The Ontario Securities Commission

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

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IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
OPTAM HOLDINGS INC.,
INFINIVEST MORTGAGE INVESTMENT CORPORATION, and
WADE ROBERT CLOSSON

NOTICE OF HEARING
(Subsections 127(1) and 127(10) of the Securities Act)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5 (the "Act"), at the offices of the Commission, 20 Queen Street West, 17th Floor, commencing on November 16, 2016 at 10:00 a.m., or as soon thereafter as the hearing can be held;

TO CONSIDER whether, pursuant to subsection 127(1) and paragraph 4 of subsection 127(10) of the Act, it is in the public interest for the Commission to make an order:

1. against Optam Holdings Inc. ("Optam") that:

    a. trading in any securities of Optam cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;

    b. trading in any securities or derivatives by Optam cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;

    c. the acquisition of any securities by Optam be prohibited permanently, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

    d. any exemptions contained in Ontario securities law do not apply to Optam permanently, pursuant to paragraph 3 of subsection 127(1) of the Act; and

    e. Optam be prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

2. against Infinivest Mortgage Investment Corporation ("Infinivest") that:

    a. trading in any securities of Infinivest cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;

    b. trading in any securities or derivatives by Infinivest cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;

    c. the acquisition of any securities by Infinivest be prohibited permanently, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

    d. any exemptions contained in Ontario securities law do not apply to Infinivest permanently, pursuant to paragraph 3 of subsection 127(1) of the Act; and

e. Infinivest be prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

3. against Wade Robert Closson ("Closson") that:

a. trading in any securities or derivatives by Closson cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;

b. the acquisition of any securities by Closson be prohibited permanently, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

c. any exemptions contained in Ontario securities law do not apply to Closson permanently, pursuant to paragraph 3 of subsection 127(1) of the Act;

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

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

f. Closson be prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

4. such other order or orders as the Commission considers appropriate.

BY REASON of the allegations set out in the Statement of Allegations of Staff of the Commission dated October 18, 2016, and by reason of an order of the Alberta Securities Commission dated December 29, 2015, and a Statement of Admissions of Closson, Optam and Infinivest dated November 6, 2015 and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that at the hearing on November 16, 2016 at 10:00 a.m., Staff will bring an application to proceed with the matter by written hearing, in accordance with Rule 11 of the Ontario Security Commission *Rules of Procedure* (2014), 37 OSCB 4168 and section 5.1 of the *Statutory Powers Procedure Act*, RSO 1990, c S.22, and any party to the proceeding may make submissions in respect of the application to proceed by written hearing;

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by a representative at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of the party and such party is not entitled to any further notice of the proceeding;

AND TAKE FURTHER NOTICE that the Notice of Hearing is also available in French on request, participation may be in either French or English and participants must notify the Secretary's Office in writing as soon as possible, and in any event, at least thirty (30) days before a hearing if the participant is requesting a proceeding to be conducted wholly or partly in French; and

ET AVIS EST ÉGALEMENT DONNÉ PAR LA PRÉSENTE que l'avis d'audience est disponible en français sur demande, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Bureau du secrétaire par écrit le plut tôt possible et, dans tous les cas, au moins trente (30) jours avant l'audience si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

DATED at Toronto this 19th day of October, 2016.

"Grace Knokowski"
Secretary to the Commission

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
OPTAM HOLDINGS INC.,
INFINIVEST MORTGAGE INVESTMENT CORPORATION, and
WADE ROBERT CLOSSON

STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission ("Staff") allege:

I. OVERVIEW

1. Optam Holdings Inc. ("Optam"), Infinivest Mortgage Investment Corporation ("Infinivest") and Wade Robert Closson ("Closson") (collectively, the "Respondents") are subject to an order made by the Alberta Securities Commission (the "ASC") dated December 29, 2015 (the "ASC Order") that imposes sanctions, conditions, restrictions or requirements upon them.

2. In its findings on liability and sanctions dated December 29, 2015 (the "Findings"), a panel of the ASC (the "ASC Panel") found that the Respondents each engaged in unregistered trading and illegal distribution. The ASC Panel further found that Closson perpetrated a fraud.

3. Staff are seeking an inter-jurisdictional enforcement order, pursuant to paragraph 4 of subsection 127(10) of the Ontario *Securities Act*, RSO 1990, c S.5 (the "Act").

II. THE ASC PROCEEDINGS

Statement of Admissions

4. Prior to the commencement of the ASC proceedings, the Respondents entered into a Statement of Admissions (the "Statement"). The Respondents made admissions therein concerning the allegations of unregistered trading and illegal distribution against them by ASC Staff, and further admitted that their conduct was contrary to the public interest. Closson also made admissions concerning the allegation of fraud against him by ASC Staff. A summary of the admissions and the ASC Panel's Findings is as follows.

Admitted Facts

5. The Respondents admitted certain facts within the Statement of Admissions, which the ASC Panel accepted as accurate. The admitted facts are as follows.

6. The conduct for which the Respondents were sanctioned took place between approximately January 1, 2009 and April 2, 2013 (the "Material Time").

7. At the time of the ASC proceedings, Closson resided at or near St. Albert, Alberta. During the Material Time, Closson was an officer and director of Optam and Infinivest, and he was not registered with the ASC.

8. Optam was incorporated in Alberta. During the Material Time, Optam was neither a reporting issuer in Alberta, nor registered with the ASC and had not filed a prospectus with the ASC.

9. Infinivest was incorporated in Alberta. During the Material Time, Infinivest was neither reporting issuer in Alberta, nor registered with the ASC and had not filed a prospectus with the ASC.

10. During the Material Time, Closson raised approximately $10.8 million from as many as 125 investors for the benefit of Optam and Infinivest (collectively, the "Issuers"). Funds were raised in two ways:

    a. Investors provided approximately $6.9 million to Optam and in return received promissory notes issued by Closson and Optam (the "Optam Scheme"); and

b. Investors provided approximately $3.9 million to Infinivest in return for preferred shares in Infinivest (the "Infinivest Scheme").

11. Infinivest was ostensibly in the business of mortgage lending as a mortgage investment corporation, administered by Closson through Optam, or, alternatively, Closson administered the investment funds provided to Optam through Infinivest and other entities he controlled. Infinivest was also used to permit investors to transfer registered accounts to Closson's control.

12. Investors received either promissory notes issued by Closson and Optam in the Optam Scheme, or preferred shares in Infinivest in the Infinivest Scheme. Investors in the Optam Scheme were to earn a return (generally, 18% annually) from the profits of the purported mortgage investment operation to which their pooled money was supposedly directed, while investors in the Infinivest Scheme were to receive dividends from the same purported operation.

13. Neither of the Issuers filed a prospectus or offering memorandum with the ASC. Further, no effort was made by the Respondents to qualify investors, or otherwise comply with the conditions of any prospectus or registration exemptions, under National Instrument 45-106 *Prospectus and Registration Exemptions* (now named *Prospectus Exemptions*) or National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

14. Closson authorized, permitted or acquiesced in the Optam and Infinivest Schemes, and solicited or acquiesced to the sales of promissory notes and shares issued in the schemes "continually and regularly with the expectation of remuneration or compensation."

15. In the course of raising funds for the Issuers, Closson made several material representations to investors, including that their investments would be used to fund mortgages, the investors' funds would be secured by real estate, and interest payments to investors (as well as Closson's fees) would be paid from income generated by the mortgages.

16. In fact, the following occurred: after approximately August 15, 2008, investors' money was not used to fund any mortgages. Aside from one or two investments made very early in the Optam Scheme, none of the investments were secured by any encumbrance on any real estate in favour of the investors. Instead, Closson diverted money to uses not authorized by the investors, including approximately $5.6 million of new investor money used to pay returns to other investors, applying approximately $3.9 million to projects outside the scope of the investments; and removing at least approximately $800,000 for his own use.

17. Further, without disclosure to investors, Closson continued to sell the Optam notes and Infinivest shares when he knew or ought to have known that one or more of himself, and/or the Issuers, were insolvent or on the cusp of bankruptcy. Closson and the Issuers declared bankruptcy on or about March 28, 2013.

18. While investors received some payments of interest, principal and dividends, almost all of the principal invested in the Optam Scheme and the Infinivest Scheme remains outstanding.

The ASC Findings

19. The ASC Panel found the following, consistent with the admissions of the Respondents contained within the Statement:

a. the Respondents each engaged in unregistered trading, contrary to section 75 of the Alberta *Securities Act*, RSA 2000 c S-4 (the "Alberta Act");

b. the Respondents each engaged in an illegal distribution of securities, contrary to section 110 of the Alberta Act;

c. Closson engaged in a course of conduct relating to securities that perpetrated a fraud on investors, contrary to section 93(b) of the Alberta Act; and

d. the Respondents' misconduct was contrary to the public interest.

The ASC Order

20. The ASC Order imposed the following sanctions, conditions, restrictions or requirements upon the Respondents:

a. under section 198(1)(a) of the Alberta Act, all trading in or purchasing in respect of any security or derivative of Optam or Infinivest must cease, permanently;

b. under sections 198(1)(b) and (c) of the Alberta Act, the Respondents are each permanently prohibited from trading in and purchasing all securities or derivatives, and all exemptions contained in Alberta securities laws do not apply to them, permanently;

c. under sections 198(1)(e.1), (e.2) and (e.3) of the Alberta Act, the Respondents are each permanently prohibited from advising in securities or derivatives, becoming or acting as a registrant, investment fund manager or promoter, or acting in a management or consultative capacity in connection with activities in the securities market;

d. under sections 198(d) and (e) of the Alberta Act, Closson must immediately resign all positions he holds as, and he is permanently prohibited from becoming or acting as, a director or officer of any issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system;

e. under section 199 of the Alberta Act, Closson must pay an administrative penalty to the ASC of $1 million; and

f. under section 202 of the Alberta Act, Closson must pay to the ASC $30,000 of the costs of the ASC's investigation.

III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

21. The Respondents are subject to an order of the ASC imposing sanctions, conditions, restrictions or requirements upon them.

22. Pursuant to paragraph 4 of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company may form the basis for an order in the public interest made under subsection 127(1) of the Act.

23. Staff allege that it is in the public interest to make an order against the Respondents.

24. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

25. Staff request that this application be heard by way of a written hearing pursuant to Rules 2.6 and 11 of the Commission's *Rules of Procedure*.

DATED at Toronto, this 18th day of October, 2016.

1.5 Notices from the Office of the Secretary

1.5.1 Optam Holdings Inc. et al.

FOR IMMEDIATE RELEASE
October 21, 2016

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
OPTAM HOLDINGS INC.,
INFINIVEST MORTGAGE INVESTMENT
CORPORATION, and WADE ROBERT CLOSSON

TORONTO – The Office of the Secretary issued a Notice of Hearing pursuant to Subsections 127(1) and 127(10) of the *Securities Act* setting the matter down to be heard on November 16, 2016 at 10:00 a.m. or as soon thereafter as the hearing can be held in the above named matter. The hearing will be held at the offices of the Commission at 20 Queen Street West, 17th Floor, Toronto.

A copy of the Notice of Hearing dated October 19, 2016 and Statement of Allegations of Staff of the Ontario Securities Commission dated October 18, 2016 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY

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media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.2 Hecla Mining Company and Dolly Varden Silver Corporation

FOR IMMEDIATE RELEASE
October 24, 2016

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
HECLA MINING COMPANY

AND

IN THE MATTER OF
DOLLY VARDEN SILVER CORPORATION

TORONTO – The Ontario Securities Commission and British Columbia Securities Commission issued their Reasons for Decision following the hearing in the above named matters.

A copy of the Reasons for Decision dated October 24, 2016 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
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1.5.3 Black Panther Trading Corporation and Charles Robert Goddard

FOR IMMEDIATE RELEASE
October 25, 2016

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
BLACK PANTHER TRADING CORPORATION AND
CHARLES ROBERT GODDARD

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

1. Staff shall serve and file written final submissions on or before November 15, 2016;

2. the Respondents shall serve and file written final submissions on or before November 29, 2016; and

3. Staff shall serve and file written reply final submissions, if any, on or before December 6, 2016.

A copy of the Order dated October 24, 2016 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Purpose Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – A mutual fund offering ETF shares and mutual fund shares that invests passively in ten Canadian financial institutions, granted relief from the concentration restriction in NI 81-102 to permit it to invest up to 15% of its net asset value in each of six Canadian banks named in its investment objectives.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.1(1), 19.1.

October 19, 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
PURPOSE INVESTMENTS INC.
(the Filer)

DECISION

I. Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Purpose Canadian Financial Income Fund (the **Fund**), which is a separate class of shares of Purpose Fund Corp., for a decision (the **Decision**) under the securities legislation of the Jurisdiction (the **Legislation**) granting the Fund relief from Section 2.1(1) of National Instrument 81-102 – *Investment Funds* (**NI 81-102**) (the **Requested Relief**) to permit the Fund to invest more than 10% of its net asset value (**NAV**) in securities of one or more Canadian Banks (defined below), subject to certain conditions proposed in this Decision.

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; 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 all of the provinces and territories of Canada other than Ontario (together with Ontario, the **Jurisdictions**).

II. 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.

(a) **Canadian Bank** means the Bank of Montreal, The Bank of Nova Scotia, Canadian Imperial Bank of Commerce, National Bank of Canada, Royal Bank of Canada and The Toronto-Dominion Bank or in the event of a merger, acquisition or other significant corporate action or event of or affecting any such bank, the top six Canadian banks listed on the Toronto Stock Exchange or other recognized exchange in Canada by market capitalization.

(b) **Canadian Insurance Company** means Great West Lifeco Inc., Industrial Alliance Insurance & Financial Services Inc., Manulife Financial Corporation and Sun Life Financial Inc. or in the event of a merger, acquisition or other significant corporate action or event of or affecting any such insurance company, the top four Canadian insurance companies listed on the Toronto Stock Exchange or other recognized exchange in Canada by market capitalization.

(c) **Exchange** means the Toronto Stock Exchange (**TSX**) or another stock exchange recognized by the Ontario Securities Commission.

(d) **Shareholder** means a holder of one or more ETF Shares or Mutual Fund Shares of the Fund.

Unless otherwise specified, all references to money amounts are to the lawful currency of Canada.

III. Representations

This Decision is based on the following facts represented by the Filer.

1. The Filer is a corporation incorporated under the laws of Ontario.

2. The registered office of the Filer is located at 130 Adelaide Street West, Suite 1700, Toronto, Ontario.

3. The Filer is registered as an investment fund manager, portfolio manager and an exempt market dealer under the *Securities Act* (Ontario).

4. The manager of the Fund will be the Filer or an affiliate thereof.

5. The Fund is a separate class of shares of Purpose Fund Corp. and is divided into five series which currently consists of ETF Shares, Series A Shares, Series F Shares, Series XA Shares and Series XF Shares.

6. The Filer is not in default of securities legislation in any of the Jurisdictions.

7. The Fund is or will be a mutual fund governed by the laws of Ontario and a reporting issuer under the laws of all of the Jurisdictions. The Fund will offer ETF Shares and Mutual Fund Shares.

8. The Fund's investment objectives are to provide Shareholders with (i) long-term capital appreciation through investment in a portfolio of Canadian Banks (up to 70% on an equal weighted basis) and Canadian Insurance Companies (up to 30% on an equal weighted basis) and (ii) monthly distributions.

9. To achieve its investment objectives, the Fund will invest primarily in equity securities of Canadian Banks and to a lesser extent Canadian Insurance Companies. The Fund may write covered call options from time to time in respect of the securities it holds to (i) enhance the Fund's total returns, (ii) enhance the dividend yield of the portfolio securities and (iii) lower the overall volatility of the Fund's portfolio.

10. The common shares of the Canadian Banks and Canadian Insurance Companies are listed on the TSX.

11. The common shares of Canadian Banks and Canadian Insurance Companies are some of the most liquid equity securities listed on the TSX and are less likely to be subject to liquidity concerns than the securities of other issuers. The initial portfolio of Canadian Banks that the Fund initially expects to invest in as described above has an average market capitalization that exceeds $65 billion and average daily trading volume of over $200 million. The initial portfolio of Canadian Insurance Companies that the Fund initially expects to invest in as described above has an average market capitalization that exceeds $24 billion and average daily trading volume of over $60 million.

12. The liquidity of the common shares of the Canadian Banks and Canadian Insurance Companies is also evidenced by the markets for options in connection with them. A liquid two-way market for options on the common shares of the Canadian Banks and Canadian Insurance Companies is provided on a daily basis by the Montreal Exchange.

13. The Filer will apply to list the ETF Shares of the Fund on the TSX. The Filer will not file a final simplified prospectus and annual information form of the Fund in respect of the ETF Shares until the TSX or another recognized stock exchange has conditionally approved the listing of the ETF Shares.

14. Mutual Fund Shares will not be listed and may be subscribed for or purchased directly from the Fund through qualified financial advisors and brokers.

15. The Fund is subject to NI 81-102 and accordingly is not permitted to purchase securities of an issuer if, immediately after the transaction more than 10% of its NAV would be invested in securities of such issuer pursuant to Section 2.1(1) of NI 81-102.

16. The Fund will invest up to 70% of its NAV in common shares of the Canadian Banks and up to 30% of its NAV in common shares of the Canadian Insurance Companies. The Fund will invest the amount allocated to (i) the Canadian Banks in each Canadian Bank on an equal weighted basis and (ii) the Canadian Insurance Companies in each Canadian Insurance Company on an equal weighted basis.

17. In order to achieve its investment objectives, the Fund will be required to invest more than 10% of its NAV in securities of one or more Canadian Banks and accordingly the Fund will need an exemption from Section 2.1(1) of NI 81-102.

18. ability to invest more than 10% of the Fund's NAV in common shares of Canadian Banks is fundamental to the Fund's investment strategies and integral to achieving the Fund's investment objectives.

19. The Fund may sell call options each month on up to 25% of the securities of each Canadian Bank and each Canadian Insurance Company in the Fund's portfolio ("**Portfolio Securities**"). The Filer may decide, in its discretion, not to sell call options in any month.

20. If required to facilitate distributions or pay expenses of the Fund, securities of each Canadian Bank and Canadian Insurance Company will be sold pro-rata across the Fund's portfolio according to their relative market values at the time of such sale.

21. Future subscriptions for ETF Shares and Mutual Fund Shares, if any, will be used to acquire securities of each Canadian Bank and Canadian Insurance Company in the same weights as the Portfolio Securities exist in the Fund's portfolio, based on their relative market values at the time of such subscription.

22. In the absence of: (i) new subscriptions for ETF Shares and/or Mutual Fund Shares, (ii) sales of Portfolio Securities, if any, required to facilitate distributions, redemptions or pay expenses of the ETF Shares and Mutual Fund Shares, or (iii) corporate actions of the Canadian Banks or Canadian Insurance Companies such as stock splits or consolidations, it is expected that the number of common shares of each of the Canadian Banks and Canadian Insurance Companies referable to the Fund's portfolio will not change. The Fund's portfolio will not be actively managed by the Filer, and will be rebalanced on a quarterly basis.

23. As the names of each of the Canadian Banks and Canadian Insurance Companies will be listed in the stated investment objectives of the Fund, and the Fund will not invest in securities other than securities of the Canadian Banks and Canadian Insurance Companies, Shareholders will be fully aware of the risks involved with an investment in the securities of the Fund.

24. The investment objectives and investment strategies of the Fund, as well as the risk factors associated therewith, will be disclosed in the Fund's final simplified prospectus and the investment objectives and investment strategies of the Fund, as well as the risk factors associated therewith, will be disclosed in each renewal of the Fund's simplified prospectus.

25. The Requested Relief will enhance the ability of the Fund to pursue and achieve its investment objectives in a cost-effective manner and will provide greater flexibility with respect to implementing its investment strategies.

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 Requested Relief is granted, provided that:

(a) the investment in Canadian Banks is made in accordance with the Fund's investment objectives and investment strategies;

(b) the Fund's investment objectives disclose that the Fund will invest in the Canadian Banks and the Canadian Insurance Companies in the stated fixed percentages described in paragraph 16 of this Decision;

(c) the Fund's investment strategies disclose that the Fund's portfolio will be rebalanced quarterly;

(d) the Fund will not purchase Portfolio Securities, or enter into any transaction to obtain indirect exposure to Portfolio Securities if:

(i) immediately after the transaction, more than 15% of the net assets of the Fund, taken at market value at the time of the transaction, would be invested, directly or indirectly, in securities of any one Canadian Bank; or

(ii) the Fund becomes an insider of any Canadian Bank as a result of such investment; and

(e) the Fund includes in its final simplified prospectus (a) disclosure regarding this Decision under the heading "Exemptions and Approvals" and (b) a risk factor regarding the concentration of the Fund's investments in Canadian Banks and the risks associated therewith.

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

2.1.2 AngelList, LLC and AngelList Advisors, LLC

Headnote

OSC LaunchPad initiative – Application for relief from certain registrant obligations contained in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103) and from the prospectus requirement set forth in section 53 of the Securities Act (Ontario) – Filers proposing to operate novel online platform for accredited investors with experience in venture capital and angel investing and start-ups that primarily operate in the technology sector – relief granted subject to certain terms and conditions set out in the decision – decision is time-limited to allow the firm to operate in a test environment and will expire in two years – decision may be amended by the Commission on written notice to the Filers – relief granted based on the particular facts and circumstances of the application with the objective of fostering capital raising by innovative start-up businesses in Canada – decision should not necessarily be viewed as a precedent for other filers in Ontario or in other jurisdictions.

Applicable Legislative Provisions

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, 74.

Instrument Cited

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 12.10(2), 13.2(2)(c)(i), 13.3, 13.16, 14,2(2)(i), (j) and (k), 15.1 and Division 5.

October 24, 2016

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

AND

IN THE MATTER OF
ANGELLIST, LLC
("AngelList")

and

ANGELLIST ADVISORS, LLC
("ALA", collectively with AngelList, the "Filers")

DECISION

Background

The Ontario Securities Commission (**Commission**) has established a pilot program (**OSC LaunchPad**) to assist innovative businesses, particularly financial technology (**fintech**) and start-up companies, understand the securities regulatory environment, how the regulatory framework applies, and how to register their businesses in Ontario. The Commission recognizes that to keep abreast of and facilitate innovation, an environment to test novel business models, products and services is required. Additionally, the Commission also recognizes that some new businesses may have limited experience in dealing with securities regulators. In working with these types of businesses, OSC LaunchPad allows for a flexible approach to addressing regulatory requirements applicable for these businesses while ensuring appropriate investor protection.

The Filers have been engaged in discussions with the Commission about becoming registered for a test period of two years in light of the novel nature of their business. The Filers operate an online platform that offers a number of services to start-up businesses that operate primarily in the technology sector (**Start-ups**), including services to facilitate venture capital and angel investing in Start-ups that meet certain criteria. The Filers offers these services through a business model that reflects the business requirements of the venture capital and angel investing community it serves. An investor must actively seek to join the Filers' platform and, in addition to being an accredited investor (as defined in section 73.3(1) of the *Securities Act* (Ontario)), must also have prior experience in venture capital and angel investing, such that they have an understanding of the risks of

investing in Start-ups, through the platform. The Filers do not hold or handle money or assets of investors or Start-ups. AngelList is responsible for operating the online platform and ALA facilitates the syndication of offerings through the platform.

