1 and to the ancillary amendments to Sections 329, 423.12 and Part XI at **Appendix A**.

Practices of Other Exchanges

None of Aequitas Neo Exchange, TSX Venture Exchange or the New York Stock Exchange have rules setting out specific requirements for DRIPs.

NASDAQ also does not have specific requirements related to DRIPs, but issuers are required to file a copy of the DRIP in connection with the issuer's application to list additional securities pursuant to a DRIP.

Questions

In responding to any of the questions below, please explain your response.

1. Are there any other requirements TSX should consider adopting regarding DRIPs?

2. Is it appropriate to limit the discount at which securities may be issued under a DRIP to 5% of the market price?

Public Interest

TSX is publishing the Amendments for a thirty (30) day comment period, which expires May 28**,** 2016. The Amendments will only become effective following public notice and the approval of the OSC.

APPENDIX A
BLACKLINE OF PUBLIC INTEREST AMENDMENTS

PART VI AMENDMENTS

Sec. 617.1. Dividend / Distribution Reinvestment Plans (DRIPs)

DRIPs are adopted by listed issuers to allow existing holders of a listed security to reinvest their cash dividends or distributions by purchasing additional securities of the same class from the listed issuer. In certain instances, DRIPs may also allow security holders to purchase additional securities, in excess of the dividend or distribution, in compliance with applicable securities laws (an "optional cash payment").

DRIPs that provide for the issuance of additional listed securities from treasury are subject to TSX pre-clearance. However, DRIPs providing for the payment of dividends or distributions solely with securities purchased on the secondary market do not require TSX approval.

(a) **Implementing a New DRIP**

(i) All DRIPs must be pre-cleared with TSX. Listed issuers must provide a draft copy of the DRIP to TSX for pre-clearance at least five (5) business days prior to the effective date of the DRIP.

(ii) Once the DRIP has been pre-cleared by TSX and approved by the board of directors of the listed issuer, the following must be filed with TSX:

a. a certified copy of the board resolution approving adoption of the DRIP;

b. a final copy of the DRIP; and

c. an additional listing application (the "DRIP additional listing application") comprised of:

i. a letter notice pursuant to Section 602; and

ii. an opinion of counsel that the securities to be listed will be validly created in accordance with applicable laws and that the securities will be validly issued as fully paid and non-assessable.

TSX will invoice the listed issuer for the additional listing fee payable (see TSX Listing Fee Schedule).

(b) **Requirements Applicable to DRIPs**

Each DRIP should provide for the principal terms and conditions pursuant to which security holders may participate in the DRIP. TSX requires, in particular:

(i) the price per listed security at which securities will be issued, such price not being lower than the market price (as defined in Part 1 [link] of the Manual), less a 5% discount, taking into account any premium increasing the amount of the dividend or distribution payable or the optional cash payment;

(ii) the number of additional securities to be listed under the DRIP, including securities issuable pursuant to an optional cash payment, such number of securities being:

a. a sufficient number of securities to cover issuances for a two-year period, provided such number of securities does not exceed 10% of the securities of the listed issuer that are issued and outstanding, on a non-diluted basis, at the time of the DRIP additional listing application; or

b. a number of securities equal to 5% of the securities of the listed issuer that are issued and outstanding, on a non-diluted basis, at the time of the DRIP additional listing application; and

(iii) listed issuers must make some provision for fractional security interests that may result from the DRIP;

(iv) all security holders must be eligible to participate in the DRIP, except that listed issuers may limit the participation of security holders residing outside of Canada; and

(v) the DRIP must state that all amendments to the DRIP must be pre-cleared by TSX.

(c) **Listing Additional Securities under an Existing DRIP**

After a DRIP has been implemented, listed issuers must have a sufficient number of securities listed to cover issuances under the DRIP, including pursuant to optional cash payments.

In order to list additional securities under an existing DRIP, listed issuers must file a DRIP additional listing application comprised of a letter notice and legal opinion in the form prescribed in (a)(ii)c. above.

TSX will invoice the listed issuer for the additional listing fee payable (see TSX Listing Fee Schedule).

(d) **Amending a DRIP**

Where a listed issuer proposes to amend a DRIP, it must pre-clear such amendment with TSX. TSX will require a black-lined copy of the DRIP clearly showing the amendments.

Once the amendment has been pre-cleared, TSX will require a certified copy of the board resolution approving the amendment to the DRIP.

(e) **Suspending or Terminating / Resuming or Reinstating a DRIP**

Where a listed issuer proposes to suspend or terminate a DRIP, it must promptly:

(i) advise its security holders of the suspension or termination by way of issuing a news release; and

(ii) notify TSX of the suspension or termination by filing a copy of the news release referred to in (i) above.

Where a listed issuer proposes to resume or re-instate a DRIP, it must notify its security holders and TSX by issuing and filing a news release as described above.