Pursuant to the OSC LaunchPad initiative, the Filers have approached the Commission regarding the registration of ALA as a restricted dealer. In conjunction with ALA's application for registration, ALA is seeking relief from certain requirements under securities legislation of the Jurisdiction. This decision (the **Decision**) should not be viewed as a precedent for other filers in Ontario or in other jurisdictions.

Relief from registrant obligations

1. The Filers have applied for a decision of the Director under the securities legislation of the Jurisdiction (the **Legislation**) pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) for exemptive relief for ALA from the following:

    (a) the requirement in subsection 12.10(2) [*Audited financial statements*] of NI 31-103 that the annual financial statements delivered to the regulator must be audited (the **audited financial statement requirement**);

    (b) the requirement in subparagraph 13.2(2)(c)(i) [*Know-your-client*] of NI 31-103 that a registrant must take reasonable steps to ensure that it has sufficient information regarding the client's investment needs and objectives (the **know-your-client requirement**);

    (c) the requirement in section 13.3. [*Suitability*] of NI 31-103 that a registrant must take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a client to buy or sell a security, the purchase or sale is suitable for the client (the **suitability requirement**);

    (d) the requirement in section 13.16 of NI 31-103 [*dispute resolution service*] that a registered firm have a certain dispute resolution service provider (the **dispute resolution requirements**); and

    (e) the requirement to deliver the disclosure and reporting requirements in paragraphs 14.2(2)(i), (j), and (k) [*Relationship Disclosure Information*] and 5 [*Reporting to clients*] of Part 14 of NI 31-103 (the **disclosure and reporting requirements**) (together with the preceding paragraphs, referred to as the **Registrant Obligations Relief Sought)**,

    provided that ALA ensures only Quality Investors (as defined below) access the Restricted Services (as defined below) and registration is limited to two years from the date of this Decision.

Prospectus Relief

2. ALA has applied for a ruling of the Commission pursuant to section 74(1) of the *Securities* Act (Ontario) (the **Act**) for exemptive relief from the prospectus requirement set forth in section 53 of the Act in connection with distributions by ALA to Quality Investors (as defined below) who acquire securities of syndicates through the platform (as described in this Decision) (the **Prospectus Relief Sought**).

Interpretation

1. For the purposes of this Decision:

    (a) **Approved Incubator Program** means an incubator, accelerator, Technology Transfer Office or similar organization that meets all of the following criteria:

        a. has a program for Start-ups and the program has been delivered for at least two years;

        b. receives funding from (A) a federal, state, provincial/territorial, or municipal government or a crown corporation or a government-owned corporation or authority, or (B) an accredited university or college;

        c. has a competitive application process with clear criteria to select Start-ups for the program;

        d. reviews the founders and other key individuals involved in the Start-up to ensure they meet the criteria for admission into the program;

        e. provides entrepreneurial advice and mentorship support over a reasonable period of time; and

f. in respect of which ALA has received the approval from staff of the Commission that the organization qualifies as an "Approved Incubator Program".

(b) **Credible Investor** means an investor that meets one of the following criteria:

a. a Venture Capital Fund that has at least $10 million in assets under management; or

b. an individual investor who has led or participated in at least five investments in a Start-up, of which at least two of those Start-ups have completed a Successful Liquidity or Financing Event; or

c. is an Experienced Founder.

(c) **Eligible Canadian Start-up** means a Start-up that is operating from or doing business in Canada where either a. or b. applies:

a. (i) the start-up is incorporated or organized under the laws of Canada or any jurisdiction of Canada, (ii) the head office of the start-up is located in Canada, and (iii) at least 25% of the directors and 25% of the Executive Officers or founders of the start-up (or at least one director and one Executive Officer or founder, if there are less than four directors and less than four Executive Officers or founders, respectively) reside in Canada; or

b. at least 25% of the consolidated payroll of the Start-up and its subsidiaries is for employees and consultants who reside in Canada.

(d) **Executive Officer** means an individual who is:

a. a chair, vice-chair, or president,

b. a vice-president in charge of a principal business unit, division or function including sales, finance, production, technology or engineering, or

c. performing a policy-making function in respect of the issuer.

(e) **Experienced Founder** means a founder of a Start-up who has:

a. management, product or engineering experience, typically with the title of "director" or equivalent, at a large technology company (500+ plus employees), or

b. co-founded, or served at the vice-president level or above of (in either case, with executive responsibilities), a Start-up that has achieved a Successful Liquidity or Financing Event.

(f) **Quality Investor** means an accredited investor (as defined in section 73.3(1) of the Act) who has been determined by ALA's procedures, as described in paragraphs 57 to 59, to have sufficient experience in venture capital and angel investing.

(g) **Successful Liquidity or Financing Event** means:

a. an initial public offering (**IPO**);

b. an acquisition of all or substantially all the securities or assets of the Start-up; or

c. the completion of a follow-on round or "up round" of venture capital or angel financing for the Start-up involving external investors to the Start-up at that time, at a valuation in excess of the Start-up's previous round of financing or that triggered the automatic conversion of previously issued debt or equity securities. (For example, a Series Seed round to a Series A round.)

(h) **Technology Transfer Office** means an office at a university with an academic research program or at a research institute that is established to handle the intellectual property and licensing rights for faculty and student investors.

(i) **Venture Capital Fund** means:

a. In the United States (**U.S.**), shall mean a "venture capital fund" as defined in Rule 203(l)-1 under the *Investment Advisers Act of 1940*; and

b. In Canada, a venture capital fund that focusses primarily on venture capital or angel investing, and that is a non-individual permitted client.

2. Terms used in this Decision that are defined in the Act or National Instrument 14-101 *Definitions* (**NI 14-101**), and not otherwise defined in the Decision, shall have the same meaning as in the Act or NI 14-101, as applicable, unless the context otherwise requires.

Representations

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

The Filers

3. ALA has applied for registration as a restricted dealer in Ontario pursuant to section 25(1) of the *Securities Act* (Ontario) (the **Act**) and NI 31-103.

4. ALA is a limited liability company formed under the laws of the state of Delaware. ALA is a subsidiary of AngelList, a limited liability company formed under the laws of the state of Delaware. A minority interest in ALA is held by AngelList EI, LLC (which is wholly-owned by employees of ALA or ALA's affiliates). The head offices of the Filers are in San Francisco, California, United States of America.

5. ALA is an "exempt reporting adviser" in the U.S. ALA relies on an exemption from U.S. Securities and Exchange Commission (**SEC**) investment adviser registration requirements under sections 203(l) [*venture capital fund adviser exemption*] of the *Investment Advisers Act of 1940* and related rules. As an exempt reporting adviser, ALA is subject to oversight by the SEC, including the requirement to pay fees to the SEC, to report annually certain information to the SEC and to have policies regarding the dissemination of material, non-public information and anti-fraud measures. ALA is also subject to review by the SEC.

6. The Filers are not registered as broker-dealers with the SEC under U.S. federal securities laws. The Filers rely on a no action letter issued to them by the SEC dated March 28, 2013 regarding the scope of their permitted activities in the U.S. without registering as broker-dealers in accordance with section 15(b) of the *Securities Exchange Act of 1934*. The Filers also rely on the no action letter issued to FundersClub Inc. and FundersClub Management LLC by the SEC dated March 26, 2013 with respect to their activities as an exempt reporting adviser. The Filers also rely on section 201(c) of the JOBS Act.

7. AngelList Ltd., an affiliate of the Filers, is authorized by the Financial Conduct Authority to carry on the following limited regulated activities in the United Kingdom: arranging (bringing about) deals in investments, dealing in investments as agent, and making arrangements with a view to transactions in investments. Through a passport process, AngelList Ltd. is permitted to carry out its permitted activities to countries in the European Economic Area.

8. The Filers wish to offer certain of the services (as described below) to issuers and investors in Ontario. As these services will involve the facilitation of trades in securities of issuers to Quality Investors for the purposes of venture capital and angel investing, ALA wishes to become registered as a restricted dealer in accordance with Ontario securities law. As the Filers' business model is novel in Canada, ALA's registration will be for an initial test period of two years.

9. Although the Filers are initially seeking registration and relief from certain registrant obligations and prospectus requirements in Ontario, the Filers may, at a later date, propose to allow Quality Investors and issuers resident in other Canadian jurisdictions to access the Restricted Services (as defined below). Prior to allowing Quality Investors and issuers in another Canadian jurisdiction to access the Restricted Services, the Filers will apply for and obtain registration as a restricted dealer in that jurisdiction and obtain any required prospectus relief as required by the regulator or securities regulatory authority in that jurisdiction.

10. The Filers are not in default of securities legislation in any province or territory in Canada, subject to the matter to which this Decision relates. The Filers are in compliance in all material respects with U.S. and U.K. securities laws.

11. The Filers do not currently prepare financial statements that are audited. During the two year period to which this Decision relates, the Filers will be working towards providing the Commission with annual financial statements audited in accordance with U.S. generally acceptable accounting principles and standards.

Services

Public Services

12. AngelList operates an online networking website (the **Platform**) that allows start-ups, accelerators, incubators, angel investors and other individuals in the start-up sector (together, the **Participants**) to connect with each other and to raise their profile in the start-up community. The Platform is primarily aimed at technology or technology-enabled Start-ups.

13. Any Participant can post a profile on the Platform that contains general information about itself, including, as applicable, its products or services, and its management team (a **Profile**). A Profile is publicly available to anyone accessing the Platform. A Start-up may also post confidential information and grant access only to certain Participants.

14. After setting up a Profile, a Participant may request a connection by visiting another Participant's profile (the **Connection Services**). AngelList will confirm the relationship between the Participants. A verified connection is required in order for a Participant to send other Participants a message or request an introduction to other Participant's connections.

15. Any Start-up can also post job openings on the Platform and seek applicants from Participants on the Platform for such job openings (the **Recruiting Services**) (together with the Connection Services, the **Public Services**).

Restricted Area and Restricted Services

16. The Platform includes a password protected area (the **restricted area**). Participants must apply to enter the restricted area, and ALA only permits accredited investors to enter the restricted area.

17. Once Participants have been approved for access to the restricted area, they may further apply to access certain services, which are referred to below as **Restricted Services**. ALA only permits Quality Investors to access the Restricted Services. Based on the Filers' experience in the United States, approximately 30% of U.S. accredited investors that apply to access the Restricted Services meet ALA's Quality Investor standard and are approved to use the Restricted Services.

18. The Restricted Services consist of the following:

    a. ALA allows both Start-ups and Lead Investors (as defined below) the ability to raise money for a specific Start-up by forming a syndicate of investors through the Platform (the **Syndicate Services**).

    b. ALA provides a transaction update email (the **Transaction Update**) to Quality Investors. ALA has an algorithm that uses objective criteria to identify Start-ups seeking to raise capital from a syndicate of investors and provides a list of these Start-ups to Quality Investors who request this information.

    c. ALA offers a program for Quality Investors who plan to invest over USD$600,000 through the Platform (the **Professional Investor Program**). Under this program, ALA introduces these Quality Investors to Start-ups that do not wish to make it known publicly that they are raising capital through a syndicate.

19. In the U.S., accredited investors who are not Quality Investors may invest in diversified funds created by ALA (referred to as **Funds**) that invest in a wide variety of syndicates on the Platform. ALA is seeking registration only as a restricted dealer. ALA may, at a later date, wish to offer Ontario investors the opportunity to invest in the Funds. Prior to allowing Ontario investors the opportunity to invest in the Funds, ALA will apply for and obtain registration as required by the Commission.

Services to be Offered in Canada

20. AngelList proposes to make the Public Services available to investors.

21. ALA proposes to make the Syndicate Services available to:

    a. Start-ups and Lead Investors (described below), and

b. Quality Investors,

subject to certain restrictions set out below.

22. ALA will make the Professional Investor Program available to Quality Investors who qualify as a "permitted client" as defined in section 1.1 of NI 31-103.

Syndicate Services

23. Syndicates can be formed by the founder or management of a Start-up itself or by an investor who is investing in a single Start-up, who wishes to make this investment opportunity available to other investors (co-investors) on the same terms and conditions, and who has been reviewed and approved by ALA as described in paragraphs 61 to 68 (a **Lead Investor**). Each syndicate only invests in securities of a single Start-up (a **syndicate**).

24. A Start-up or Lead Investor requests approval from ALA to establish the syndicate.

25. ALA reviews the request from the Start-up or Lead Investor and determines whether to allow the Start-up or Lead Investor to form a syndicate. In reviewing a request to form a syndicate, ALA reviews the Start-up for the following features:

a. Whether the Start-up is a growth-oriented technology or technology-enabled company that has the potential to develop into a large stand-alone business;

b. Whether the Start-up is focused on a product or service that will provide social, economic or environmental benefits or that is likely to meet a strong market demand; and

c. Whether, in ALA's opinion, the Start-up is likely to appeal to Quality Investors.

26. ALA will not permit reporting issuers or any public company in any other jurisdiction to form a syndicate on the Platform.

27. If ALA grants approval to form a syndicate, the Start-up or the Lead Investor, as applicable, completes and posts an investor note (the **investor note**) about the syndicate on the restricted area of the Platform. The investor note contains factual information about the proposed capital raise, the Start-up to be invested in, any co-investors, the risks associated with investing in the Start-up, past financing of the Start-up, and other key investment terms and conditions.

28. Interested Quality Investors may conduct due diligence on the Lead Investor and/or the Start-up. Quality Investors use their own judgement whether to invest in a syndicate.

29. Neither ALA nor the Lead Investor nor the Start-up:

a. provide specific recommendations or advice to particular Quality Investors about the suitability of an investment in a syndicate; or

b. recommend or solicit any particular purchase or sale by a Quality Investor of a syndicate's securities.

30. Interested Quality Investors may submit non-binding requests for additional information through the Platform to either the Start-up or Lead Investor about the Start-up that is being syndicated.

31. If there is sufficient interest to proceed with closing the investment in the syndicate, ALA establishes a special purpose entity (**SPE**) to accept the funds from committed investors and to acquire the Start-up's securities. The SPE formed to invest in the Start-up is required under U.S. securities law to have 99 or fewer investors. For investments in Eligible Canadian Start-ups, for tax reasons Canadian investors may be aggregated into a parallel Canadian SPE. The parallel Canadian SPE will otherwise invest on identical terms and conditions to a standard SPE.

32. ALA has engaged an arms' length consulting and fund administration firm (the **SPE Manager**) to provide administrative services in relation to the SPEs. On behalf of ALA, the SPE Manager handles the formation and organization of each SPE, certain closing procedures for the syndicate investments, securities filings, ongoing administration, and winding up the SPE where applicable.

33. The first time a Quality Investor makes a syndicate investment, prior to closing of that syndicate, the Quality Investor is asked to confirm his or her interest in investing in Start-ups generally, and to acknowledge a series of risk warnings including warnings as to risk of total loss of the investment, illiquidity of the securities and dilution risk, and the need for

the Quality Investor to conduct his or her own due diligence on the Start-up. Detailed risk warning acknowledgements are not obtained from Quality Investors on subsequent investments; however, certain risks are acknowledged upon each Quality Investor's acceptance of the provisions of the Closing Documents (as defined below).

34. For each syndicate investment, prior to closing that syndicate, the Quality Investor is also asked to reconfirm its accredited investor status. If a Quality Investor indicates that its status has changed such that it is no longer an accredited investor, the investor is not permitted to invest in the syndicate and is not permitted to access to the restricted area of the Platform. Quality Investors electronically agree to and sign the SPE's closing documents on the Platform and are provided with wire instructions for their investment amounts.

35. After a Quality Investor commits to making an investment in a syndicate, the Quality Investor receives the following documents: the SPE's operating or limited partnership agreement, the SPE's private placement memorandum, the subscription or purchase agreement for the purchase of securities of the SPE, an investor statement (which is a screen confirming how much the Quality Investor invested in the SPE and the corresponding investment in the Start-up as of the specific date), a signature certificate (which is a screen showing the investor that documents have been digitally signed and a digital fingerprint provided for security reasons) and the investor note (collectively, the **Closing Documents**). The SPE Manager will retain the Closing Documents for eight years.

36. Either the Filers or SPE Manager will deliver electronically to the Commission any of the Closing Documents that constitute an offering memorandum under the Act. The Filers will inform the Start-up that the Start-up must deliver electronically to the Commission a copy of any document that constitutes an offering memorandum under the Act provided to Ontario investors that has not already been delivered to the Commission by the Filers or SPE Manager.

37. Prior to closing a syndicate, ALA uses a third party service (such as Blockscore or Jumio) to verify the identity of each Quality Investor. ALA also runs anti-money laundering and terrorist financing checks. The verification process and anti-money laundering and terrorist financing checks are performed on both individual and non-individual Quality Investors (entities). For non-individual Quality Investors, the Filers contact the investor by email to determine the identity of the individual principal(s) of the Quality Investor. AML and terrorist financing checks are performed through a politically exposed person (**PEP**) list and/or Office of Foreign Assets Control (**OFAC**) list search. Similar verification processes and checks will be performed for Ontario investors.

38. ALA conducts a review of each Start-up's constating documents and Closing Documents to ensure they are consistent with the information in the Profile and the investor note, the results of any background checks and any accompanying materials or information provided to it by an investor, the Lead Investor and/or the Start-up and determines if the Closing Documents are complete, consistent and not misleading. If it appears to ALA that the Closing Documents are incomplete, inconsistent or misleading, ALA will require the Closing Documents to be corrected, made complete, or clarified.

39. Neither the Filers nor the SPE holds, handles or controls any investor or issuer funds. The funds are held by and deposited in a single trust account that has been established by a FDIC-member U.S. bank in the name of the bank for the benefit of investors investing through the Platform. The Filers do not intermingle their own monies in this account.

40. Once all expected funds have been received by the bank, the bank notifies ALA. ALA then issues advice to the bank to initiate funds transfer to the Start-up.

41. All Quality Investors in the syndicate are e-mailed to inform them that the SPE investment, and the investment by the SPE in the Start-up, is finalized and to provide them with a copy of the final Closing Documents.

42. The Filers will utilize the same bank and procedures for investments in Eligible Canadian Start-ups completed on the Platform. Although initially the Platform will only support transactions denominated in U.S. dollars, the Filers plan to support transactions in Canadian dollars and utilize Canadian banking services as required for transactions in Canadian dollars.

43. Quality Investors have access to an individual account on the Platform where they may view information about the transaction and access copies of the Closing Documents. The Closing Documents will be retained and made available to Quality Investors through the Platform for at least eight years.

44. For their role in a syndicate, ALA and the Lead Investor will only receive compensation equal to a portion of the increase in value, if any, of the investment as calculated at the termination of the investment in the SPE (the **Carried Interest**), and will not receive any transaction-based compensation. None of the Filers, the Lead Investor, nor any of their officers or directors receive any other form of commission or transaction-based compensation related to the Restricted Services, including the Syndicate Services.

45. ALA requires that each investor in a syndicate pay a portion of the costs associated with the closing of the syndicate investment (such as legal fees) in proportion to the investor's investment in the Start-up.

46. Neither the syndicate nor the SPE borrows funds from investors or the public for any reason. The syndicate, the SPE and the Filers do not loan money or extend margin to investors that wish to invest in a Start-up through a syndicate.

47. The Filers do not facilitate any secondary trading of previously issued securities, whether originally issued through a syndicate or otherwise.

Professional Investor Program

48. ALA is involved with a number of syndicates in which the Start-up does not wish to disclose publicly that it is seeking funding (the **Private Syndicates**).

49. These Private Syndicates are only made available to Quality Investors who:

    a. intend to invest over USD$600,000 in syndicates through the Platform;

    b. invest, on average, at least USD$50,000 per month in syndicates;

    c. sign a non-disclosure agreement with ALA; and

    d. are able to make investment decisions in a timely manner.

50. ALA has automated functionality that matches between one to five Private Syndicates with the Quality Investor's selected objective criteria, based on filters that the Quality Investor selected when the Quality Investor signed up for the Professional Investor Program.

51. ALA provides the list of Private Syndicates to the Quality Investor.

52. The Quality Investor conducts its own due diligence on the Start-up of the Private Syndicate.

53. The Quality Investor will make its own decision as to which Private Syndicate to invest in. The same investment procedures that are used for a typical syndicate also apply to a Private Syndicate.

54. There are no fees for participating in the Professional Investor Program.

Participants

Investors

55. When opening an account with AngelList, each investor provides the Filers with the following information:

    a. The category of accredited investor the investor meets, which for Ontario investors will correspond to the definition of accredited investor in section 73.3(1) of the Act;

    b. The amount the investor has budgeted for investing in Start-ups on the Platform;

    c. The investor's net worth band (e.g., > $1 million, > $2 million, > $5 million, with currency being denominated in U.S. dollars). For Canadian investors, bands will be denominated in Canadian dollars;

    d. The proportion of the investor's net worth that the investor's budget for investing in Start-ups represents; and

    e. The investor's experience in investing in Start-ups or working for or with private equity firms and venture capital firms and the investor's connection to other investors and Start-ups on the Platform.

    The above-listed information is retained on the Platform by the Filers for 8 years.

56. In addition to providing the information in paragraph 55, each investor acknowledges the following risks associated with investing in Start-ups generally when signing up to access the Public Services and Restricted Services:

    a. Risk of loss of an investor's entire investment in a Start-up;

b. Illiquidity risk;

c. No due diligence of a Start-up is conducted by the Filers;

d. Dilution risk;

e. Risk of change in the Start-up's plans, markets and products; and

f. No recommendation or advice is provided by the Filers to the investor.

In addition:

g. Prior to making an investment, the investor must acknowledge that it will receive limited or no initial or ongoing information about the investment; and

h. The investor note will disclose any conflicts of interest that may exist.

The above-listed information is retained on the Platform or by ALA for 8 years.

57. ALA assesses each investor's experience and knowledge with respect to venture capital and angel investing based upon the following information:

a. The investor's previous venture capital and angel investments and the size of those investments (as declared by the investor);

b. The investor's connections to other founders and investors, and ALA's assessment of those founders and investors; and

c. ALA's judgement about an investor's previous venture capital and angel investing experience with other top investors and the investor's reputation.

58. Using a computer algorithm, ALA rates each investor on a scale of one to ten based on the information provided by the investor (a **Quality Investor Score**). Only investors with a Quality Investor Score of at least 6.5 out of 10 are approved by ALA as "quality investors" (**Quality Investors**). In order to access the Restricted Services an investor must first be approved as a Quality Investor.

59. ALA does not initially approve an investor if the investor has an initial Quality Investor Score of less than 6.5 out of 10 or if the investor has indicated that he or she plans to invest more than 9% of his or her net worth in Start-ups. ALA may conduct a further review of these investors who are not initially approved. If ALA's manual review of the investor discloses information which would materially increase the investor's Quality Investor Score (for example, the investor has significant venture capital or angel investing experience that was not reflected on its profile on the Platform), the investor may be approved as a Quality Investor and permitted invest in syndicates through the Platform.

60. In Canada, accredited investors (as defined in section 73.3(1) of the Act) that are not Quality Investors will not be permitted to invest in syndicates through the Platform and will not be permitted access to the Restricted Services.

Lead Investors

61. Only accredited investors (as defined in section 73.3(1) of the Act) can apply to be Lead Investors. ALA retains the right and full discretion to determine whether a person may act as a Lead Investor.

62. ALA reviews a potential Lead Investor for previous experience related to venture capital and angel investing by reviewing the Lead Investor's activity on relevant social media and other websites (such as Crunchbase and Google).

63. ALA also reviews references provided by each Lead Investor related to the Lead Investor's prior Start-up investments.

64. If ALA is not satisfied that a Lead Investor has sufficient knowledge and experience related to Start-up and/or venture capital investing, ALA will also consider whether there is a Credible Investor involved in the syndicate and who is investing on the same terms and conditions as the investors in the syndicate.

65. Where ALA approves a Lead Investor to form a syndicate, ALA requires each Lead Investor to sign an agreement with ALA. For so long as the Lead Investor has an interest in the Start-up that the Lead Investor has syndicated, this agreement requires, among other things, the Lead Investor:

a. To assist ALA and the SPE Manager as necessary to allow ALA and the SPE Manager to comply with applicable regulatory requirements pertaining to the syndicate and the investment in the Start-up,

b. To provide ALA with information about the Start-up as required by ALA or the SPE Manager to service the syndicate, and

c. To provide ALA with written notice of certain events, including subsequent investment in the Start-up by the Lead Investor, sale or transfer of the Lead Investor's securities in the Start-up, and how the Lead Investor has voted.

66. Lead Investors are required to disclose all conflicts of interest to ALA and to potential Quality Investors. Conflicts of interest that must be disclosed include whether the Lead Investor invested in previous round of financing by the Start-up, is an employee or officer of the Start-up, or has family members working at the Start-up, any other circumstances judged by ALA to constitute conflicts or potential conflicts.

67. The Lead Investor invests either directly with the Start-up or alongside other investors in the syndicate on the same terms and conditions as the investors in the syndicate.

68. Prior to the closing of the syndicate, ALA conducts a background check on the Lead Investor (through a third party service provider), including criminal record, securities regulatory, AML, terrorist financing, and economic and political sanctions watch-lists.

Start-ups

69. ALA conducts background checks on the Start-up and each officer and director of the Start-up (through a third party service provider) before the close of a syndicate.

70. The background checks conducted by ALA include: criminal record, securities regulatory, AML, terrorist financing, and economic and political sanctions watch-lists.

71. ALA does not permit a syndicate to close, if any of the Start-up, its president or chief executive officer has pled guilty to or has been found guilty of an offence related to or has entered into a settlement agreement in a matter that involved fraud or securities violations or if the Start-up is bankrupt.

Additional Requirements

72. Ontario investors will only be permitted to invest in a Start-up that seeks to raise capital through a syndicate on the Platform in one of the following circumstances:

a. **Permitted Clients.** Ontario investors who qualify as permitted clients (as defined in section 1.1 of NI 31-103) and who waive the requirement for ALA to conduct a suitability assessment, in accordance with subsection 13.3(4) of NI 31-103, may invest in any syndicate on the Platform and participate in the Professional Investor Program.

b. **The Start-up is participating in or within the past 24 months has successfully completed an Approved Incubator Program.** Ontario Quality Investors may invest in syndicates where the Start-up is an Eligible Canadian Start-up that is participating in or has successfully completed an Approved Incubator Program.

c. **Other Start-ups – Subject to limits on the number of Ontario Quality Investors.** Over the two-year period that this Decision relates to, up to a maximum of 500 Ontario Quality Investors may invest in one or more syndicates that meet one of the following criteria:

i. The founder of the Start-up is an Experienced Founder.

ii. Either the Lead Investor of the syndicate or at least one investor in the Start-up that the syndicate is investing in, other than the Lead Investor, is a Credible Investor, and the syndicate is investing in the Start-up on the same terms and conditions as the Credible Investor.

iii. The Start-up has, within the previous three years, received funding from a federal, state, provincial or territorial government program that supports small business or Start-ups as part of its mandate, such as Business Development Bank of Canada, BDC Capital, the Investment Accelerator Fund, Ontario Centres of Excellence, and the Federal Economic Development Agency for Southern Ontario.

The 500 Quality Investors limit is measured from the period commencing on the date of this Decision and ending on the expiry of this Decision.

Decision

The Commission and the Director are satisfied that the Decision meets the test set out in the Legislation for the Commission and the Director to make the Decision.

It is the decision of the Commission that the Prospectus Relief Sought is hereby granted, provided that all of the following conditions are met:

1. The Filers have their head office or principal place of business in the U.S. or Canada.

2. The Filers are in compliance with the no action letter relating to broker-dealer registration issued to them by the SEC dated March 28, 2013 and the no action letter has not been modified or revoked.

3. ALA is an exempt reporting adviser in the U.S.

4. The Filers ensure that securities of syndicates are only distributed to investors in Ontario in accordance with the terms, conditions, restrictions and requirements of the accredited investor exemption as set out in subsection 73.3(2) of the Act, including those prescribed by regulation, except the requirements in s. 2.3(6) and (7)) of NI 45-106 to obtain and retain a signed risk acknowledgement in the prescribed form.

5. The Filers ensure that

    a. The accredited investor status of each investor is verified when the investor first signs up to the Platform and verified again when the investor makes any investment through the Platform, and

    b. Upon account opening, the investor acknowledges the risks as described above in paragraphs 55 and 56.

6. The Filers limit access to the Restricted Services to accredited investors (as that term is defined in section 73.3(1) of the Act) who are Quality Investors.

7. The Filers will immediately remove an investor from being able to access the Restricted Services if it knows or suspects that the investor is not an accredited investor (as defined in section 73.3(1) of the Act).

8. The Filers ensure that Ontario investors invest in syndicates through the Platform in accordance with paragraph 72.

9. The Approved Incubator Programs are NEXT Canada (previously known as The Next 36), Creative Destruction Lab, and any other Approved Incubator Program as approved by the Commission from time to time.

10. ALA notifies the Commission in writing at least 30 days prior to any material change in either Filers' business operations or business model, including any material addition to or material modification to the Restricted Services.

11. The Filers notify the Commission promptly in writing of any regulatory action, criminal charges, or material civil actions initiated after the date of this Decision in respect of the Filers or any specified affiliate (as defined in Form 33-109F6 *Firm Registration*) of the Filers.

12. This Decision shall expire two years after the date of the Decision.

"Monica Kowal"
Vice Chair
Ontario Securities Commission

"D. Grant Vingoe"
Vice Chair
Ontario Securities Commission

It is the decision of the Director that the Registrant Obligations Relief Sought is hereby granted, provided that all of the following conditions are met:

1. The Filers comply with the terms and conditions of the Decision with respect to the Prospectus Relief Sought.

2. otherwise exempted by a further decision of the decision maker, ALA must comply with all of the terms, conditions, restrictions and requirements applicable to a registered dealer and to a registered individual under Ontario securities laws, including the Act and NI 31-103, and any other terms, conditions, restrictions or requirements imposed by a securities regulatory authority or regulator on ALA.

3. The Filers will deal fairly, honestly and in good faith with Participants.

4. The Filers, any representatives of the Filers, any Lead Investors, and any Start-ups do not provide recommendations or advice to any investor or prospective investor on the Platform.

5. The Filers ensure Lead Investors of a syndicate invest in the Start-up on the same terms and conditions as the syndicate.

6. The Filers ensure that any Start-up that raises capital in Ontario through the Platform is not an investment fund and not a reporting issuer.

7. Neither ALA nor any Lead Investor will solicit investors, aside from the restricted area of the Platform itself.

8. Neither the Filers nor the SPE holds, handles or controls any investor or issuer funds.

9. Neither Filers permit any secondary trading of previously issued securities to take place on the Platform.

10. The only compensation that ALA and the Lead Investor receive for their role in a syndicate is Carried Interest and such compensation is disclosed to investors. None of the Filers, the Lead Investor nor any of their officers or directors receive any other form of commission or transaction-based compensation related to the Restricted Services, including the Syndicate Services.

11. ALA will disclose any conflicts of interest as described in paragraph 66 to investors in the syndicate.

12. The Filers will immediately remove a Start-up from the Platform, and the posting of any syndicate in relation to such Start-up, if:

    a. Either Filer makes a good faith determination that the business of the Start-up may not be conducted with integrity because of the past or current conduct of the Start-up or of the Start-up's directors, executive officers or promoters; and

    b. Either Filer becomes aware that the Start-up is not complying with applicable securities laws.

13. The Filers will immediately remove any Participant from the Platform or prohibit any person or company from accessing the restricted area of the Platform at the request of the Commission in the Jurisdiction.

14. In addition to any other reporting required by law, including Form 45-106F1 *Report of Exempt Distribution*, the Filers provide the following information to the Commission on a quarterly basis:

    a. The name of each Start-up that has raised capital in Ontario through a syndicate on the Platform, the name of the associated SPE(s), whether the Start-up is an Eligible Canadian Start-up and the name of the Approved Incubator Program, and the total amount raised by the Start-up, and

    b. The number of Ontario accredited investors that applied during the quarter to be approved as Quality Investors and the number who were approved by ALA as Quality Investors.

15. This Decision shall expire two years after the date of the Decision.

16. This Decision may be amended by the Director from time to time upon prior written notice to the Filer.

"Debra Foubert"
Director
Ontario Securities Commission

2.1.3 J.P. Morgan Securities LLC

Headnote

U.S. registered broker-dealer exempted from dealer registration under paragraph 25(1) of the Act in respect of certain trades in debt securities with permitted clients, as defined under NI 31-103, where the debt securities are i) debt securities of Canadian issuers and are denominated in a currency other than the Canadian dollar; or ii) debt securities of any issuer, including a Canadian issuer, and were originally offered primarily in a foreign jurisdiction outside Canada and a prospectus was not filed with a Canadian securities regulatory authority for the distribution – relief is subject to sunset clause – relief as contemplated by CSA Staff Notice 31-346 Guidance as to the Scope of the International Dealer Exemption in relation to Foreign-Currency Fixed Income Offerings by Canadian Issuers.

Applicable Legislative Provisions

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 74(1).

Instruments Cited

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.18.

October 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
J.P. MORGAN SECURITIES LLC
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer (the **Application**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Filer from the dealer registration requirement under the Legislation in respect of trades in debt securities, other than during the distribution of such securities, with permitted clients, as defined under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), where the debt securities are

(a) debt securities of Canadian issuers and are denominated in a currency other than the Canadian dollar; or

(b) debt securities of any issuer, including a Canadian issuer, and were originally offered primarily in a foreign jurisdiction outside Canada and a prospectus was not filed with a Canadian securities regulatory authority for the distribution (the **Exemption Sought**).

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

(a) the Ontario Securities Commission (**OSC**) is the principal regulator for this Application, 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 of Canada (the **Passport Jurisdictions** and together with the Jurisdiction, the **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:

1. The Filer is a limited liability company incorporated under the laws of the State of Delaware. Its head office is located at 383 Madison Avenue, New York, NY 10179, U.S. It is a wholly owned subsidiary of J.P. Morgan Securities Holdings LLC, a Delaware limited liability company, and an indirect wholly owned subsidiary of J.P. Morgan Chase & Co. (**JPM Chase**), a Delaware corporation.

2. The Filer is registered as a broker-dealer with the U.S. Securities and Exchange Commission (**SEC**) and is a member of the Financial Industry Regulatory Authority (**FINRA**), a self-regulatory organization. This registration subjects the Filer to requirements over regulatory capital, lending of money, extension of credit and provision of margin, financial reporting to the SEC and FINRA, and segregation and custody of assets which provide protections that are substantially similar to the protections provided by the rules to which dealer-members of the Investment Industry Regulatory Organization of Canada (**IIROC**) are subject.

3. The Filer is a member of a number of major U.S. securities exchanges, including the New York Stock Exchange and NASDAQ.

4. The Filer provides a variety of capital raising, investment banking, market making, brokerage, and advisory services, including fixed income and equity sales and research, commodities trading, foreign exchange sales, emerging markets activities, securities lending and derivatives dealing for governments, corporate and financial institutions.

5. J.P. Morgan Securities Canada Inc. (**JPMSCI**) is an affiliate of the Filer. JPMSCI is registered as an investment dealer in each of the provinces of Canada, as a derivatives dealer in Quebec, and is a dealer member of IIROC.

6. The Filer is currently relying on the "international dealer exemption" under section 8.18 of NI 31-103 (the **international dealer exemption**) in each of the Jurisdictions.

7. The Filer is in compliance in all material respects with U.S. securities laws. The Filer is not in default of Canadian securities laws.

8. The Filer wishes to trade in debt securities of Canadian issuers with permitted clients other than during such securities' distribution.

9. Subsection 8.18(2)(b) of NI 31-103 provides that, subject to subsections 8.18(3) and 8.18(4), the dealer registration requirement does not apply in respect of a trade in a debt security with a permitted client during the security's distribution, if the debt security is offered primarily in a foreign jurisdiction and a prospectus has not been filed with a Canadian securities regulatory authority for the distribution. Subsection 8.18(2)(c) of NI 31-103 provides that, subject to subsections 8.18(3) and 8.18(4), the dealer registration requirement does not apply in respect of a trade in a debt security that is a foreign security with a permitted client, other than during the security's distribution.

10. The permitted activities under subsection 8.18(2) of NI 31-103 do not include a trade in a debt security of a Canadian issuer with a permitted client, other than during the security's distribution in the limited circumstances described above.

11. On September 1, 2016, the Staff of the Canadian Securities Administrators (**CSA Staff**) published CSA Staff Notice 31-346 *Guidance as to the Scope of the International Dealer Exemption in relation to Foreign-Currency Fixed Income Offerings by Canadian Issuers* (the **Staff Notice**).

12. CSA Staff stated in the Staff Notice that they did not believe there was a policy reason to limit the exemption in subsection 8.18(2) of NI 31-103 to trades that occur during the initial period of the securities' distribution or to conclude that an international dealer should be permitted to sell a debt security to a Canadian institutional investor but not be permitted to act for the institutional investor in connection with the resale of the security. CSA Staff further stated that

they were prepared to recommend exemptive relief to permit international dealers to deal with institutional investors to facilitate resales of debt securities, subject to conditions the CSA consider appropriate.

13. Accordingly, the Filer is seeking exemptive relief as contemplated by the Staff Notice to permit the Filer to deal with Canadian permitted clients in connection with resales of debt securities that may be distributed to the permitted clients in reliance on the international dealer exemption in section 8.18 of NI 31-103.

14. It may be difficult at the time of a resale of a debt security to determine whether the debt security was originally offered as part of an offering that was made primarily in a foreign jurisdiction or whether a prospectus was filed in Canada in connection with such offering. However, the Filer believes, based on its experience with foreign-currency-denominated fixed income offerings by Canadian issuers (**Canadian foreign-currency fixed income offerings**), that such offerings are generally made primarily outside of Canada. Accordingly, the Filer believes that the denomination of an offering of debt securities in a foreign currency will be a reasonable proxy for determining whether the offering was originally made primarily outside of Canada.

15. Similarly, the Filer believes, based on its experience with Canadian foreign-currency fixed income offerings, that, to the extent that debt securities that are the subject of such offerings are listed on a stock exchange, they will typically not be listed on a stock exchange situated in Canada. To the extent that foreign-currency-denominated debt securities of a Canadian issuer are listed on a stock exchange situated in Canada, investors will be required to trade such debt securities through an IIROC registered dealer.

16. The Filer is a "market participant" as defined under subsection 1(1) of the OSA. As a market participant, among other requirements, the Filer is required to comply with the record keeping and provision of information provisions under section 19 of the OSA, which include the requirement to keep such books, records and other documents (a) as are necessary for the proper recording of business transactions and financial affairs, and the transactions executed on behalf of others, (b) as may otherwise be required under Ontario securities law, and (c) as may reasonably be required to demonstrate compliance with Ontario securities laws, and to deliver such records to the OSC if required.

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 Exemption Sought is granted provided that the Filer complies with the terms and conditions described in section 8.18 of NI 31-103 as if the Filer had made the trades in reliance on an exemption contained in section 8.18.

It is further the decision of the principal regulator that the Exemption Sought shall expire on the date that is the earlier of:

(a) the date on which amendments to the international dealer exemption in section 8.18 of NI 31-103 come into force that address the ability of international dealers to trade debt securities of Canadian issuers; and

(b) five years after the date of this decision.

"Monica Kowal"
Vice Chair
Ontario Securities Commission

"D. Grant Vingoe"
Vice Chair
Ontario Securities Commission

2.1.4 Mackenzie Financial Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – fund family relief from the requirement to send a printed information circular to registered holders of the securities of an investment fund – relief subject to a number of conditions, including sending an explanatory document in lieu of the printed information circular and giving securityholders the option to request and obtain at no charge a printed information circular – notice-and-access for investment funds.

Applicable Legislative Provisions

National Instrument 81-106 Investment Fund Continuous Disclosure, s. 12.2(2)(a).

October 21, 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
MACKENZIE FINANCIAL CORPORATION
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of existing and future investment funds that are or will be managed from time to time by the Filer or by an affiliate or successor of the Filer (the **Funds**), for a decision under the securities legislation of the Jurisdiction (the **Legislation**) granting an exemption from the requirement contained in paragraph 12.2(2)(a) of National Instrument 81-106 *Investment Fund Continous Disclosure* (**NI 81-106**) for a person or company that solicits proxies, by or on behalf of management of a Fund, to send an information circular to each registered holder of securities of a Fund whose proxy is solicited, and instead allow the Funds to send a Notice-and-Access Document (as defined in condition 1 of this decision) using the Notice-and-Access Procedure (as defined in condition 2 of this decision) (the **Exemption Sought**).

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; 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 British Columbia, Alberta, Manitoba, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Nunavut, Yukon and Northwest Territories (collectively, with the Jurisdiction, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) and National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (**NI 54-101**) 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 and the Funds

1. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is registered as a portfolio manager and exempt market dealer in each Jurisdiction, as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador and as a commodity trading manager in Ontario.

3. The Funds are, or will be, managed by the Filer or by an affiliate or successor of the Filer.

4. The Funds are, or will be, investment funds and are, or will be, reporting issuers in one or more of the Jurisdictions.

5. Neither the Filer, nor any of the existing Funds is in default of any of the requirements of securities legislation in any of the Jurisdictions.

Meetings of Securityholders of the Funds

6. Pursuant to applicable legislation, the Filer must call a meeting of securityholders of each Fund from time to time to consider and vote on matters requiring securityholder approval.

7. In connection with a meeting, a Fund is required to comply with the requirements in NI 81-106 regarding the sending of proxies and information circulars to registered holders of its securities, which include a requirement that each person or company that solicits proxies by or on behalf of management of a Fund send, with the notice of meeting, to each registered holder of securities of a Fund whose proxy is solicited, an information circular, prepared in compliance with the requirements of Form 51-102F5 of NI 51-102, to securityholders of record who are entitled to receive notice of the meeting.

8. A Fund is also required to comply with NI 51-102 for communicating with registered holders of its securities, and to comply with NI 54-101 for communicating with beneficial owners of its securities.

Notice-and-Access Procedure – Corporate Finance Issuers

9. Section 9.1.1 of NI 51-102 permits, if certain conditions are met, a reporting issuer that is not an investment fund to use the notice-and-access procedure and send, instead of an information circular, a notice to each registered holder of its securities that contains certain specific information regarding the meeting and an explanation of the notice-and-access procedure.

10. Section 2.7.1 of NI 54-101 permits a reporting issuer that is not an investment fund to use a similar procedure to communicate with each beneficial owner of its securities.

Reasons supporting the Exemption Sought

11. A meeting of investment fund securityholders is no different than a meeting of corporate finance securityholders. As a result, if the notice-and access procedure set forth in NI 51-102 and in NI 54-101 can be used by a corporate finance issuer for a meeting of its securityholders in order to send a notice-and-access document instead of an information circular, it would not be detrimental to the protection of investors to allow an investment fund to also use the Notice-and-Access Procedure to send a Notice-and-Access Document, instead of the information circular.

12. With the Exemption Sought, securityholders will maintain the same access to the same quality of disclosure material currently available. Without limiting the generality of the foregoing:

    (a) all securityholders of record entitled to receive an information circular will receive instructions on how to access the information circular and will be able to receive a printed copy, without charge, if they so desire; and

    (b) the conditions to the Exemption Sought mandate that the Notice-and-Access Document will be sent to securityholders sufficiently in advance of a meeting so that if a securityholder wishes to receive a printed copy of the information circular, there will be sufficient time for the Filer, directly or through the Filer's agent, to send the information circular.

13. With the Notice-and-Access Procedure, no securityholder will be deprived of their ability to access the information circular in his/her preferred manner of communication.

14. In accordance with the Filer's standard of care owed to the relevant Fund pursuant to applicable legislation, the Filer will only use the Notice-and-Access Procedure for a particular meeting where it has concluded it is appropriate and consistent to do so, also taking into account the purpose of the meeting and whether the Fund would obtain a better participation rate by sending the information circular with the other proxy-related materials.

15. There are significant costs involved in the printing and delivery of the proxy-related materials, including information circulars, to securityholders in the Funds.

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 Decision Makers under the Legislation is that the Exemption Sought is granted provided that, in respect of each Fund or the Filer soliciting proxies by or on behalf of management of a Fund:

1. The registered holders or beneficial owners, as applicable, of securities of the Fund are sent a document that contains the following information and no other information (the **Notice-and-Access Document**):

    (a) the date, time and location of the meeting for which the proxy-related materials are being sent;

    (b) a description of each matter or group of related matters identified in the form of proxy to be voted on unless that information is already included in a Form 54-101F6 or Form 54-101F7 as applicable, that is being sent to the beneficial owner of securities of the Fund under condition (2)(c) of this decision;

    (c) the website addresses for SEDAR and the non-SEDAR website where the proxy-related materials are posted;

    (d) a reminder to review the information circular before voting;

    (e) an explanation of how to obtain a paper copy of the information circular and, if applicable, the financial statements;

    (f) a plain-language explanation of the Notice-and-Access Procedure that includes the following information:

        (i) the estimated date and time by which a request for a paper copy of the information circular and, if applicable, the financial statements of the Fund, is to be received in order for the registered holder or beneficial owner, as applicable, to receive the paper copy in advance of any deadline for the submission of voting instructions for the meeting;

        (ii) an explanation of how the registered holders or the beneficial owners, as applicable, of securities of the Fund are to return voting instructions, including any deadline for return of those instructions;

        (iii) the sections of the information circular where disclosure regarding each matter or group of related matters identified in the Notice-and-Access Document can be found; and

        (iv) a toll-free telephone number the registered holders or the beneficial owners, as applicable, of securities of the Fund can call to get information about the Notice-and-Access Procedure.