ANCILLARY AMENDMENTS

Sec. 329 Outstanding Options, ~~and Employee~~ Incentive Plans and Dividend / Distribution Reinvestment Plans (DRIPs)

(a) Stock options, stock option plans and ~~employee~~ stock purchase plans, which are in effect at the time a company is first listed on the Exchange, must be in compliance with the Exchange's requirements applicable to listed companies (but need not be approved by shareholders). See Section 613 regarding share compensation and incentive arrangements for employees and other persons who provide services for listed companies on an ongoing basis.

(b) DRIPs which are in effect at the time a company is first listed on the Exchange must be in compliance with the Exchange's requirements applicable to DRIPs as set out in Section 617.1.

Sec. 423.12 – Electronic Communication Guidelines

TSX recommends that listed issuers follow these guidelines when designing a website, establishing an internal email policy or disseminating information over the Internet.

[…]

An issuer may either post its own investor relations information or establish links, frequently called “hyper-links”, to other web sites that also maintain publicly disclosed documents on behalf of the issuer such as news wire services, SEDAR and stock quote services. “Investor relations information” includes all material public documents such as: the annual report: annual and interim financial statements; the Annual Information Form; news releases; material change reports; information regarding DRIPs; declarations of dividends; redemption notices; management proxy circulars; and any other communications to shareholders.

Part XI Requirements Applicable to Non-Corporate Issuers

This section sets out the requirements that are specifically applicable to Non-Corporate Issuers.

In addition to the specific requirements outlined in this Part XI, Non-Corporate Issuers must also comply with the following sections of the Manual:

Part IV—MAINTAINING A LISTING

All Sections, other than Shareholders' Meeting and Proxy Solicitation (Sections 455–465)

Part VI—CHANGES IN CAPITAL STRUCTURE

(A) Discretion (Section 603), Security Holder Approval (Section 604), Changes in Issued Securities (Section 605)

(C) Security Based Compensation Arrangements (Section 613)

(E) Additional Listings (Section 617.1)

(F) Substitutional Listings (Sections 618–622)

(I) Redemption of Listed Securities (Section 625)

(L) Normal Course Issuer Bids (Sections 628–629)

APPENDIX B
CLEAN VERSION OF PUBLIC INTEREST AMENDMENTS

PART VI AMENDMENTS

Sec. 617.1. Dividend / Distribution Reinvestment Plans (DRIPs)

DRIPs are adopted by listed issuers to allow existing holders of a listed security to reinvest their cash dividends or distributions by purchasing additional securities of the same class from the listed issuer. In certain instances, DRIPs may also allow security holders to purchase additional securities, in excess of the dividend or distribution, in compliance with applicable securities laws (an "optional cash payment").

DRIPs that provide for the issuance of additional listed securities from treasury are subject to TSX pre-clearance. However, DRIPs providing for the payment of dividends or distributions solely with securities purchased on the secondary market do not require TSX approval.

(a) Implementing a New DRIP

(i) All DRIPs must be pre-cleared with TSX. Listed issuers must provide a draft copy of the DRIP to TSX for pre-clearance at least five (5) business days prior to the effective date of the DRIP.

(ii) Once the DRIP has been pre-cleared by TSX and approved by the board of directors of the listed issuer, the following must be filed with TSX:

a. a certified copy of the board resolution approving adoption of the DRIP;

b. a final copy of the DRIP; and

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i. a letter notice pursuant to Section 602; and

ii. an opinion of counsel that the securities to be listed will be validly created in accordance with applicable laws and that the securities will be validly issued as fully paid and non-assessable.

TSX will invoice the listed issuer for the additional listing fee payable (see TSX Listing Fee Schedule).

(b) Requirements Applicable to DRIPs

Each DRIP should provide for the principal terms and conditions pursuant to which security holders may participate in the DRIP. TSX requires, in particular:

(i) the price per listed security at which securities will be issued, such price not being lower than the market price (as defined in Part 1 [link] of the Manual), less a 5% discount, taking into account any premium increasing the amount of the dividend or distribution payable or the optional cash payment;

(ii) the number of additional securities to be listed under the DRIP, including securities issuable pursuant to an optional cash payment, such number of securities being:

a. a sufficient number of securities to cover issuances for a two-year period, provided such number of securities does not exceed 10% of the securities of the listed issuer that are issued and outstanding, on a non-diluted basis, at the time of the DRIP additional listing application; or

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(E) Additional Listings (Section 617.1)

(F) Substitutional Listings (Sections 618–622)

(I) Redemption of Listed Securities (Section 625)

(L) Normal Course Issuer Bids (Sections 628–629)

13.3 Clearing Agencies

13.3.1 CDS – Notice of Effective Date – Technical amendments for Housekeeping Changes, March 2016

NOTICE OF EFFECTIVE DATE – TECHNICAL AMENDMENTS TO CDS PROCEDURES

HOUSEKEEPING CHANGES – March 2016

The Ontario Securities Commission is publishing *Notice of Effective Date – Technical Amendments to CDS Procedures – Housekeeping Changes – March 2016*. The CDS procedure amendments were reviewed and approved by CDS's strategic development review committee (SDRC) on March 31, 2016. CDS has determined that these amendments will become effective on May 2, 2016.

A copy of the CDS notice is on our website http://www.osc.gov.on.ca.

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