2. The Filer, on behalf of the Fund, sends the Notice-and-Access Document in compliance with the following procedure (the **Notice-and-Access Procedure**), in addition to any and all other applicable requirements:

    (a) the proxy-related materials are sent a minimum of 30 days before a meeting and a maximum of 50 days before a meeting;

    (b) if the Fund sends proxy-related materials:

        (i) directly to a NOBO using the Notice-and-Access Procedure, then the Fund must send the Notice-and-Access Document and, if applicable, any paper copies of information circulars and the financial statements, at least 30 days before the date of the meeting; and

(ii) indirectly to a beneficial owner using the Notice-and-Access Procedure, then the Fund must send the Notice-and-Access Document and, if applicable, any paper copies of information circulars and the financial statements to the proximate intermediary (A) at least 3 business days before the 30th day before the date of the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary by first class mail, courier or the equivalent, or (B) at least 4 business days before the 30th day before the date of the meeting, in the case of proxy-related materials that are to be sent using any other type of prepaid mail;

(c) using the procedures referred to in section 2.9 or 2.12 of NI 54-101, as applicable, the beneficial owner of securities of the Fund is sent, by prepaid mail, courier or the equivalent, the Notice-and-Access Document and a Form 54-101F6 or Form 54-101F7, as applicable;

(d) the Filer, on behalf of the Fund, files on SEDAR the notification of meeting and record dates on the same date that it sends the notification of meeting date and record date pursuant to subsection 2.2(1) of NI 54-101 (as such time may be abridged);

(e) public electronic access to the information circular and the Notice-and-Access Document is provided on or before the date that the Notice-and-Access Document is sent to registered holders or to beneficial owners, as applicable, of securities of the Fund in the following manner:

(i) the information circular and the Notice-and-Access Document are filed on SEDAR; and

(ii) the information circular and the Notice-and-Access Document are posted until the date that is one year from the date that the documents are posted, on a website of the Filer or the Fund;

(f) a toll-free telephone number is provided for use by the registered holders or beneficial owners, as applicable, of securities of the Fund to request a paper copy of the information circular and, if applicable, the financial statements of the Fund, at any time from the date that the Notice-and-Access Document is sent to the registered holders or the beneficial owners, as applicable, up to and including the date of the meeting, including any adjournment;

(g) if a request for a paper copy of the information circular and, if applicable, the financial statements of the Fund, is received at the toll-free telephone number provided in the Notice-and-Access Document or by any other means, a paper copy of any such document requested is sent free of charge to the registered holder or beneficial owner, as applicable, at the address specified in the request in the following manner:

(i) in the case of a request received prior to the date of the meeting, within 3 business days after receiving the request, by first class mail, courier or the equivalent; and

(ii) in the case of a request received on or after the date of the meeting, and within one year of the date the information circular is filed on SEDAR, within 10 calendar days after receiving the request, by prepaid mail, courier or the equivalent;

(h) a Notice-and-Access Document is only accompanied by:

(i) a form of proxy;

(ii) if applicable, the financial statements of the Fund to be presented at the meeting; and

(iii) if the meeting is to approve a reorganization of the Fund with a mutual fund, as contemplated by paragraph 5.1(1)(f) of NI 81-102 *Investment Funds*, the Fund Facts document for the continuing mutual fund;

(i) a Notice-and-Access Document may only be combined in a single document with a form of proxy;

(j) if the Filer, directly or through the Filer's agent, receives a request for a copy of the information circular and if applicable, the financial statements of the Fund, using the toll-free telephone number referred to in the Notice-and-Access Document or by any other means, it must not do any of the following:

(i) ask for any information about the registered holder or beneficial owner, other than the name and address to which the information circular and, if applicable, the financial statements of the Fund are to be sent; and

(ii) disclose or use the name or address of the registered holder or beneficial owner for any purpose other than sending the information circular and, if applicable, the financial statements of the Fund;

(k) the Filer, directly or through the Filer's agent, must not collect information that can be used to identify a person or company who has accessed the website address to which it posts the proxy-related materials pursuant to condition (2)(e)(ii) of this decision.

(l) in addition to the proxy-related materials posted on a website in the manner referred to in condition (2)(e)(ii) of this decision, the Filer must also post on the website the following documents:

(i) any disclosure document regarding the meeting that the Filer, on behalf of the Fund, has sent to registered holders or beneficial owners of securities of the Fund; and

(ii) any written communications the Filer, on behalf of the Fund, has made available to the public regarding each matter or group of matters to be voted on at the meeting, whether or not they were sent to registered holders or beneficial owners of securities of the Fund;

(m) materials that are posted on a website pursuant to condition (2)(e)(ii) of this decision must be posted in a manner and be in a format that permit an individual with a reasonable level of computer skill and knowledge to do all of the following easily:

(i) access, read and search the documents on the website; and

(ii) download and print the documents;

(n) despite subsection 2.1(b) of NI 54-101, if the Fund relies upon this Decision, it must set a record date for notice that is no fewer than 40 days before the date of the meeting;

(o) in addition to section 2.20 of NI 54-101, the Fund may only abridge the time prescribed in subsection 2.1(b), 2.2(1) or 2.5(1) of NI 54-101 if the Fund fixes the record date for notice to be at least 40 days before the date of the meeting and sends the notification of meeting and record dates at least 3 business days before the record date for notice;

(p) the notification of meeting date and record date sent pursuant to subsection 2.2(1)(b) of NI 54-101 shall specify that the Fund is sending proxy-related materials to registered holders or beneficial owners, as applicable, of securities of the Fund using the Notice-and-Access Procedure pursuant to the terms of this Decision;

(q) the Filer, on behalf of the Fund, provides disclosure in the information circular to the effect that the Fund is sending proxy-related materials to registered holders or beneficial owners, as applicable, of securities of the Fund using the Notice-and-Access Procedure pursuant to the terms of this Decision; and

(r) the Filer pays for delivery of the information circular and, if applicable, the financial statements of the Fund, to registered holders or to beneficial owners, as applicable, of securities of the Fund if a copy of such material is requested following receipt of the Notice-and-Access Document.

The Exemption Sought terminates on the coming into force of any legislation or regulation allowing an investment fund to use a notice-and-access procedure.

"Raymond Chan"
Manager, Investment Funds and Structured Products
Ontario Securities Commission

2.2 Orders

2.2.1 SMART Technologies Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to 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).

Citation: Re SMART Technologies Inc., 2016 ABASC 257

October 11, 2016

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

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
SMART TECHNOLOGIES INC.
(the Filer)

ORDER

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the **Order Sought**).

Under the Process for Cease to be a Reporting Issuer Applications (for a dual application):

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

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories, and Nunavut; and

(c) this order is the order of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

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

Representations

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

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

2. the outstanding securities of the Filer, 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;

3. no securities of the Filer, 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;

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

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

Order

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

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

“Denise Weeres”
Manager, Legal
Corporate Finance

2.2.2 Whiterock Real Estate Investment Trust

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to 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).

October 20, 2016

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

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
WHITEROCK REAL ESTATE INVESTMENT TRUST
(the Filer)

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer for an order under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the **Order Sought**).

Under the Process for Cease to be a Reporting Issuer Applications (for a passport application):

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

(b) the Filer has provided notice that subsection 4C.5(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 and Newfoundland.

Interpretation

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

Representations

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

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the US Over-the-Counter Markets*;

2. the outstanding securities of the Filer, 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;

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

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

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

Order

The Principal Regulator is satisfied that the order meets the test set out in the Legislation for the Principal Regulator to make the order.

The decision of the Principal Regulator under the Legislation that the Order Sought is granted.

”Sonny Randhawa”
Deputy Director, Corporate Finance Branch
Ontario Securities Commission

2.2.3 Black Panther Trading Corporation and Charles Robert Goddard

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
BLACK PANTHER TRADING CORPORATION
AND
CHARLES ROBERT GODDARD

ORDER

WHEREAS:

1. on October 13, 2015, Staff of the Ontario Securities Commission ("Staff") filed a Statement of Allegations, in which Staff sought an order against Black Panther Trading Corporation and Charles Robert Goddard (together, the "Respondents") pursuant to subsection 127(1) and section 127.1 of the Securities Act;

2. on October 14, 2015, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in respect of that Statement of Allegations;

3. on March 21, 2016, Staff filed an Amended Statement of Allegations;

4. on October 20, 21, and 24, 2016, the Commission held the hearing on the merits in this proceeding; and

5. the parties requested that they be allowed to file written final submissions;

IT IS ORDERED that:

1. Staff shall serve and file written final submissions on or before November 15, 2016;

2. the Respondents shall serve and file written final submissions on or before November 29, 2016; and

3. Staff shall serve and file written reply final submissions, if any, on or before December 6, 2016.

DATED at Toronto, this 24th day of October, 2016.

"Timothy Moseley"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Hecla Mining Company and Dolly Varden Silver Corporation

SIMULTANEOUS HEARINGS OF
THE BRITISH COLUMBIA SECURITIES COMMISSION (BCSC) AND
THE ONTARIO SECURITIES COMMISSION (OSC)

IN THE MATTER OF
HECLA MINING COMPANY

AND

IN THE MATTER OF
DOLLY VARDEN SILVER CORPORATION

***SECURITIES ACT*, RSBC 1996, c 418 (BC Act)**
***SECURITIES ACT*, RSO 1990, c S.5 (Ontario Act)**

REASONS FOR DECISION

Hearing:	July 20 and 21, 2016		
Decision:	October 24, 2016		
BCSC Panel:	Nigel Cave	–	Vice-Chair and BCSC Coordinating Chair
	George C. Glover, Jr.	–	Commissioner
	Audrey T. Ho	–	Commissioner
OSC Panel:	D. Grant Vingoe	–	Vice-Chair and OSC Coordinating Chair
	Monica Kowal	–	Vice-Chair
	Deborah Leckman	–	Commissioner
Appearances:	David Di Paolo Robert J.C. Deane Caitlin Sainsbury Hunter Parsons Maureen Doherty Graham Splawski	–	For Dolly Varden Silver Corporation
	Wendy Berman Lara Jackson Christopher Horkins Jeffrey Roy	–	For Hecla Mining Company
	Swapna Chandra Pamela Foy Naizam Kanji Jason Koskela Jordan Lavi Kristina Skocic Christina Galbraith	–	For Staff of the OSC
	Gordon Smith Nazma Lee	–	For Staff of the BCSC

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REASONS FOR DECISION

I. INTRODUCTION

[1] Hecla Mining Company, through its indirect wholly-owned subsidiary, 1080980 B.C. Ltd. (collectively, Hecla), made an all-cash offer for all of the outstanding common shares (DV Shares) of Dolly Varden Silver Corporation (referred to as DV or Dolly Varden) at a price of $0.69 per share (Offer).

[2] Hecla first announced its intention to proceed with the Offer on June 27, 2016. The price of the bid represented a premium of approximately 55% over the closing price on the TSX Venture Exchange (TSX-V) for the DV Shares on the last trading day before Hecla's announcement.

[3] The Offer was formally commenced 11 days later, on July 8, 2016. The Offer was subject to a number of conditions, one of which, importantly for these Reasons, was that a private placement of DV Shares announced by Dolly Varden on July 5, 2016, involving gross proceeds of up to $6 million (Private Placement), be abandoned.

[4] The Private Placement was priced at $0.62 for up to approximately 7.26 million DV Shares, and $0.70 for up to approximately 2.14 million DV Shares qualified as "flow-through shares" under the *Income Tax Act*. The Private Placement was arranged by an independent finder and would potentially result in dilution of existing shareholders of approximately 43%. Hecla had a participation right that assured that it could purchase shares in the Private Placement and avoid dilution of its own position.

[5] In accordance with amendments to the take-over bid regime applicable throughout Canada that became effective on May 9, 2016, the Offer was subject to a minimum tender condition that required that at least 50% of the total number of outstanding DV Shares, not under the control of Hecla and its affiliates, be tendered in the Offer (Required Minimum Condition). Since this condition is a regulatory requirement, it could not be waived by Hecla.

[6] The Offer was an "insider offer", as defined in Multilateral Instrument 61-101 – *Protection of Minority Shareholders in Special Transactions* (MI 61-101), since Hecla is an insider of Dolly Varden. As of July 8, 2016, Hecla owned DV Shares and warrants to acquire additional DV Shares, representing approximately 19.8% of the issued and outstanding DV Shares as of that date.

[7] On July 8, Hecla filed an application with the BCSC under subsection 161(1) of the BC Act, seeking to cease trade the Private Placement on the basis that it was an abusive defensive tactic under National Policy 62-202 – *Take-Over Bids – Defensive Tactics* (referred to as NP 62-202 or the Policy) (BC Hecla Application). The same application was filed by Hecla with the OSC on July 16, seeking the same relief under sections 104 and 127 of the Ontario Act (Ontario Hecla Application; the BC Hecla Application and the Ontario Hecla Application being the Hecla Applications).

[8] At the time of the Hecla Applications, Dolly Varden had not received approval from the TSX-V for the Private Placement, nor had Dolly Varden closed the transaction. Dolly Varden gave an undertaking to the BCSC not to close the Private Placement until the BCSC rendered its decision on the BC Hecla Application.

[9] On July 16, 2016, Dolly Varden filed an application with the OSC under subsections 104(1) and 127(1) of the Ontario Act, seeking, among other relief, to cease trade the Offer on the basis that Hecla's take-over bid circular did not include a formal valuation as required by MI 61-101 and that the exemption provided by section 2.4(1)(a) of that instrument was not available to Hecla (Ontario DV Application). This exemption would be available if neither Hecla nor any of its affiliates or joint actors has or has had, since July 8, 2015 any board or management representation in respect of Dolly Varden or knowledge of any material information concerning Dolly Varden or DV Shares that has not been generally disclosed.

[10] Although the BCSC has not adopted MI 61-101, Dolly Varden's application was also filed with the BCSC seeking the same relief under the BCSC's public interest authority (BC DV Application; the Ontario DV Application and the BC DV Application being the DV Applications).

[11] OSC Staff made a request pursuant to Rule 13.1 of the OSC's *Rules of Procedure* for the OSC to hold simultaneous hearings on the Hecla Applications. BCSC Staff joined in that request.

[12] As a preliminary matter, the OSC and BCSC Panels determined to hold simultaneous hearings on the Hecla Applications on the basis that the consideration of the issues raised in the Hecla Applications, in light of the recent amendments to the take-over bid regime in Canada, involved matters for which it was in the public interest for "securities administrators [to] strive to achieve consistency in … decision-making", as set out in subparagraph (c) of OSC Rule 13.1(4). In addition, the urgency in making decisions affecting a live bid and the overlapping evidence required in order to provide a complete narrative of events leading up to the Hecla Applications favoured a

simultaneous hearing. This determination was then extended to the DV Applications as well, on the basis of the urgency in making decisions affecting Hecla's bid and the efficiency in presenting common evidence.

[13] The simultaneous hearings were conducted by video conference on July 20 and 21, 2016. At the simultaneous hearings, we heard testimony from two witnesses, Dolly Varden's current Interim President and Chief Executive Officer, Rosalie Moore (Moore), and Hecla's Chief Executive Officer, Phillips S. Baker Jr. (Baker). We received oral and written submissions on the Hecla Applications and DV Applications from Hecla, Dolly Varden and jointly from OSC Staff and BCSC Staff.

[14] Each Panel was separately constituted and each rendered its own decision. The parties were informed that, given the effort to promote consistency, the two Panels would communicate with one another and engage in separate and shared deliberations.

[15] On July 22, 2016, the OSC issued its Order denying the Ontario Hecla Application, and cease trading the Offer until the requirements of MI 61-101 are satisfied, including the preparation and inclusion of a formal valuation. In order to allow sufficient time for Dolly Varden shareholders to consider this additional information, the bid was required, under the terms of the Order, to remain open for at least 35 days after the information was provided as an addendum to the Hecla take-over bid circular, notwithstanding the point in time that it was delivered during the term of the Offer.

[16] On the same date, the BCSC issued its Order denying both the BC Hecla Application and the BC DV Application.

[17] These are the collective reasons of the BCSC and OSC with respect to the Hecla Applications and the DV Applications. In particular, these are the common reasons of the BCSC and OSC in denying the Hecla Applications. Separate reasons are included herein with respect to: (1) the OSC's order for the Ontario DV Application, and (2) the BCSC's order denying the BC DV Application.

II. FACTS

A. Parties

1. *Hecla*

[18] Hecla is a US silver producer incorporated pursuant to the laws of the state of Delaware and is a reporting issuer in all of the provinces and territories of Canada. Hecla's common shares are listed on the New York Stock Exchange.

[19] Hecla, through its wholly-owned subsidiary Hecla Canada Ltd., beneficially owns and exercises control and direction over 2,620,291 DV Shares and share purchase warrants to acquire 1,250,000 DV Shares. At all times relevant to our hearings, this ownership of Dolly Varden securities represented more than 10% of the issued and outstanding DV Shares.

2. *Dolly Varden*

[20] Dolly Varden is a junior mineral exploration company focused on the exploration of a silver property located in Northwestern British Columbia. This property is Dolly Varden's only project. Dolly Varden is a reporting issuer in British Columbia, Ontario and Alberta and the DV Shares are listed on the TSX-V.

[21] The main portion of Dolly Varden's property is adjoined on three sides by mineral claims known as the Kinskuch Project (Kinskuch Claims) on to which alteration, structural and mineralization trends from the Dolly Varden project extend.

B. Chronology of Events

[22] Hecla and Dolly Varden, and Moore, have a history going back to 2012. Over the years, Hecla and Dolly Varden's relationship evolved and it is important to understand the shared history of the two companies and Moore. A chronology of relevant events follows below.

1. *Moore's Consulting Agreement*

[23] On May 23, 2012, Moore entered into a consulting agreement (Consulting Agreement) with Hecla, which agreement was extended multiple times and most recently renewed in January 2015. Moore's consulting relationship with Hecla only formally ended earlier this year, in January 2016, when the Consulting Agreement's term expired, without Hecla or Moore taking any previous steps to terminate the agreement.

[24] The scope of work under the Consulting Agreement remained unamended through the term of the contract and provided that the "Consultant shall perform consulting services as agreed to from time to time by Hecla and the Consultant". In addition, the Consulting Agreement contained a condition that "[d]uring the term of this Agreement or any extension thereof, (i) Consultant agrees not to engage in any activity either independently or by agreement which would be adverse to Hecla or its mineral properties or operating interests ...".

2. *Hecla's Initial Investment in Dolly Varden*

[25] Hecla's investment in Dolly Varden commenced in September 2012, when Hecla acquired a significant interest in Dolly Varden by way of a private placement of 2 million DV Shares at a price of $1.60 per share, providing Dolly Varden with $3.2 million cash proceeds and resulting in Hecla's ownership of approximately 19.9% of the then-outstanding DV Shares.

3. *Ancillary Rights Agreement*

[26] Concurrently with the completion of its initial investment, Hecla entered into an Ancillary Rights Agreement with Dolly Varden, dated September 4, 2012. Under the Ancillary Rights Agreement, Hecla has a right to:

– nominate one person to the Dolly Varden Board of Directors (so long as Hecla owns at least 10% of the aggregate DV Shares and number of shares issuable upon the exercise, exchange or conversion of securities (on an undiluted basis)),

– nominate one person to the Dolly Varden Technical Committee (Technical Committee), and

– participate in any future proposed equity offering of Dolly Varden in order to maintain its *pro rata* interest.

4. *Hecla's Nominee on the Dolly Varden Technical Committee and the Technical Committee Meetings*

[27] Following the execution of the Ancillary Rights Agreement, Dr. Dean W.A. McDonald (McDonald) was appointed as Hecla's nominee to the Technical Committee of Dolly Varden in September 2012. McDonald acted as Hecla's nominee on the Technical Committee at all times since the Ancillary Rights Agreement was entered into.

[28] The Technical Committee's mandate was limited to the review, planning and implementation of technical exploration work completed at the Dolly Varden project, which included mapping, drilling and sampling, as well as making recommendations to Dolly Varden's Board with respect to future exploration activities.

[29] The Technical Committee met approximately 20 times between October 2012 and February 2016. Meetings were held on an irregular schedule two to six times per year. The subject matter covered by the Technical Committee at its meetings included information related to Dolly Varden's assessment of the value of its properties and other neighboring properties. The minutes for the Technical Committee meetings held on December 16, 2014, September 10, 2015, and February 2, 2016 indicate that McDonald and Moore were present at the meetings. In addition to its membership on the Technical Committee, Hecla also participated in three site visits to the Dolly Varden property, beginning in October 2012, including a site visit attended by Curt Allen, Hecla's Director of New Projects, on October 21-23, 2015.

5. *Hecla's Subsequent Investments in Dolly Varden*

[30] Following Hecla's initial investment in Dolly Varden, Dolly Varden undertook various additional staged equity financings in 2013 and 2014 to fund costs associated with various stages of its planned exploration program and general corporate expenses.

[31] Specifically, Dolly Varden undertook private placements in March 2013, April 2013, December 2013, and August 2014. In April 2013, Hecla subscribed pursuant to its pre-emptive rights, re-establishing its approximately 19.9% ownership interest, and invested a further $2.7 million into Dolly Varden.

6. *Hecla's Nominee on the Dolly Varden Board*

[32] On June 24, 2013, while under contract as a consultant for Hecla, Moore was appointed to Dolly Varden's Board as Hecla's nominee in accordance with the Ancillary Rights Agreement. She was elected to Dolly Varden's Board on July 26, 2013. Moore has served on Dolly Varden's Board continuously since that time.

7. *Moore Becomes Dolly Varden's Interim President and CEO*

[33] From November 2014 to March 2015, Dolly Varden announced a series of changes in its senior executive team and Board of Directors. As part of these management changes, on January 23, 2015, Moore was seconded by Hecla to Dolly Varden and appointed Interim President and Chief Executive Officer of Dolly Varden.

[34] Hecla did not exercise its right to nominate another person to the Dolly Varden Board since Moore assumed the position of Interim President and CEO. As further discussed below in paragraph [142], this decision was made, at least in part, because if Hecla appointed a new nominee, then it would be complicated for Moore to return to the position if her CEO role was not permanent.

[35] An exchange of e-mails between Moore, Hecla's CEO and Hecla's General Counsel addressed the characterization of Moore's position as a secondment and the risk that Moore would not ever be seen as fully independent from Hecla. The relevant e-mail excerpts state:

- "… [A]s to [Moore's] independence from Hecla, notwithstanding the plan going forward, it probably will always be the case based on the past arrangements that [Moore] is never perceived as 100% independent from Hecla. However, perception aside, there could be other legal issues which arise in the event Hecla seeks to acquire Dolly Varden in the future, e.g. the need for an independent valuation I mentioned earlier in the week." (e-mail from Hecla's General Counsel dated January 15, 2015);

- "It seems like the term "secondment" is being used loosely to just refer to the plan going forward and reflected in the corresponding disclosure by Dolly Varden that reflects the following: "Rosie is a consultant to Hecla. Hecla designated Rosie as its DV Board representative. DV needs stronger management, and would like to name Rosie as interim CEO. Hecla has supports [sic] its consultant – Rosie – becoming interim CEO in order to strengthen DV's management, while still maintaining her consulting relationship with Hecla." From Hecla's perspective, this arrangement would be accomplished thru [sic] a simple amendment to the consulting agreement…" (e-mail from Hecla's General Counsel dated January 15, 2015);

- "The more the Hecla connection is highlighted [in the press release], so too will be the independence issue. But as Phil and I discussed today, I'm not sure you [Moore] will ever be perceived as fully independent from Hecla (although we of course reserve all arguments that you are statutorily independent from Hecla in certain situations" (e-mail from Hecla's General Counsel dated January 15, 2015); and

- "I have no delusion that I'll ever be seen as fully independent but I'm comfortable wearing both hats" (e-mail from Moore to Hecla dated January 15, 2015).

8. *Dolly Varden's Financial Difficulties and Efforts to Source a Corporate Transaction*

[36] At the time of Moore's appointment as Dolly Varden's Interim President and CEO, Dolly Varden had insufficient funds in its accounts to be able to discharge its obligations pursuant to the terms of outstanding flow-through shares, land holding and lease costs and, in general, to remain a going concern through 2015.

[37] By the end of August 2015, Dolly Varden had still not secured funds to complete its field program necessary to discharge its obligations pursuant to the flow-through share issuance and the company was in a desperate financial state.

[38] Dolly Varden's Consolidated Interim Financial Statements for the three- and nine-month periods ending September 30, 2015 stated that:

> At September 30, 2015, the Company had incurred accumulated losses of $11,138,297 (December 31, 2014: accumulated loss of $9,878,858) since inception, and has a working capital deficiency of $496,311 (December 31, 2014: Working Capital $1,342,756). The Company expects to incur further losses in the development of its business and accordingly there is a material uncertainty in the Company's ability to continue as a going concern. The Company's ability to continue as a going concern is dependent upon its ability to continue to raise adequate financing in the future to meet its obligations and repay its liabilities arising from normal business operations when they come due.

[39] At the hearings, we were provided with evidence that Dolly Varden was still experiencing financial difficulties and, as of June 30, 2016, Dolly Varden had $203,310 in current cash and $2,336, 876 in current liabilities. Given the terms of the New Loan (as defined below), which was concluded after this date and the repayment of the Senior Loan (as defined below), Dolly Varden's financial position remained precarious up to the time of the hearings.

9. *Senior Loan*

[40] In early September 2015, Hecla and another large Dolly Varden shareholder, who we will refer to by the initial G, agreed to provide Dolly Varden with a loan so that Dolly Varden could meet its obligations pursuant to the flow-through share issuance.

[41] Hecla and G, as lenders, and Dolly Varden, as borrower, entered into a credit agreement (Credit Agreement), dated September 30, 2015 (the Senior Loan). The Senior Loan provided Dolly Varden with a senior, non-revolving secured loan of $1,500,000 with the option to increase to $2,000,000 and was secured by first ranking security interest over all of Dolly Varden's assets. The Senior Loan was subject to repayment in one year. In connection with the Credit Agreement, and as consideration for the advance of their respective portions of the Senior Loan, each of Hecla and G were issued 1,250,000 warrants. Each warrant entitled the holder to acquire one DV Share at a price of $0.30 per share exercisable for a period of three years from the date of issuance.

[42] The Senior Loan had a one-year term expiring October 1, 2016. It also included the following conditions:

> **Negative Covenants of the Borrower**
>
> 8.2 The Borrower hereby covenants and agrees that, except with prior written consent of Agent (in accordance with the instructions of the Majority Lenders) or as otherwise contemplated in this Section 8.2, the Borrower will not:
>
> (a) directly or indirectly issue, incur, assume or otherwise become liable for or in respect of any Indebtedness other than Permitted Indebtedness;
>
> …
>
> (i) issue any securities of the Borrower (other than (i) the Warrants and pursuant to the exercise by the lenders thereof and (ii) pursuant to the exercise of options previously granted pursuant to the Borrowers stock option plan existing on the date of this Agreement).

[43] At the time of the Senior Loan, Dolly Varden represented to Hecla that:

– it required funds of $1.6 million to complete the committed 2015 exploration program and for general corporate expenses; and

– upon completion of the 2015 exploration program, it would implement a hibernation plan, including reducing corporate expenses and putting the Dolly Varden project on a maintenance plan, given market conditions.

[44] Under the terms of the Senior Loan, Dolly Varden was also required to provide Hecla with monthly reports on Dolly Varden's activities. These reports provided updates on Dolly Varden's use of the funds provided under the Senior Loan, field program, drill results, lease negotiations, possible future financings, possibility of business combinations, budget, and cash position. While these reports were required to be provided monthly, in reality they were provided on a more *ad hoc* basis.

10. *Dolly Varden's Objectives to Eliminate Debt, Convert Debt to Equity and Raise Capital*

[45] In late 2015 and early 2016, Moore began to have concerns with respect to Dolly Varden's ability to eventually eliminate its debt. While Dolly Varden accepted the funds provided through the Senior Loan, Moore believed that it was in the long-term interest of Dolly Varden to become debt-free. She believed that it was important for a junior exploration company to continue to conduct exploration to create value and that an exploration company in "hibernation" had no prospects to increase shareholder value or to raise capital other than a dramatic increase in commodity prices.

[46] As a result, on December 17, 2015, when requesting a further drawdown on the Senior Loan, Moore asked whether Hecla and G would convert $500,000 of their loan into equity of Dolly Varden. Moore's December 17, 2015 letter explained that:

> We see this conversion as carrying mutual benefits for all parties:
>
> 1) Requires no additional out-of-pocket money,

2) Reduction in Dolly Varden's debt will reduce the hurdle to attracting new capital investment,

3) Top up each lender's equity ownership position at a very low market price,

4) Expression of continued support by Dolly Varden's largest shareholders to encourage other investors.

[47] On January 12, 2016, Moore met with Hecla's CEO to discuss converting $500,000 of the Senior Loan into equity of Dolly Varden. Hecla's CEO refused, stating that "debt has more value to us since it gives us control".

[48] In early 2016, Dolly Varden's management began to realize that Hecla was not going to allow Dolly Varden to achieve its long-term goal of eliminating its debt.

[49] The fact that Dolly Varden was actively pursuing ways to eliminate its debt through conversion of debt to equity, seeking a corporate transaction or engaging in equity financing was evidenced in five of the reports provided to Hecla pursuant to the Credit Agreement.

11. *Moore's Consulting Agreement Expires*

[50] On January 16, 2016, Moore's Consulting Agreement with Hecla expired. There was no evidence of any reaction by any of the parties at the time of this event.

12. *Further Drawdown on the Senior Loan*

[51] On January 22 and 25, 2016, Hecla and G advanced an additional $500,000 to Dolly Varden, bringing the total outstanding principal amount of the Senior Loan to $2 million. No additional consideration was sought or obtained by the lenders at that time. Hecla advised Dolly Varden that it did not want to convert debt to equity as it was dilutive to other Dolly Varden shareholders and the conversion would not be permitted under the TSX-V policies without shareholder approval. Hecla expressed concerns with respect to any equity raise or conversions of debt.

13. *Dolly Varden Requires Further Funding*

[52] In February 2016, Moore provided an updated hibernation budget forecast that would allow Dolly Varden to maintain its TSX-V listing and keep its property position in good standing to the end of 2017. Moore advised Hecla that Dolly Varden's funding requirement under this scenario was $350,000 through 2017.

[53] Hecla confirmed its commitment to extend the maturity of the Senior Loan to the end of 2017 and to increase the amount of the loan facility to cover the additional funding requirement of $350,000. On February 29, 2016, Hecla provided Dolly Varden with a proposed amendment to the Credit Agreement to increase the size of the facility from $2 million to $2.35 million and to extend the term to December 31, 2017. However, G could not be convinced to agree to the Senior Loan extension. He was apparently not opposed to extending the Senior Loan, but was inclined to do so closer to its maturity. Dolly Varden's Board was strongly opposed to postponing the loan extension discussions until August or September 2016, at which time Dolly Varden would be in a weaker negotiating position.

14. *Silver Prices Rise and the Parties Become Active*

[54] In April 2016, silver prices rose and Dolly Varden came, at least partially, out of "hibernation". Moore stated that, as early as May 2016, Dolly Varden was discussing a possible private placement. Moore began contacting potential investors to test interest in an equity issuance. On May 6, 2016, Moore also presented Hecla with options for a potential $3 million financing. Hecla responded that it would not support a financing of that size and indicated that Hecla did not want to be bought out of the Senior Loan.

[55] On May 9, 2016, Hecla indicated that it was willing to extend the term of the Senior Loan into 2017 and to increase the loan amount to $3 million. Hecla also offered to buy out G's position in the Senior Loan. Dolly Varden again raised the possibility of an equity financing to repay the Senior Loan. Hecla responded that it was opposed to this plan under present market conditions.

[56] Within the next few weeks, the Dolly Varden Board instructed Moore to investigate options for terminating the Senior Loan without breaching its conditions. By the end of May 2016, Dolly Varden's Board had arrived at a plan to obtain an additional loan sufficient to pay the Senior Loan in full. Moore approached one of the investment firms she had contacted earlier that month about potential equity financing, Sprott Resource Lending Corp. (Sprott), and inquired whether Sprott would consider a short-term debt financing instead.

[57] Meanwhile, on May 26, 2016, Hecla purchased the Kinskuch Claims, a number of adjacent mineral properties to the Dolly Varden property, without Dolly Varden's knowledge or involvement. After the completion of the purchase, on June 7, 2016, Hecla advised Moore of the transaction and indicated that Hecla's ultimate goal was to consolidate the district.

15. *Dolly Varden Obtains a New Loan and Moves to Repay the Senior Loan*

[58] After a few weeks of negotiations, on June 13, 2016, Dolly Varden entered into agreements for new senior secured term loans with Sprott and two other lenders (New Loan). The New Loan provided Dolly Varden with short-term loan proceeds of $2.5 million, bearing interest of 4% per annum, and provided the lenders with 2.5 million common share purchase warrants at an exercise price of $0.384 per share and an exercise period of two years. Repayment of the New Loan was due within six months, but unlike the Senior Loan, Dolly Varden could repay the New Loan through an equity financing, which could be obtained without the lenders' consent. In addition, Dolly Varden paid a 2.5% finder's fee on a portion of the New Loan's proceeds.

[59] Dolly Varden's evidence was that the intended purpose of the New Loan was always to enable Dolly Varden to repay the Senior Loan, and that it then planned to raise equity through a private placement.

[60] On the same day the New Loan was entered into, Dolly Varden provided Hecla with formal notice of its intention to prepay the outstanding balance of the Senior Loan within 10 business days. Dolly Varden also publicly announced the terms of the New Loan and Dolly Varden's intention to immediately repay the Senior Loan. The press release noted the importance of the greater flexibility that Dolly Varden gained from repayment of the New Loan but did not specifically indicate an intention to do so through a private placement.

16. *Hecla Offers to Amend the Senior Loan*

[61] On June 22, 2016, Hecla made an offer (open for acceptance for two days) to amend the Senior Loan. The offer was conditional on Dolly Varden not moving ahead with the New Loan. The terms of Hecla's offer included, among other things:

– an additional loan of $1 million,

– a reduced interest rate, from 5% to 3%,

– an extension of the term of the Senior Loan by 15 months, to December 31, 2017, and

– Dolly Varden's issuance of 664,642 warrants to Hecla.

[62] On June 23, 2016, the Dolly Varden Board met and decided to reject Hecla's offer to amend the Senior Loan. Moore e-mailed Hecla's CEO, Baker, to advise him of the decision, noting that Hecla's offer did not address "the fundamental issue of debt repayment" and, specifically, did not "permit Dolly Varden to issue equity to repay the loan without obtaining Hecla's consent". Moore confirmed that Dolly Varden would be proceeding with the New Loan.

17. *Hecla Announces an Intended Unsolicited Take-over Bid*

[63] On June 27, 2016, Hecla issued a press release announcing its intention to make the Offer. At the time of the announcement, Hecla already owned a significant portion of the outstanding DV Shares, as follows:

Dolly Varden Shareholdings	**Without exercise of Hecla's warrants**	**With exercise of Hecla's warrants**
Outstanding Common Shares	18,286,963	19,518,963
Hecla Ownership – shares	2,620,291	3,870,291
Hecla Ownership – percentage	14.3%	19.8%

[64] Hecla would offer $0.69 per share in cash, reflecting a premium of approximately 55%, based on the closing price of the DV Shares on June 24, 2016.

[65] Hecla also announced that it had entered into support agreements with other shareholders (G and his spouse) who collectively held 2,500,000 DV Shares and 1,250,000 DV warrants. G and his spouse agreed to tender their shares and warrants into the Offer and to otherwise support the take-over bid. Together, G and his spouse and Hecla held 34.4% of the DV Shares on a fully-diluted basis.

18. *Dolly Varden's Relevant Board Meetings*

[66] The Dolly Varden Board received a copy of Hecla's press release during its meeting on June 27, 2016. The draft minutes of that meeting indicated that, having already discussed several matters (including, of note, a potential press release regarding a contemplated private placement and the Board's instructions for Moore to advance the private placement with the proposed finder, then to report back), the Board received Hecla's press release and the meeting was briefly adjourned. Upon reconvening, the Board minutes reflect that Moore reported on her communications with a proposed finder, who had contacted potential private placees who might be willing to invest in DV Shares at a price of $0.69 per share. The Board instructed Moore to follow up with the finder to further advance the private placement.

[67] On June 29, 2016, the Dolly Varden Board met again. The draft minutes of that meeting indicated that the Board discussed Hecla's intention to make a take-over bid, as well as proceeding with the private placement. The Board decided to schedule a meeting with potential financial advisors with respect to the Offer. The Board also discussed potential members of a special committee. Later that same day, Dolly Varden's counsel sent a letter to alert Hecla of its obligations to provide a formal valuation under MI 61-101. Dolly Varden indicated that it was initiating a process to select a valuator through its Special Committee and that arrangements should be made for Hecla to pay for the valuator's engagement. Hecla promptly responded with its view that Hecla was exempt from formal valuation obligations and that it declined to pay for any valuator.

[68] The Dolly Varden Board met again on June 30, 2016. The draft minutes of that meeting indicated that financing alternatives were discussed, including a private placement through the finder that had been previously identified. Discussions also considered the risk of legal action by Hecla and Dolly Varden's need for cash.

[69] Another Dolly Varden Board meeting was held on July 2, 2016. The draft minutes of that meeting indicated that the Board discussed the resolutions appointing the Special Committee, whose mandate would be to review and evaluate the Offer and provide recommendations to the Board. The Board then considered two options for an equity offering. Discussions noted an uncertainty regarding whether Hecla would proceed with the Offer. Ultimately, the Board decided to proceed with an equity financing through the finder. The Board instructed Moore to negotiate a finder's agreement.

19. *Dolly Varden Repays Senior Loan and Announces a Private Placement*

[70] On July 4, 2016, Dolly Varden repaid the balance of the Senior Loan, delivering approximately $2 million to Hecla. It also issued a press release announcing Dolly Varden's appointment of a Special Committee to evaluate the Offer and "actively investigate all possible alternatives". The release noted that "Hecla has not made any formal offer" and advised shareholders to wait before making any decisions.

[71] On July 5, 2016, Dolly Varden announced its intention to undertake the Private Placement. Dolly Varden announced that it would use the net proceeds to repay the New Loan (thereby eliminating its debt) and to explore the Dolly Varden property. Some proceeds would also be used for working capital.

20. *Hecla's Formal Take-over Bid is Filed*

[72] On July 8, 2016, within days of the Private Placement announcement, the Offer was formally commenced.

[73] On July 11, 2016, Dolly Varden wrote Hecla to formally advise, for the first time, that Dolly Varden was asserting claims in respect of the Kinskuch Claims. Dolly Varden alleged that Hecla breached a confidentiality provision in the Ancillary Rights Agreement when it acquired the Kinskuch Claims. Accordingly, Dolly Varden alleged that Hecla held the Kinskuch Claims pursuant to a constructive trust in favor of Dolly Varden.

III. HECLA APPLICATIONS

A. BCSC and OSC Analysis of Hecla Applications

1. *Law*

[74] This was the first instance in which the Commissions have had to consider whether a contemplated private placement is an inappropriate defensive tactic after the adoption of the changes to the Canadian take-over bid regime that became effective in May 2016. These changes require that all take-over bids:

a. remain open for a minimum period of 105 days unless the target board reduces the bid period (to a minimum of 35 days) or agrees to certain competing transactions (in which case the minimum bid period will automatically be 35 days);

b. be subject to the Required Minimum Condition; and

c. be extended for at least 10 days after the Required Minimum Condition is satisfied.

[75] These changes did not modify NP 62-202 regarding defensive take-over bid tactics, which must now be interpreted in light of these changes to the basic requirements for all bids.

[76] Subsection 1.1(2) of NP 62-202 provides that the primary objective of the take-over bid provisions "is the protection of the *bona fide* interests of the shareholders of the target company" and that "[a] secondary objective is to provide a regulatory framework within which take-over bids may proceed in an open and even-handed environment." The Policy expresses concern that certain defensive measures taken by a target's management may have the effect of denying shareholders the ability to make a decision whether to tender or not and "frustrating an open take-over bid process". In subsection 1.1(3) of the Policy, the Commissions state that they are "prepared to examine target company tactics in specific cases to determine whether they are abusive of shareholder rights."

[77] The Policy goes on to state, in part, at subsection 1.1(4):

> Without limiting the foregoing, defensive tactics that may come under scrutiny if undertaken during the course of a bid, or immediately before a bid, if the board of directors believe that a bid might be imminent, include
>
> (a) the issuance … of … securities, …
>
> (b) entering into a contract other than in the normal course of business or taking corporate action other than in the normal course of business …

[78] The Policy states, at subsection 1.1(5), that we will:

> [t]ake appropriate action if [we] become aware of defensive tactics that will likely result in shareholders being deprived of the ability to respond to a take-over bid or a competing bid.

[79] The Policy states expressly that a securities issuance, could, in certain circumstances, constitute a defensive tactic attracting regulatory scrutiny on the basis that it may frustrate the ability of shareholders to respond to a bid or a competing bid.

[80] Much of the activity by Commissions involving defensive tactics has involved shareholder rights plans and the focus has been upon when the plans no longer serve the purpose of maximizing shareholder value and choice and should be cease traded.

[81] Private placement transactions, in contrast, may serve multiple corporate objectives. They are therefore more challenging for securities regulators to review than cases involving shareholder rights plans, where the corporate objective is only to alter the dynamics of a bid environment.

[82] When reviewing a private placement in accordance with NP 62-202, the Commissions need to balance: 1) the extent to which the private placement serves *bona fide* corporate objectives, for which corporate law gives significant deference to a board of directors in exercising its business judgment, with 2) the securities law principles of facilitating shareholder choice with regard to corporate control transactions and promoting open and even-handed bid environments.

[83] The appropriate balancing of these considerations promotes certainty in corporate decision-making, while deterring a target's board of directors and management from entering into abusive transactions that deny shareholders the ability to participate in an offer or that improperly alter bid dynamics.

[84] Securities regulatory review of private placements is further complicated by the varied circumstances and options available for presenting and addressing the issue. Outside of securities commissions, a private placement may be: 1) the subject of a court proceeding, and 2) subject to stock exchange review and approval. Varying remedies are available in each of these forums.

[85] Once completed, unwinding a completed financing transaction will involve potentially difficult issues denying the target and its shareholders and the investors in the private placement of the benefits of the contractual commitments that have been made.

[86] In this case, the TSX-V had not approved the Private Placement at the time of our hearings, so the issue of forum did not arise. As a result of the undertaking by Dolly Varden not to close the Private Placement prior to the issuance of a decision in this matter, we were afforded the opportunity to consider these issues without concern about what remedy could be afforded after a transaction has closed. Those issues can be reserved for other cases.

[87] In *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 (*Asbestos*), the Supreme Court of Canada stated at paragraph 45:

> … [T]he OSC has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so. However, the discretion to act in the public interest is not unlimited. In exercising its discretion, the OSC should consider the protection of investors and the efficiency of, and public confidence in, capital markets generally.

[88] Public confidence in the capital markets requires us to consider the responsibilities of boards of directors in implementing corporate actions, including the duties owed by directors to the corporation, the standard of care imposed on directors, and the deference afforded to the business judgment of properly informed directors following appropriate governance processes. We must consider these corporate law principles when our discretion is sought to be invoked to prevent shareholder abuse of the kind that NP 62-202 is intended to address. We must also take into account that corporate law has its own remedies, available through the courts, for actions that fall short of corporate law standards, including, in appropriate cases, the oppression remedy found in many Canadian corporate law statutes. Contract law may also afford remedies in particular cases as between corporations and their shareholders. It is not the role of securities regulators to offer redress on these grounds or duplicate these remedies.

[89] We agree with the BCSC's decision *Re Red Eagle*, 2015 BCSECCOM 401 (*Red Eagle*) at paragraph 89, which cited with approval the approach stated by the Alberta Securities Commission in *Re ARC Equity Management (Fund 4) Ltd.*, 2009 ABACC 390 (*ARC*), as follows:

> We agree with the policy perspective in ARC, that securities regulators should tread warily in this area and that a private placement should only be blocked by securities regulators where there is a clear abuse of the target shareholders and/or the capital markets.

[90] It should be noted that in *Red Eagle*, the private placement being reviewed took place in respect of a take-over bid initiated while the take-over bid amendments were only proposals and not yet effective. Red Eagle's bid for CB Gold nonetheless included a 50% minimum condition. The private placement to Batero Gold Corp, the competing bidder and a related party to CB Gold, resulted in the shares tendered to the Red Eagle bid at the time of the BCSC hearing being reduced from 52% to 48%. The minimum condition was satisfied before giving effect to the private placement, but not after. However, Red Eagle had waived that condition prior to the hearing. The BCSC declined to cease trade the private placement because it was not clearly a defensive tactic, based on evidence that CB Gold needed financing to remain a going concern. In addition, without the private placement, Batero Gold Corp may not have made its offer and therefore the private placement may have helped bring about the competing offer.

[91] In addressing the effect of the waiver of the 50% minimum condition, the BCSC stated in *Red Eagle*, at paragraph 95:

> Without the waiver of the 50% minimum tender condition by Red Eagle, it was likely that this application would have become considerably more difficult to decide. If the shares issued under the Private Placement were acting as a bar to Red Eagle meeting a mandatory 50% minimum tender condition, then the objectives in the Policy of ensuring target shareholders have an opportunity to tender to bids would have become more directly engaged.

[92] Now that the Required Minimum Condition is in effect, it is not open to a party to voluntarily waive this condition, as in *Red Eagle*. However, in considering remedies to be granted in respect of particular applications, a party could potentially seek alternative relief from the Commissions, such as not including the shares issued in a private placement with a tactical motivation in the number of outstanding shares (i.e., the denominator in the calculation), for the purpose of the satisfaction of the Required Minimum Condition. This is a less drastic remedy, but also one that may be unsatisfactory to a bidder seeking a defined percentage of legal or de facto control of the target. In these proceedings, Hecla affirmatively declined to request such relief, and we did not consider the availability of this relief in this case. We were therefore presented with a binary decision to cease trade the Private Placement or allow it to proceed. If the request for alternate relief had been made, there may have been different considerations that would apply; however, we did not have to consider that issue in this case.

2. *The Applicable Test: Is the Private Placement a Defensive Tactic?*

(a) If the Private Placement is clearly not a defensive tactic

[93] We heard submissions from the parties concerning the factors that they proposed we should take into account in assessing whether or not a private placement was an inappropriate defensive tactic under the Policy for which we should exercise our public interest jurisdiction to cease trade the issuance. The factors presented required us to bear in mind the balance of interests discussed above in the context of the prevailing take-over bid regime in effect in our jurisdictions.

[94] The starting point for the analysis of a private placement in the bid context is first whether the principles set out in NP 62-202 are engaged at all. The first question is: does the evidence clearly establish that the private placement is not, in fact, a defensive tactic designed, in whole or in part, to alter the dynamics of the bid process?

[95] If the private placement is not such a defensive tactic, then the principles in NP 62-202 are inapplicable and it would only be left to consider whether there was some other reason, under the Commissions' broader public interest mandate to interfere with the private placement.

[96] In considering whether the private placement is a defensive tactic, there is the question of evidentiary onus. Where the applicant is able to establish that the impact of a private placement on an existing bid environment is material, as was the case with a potential 43% dilution in this instance, then it would seem appropriate for the target board to have the onus of establishing that the private placement was not used as a defensive tactic.

[97] A non-exhaustive list of considerations that would be relevant to answering this first question would include:

a. whether the target has a serious and immediate need for the financing;

b. whether there is evidence of a *bona fide*, non-defensive, business strategy adopted by the target; and

c. whether the private placement has been planned or modified in response to, or in anticipation of, a bid.

(b) If the Private Placement is or may be a defensive tactic

[98] Where a panel is unable to clearly find that the private placement was not used as a defensive tactic, either because there appear to be multiple purposes or there is insufficient evidence as to purpose, then the principles set out in NP 62-202 are engaged. In this circumstance, it will be necessary to find the appropriate balance between those principles and respecting a board's business judgment.

[99] As the recent amendments to the take-over bid rules represent a material readjustment of the bid dynamics in favour of allowing target boards more time to respond to hostile bids and allowing for majority shareholder approval of bids, we think, generally, that defensive tactics other than shareholder rights plans will become more common and will attract a high level of regulatory scrutiny.

[100] If a transaction is or may be a defensive tactic, in addition to the considerations listed in paragraph [97] above, the following is a non-exhaustive list of considerations that are relevant to whether a private placement should be interfered with:

a. would the private placement otherwise be to the benefit of shareholders by, for example, allowing the target to continue its operations through the term of the bid or in allowing the board to engage in an auction process without unduly impairing the bid?

b. to what extent does the private placement alter the pre-existing bid dynamics, for example by depriving shareholders of the ability to tender to the bid?

c. are the investors in the private placement related parties to the target or is there other evidence that some or all of them will act in such a way as to enable the target's board to "just say no" to the bid or a competing bid?

d. is there any information available that indicates the views of the target shareholders with respect to the take-over bid and/or the private placement?

e. where a bid is underway as the private placement is being implemented, did the target's board appropriately consider the interplay between the private placement and the bid, including the effect of the resulting dilution on the bid and the need for financing?

[101] As noted above, separate and apart from any evaluation of a private placement under the Policy, a panel must also consider whether there are any other capital markets policy considerations or other public interest considerations that are relevant under the circumstances.

[102] As market participants implement transactions under the modified take-over bid regime, the considerations we apply, and how they are applied, will necessarily evolve based on the facts presented.

3. *Application of the Law*

[103] In this case, we found that the Private Placement was instituted for non-defensive business purposes. The evidence established that Dolly Varden was contemplating an equity financing considerably in advance of Hecla's announcement of the Offer. Further, the size of the Private Placement was not inappropriate given Dolly Varden's current liabilities (including the obligation to repay the New Loan) and what would be required (as acknowledged by Hecla itself) to carry out the next phase of the exploration work on the Dolly Varden silver property. Finally, there was evidence that Dolly Varden considered a larger financing and decided not to pursue that opportunity.

[104] Under the Credit Agreement dated September 30, 2015, Hecla and G provided Dolly Varden with enough funds to discharge its 2015 obligations under its flow-through shares to avoid default and, thereafter, to only cover the bare minimum of its general and administrative costs (i.e., a hibernation budget), in the short term.

[105] A renewed exploration program required Dolly Varden to seek additional equity capital. With the price of silver increasing in April 2016, raising equity capital for this purpose became an increasingly realistic option. Dolly Varden was, however, subject to the terms of the Senior Loan that required the lenders' consent to any equity issuance. The Senior Loan was due and payable on September 30, 2016. In the months preceding the Private Placement, it was unclear whether the lenders were willing to extend the Senior Loan. G, in particular, indicated to Moore that he would not agree to extend the Senior Loan until closer to its maturity, exacerbating the uncertainty in respect of Dolly Varden's financial position.

[106] Moore also raised with Baker on multiple occasions the possibility of Dolly Varden raising equity capital or converting debt to equity, but Baker repeatedly and adamantly rejected this possibility. Hecla could enforce its objections since its consent was required under the Senior Loan. Hecla's stated objections arose from a concern for excessive dilution and a belief that market conditions were not yet ripe for Dolly Varden to undertake the longer-term equity financings needed to restart and sustain Dolly Varden's relatively expensive exploration program, which Baker estimated to be $4-5 million per year.

[107] In light of these discussions, Dolly Varden embarked on a plan to be in a position to raise equity capital by paying off the Senior Loan with the New Loan and then seeking equity capital to pay off the New Loan. Dolly Varden sought to conduct these steps in a manner that would not breach the Senior Loan’s restriction on equity issuances without lenders' consent.

[108] Given the prior discussions between Dolly Varden and Hecla concerning equity placements, and the six-month term of the New Loan, Hecla could reasonably expect that Dolly Varden would seek equity capital during this period, as market conditions permitted. In fact, Baker testified that he knew by June 24, 2016 that Dolly Varden would be doing an equity financing in the next six months as a consequence of paying off the Senior Loan.

[109] By the end of June 2016, as Dolly Varden was implementing its plans, its cash position had been reduced to approximately $200,000, making the raising of capital a very pressing matter for Dolly Varden in order to implement its plans.

[110] Hecla attempted to reassure Dolly Varden that it would extend the Senior Loan and takeout G’s portion of the loan. It offered to improve the terms of the Senior Loan by increasing the amount by $1 million, extending the term and reducing the interest rate. It would not budge on the restriction on equity issuances. Dolly Varden rebuffed Hecla's offer.

[111] Dolly Varden was concerned during this period that Hecla's views concerning Dolly Varden restarting its exploration program were influenced by Hecla's acquisition in May 2016 of the properties adjoining the Dolly Varden property and by the potential for Hecla to consolidate the mining district under common ownership.

[112] Baker testified that approximately $4-5 million would be needed per year to fund a reasonable sustained exploration program on the Dolly Varden property. The Private Placement, together with the amount paid by Hecla if it exercised its participation rights, resulting in aggregate gross proceeds of approximately $7.19 million, provided sufficient proceeds to pay off the $2.5 million New Loan and provide funds for additional exploration. These uses reasonably support the

size of the Private Placement being for *bona fide* business purposes, consistent with the strategy developed by Dolly Varden when it came out of "hibernation" in early May 2016.

[113] The development of Dolly Varden's strategy recounted above took place well before Hecla even announced its intention to proceed with its bid, let alone its actual commencement of the bid. Our point in recounting these events from earlier in the year is not to analyze whether Dolly Varden's strategy and plans were reasonable in the exercise of business judgment or not, but to demonstrate that Dolly Varden was implementing a *bona fide* strategy that its Board developed in the exercise of its business judgment. The Private Placement was not implemented for the purpose of circumventing any bid, since none had yet been advanced when the strategy had crystallized. There was no evidence presented to us that the Private Placement was modified in response to the bid so as to become defensive in character. The financing was not planned (nor modified) in response to, or in anticipation of, a bid and was therefore not pursued as a defensive tactic.

[114] Dolly Varden's Board made the judgment that it did not want to extend the Senior Loan, even on more attractive financial terms, and that it preferred equity financing without the restrictive covenants, and the resulting control that the debt financing had conferred on Hecla. In the circumstances, it is not appropriate for us to second guess the Dolly Varden Board's decision to implement an equity financing versus an extended loan from Hecla that included restrictive covenants.

[115] As discussed above, Hecla knew or would reasonably have known that Dolly Varden was planning to raise equity capital once the New Loan was announced. Once the offer of an extended loan was rejected and the repayment of the Senior Loan was imminent, Hecla announced and then later implemented its bid. The bid materialized after Dolly Varden's Private Placement plans had been put in motion. We accept that the bid was announced in response to the planned repayment of the Senior Loan and the Private Placement and not *vice versa*.

[116] In addition, there was no evidence presented that the Private Placement was modified in response to the bid so as to become defensive in character.

[117] Based on the foregoing evidence, Dolly Varden was pursuing a *bona fide* corporate objective of increasing its flexibility by seeking to terminate the restrictive covenants in the Senior Loan and to seek equity capital in order to repay indebtedness and implement a considered exploration program. In doing so, it was adjusting its strategy based on changes in commodity prices and market conditions and was seeking to develop shareholder value as an independent company.

[118] Having reached this finding, we did not need to pursue the balancing of factors set out in paragraph [100].

[119] In this case, we found the application of NP 62-202 to be relatively straight forward given the extensive evidence supporting a non-defensive purpose for the Private Placement. We recognize that other cases may involve a record where there is evidence of mixed motivations that will require the balancing of the other factors we have identified, and other factors applicable in new circumstances.

B. Public Interest Considerations

[120] We have noted the market reality that listed junior companies may often engage in dilutive equity transactions for *bona fide* business purposes. It may become a recurrent theme in the take-over bid landscape to determine how these issuances will interrelate with the Required Minimum Condition, since relatively small cash investments can swing a bidder from success to failure. This will require the Commissions to closely examine the facts in each case to determine whether the issuance is for an abusive defensive purpose, and then to fashion appropriate remedies, when warranted. Those issues do not arise in this case.

[121] We did not see any reason to interfere with the Private Placement under our broader public interest mandate.

C. OSC and BCSC Orders on Hecla Applications

[122] For the above reasons, the OSC and the BCSC issued their Orders denying the Ontario Hecla Application and the BC Hecla Application, respectively.

IV. DV APPLICATIONS

A. OSC Reasons for the Ontario DV Application

1. *Issues*

[123] The issues raised in the Ontario DV Application are as follows:

a. Did Hecla, an insider of Dolly Varden, qualify for an exemption to the formal valuation requirement? Specifically, was Hecla exempt because it had neither:

i. board nor management representation at Dolly Varden in the 12 months preceding the Offer, nor

ii. knowledge of material information concerning Dolly Varden or its securities that had not been generally disclosed?

b. Was the Offer deficient due to the omission of material undisclosed information in Hecla's possession that would reasonably be expected to affect the decision of Dolly Varden security holders to accept or reject the Offer?

2. *Law*

(a) Insiders are required to obtain a formal valuation

[124] MI 61-101 and Companion Policy 61-101CP (CP 61-101) are only in force in Ontario and Québec. Section 1.1 of CP 61-101 explains the purpose behind MI 61-101:

> 1.1 General – The Autorité des marchés financiers and the Ontario Securities Commission (or "we") regard it as essential, in connection with the disclosure, valuation, review and approval processes followed for insider bids, issuer bids, business combinations and related party transactions, that all security holders be treated in a manner that is fair and that is perceived to be fair. We are of the view that issuers and others who benefit from access to the capital markets assume an obligation to treat security holders fairly, and that the fulfillment of this obligation is essential to the protection of the public interest in maintaining capital markets that operate efficiently, fairly and with integrity.
>
> We do not consider that the types of transactions covered by this Instrument [MI 61-101] are inherently unfair. We recognize, however, that these transactions are capable of being abusive or unfair, and have made the Instrument [MI 61-101] to address this.

[125] Part 2 of MI 61-101 sets out enhanced disclosure requirements for insider bids. Specifically, subsection 2.3(1) of MI 61-101 states that the offeror in an insider bid must, among other things, obtain a formal valuation at its own expense. The independent formal valuation is supervised by an independent committee of the target, and the valuation can form the basis of arm's-length negotiations between the special committee and the bidder and also provide target shareholders with sufficient information to determine whether the offer appropriately values the target considering the nature of the acquirer.

[126] The policy rationale for the formal valuation requirement was described in the OSC decision *Re Western Wind Energy Corp.* (2013), 36 OSCB 6749 (*Western Wind*) at paragraph 19, as follows:

> The policy rationale for the formal valuation requirement is **that insiders may have access to more or better information about an issuer than other shareholders**, including undisclosed material information. That may give the bidder an unfair advantage in valuing the securities of the target. **The purpose of the formal valuation requirement is to ensure that all target shareholders are able to make an informed decision whether or not to tender to the bid and that shareholders have the benefit of an independent assessment of the fair market value of an issuer when assessing an insider bid for the issuer.** This rationale is consistent with the overall policy objectives of the take-over bid regime, which include, in particular, protecting the interests of target shareholders. **In our view, the failure to provide a formal valuation when one is required is a serious allegation.** [emphasis added]

[127] The requirement for an insider to provide a formal valuation is an important one. The disclosure of information provided through a formal valuation serves to address the asymmetry of information between the insider and other shareholders.

A formal valuation is necessary to provide all shareholders with sufficient information to permit them to make an informed decision about whether or not to tender to the insider bid.

[128] Insider bids that do not contain a formal valuation are non-compliant bids, unless an exemption is available, as discussed below. Bids that fail to meet this fundamental requirement harm the integrity of the market. Bidders should carefully consider whether they can reasonably satisfy their burden of proof that an exemption from this requirement is available and should engage with Staff as appropriate. If, instead, the bidder proceeds with its bid without a valuation and without firm grounds for the availability of an exemption under MI 61-101, and waits for the outcome of a hearing before the OSC, the issue of the valuation may well become intermixed with other issues involving the public interest, as in this case. Bidders may then have the incentive to "roll the dice" and, if any material matter goes against them, to have the option of walking away from their bid. This could, in some cases, promote the initiation of tactical bids to interfere with corporate objectives of a target company, while avoiding the significant time, effort and expense involved in producing a formal valuation. We discourage potential bidders and their counsel from taking this approach.

(b) Exemptions to the formal valuation requirement

[129] Section 2.4 of MI 61-101 provides exemptions from the formal valuation requirement in three categories of circumstances: 1) lack of knowledge and representation, 2) previous arm's length negotiations, and 3) auctions.

[130] In this case, only the first category was at issue: lack of knowledge and representation. That exemption is provided for in subsection 2.4(1)(a) of MI 61-101:

> **2.4 Exemptions from Formal Valuation Requirement**
>
> (1) Section 2.3 does not apply to an offeror in connection with an insider bid in any of the following circumstances:
>
> (a) **Lack of Knowledge and Representation** – neither the offeror nor any joint actor with the offeror has, or has had within the preceding 12 months, any board or management representation in respect of the offeree issuer, or has knowledge of any material information concerning the offeree issuer or its securities that has not been generally disclosed.

[131] The existence of any of the factors listed in subsection 2.4(1)(a) of MI 61 101 results in the exemption being unavailable to the bidder. In other words, if the bidder either had board or management representation or knowledge of material information concerning the target or its securities, the bidder cannot rely on the exemption.

[132] The phrase "board or management representation" refers to the bidder having an individual who is an employee of the bidder or in a contractual or close relationship with the bidder who is placed on the target board or target management by the bidder to fulfil their duties to the target while mindful of the bidder's interests. Such arrangement may be formal or informal. Information asymmetry is presumed in circumstances where a bidder has access to the inner workings of the target through representatives on the board of directors or management of the target. The onus falls on the insider bidder to demonstrate that it did not have board or management representation in the preceding 12 months and that it therefore fits into the four corners of the exemption on which it seeks to rely.

[133] As set out in paragraphs 30 and 31 of *Western Wind*, knowledge of material information concerning the offeree issuer or its securities that has not been generally disclosed encompasses:

a. a material fact or material change that would reasonably be expected to have a significant effect on the market price or value of the target's securities, or

b. information, the disclosure of which would reasonably affect the decision of a shareholder to accept or reject an offer, as required by item 23 of Form 62-504F1 – *Take-Over Bid Circular*.

Again, if an insider bidder seeks to rely on the exemption, the onus falls on the bidder to demonstrate that it did not have knowledge of such information.

[134] If an insider bidder does not qualify for an exemption set out in section 2.4 of MI 61-101, it may alternatively seek discretionary relief from the OSC for an exemption from the formal valuation requirement. Pursuant to subsection 9.1(2) of MI 61-101, the OSC may grant an exemption, in whole or in part, subject to conditions. Hecla did not seek such discretionary exemptive relief in this case.

3. *Application of Law*

(a) Did Hecla have board or management representation at Dolly Varden in the 12 months preceding the Offer?

[135] We found that Hecla had board representation at Dolly Varden, via Moore, within the 12 months preceding the Offer. Hecla did not meet the onus of demonstrating that it qualified for the exemption set out in subsection 2.4(1)(a) of MI 61-101.

[136] In this case, the need to include a formal valuation was not a "close call" under MI 61-101, and the considerations outlined in paragraph [128] should have resulted in a different process.

[137] As a junior mineral exploration company, Dolly Varden had only one project and very few employees. Indeed, at the time of the hearings, Moore was Dolly Varden's sole full-time employee and Dolly Varden shared offices in Vancouver with Hecla. However, well before any involvement with Dolly Varden, Moore was a consultant for Hecla, an international senior silver mining company that is exponentially larger than Dolly Varden. Hecla is Dolly Varden's largest shareholder and was a lender to Dolly Varden, with significant contractual rights in respect of Dolly Varden's affairs.

[138] Until recently, Moore was Hecla's consultant. Beginning in 2012, Moore entered into the Consulting Agreement with Hecla, which agreement was extended multiple times and most recently renewed in January 2015. Under the terms of the Consulting Agreement, Moore was prohibited from engaging in activities adverse to Hecla or its mineral properties or operating interests. Moore's consulting relationship with Hecla only formally ended earlier this year, in January 2016, when the Consulting Agreement's term expired, without Hecla or Moore taking any previous steps to terminate the agreement. The expiry seems to have passed without any discussion or particular notice by either party. As late as May 2016, Moore's e-mail signature continued to self-identify Moore as simply a "Consulting Geologist & Analyst".

[139] Formerly, Moore was also Hecla's formal representative on the Dolly Varden Board. In June 2013, Moore became Hecla's first and only nominee to Dolly Varden's Board of Directors. The Ancillary Rights Agreement with Dolly Varden gave Hecla the right to nominate a director to Dolly Varden's Board, as long as Hecla owned at least 10% of the DV Shares. Hecla exercised that right by nominating Moore. Accordingly, Moore was elected to the Dolly Varden Board in July 2013, a position she held continuously to the present. The scope of work provided for in Moore's Consulting Agreement was not amended after her election to the Dolly Varden Board. We inferred that the Board nominee role was undertaken in the normal course of Moore's consulting work for Hecla.

[140] Moore's current position as a director and then as Interim President and Chief Executive Officer of Dolly Varden was arranged by Hecla. In January 2015, a year and a half after becoming Hecla's nominee to the Dolly Varden Board, Hecla seconded Moore to Dolly Varden to become its Interim President and CEO, a position she continues to hold. At the same time as the secondment, Hecla made a conscious decision to extend Moore's Consulting Agreement for an additional year, amending the agreement in contemplation of a continuing consulting relationship with Moore, even after her appointment as an officer of Dolly Varden. Again, the scope of work provided for in Moore's Consulting Agreement was not expressly amended, but it was discussed that Moore would continue to consult with Hecla on non-Dolly Varden matters. No separate secondment agreement was entered into.

[141] Although Moore's employment was intentionally characterized by Hecla as a secondment, Moore was not seconded in the traditional sense because she was not a Hecla employee and Hecla did not pay her salary as Dolly Varden's Interim President and CEO. Nonetheless, Hecla exerted influence over Moore's compensation, as Moore's affidavit indicated that Hecla requested that Moore be put on "hibernation" wages in March 2016, essentially seeking to limit her work to one week per month. This fact was not challenged in responding affidavits from Hecla or on Moore's cross examination.

[142] We found that it was anticipated, at least initially, by all parties that Moore may return to Hecla upon completion of her indefinite secondment to Dolly Varden. At the same time as Moore's secondment began, Moore stepped down as Hecla's nominee to the Dolly Varden Board and alerted Hecla to its right to nominate another representative immediately. Hecla declined to do so. In an e-mail exchange in late January 2015, Hecla's President noted that if Hecla appointed a new nominee, then it would be complicated for Moore to return to the position if her CEO role was not permanent. He suggested waiting to nominate a new representative if Moore became Dolly Varden's permanent CEO.

[143] Hecla's failure to nominate a replacement Board member was a deliberate choice not to exercise a contractual right. At the hearing, Hecla was unable to provide any explanation for why Hecla failed to exercise its right. Based on the correspondence, we infer that Hecla declined to do so, at least in part, because Hecla was satisfied that its interests were adequately addressed by Moore continuing to serve on the Board, though not formally as Hecla's nominee, and Moore serving as Interim President and CEO of Dolly Varden. Following her secondment, Moore continued to provide

Hecla with all the advantages of a board representative through regular communications that would not likely have differed if she had formally been Hecla's board nominee, while not continuously through to the present, then at least within the 12 months preceding the Offer. In the context of a junior exploration company on a hibernation budget, it is not surprising that Hecla would view Moore's role as a convenient form of doing "double duty", even if it could generate potential conflicts of interest.

[144] Hecla's insider advantages included close communications and a good reporting relationship, both of which were intentionally maintained throughout Moore's secondment. There was evidence of continuing conversations between Hecla and Moore, even after Moore became Dolly Varden's Interim CEO. In cross examination, Moore explained that:

> … I continued to stay close with Hecla. I will say that the relationship became strained in the early part of 2016 when our – the Dolly Varden Board got the distinct impression that we were never meant to escape the loan, and the relationship became strained at that time. **But I always kept in close contact with Hecla, certainly throughout all of 2015 and well into 2016.** [emphasis added]

[145] Specifically, Moore's Affidavit sworn July 14, 2016 sets out the ways in which Moore shared information with Hecla. Part of Moore's communications with Hecla involved providing reports pursuant to a requirement of the Credit Agreement with Hecla. But Moore's communications were more than just reporting obligations to a lender. As set out in paragraph 15 of her Affidavit:

> Since January 2015, I had numerous discussions with other Hecla representatives (including, but not limited to, Philip S. Baker, Jr., Don Poirier and Kurt Allen) during casual visits to Hecla's Vancouver office, at industry conferences and at social gatherings.

[146] Internally, Hecla was always aware of the repercussions of characterizing Moore's position at Dolly Varden as a Hecla "secondment". Hecla insisted on the secondment arrangement regardless of the known risk that it would undermine a characterization of Moore down the road as independent of Hecla. Hecla's correspondence, both internally and with Moore, made early acknowledgement of the significance of the secondment and the issue of whether Moore would ever be perceived as fully independent from Hecla. E-mails between Moore, Hecla's CEO and Hecla's General Counsel demonstrated that the issue was live in their minds at the outset of the secondment, as described in paragraph [35] of these reasons.

[147] At the time of the hearings, Moore had been seconded by Hecla as Dolly Varden's "interim" CEO for over a year and a half. We drew an adverse inference from the fact that Moore had been labeled "interim" for so long. We found that both parties accepted that Moore would wear two hats pursuant to her secondment and that her ultimate return to Hecla was in everyone's contemplation.

[148] In the affidavit of Baker, Hecla's President and CEO, sworn July 18, 2016, he asserted that, though the Consulting Agreement remained in effect, Moore ceased acting as Hecla's consultant and that Moore "… did not have any responsibilities, duties or obligations to Hecla as a consultant following such appointment [as Interim CEO and President of Dolly Varden]." This assertion did not counter Moore's history with Hecla, nor the circumstances surrounding the secondment, which point to a continuing close association by Moore with Hecla.

[149] While Hecla also argued that Moore could not do both jobs or "wear both hats", as she would face unresolvable conflicts of interest, that was not the reality of how Moore's duties were performed. The fact that Moore negotiated with Hecla on behalf of Dolly Varden concerning financing alternatives after her secondment only suggests that the conflict was not raised and addressed at that time. The approach that was taken by having Moore "wear two hats" was one involving short cuts in governance practices, compliance with which would otherwise involve extra time and costs. When that approach is taken, it is not reasonable to expect that the OSC will undermine fundamental investor protections requiring an insider bidder to produce a formal valuation.

[150] Hecla pointed to the fact that Moore did not invoice Hecla for consulting services in the 12 months preceding the Offer to suggest that Moore was no longer providing any services to Hecla. The lack of invoices to Hecla from Moore after February 2015 was not persuasive evidence of any change in the nature of their relationship, especially in the circumstances of Dolly Varden's "hibernation" during a period of the secondment.

[151] Though a breakdown in the relationship between Moore and Hecla was evident by the time of the hearings, Hecla still had board representation within the year preceding the Offer. Although we found it unnecessary to pinpoint the exact time of the relationship breakdown, we found it likely occurred when it became clear that Hecla would resist Dolly Varden's efforts to raise equity and gain independence from the restrictive covenants in the Senior Loan, sometime in 2016, well within the 12 months preceding the Offer.

[152] Finally, as noted above, if an issuer believes that it is entitled to an exemption from the insider's formal valuation requirement, then the issuer can engage in discussions with Staff and apply to the OSC for that exemptive relief if appropriate. Hecla chose not to take this approach.

[153] Hecla bore the onus of demonstrating that it satisfied the exemption. It failed to satisfy this onus. It was aware of this risk, as demonstrated in the e-mails from its counsel, from the outset of Moore's secondment.

(b) Did Hecla have knowledge of material information concerning Dolly Varden or its securities that had not been generally disclosed or that was required to be included in the circular?

[154] In light of our finding that Hecla was not exempt from the formal valuation requirement due to its board representation, it is unnecessary for us to determine whether Hecla had knowledge of undisclosed material information received from Dolly Varden and whether any such information needed to be included in the circular. Regardless of Hecla's possession of undisclosed material information, or lack thereof, Hecla did not qualify for the exemption in MI 61-101 and was required to obtain a formal valuation for its Offer.

4. *OSC Order on Ontario DV Application*

[155] For the reasons set out above, we, the OSC Panel found, that Hecla had board and management representation at Dolly Varden through Moore. As a result, Hecla did not qualify for the exemption in subsection 2.4(1)(a) of MI 61-101 and was required to obtain a formal valuation.

[156] Pursuant to subsection 104(1) of the Ontario Act, we had the authority to order, among other things, compliance with the requirements of the bid regime in MI 61-101 and an amendment or variation to any document or communication used or issued in connection with a take-over bid. We found it appropriate to order that Hecla obtain, at its own expense, a formal valuation of the offeree securities, to include such valuation as an addendum to the Amended Offer (as defined in the OSC Order) and to comply with section 2.3 of MI 61-101. We also ordered that the Amended Offer shall, unless earlier terminated, remain open for acceptance until the later of: (1) 4:00 p.m. (Toronto time) on the date that is 35 days after the delivery of the Amended Offer, or (2) the "Expiry Time", as defined in the Offer. In our view, these time requirements for keeping the Amended Offer open provided adequate time for shareholders to digest the new information that a formal valuation would provide.

[157] Disclosure in the Offer was deficient due to the lack of the formal valuation and it was non-compliant with Ontario securities law. Accordingly, we cease traded the Offer pursuant to subsection 127(1)2 of the Ontario Act until a formal valuation was obtained and Hecla otherwise complied with the requirements of MI 61-101.

B. <u>BCSC Reasons for the BC DV Application</u>

1. *Was the Offer deficient due to its omission to include a valuation of the DV Shares?*

[158] MI 61-101 has not been adopted by the BCSC. Therefore, this issue came before the BCSC on the basis that the failure to include a valuation in the Hecla take-over bid circular was contrary to the public interest and that the BCSC should cease trade the Offer, under its public interest jurisdiction until the disclosure deficiency was rectified.

[159] Therefore, the BCSC Panel's analysis of this issue proceeded in a different manner, with different considerations, than that of the OSC Panel.

[160] We note, however, that MI 61-101 does apply to issuers listed on the TSX-V, as the exchange has adopted that instrument as applicable to its listed issuers.

[161] In their joint written submissions, OSC Staff and BCSC Staff asserted that the BCSC could consider the breach of an exchange policy (assuming that there was in fact a breach of MI 61-101) as part of our public interest jurisdiction. While we agree generally with that submission (*i.e.*, it is in the public interest to support compliance with exchange policies), in this case, the exchange's policy would apply to Dolly Varden (being the listed issuer) and not Hecla. In the BC DV Application, any breach of MI 61-101 would be a breach committed by Hecla and not Dolly Varden. It is hard to see where it would be in the public interest to have the BCSC, indirectly, enforce an exchange rule against Hecla that the TSX-V could not itself enforce against Hecla.

[162] It is clear the BCSC has the authority to make an order in the public interest without finding a contravention of the BC Act (*Asbestos*). The issue is determining the circumstances when a panel should exercise that authority.

[163] In the recent case of *Re Carnes*, 2015 BCSECCOM 187, a panel of the BCSC, after reviewing various cases where panels have exercised or refused to exercise the public interest jurisdiction, without a contravention of the applicable Act, both in BC and Ontario, made the following comments at paragraph 129:

> We recognize that when a panel issues an order in exercise of its public interest jurisdiction, the order has the effect of restraining or prohibiting conduct that is not prohibited specifically by legislation. Market participants should be able to structure their affairs within the context of the specific provisions of the Act, without fear of enforcement actions alleging wrongdoing that is not encoded in the Act, regulation or rules of the Commission.

[164] In so doing, the panel was advocating for a narrow view of the scope of the public interest jurisdiction in enforcement cases. This is not an enforcement case. However, the potential impact of the requested order in the BC DV Application, a cease trade of the Offer, would be significant not only for Hecla but also for the Dolly Varden shareholders. A cease trade order of the Offer until a valuation could be prepared would likely necessitate a delay in the Offer and might potentially result in a termination of the Offer. Given the potentially significant impact on the Dolly Varden shareholders, we believe this is another situation which advocates for a narrow application of the public interest jurisdiction. A narrow application of this jurisdiction has traditionally required a finding that the impugned conduct constitutes an abuse of the capital markets or investors.

[165] In the DV Applications, Dolly Varden was advocating that the Offer should be cease traded because the Dolly Varden shareholders required the inclusion of a valuation in Hecla's bid circular in order to be able to make an informed decision as to whether to tender to the Offer or not. They made this submission notwithstanding that the Board of Dolly Varden had priced a Private Placement, which would result in over 40% dilution, at a lower price than the price of the Offer. Given the valuation exercise undertaken by the Board of Dolly Varden to price the Private Placement, we did not agree with this submission of Dolly Varden.

[166] Dolly Varden further suggested that the purpose of the valuation requirement in MI 61-101 was to equalize information, and access to information, between the insider making the bid and the target shareholders. Dolly Varden submitted that Hecla had access to material undisclosed information that was not otherwise publicly available to the Dolly Varden shareholders.

[167] However, we did not find that Hecla possessed material undisclosed information regarding Dolly Varden that would make us concerned that the Offer, without a valuation, would constitute an abuse of the capital markets or investors.

[168] Further, the price of the Private Placement was negotiated between Dolly Varden and the placees with the aid of a finder. All of the evidence suggested that this was an arm's length negotiation. We do not believe that a formal valuation would offer better insight into the valuation of the DV Shares than a freely negotiated transaction between arm's length parties.

[169] The BCSC therefore dismissed this aspect of the BC DV Application.

2. *Was Hecla's Offer deficient due to the omission of material undisclosed information in Hecla's possession?*

[170] Multilateral Instrument 62-104 *Take-over Bids and Issuer Bids* contains a requirement that a bidder send to all target shareholders a bid circular in the form set out in Form 62-104 F1.

[171] Item 23(b) of Form 62-104 F1 contains a requirement that the bidder include in its circular "any other matters not disclosed in the take-over bid circular that has not previously been generally disclosed, is known to the offeror, and that would generally be expected to affect the decision of the security holders of the offeree issuer (the target) to accept or reject the offer".

[172] Dolly Varden submitted that Hecla's take-over bid circular was not in compliance with Form 62-104 F1 because Hecla possessed information that would be expected to affect the decision of the Dolly Varden shareholders and that information was not included in the Hecla take-over bid circular. In particular, Dolly Varden alleged that the following information should have been included in the circular:

– that Dolly Varden had a constructive trust claim over the Kinskuch Claims and that the value of that claim would be material to the Dolly Varden shareholders;

– the purchase price that Hecla paid for the Kinskuch Claims; and

– certain geological information pertaining to the Kinskuch Claims.

[173] The Dolly Varden property is surrounded on three sides by the Kinskuch Claims. Dolly Varden uses the physical proximity of the Kinskuch Claims as a basis for asserting the materiality of the three items set out above.

[174] However, Dolly Varden did not present any persuasive evidence that any of these suggested deficiencies were material. The materiality of the constructive trust claim is dependent upon the merits of that claim and the value of the Kinskuch Claims. We had no evidence before us to make any findings with respect to either of those items. If anything, the evidence raised questions about the merits of the constructive trust claims, as there was no dispute that Hecla was aware of the Kinskuch Claims prior to its original investment in Dolly Varden.

[175] The materiality to a Dolly Varden shareholder of the price paid by Hecla for the Kinskuch Claims and its geological information regarding those properties is dependent upon the geological connection between the Kinskuch Claims and the Dolly Varden property. Again, we did not have persuasive evidence before us to establish a connection. Moore testified specifically that sufficient work had not been done to establish any material geological connectivity between the properties.

[176] Given all of the above, we did not have sufficient evidence to find that Hecla had information in its possession, that was not included in its bid circular, that could affect the decision of the Dolly Varden shareholders to tender or not to the Offer. Therefore, the BCSC dismissed this aspect of the BC DV Application.

3. *BCSC Order on BC DV Application*

[177] For the above reasons, the BCSC issued its Order denying the BC DV Application.

Dated this 24th day of October 2016.

BCSC PANEL:

"Nigel Cave"
Nigel Cave

"George C. Glover, Jr."
George C. Glover, Jr.

"Audrey T. Ho"
Audrey T. Ho

OSC PANEL:

"D. Grant Vingoe"
D. Grant Vingoe

"Monica Kowal"
Monica Kowal

"Deborah Leckman"
Deborah Leckman

3.2 Director's Decisions

3.2.1 Investar Investment Ltd. et al. – s. 31

IN THE MATTER OF
STAFF'S RECOMMENDATION FOR
THE SUSPENSION OF REGISTRATION OF
INVESTAR INVESTMENT LTD., LIYUAN QI AND JIAN (BOB) GUO

OPPORTUNITY TO BE HEARD BY THE DIRECTOR
UNDER SECTION 31 OF THE SECURITIES ACT

Decision

1. For the reasons outlined below, my decision is to permanently suspend the registration of each of Investar Investment Ltd. (**Investar**), Liyuan Qi (**Qi**) and Jian (Bob) Guo (**Guo**) effective October 13, 2016.

Overview

2. On July 14, 2016, staff of the Compliance and Registrant Regulation branch (**CRR**) of the Ontario Securities Commission (**Commission**) (**Staff**) recommended to the Director that the registration of Investar as an exempt market dealer, Qi as ultimate designated person (**UDP**) and a dealing representative, and Guo as the chief compliance officer (**CCO**) of Investar (Investar, Qi, and Guo collectively referred to in this decision as **Registrants**) be suspended under the *Securities Act* (Ontario) (**Act**). Under section 31 of the Act, Investar, Qi and Guo are entitled to an opportunity to be heard (**OTBH**) before a decision is made by me, as Director.

3. The July 14, 2016 Staff recommendation for suspension of the Registrants set out the following reasons for their recommendation:

   a. Investar has an inadequate compliance system, and Qi and Guo are not meeting their responsibilities as UDP and CCO, respectively;

   b. Investar has been dealing outside of its registration category by entering into mutual fund distribution agreements with two fund companies and selling mutual funds to clients;

   c. Investar has been holding itself out as a mutual fund dealer to its clients;

   d. Investar failed to make timely and accurate filings with the Commission with respect to outside employment and business activities of registered individuals, including Qi and Guo;

   e. Misleading or inaccurate marketing materials; and

   f. Investar's risk assessment questionnaire dated June 28, 2016 was not accurately completed and contained incorrect information.

Should the OTBH proceed in the absence of the Registrants?

4. The OTBH with respect to this matter was scheduled for October 13, 2016 commencing at 9:30. The OTBH started approximately 15 minutes late in order to allow the Registrants more time to appear at the OTBH. At the start of the OTBH, Staff confirmed (at my request) that the Registrants were not in the OSC's reception area.

5. Victoria Paris (Legal Counsel, CRR) provided submissions to me regarding why the OTBH should proceed in the absence of the Registrants. I was advised that:

   a. an email dated August 24 from Qi to Staff states that "we are [sic] prefer to schedule [the OTBH] for Oct. 13";

   b. Staff sent its initial materials for the OTBH to Qi on September 29 with a letter that set out the date of the OTBH (October 13);

   c. Staff sent further materials for the OTBH to Qi on October 4 with a letter that also set out the date of the OTBH (October 13); and

d. An email dated October 7 from Qi to Staff (**October 7 Qi Email**) states that "We already received the hard copy and your letter … We do not think it's necessary to attend the Director hearing".

6. Although it was unclear in the October 7 Qi Email whether Qi is referring to Staff's letter of September 29 or October 4, both of which attached materials, I am satisfied that the Registrants were aware of the OTBH date of October 13.

7. On October 7, Staff sent a further email to Qi (to the email address that Qi used in the October 7 Qi Email) which states that:

> If you wish to consent to the decision to suspend, I will inform the Director and you do not have to attend the OTBH. The Director will make a decision based on the information in Staff's materials.
>
> If you wish to oppose the decision to suspend, or ask that the suspension be time limited or conditional, you must attend the OTBH and make the request to the Director. … Please let me know how you wish to proceed.
>
> (**October 7 Staff Email**)

8. In my view, the Registrants had ample notice of Staff's recommendation dated July 14, 2016, they received Staff's materials and requests for submissions, and they were notified in the October 7 Staff Email that I would make a decision based on the information in Staff's materials. Therefore, I am satisfied that the OTBH could proceed in their absence.

Should the Registrants' registrations be suspended?

9. The October 7 Qi Email also states:

> Looks like, we have no choice but accept the result to suspend our EMD license … The only hope of suspension is time limited or just a conditional suspension. So, we have a second chance to correct all the mistakes and restart our EMD business again.

10. As noted above, the October 7 Staff Email requests further submissions. Staff also sent a further email to Qi on October 11 requesting a response to the October 7 Staff Email. No response was received prior to the OTBH.

11. Staff referred me to the *Re Cornerstone Asset Management L.P.* (2015), 38 OSCB 9535 decision. In that decision, the registrant consented to the suspension of its registration, but provided no materials to the Director for review, and the Director proceeded to suspend the registration of Cornerstone. In the *Re Royal Securities Corp. and Ningyuan Guo also known as Mark Guo* (2011), 34 OSCB 8043 decision, the Registrant failed to appear at the in person OTBH (as requested by the Director given the seriousness of the misconduct) and instead provided written submissions that the Director described as "disjointed, confusing, and generally difficult to understand". The Director stated that:

> Based on the submissions before me and the fact that Mr. Guo [the UDP and CCO of Royal Securities Corp.] failed to attend the OTBH and refused to cooperate with Staff's attempt to conduct a compliance review of the Registrants, my decision is that the registration of Mr. Guo and [Royal Securities Corp.] be suspended, effectively immediately.

12. In my view, these decisions are directly relevant to the case at hand. The Registrants have, in my view, consented to the suspension of their registrations.

Should the suspensions of the Registrants be time limited or permanent?

13. In the Registrants' very brief submissions to me in the October 7 Qi Email (which were the only submissions made by the Registrants to me), I was asked to consider whether the suspensions of the Registrants should be permanent or time limited.

14. My decision is that the suspensions of the Registrants should all be permanent. I agree with Staff's recommendation and, in my view, the misconduct described in paragraph 3 above represents a pattern of serious non-compliance with Ontario securities law that is sufficient to demonstrate that the elements of the test for suspension under section 28 of the Act have been met.

Request for Staff to follow up on clients holding mutual fund securities illegally sold to them by Investar

15. Lastly, Staff is urged to take appropriate follow up action with respect to the clients holding mutual fund securities illegally sold to them by Investar including contacting the two fund companies to determine how to best deal with these clients.

"Marrianne Bridge", FCPA, FCA
Deputy Director, Compliance, Strategy and Risk
Compliance and Registrant Regulation
Ontario Securities Commission

October 17, 2016

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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

THERE IS NOTHING TO REPORT THIS WEEK.

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
Performance Sports Group Ltd.	19 October 2016	31 October 2016			

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
AlarmForce Industries Inc.	19 Sept 2016	30 Sept 2016	30 Sept 2016		
iSIGN Media Solutions Inc.	09 Sept 2016	21 Sept 2016	21 Sept 2016		
Performance Sports Group Ltd.	19 October 2016	31 October 2016			
Starrex International Ltd.	30 December 2015	11 January 2016	11 January 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:
eCobalt Solutions Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Base Shelf Prospectus dated October 19, 2016
NP 11-202 Receipt dated October 19, 2016
Offering Price and Description:
$100,000,000.00
Common Shares
Preference Shares
Debt Securities
Warrants
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2542581

Issuer Name:
Great Panther Silver Limited
Principal Regulator – British Columbia
Type and Date:
Preliminary Base Shelf Prospectus dated October 20, 2016
NP 11-202 Receipt dated October 21, 2016
Offering Price and Description:
$80,000,000.00
Common Shares
Warrants
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2543315

Issuer Name:
Iron Man Protection Systems, Inc.
Type and Date:
Preliminary Long Form Non-Offering Prospectus dated October 20, 2016
Preliminary Receipted on October 20, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Richard M. Smith
Project #2542946

Issuer Name:
NewCastle Gold Ltd.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 18, 2016
NP 11-202 Receipt dated October 18, 2016
Offering Price and Description:
$18,450,000.00 – 22,500,000 Common Shares
Price: $0.82 per Common Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
Canaccord Genuity Corp.
Cormark Securities Inc.
National Bank Financial Inc.
Beacon Securities Limited
BMO Nebitt Burns Inc.
Haywood Securities Inc.
GMP Securities L.P.
Paradigm Capital Inc.
PI Financial Corp.
Promoter(s):
-
Project #2540943

Issuer Name:
Profound Medical Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 21, 2016
NP 11-202 Receipt dated October 21, 2016
Offering Price and Description:
$17,402,000.00 – 15,820,000 Common Shares
$1.10 per Common Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Echelon Wealth Partners Inc.
Mackie Research Capital Corporation
Promoter(s):
-
Project #2542214

Issuer Name:
AGF American Growth Class*
(Mutual Fund Series, Series D, Series F, Series I, Series O, Series Q, Series T and Series V Securities)
AGF Diversified Income Fund
(Mutual Fund Series, Series F, Series I, Series O and Series Q Securities)
AGF Global Dividend Fund
(Mutual Fund Series, Series F, Series I, Series O, Series Q, Series T, Series V and Series W Securities)
AGF Global Equity Fund
(Mutual Fund Series, Series F, Series I, Series O, Series Q and Series W Securities)
AGF Global Sustainable Growth Equity Fund
(Mutual Fund Series, Series F, Series I, Series O, Series Q and Series W Securities)
AGF Monthly High Income Fund
(Mutual Fund Series, Series F, Series I, Series O, Series Q and Series T Securities)
AGF Precious Metals Fund
(Mutual Fund Series, Series F, Series I, Series O and Series W Securities)
* a class of AGF All World Tax Advantage Group Limited
Principal Regulator – Ontario
Type and Date:
Amendment #2 dated October 18, 2016 to the Simplified Prospectuses and Annual Information Form dated April 18, 2016
NP 11-202 Receipt dated October 20, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
-
Project #2455518

Issuer Name:
Mutual Fund Trust Units of:
Investors U.S. Money Market Fund
Investors Cornerstone I Portfolio
Investors Cornerstone II Portfolio
Investors Cornerstone III Portfolio
Classic Series Units and Premium Series Units of:
Investors Canadian Money Market Fund
Series A, Series B, Series C, Series JDSC , Series JNL and Series U Units of:
Investors Mortgage and Short Term Income Fund
Investors Canadian Bond Fund
Investors Canadian Corporate Bond Fund
Investors Global Bond Fund
Investors Canadian High Yield Income Fund
IG Mackenzie Income Fund
IG Mackenzie Floating Rate Income Fund
IG Putnam U.S. High Yield Income Fund
Investors Canadian Large Cap Value Fund
Investors Canadian Equity Fund
Investors Canadian Growth Fund
Investors Core Canadian Equity Fund
Investors Canadian Small Cap Fund
Investors Canadian Small Cap Growth Fund
Investors Quebec Enterprise Fund
IG Fiera Canadian Small Cap Fund
IG Beutel Goodman Canadian Equity Fund
Investors Summa SRI Fund
IG FI Canadian Equity Fund
IG Mackenzie Dividend Growth Fund
IG Mackenzie Canadian Equity Growth Fund
IG Franklin Bissett Canadian Equity Fund
Investors Canadian Natural Resource Fund
Investors Canadian Equity Income Fund
Investors Low Volatility Canadian Equity Fund
Investors Core U.S. Equity Fund
Investors U.S. Large Cap Value Fund
Investors U.S. Dividend Growth Fund
Investors U.S. Opportunities Fund
IG AGF U.S. Growth Fund
IG FI U.S. Large Cap Equity Fund
IG Putnam U.S. Growth Fund
IG Putnam Low Volatility U.S. Equity Fund
Investors Global Fund
Investors North American Equity Fund
Investors International Equity Fund
Investors European Equity Fund
Investors European Mid-Cap Equity Fund
Investors Pacific International Fund
Investors Pan Asian Equity Fund
Investors Greater China Fund
IG Mackenzie Ivy European Fund
IG Mackenzie Cundill Global Value Fund
IG AGF Global Equity Fund
IG Templeton International Equity Fund
Investors Low Volatility Global Equity Fund
Investors Global Science & Technology Fund
Investors Global Financial Services Fund
Investors Global Real Estate Fund
Allegro Conservative Portfolio
Allegro Moderate Conservative Portfolio
Allegro Moderate Portfolio
Allegro Moderate Aggressive Portfolio

Allegro Moderate Aggressive Canada Focus Portfolio
Allegro Aggressive Portfolio
Allegro Aggressive Canada Focus Portfolio
Investors Fixed Income Flex Portfolio
Investors Global Fixed Income Flex Portfolio
Investors Growth Portfolio
Investors Income Plus Portfolio
Investors Growth Plus Portfolio
Investors Retirement Growth Portfolio
Investors Retirement Plus Portfolio
Alto Conservative Portfolio
Alto Moderate Conservative Portfolio
Alto Moderate Portfolio
Alto Moderate Aggressive Portfolio
Alto Moderate Aggressive Canada Focus Portfolio
Alto Aggressive Portfolio
Alto Aggressive Canada Focus Portfolio
Series A, Series B, Series C, Series TNL, Series TDSC, Series TC, Series JDSC, Series JNL, Series TJDSC, Series TJNL, Series U and Series TuUnits of:
Investors Canadian Balanced Fund
Investors Mutual of Canada
Investors Dividend Fund
Investors U.S. Dividend Registered Fund
Investors Global Dividend Fund
IG Beutel Goodman Canadian Balanced Fund
IG AGF Canadian Balanced Fund
IG FI Canadian Allocation Fund
IG Mackenzie Strategic Income Fund
Alto Monthly Income Portfolio
Alto Monthly Income and Growth Portfolio
Alto Monthly Income and Enhanced Growth Portfolio
Alto Monthly Income and Global Growth Portfolio
Maestro Income Balanced Portfolio
Maestro Balanced Portfolio
Maestro Growth Focused Portfolio
Series C, Series JDSC, Series JNL and Series U Units of:
IG Beutel Goodman Canadian Small Cap Fund
Series JDSC, Series JNL and Series U Units of:
IG Putnam Emerging Markets Income Fund
Principal Regulator – Manitoba

Type and Date:
Amendment #1 dated September 26, 2016 to the Simplified Prospectuses and Annual Information Form dated June 30, 2016
NP 11-202 Receipt dated October 24, 2016

Offering Price and Description:
Mutual Fund Trust Units, Classic Series Units and Premium Series Units, Series A, Series B, Series C, Series TNL, Series TDSC, Series TC, Series JDSC, Series JNL, Series TJDSC, Series TJNL, Series U and Series TuUnits @ Net Asset Value

Underwriter(s) or Distributor(s):
INVESTORS GROUP FINANCIAL SERVICES INC.
INVESTORS GROUP SECURITIES INC.
Investors Group Financial Services Inc. and Investors Group Securities Inc.
Investors Group Financial Services Inc.
Investors Group Financial Services Inc. & Investors Group Securties Inc.
Investors Group Financial Services Inc./Investos Group Securities Inc.
Investors Group Financial Services Inc. and Investors Group Securities Inc
Investors Group Financial Services Inc. and Investors Group
Investors Group Financial Services Inc. and Investors Groups Securities Inc
Investors Group Financial Inc. and Investors Group Securities Inc.

Promoter(s):
I.G. INVESTMENT MANAGEMENT, LTD.

Project #2489976

Issuer Name:
Series RDSP Units of:
Investors Canadian Money Market Fund
Investors Cornerstone III Portfolio
Series A-RDSP Units and Series B-RDSP Units of:
Allegro Conservative Portfolio
Allegro Moderate Conservative Portfolio
Allegro Moderate Portfolio
Allegro Moderate Aggressive Portfolio
Allegro Aggressive Portfolio
Alto Conservative Portfolio
Alto Moderate Conservative Portfolio
Alto Moderate Portfolio
Alto Moderate Aggressive Portfolio
Alto Aggressive Portfolio
Principal Regulator – Manitoba

Type and Date:
Amendment #1 dated September 26, 2016 to the Simplified Prospectuses and Annual Information Form dated June 30, 2016
NP 11-202 Receipt dated October 24, 2016

Offering Price and Description:
Series A-RDSP Units and Series B-RDSP Units @ Net Asset Value

Underwriter(s) or Distributor(s):
Investors Group Financial Services Inc. and Investors Group Securities Inc.

Promoter(s):
-

Project #2490445

Issuer Name:
Series A, Series B, Series JDSC, Series JNL and Series U Shares of:
Investors Canadian Equity Class
Investors Canadian Growth Class
Investors Canadian Large Cap Value Class
Investors Canadian Small Cap Class
Investors Canadian Small Cap Growth Class
Investors Core Canadian Equity Class
Investors Low Volatility Canadian Equity Class
Investors Quebec Enterprise Class
Investors Summa SRI Class
IG Beutel Goodman Canadian Equity Class
IG FI Canadian Equity Class
IG Fiera Canadian Small Cap Class
IG Franklin Bissett Canadian Equity Class
IG Mackenzie Canadian Equity Growth Class
Investors Core U.S. Equity Class
Investors U.S. Large Cap Value Class
Investors U.S. Opportunities Class
Investors U.S. Small Cap Class
IG AGF U.S. Growth Class
IG FI U.S. Large Cap Equity Class
IG Putnam Low Volatility U.S. Equity Class
IG Putnam U.S. Growth Class
Investors European Equity Class
Investors European Mid-Cap Equity Class
Investors Global Class
Investors Greater China Class
Investors International Equity Class
Investors International Small Cap Class
Investors Low Volatility Global Equity Class
Investors North American Equity Class
Investors Pacific International Class
Investors Pan Asian Equity Class
IG AGF Global Equity Class
IG Mackenzie Cundill Global Value Class
IG Mackenzie Emerging Markets Class
IG Mackenzie Ivy European Class
IG Mackenzie Ivy Foreign Equity Class
IG Templeton International Equity Class
Investors Global Consumer Companies Class
Investors Global Financial Services Class
Investors Global Health Care Class
Investors Global Infrastructure Class
Investors Global Natural Resources Class
Investors Global Science & Technology Class
IG Mackenzie Global Precious Metals Class
Allegro Growth Portfolio Class
Allegro Growth Canada Focus Portfolio Class
Series A, Series B, Series JDSC, Series JNL, Series TDSC, Series TNL, Series TJDSC, Series TJNL, Series TU and Series U Shares of:
Allegro Income Balanced Portfolio Class
Allegro Balanced Portfolio Class
Allegro Balanced Growth Portfolio Class
Allegro Balanced Growth Canada Focus Portfolio Class
Investors Dividend Class
Maestro Income Balanced Portfolio Class
Maestro Balanced Portfolio Class
Maestro Growth Focused Portfolio Class
Series A and Series B Shares of:
Investors Canadian Money Market Class
Principal Regulator – Manitoba
Type and Date:
Amendment #1 dated September 26, 2016 to the Simplified Prospectuses and Annual Information Form dated June 30, 2016
NP 11-202 Receipt dated October 24, 2016
Offering Price and Description:
Series A, Series B, Series JDSC, Series JNL, Series TDSC, Series TNL, Series TJDSC, Series TJNL, Series TU and Series U Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
INVESTORS GROUP FINANCIAL SERVICES INC.
INVESTORS GROUP SECURITIES INC.
Investors Group Financial Services Inc. and Investors Group Securities Inc.
Investors Group Financial Services Inc. and Investors Group Securities Inc
Investors Group Financial Inc. and Investors Group Securities Inc.
Investors Groupe Financial Services Inc.and Investors Group Securities Inc.
Investors Groupe Financial Services Inc. and Investors Group Securities Inc.
Investors Group Financial Services Inc. & Investors Group Securities Inc.
Investors Group Financial Services Inc. and Investors Group Securties Inc.
Investors Group Financial Services Inc. and Investors Global Securities Inc.
Investors Financial Services Inc. and Investors Group Securities Inc.
Investors Group Financial Services Inc.and Investors Group Securities Inc.
Promoter(s):
I.G. INVESTMENT MANAGEMENT, LTD.
Project #2489312

Issuer Name:
Alterra Power Corp.
Principal Regulator – British Columbia
Type and Date:
Final Short Form Prospectus dated October 19, 2016
NP 11-202 Receipt dated October 19, 2016
Offering Price and Description:
C$35,004,000 – 5,834,000 Common Shares
Price: C$6.00 Per Common Share
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
RAYMOND JAMES LTD.
CANACCORD GENUITY CORP.
CORMARK SECURITIES INC.
RBC DOMINION SECURITIES INC.
Promoter(s):
-
Project #2539575

Issuer Name:
CARDS II Trust
Principal Regulator – Ontario
Type and Date:
Final Base Shelf Prospectus dated October 21, 2016
NP 11-202 Receipt dated October 21, 2016
Offering Price and Description:
Up to $11,000,000,000 Credit Card Receivables Backed Notes
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
Laurentian Bank Securities Inc.
Merrill Lynch Canada Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
Canadian Imperial Bank of Commerce
Project #2541385

Issuer Name:
Series I and Series TI Units of:
iProfile Canadian Equity Pool
iProfile U.S. Equity Pool
iProfile International Equity Pool
iProfile Emerging Markets Pool
iProfile Fixed Income Pool
Series I and Series TI Shares of:
iProfile Canadian Equity Class
iProfile U.S. Equity Class
iProfile International Equity Class
iProfile Emerging Markets Class
Series I Shares of:
Investors Canadian Money Market Class
Principal Regulator – Manitoba
Type and Date:
Amendment #1 dated September 26, 2016 to the Simplified Prospectuses and Annual Information Form dated June 30, 2016
NP 11-202 Receipt dated October 24, 2016
Offering Price and Description:
Series I and Series TI Units and Series I and Series TI Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
INVESTORS GROUP FINANCIAL SERVICES INC.
INVESTORS GROUP SECURITIES INC.
Investors Group Financial Services Inc. and Investors Group Securities Inc.
Promoter(s):
-
Project #2489393

Issuer Name:
Investors Real Property Fund
Principal Regulator – Manitoba
Type and Date:
Amendment #1 dated September 26, 2016 to the Simplified Prospectuses and Information Form dated June 30, 2016
NP 11-202 Receipt dated October 24, 2016
Offering Price and Description:
Series A, Series C, Series JDSC, and Series U Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Investors Group Financial Services Inc.and Investors Group Securities Inc.
Promoter(s):
-
Project #2490261

Issuer Name:
iShares Canadian Financial Monthly Income ETF
iShares Equal Weight Banc & Lifeco ETF
iShares Premium Money Market ETF
iShares Short Duration High Income ETF (CAD-Hedged) (FKA, iShares Advantaged Short Duration High Income ETF (CAD-Hedged)
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated October 21, 2016
NP 11-202 Receipt dated October 24, 2016
Offering Price and Description:
Common Units and Advisor Class Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2535357

Issuer Name:
Marathon Gold Corporation
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated October 18, 2016
NP 11-202 Receipt dated October 18, 2016
Offering Price and Description:
$7,992,000.00 – 8,880,000 FLOW-THROUGH COMMON SHARES
$0.90 per FT Share
Underwriter(s) or Distributor(s):
HAYWOOD SECURITIES INC.
BEACON SECURITIES LIMITED
CANACCORD GENUITY CORP.
PARADIGM CAPITAL INC.
Promoter(s):
-
Project #2538707

Issuer Name:
NUVISTA ENERGY LTD.
Principal Regulator – Alberta
Type and Date:
Final Short Form Prospectus dated October 21, 2016
NP 11-202 Receipt dated October 21, 2016
Offering Price and Description:
$90,009,000.00 – 13,140,000 Common Shares
Price $6.85 per Common Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Peters & Co. Limited
CIBC World Markets Inc.
Scotia Capital Inc.
GMP Securities L.P.
TD Securities Inc.
BMO Nesbitt Burns Inc.
AltaCorp Capital Inc.
Cormark Securities Inc.
Credit Suisse Securities (Canada), Inc.
Desjardins Securities Inc.
Raymond James Ltd.
Promoter(s):
-
Project #2540586

Issuer Name:
ETF units, ETF non-currency hedged units, Class A units, Class A non-currency hedged units,
Class F units, Class F non-currency hedged units, Class I units, Class I non-currency hedged
units
and Class D units (unless otherwise indicated) of
Purpose High Interest Savings ETF (ETF units and Class I units)
Purpose US Dividend Fund
Purpose International Dividend Fund (ETF units, Class A units, Class F units, Class I units and
Class D units)
Purpose Tactical Investment Grade Bond Fund (ETF units, Class A units, Class F units, Class I
units and Class D units)
Purpose US Cash ETF (ETF units and Class I units)
ETF shares, Series A shares, Series F shares, Series I shares, Series D shares,
Series XA shares and Series XF shares (unless otherwise indicated) of
Purpose International Tactical Hedged Equity Fund
Purpose Premium Money Market Fund (Series A shares, Series F shares and Series XF shares)
Purpose Canadian Financial Income Fund (ETF shares, Series A shares, Series F shares,
Series XA shares and Series XF shares)
Purpose Conservative Income Fund (ETF shares, Series A shares, Series F shares, Series D
shares, Series XA shares and Series XF shares)

Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectuses dated October 17, 2016
NP 11-202 Receipt dated October 19, 2016
Offering Price and Description:
ETF units, ETF non-currency hedged units, Class A units, Class A non-currency hedged units, Class F units, Class F non-currency hedged units, Class I units, Class I non-currency hedged units and Class D units , and
ETF shares, Series A shares, Series F shares, Series D shares, Series XA shares and Series XF shares @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Purpose Investments Inc.
Project #2510588

Issuer Name:
Spectra7 Microsystems Inc.
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated October 20, 2016
NP 11-202 Receipt dated October 20, 2016
Offering Price and Description:
$6,700,000 – 19,705,883 Common Shares
Price: $0.34 per Common Share
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
DUNDEE SECURITIES LTD.
MACKIE RESEARCH CAPITAL CORPORATION
Promoter(s):
-
Project #2539628

Issuer Name:
Legacy Ventures International Inc.
Type and Date:
Preliminary Long Form Prospectus dated April 20, 2016
Closed on October 21, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Rehan Saeed
Project #2472569

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	AON Securities Investment Management Inc.	Commodity Trading Manager and Portfolio Manager	October 18, 2016
New Registration	Atlas Capital Inc.	Exempt Market Dealer	October 19, 2016
New Registration	ICPP Funds Ltd.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	October 20, 2016
Voluntary Surrender	Veritas Investment Research Corporation	Portfolio Manager and Exempt Market Dealer	October 20, 2016
Change in Registration Category	Letko, Brosseau & Associates Inc.	From: Investment Fund Manager and Portfolio Manager To: Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	October 21, 2016
New Registration	Veritas Asset Management Inc.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	October 21, 2016
New Registration	Loop Securities Inc.	Exempt Market Dealer	October 21, 2016
New Registration	AngelList Advisors, LLC	Restricted Dealer	October 24, 2016
Voluntary Surrender	FirstEnergy Capital Corp.	Investment Dealer	October 24, 2016

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 MFDA – Proposed Amendments to MFDA Rule 1.2.5 (Misleading Business Titles Prohibited) – OSC Staff Notice of Request for Comment

OSC STAFF NOTICE OF REQUEST FOR COMMENT

THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA (MFDA)

PROPOSED AMENDMENTS TO MFDA RULE 1.2.5 (MISLEADING BUSINESS TITLES PROHIBITED)

On October 6, 2016, the Board of Directors of the MFDA approved the publication of the proposed amendments to MFDA Rule 1.2.5 (Misleading Business Titles Prohibited). MFDA is publishing for public comment the proposed amendments which are intended to respond to investor confusion by establishing minimum proficiency requirements for Approved Persons who wish to use the title “Financial Planner”.

A copy of the MFDA Notice including the proposed amendments to MFDA Rule 1.2.5 is published on our website at www.osc.gov.on.ca. The comment period ends on January 25, 2017.

13.2 Marketplaces

13.2.1 TSX – Housekeeping Amendments to the TSX Company Manual – Notice of Housekeeping Rule Amendments

TORONTO STOCK EXCHANGE

NOTICE OF HOUSEKEEPING RULE AMENDMENTS

HOUSEKEEPING AMENDMENTS TO THE TSX COMPANY MANUAL

Introduction

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 (the "**Protocol**"), Toronto Stock Exchange ("**TSX**") has adopted, and the Ontario Securities Commission has approved, amendments (the "**Amendments**") to Parts III, IV and VI of the TSX Company Manual (the "**Manual**"). The Amendments are Housekeeping Rules under the Protocol and therefore have not been published for comment. The Ontario Securities Commission has not disagreed with the categorization of the Amendments as Housekeeping Rules.

Reasons for the Amendments

The Amendments relate to non-public interest changes to (i) update requirements in the Manual regarding stock symbols, and (ii) require issuers to email certain news releases disclosing voting results of director elections to TSX.

Summary of the Amendments

Section	Amendment	Rationale
355 – Stock Symbol 619(b) – Name or Symbol Changes	Amend sections to reflect that stock symbols may now consist of up to four letters of the alphabet instead of the previous limit of up to three letters.	Update Manual to reflect the availability of four letter stock symbols.
461.4 – News release disclosing detailed voting results	Amend section to require issuers to email TSX a copy of the news release disclosing voting results of director elections where one or more director is not elected by a majority of votes.	Update notice requirement so that TSX receives news release via email.

Text of the Amendments

The Amendments to the Manual are set out as blacklined text at **Appendix A**. For ease of reference, a clean version of the Amendments to the Manual is set out at **Appendix B**.

Timing and Transition

The Amendments become effective on **November 1, 2016**.

APPENDIX A

BLACKLINES OF
NON-PUBLIC INTEREST AMENDMENTS TO THE TSX COMPANY MANUAL

Stock Symbol

Sec. 355.

The new listed issuer is assigned a stock symbol by Exchange staff. The stock symbol is an abbreviation of the issuing company's name, consisting of not more than ~~three~~ four letters of the alphabet. A suffix is attached to the symbol to identify preferred shares, rights, warrants, or a specific class of shares.

A request for a specific trading symbol may be made to the Exchange by the company when applying for listing. Every effort will be made to reserve the symbol requested, but there is no guarantee that it will be available.

The stock symbol assigned by the Exchange will be unique to the company for all trading on Canadian exchanges. If the company is already listed on another Canadian exchange, its securities will trade on the Toronto Stock Exchange under the same symbol.

Sec. 461.4.

Following each meeting of security holders at which there is a vote on the election of directors at an uncontested meeting, each listed issuer must forthwith issue a news release disclosing the detailed voting results for the election of each director~~.~~[7] and must forthwith provide a copy of the news release to TSX by email to disclosure@tsx.com if one or more director is not elected by at least a majority of the votes cast with respect to his or her election.

Sec. 619. Name or Symbol Changes

(a) A listed issuer proposing to change its name must notify TSX as soon as possible after the decision to change the name has been made. The new name must be acceptable to TSX.

(b) If the proposed change is substantial, it may be appropriate for TSX to assign a new stock symbol to the listed issuer's securities. The listed issuer's choices, if any, in this regard should be communicated to TSX, in order of preference, in advance of the effective date of the name change. The symbol may consist of up to ~~three~~ four letters (excluding the letters that differentiate between different classes of securities).

[7] The news release is intended to provide the reader with insight into the level of support received for each director. Accordingly, issuers should disclose one of the following in their news release: (i) the percentages of votes received 'for' and 'withheld' for each director; (ii) the total votes cast by ballot with the number that each director received 'for'; or (iii) the percentages and total number of votes received 'for' each director.

If no formal count has occurred that would meaningfully represent the level of support received by each director, for example when a vote is conducted by a show of hands, TSX expects the disclosure at least to reflect the votes represented by proxy that would have been withheld from each nominee had a ballot been called, as a percentage of votes represented at the meeting.

APPENDIX B

NON-PUBLIC INTEREST AMENDMENTS TO THE TSX COMPANY MANUAL

Stock Symbol

Sec. 355.

The new listed issuer is assigned a stock symbol by Exchange staff. The stock symbol is an abbreviation of the issuing company's name, consisting of not more than four letters of the alphabet. A suffix is attached to the symbol to identify preferred shares, rights, warrants, or a specific class of shares.

A request for a specific trading symbol may be made to the Exchange by the company when applying for listing. Every effort will be made to reserve the symbol requested, but there is no guarantee that it will be available.

The stock symbol assigned by the Exchange will be unique to the company for all trading on Canadian exchanges. If the company is already listed on another Canadian exchange, its securities will trade on the Toronto Stock Exchange under the same symbol.

Sec. 461.4.

Following each meeting of security holders at which there is a vote on the election of directors at an uncontested meeting, each listed issuer must forthwith issue a news release disclosing the detailed voting results for the election of each director,[7] and must forthwith provide a copy of the news release to TSX by email to disclosure@tsx.com if one or more director is not elected by at least a majority of the votes cast with respect to his or her election.

Sec. 619. Name or Symbol Changes

(a) A listed issuer proposing to change its name must notify TSX as soon as possible after the decision to change the name has been made. The new name must be acceptable to TSX.

(b) If the proposed change is substantial, it may be appropriate for TSX to assign a new stock symbol to the listed issuer's securities. The listed issuer's choices, if any, in this regard should be communicated to TSX, in order of preference, in advance of the effective date of the name change. The symbol may consist of up to four letters (excluding the letters that differentiate between different classes of securities).

[7] The news release is intended to provide the reader with insight into the level of support received for each director. Accordingly, issuers should disclose one of the following in their news release: (i) the percentages of votes received 'for' and 'withheld' for each director; (ii) the total votes cast by ballot with the number that each director received 'for'; or (iii) the percentages and total number of votes received 'for' each director.

If no formal count has occurred that would meaningfully represent the level of support received by each director, for example when a vote is conducted by a show of hands, TSX expects the disclosure at least to reflect the votes represented by proxy that would have been withheld from each nominee had a ballot been called, as a percentage of votes represented at the meeting.

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