The Ontario Securities Commission

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Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

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1.1 Notices

1.1.1 Executive Director's Designation and Determination

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5, AS AMENDED
(the "Act")

AND

IN THE MATTER OF
THE DESIGNATION BY THE EXECUTIVE DIRECTOR OF POSITIONS FOR
THE PURPOSES OF THE DEFINITION OF DIRECTOR IN THE ACT

AND

IN THE MATTER OF
THE ASSIGNMENT OF CERTAIN POWERS AND DUTIES OF
THE ONTARIO SECURITIES COMMISSION

EXECUTIVE DIRECTOR'S DESIGNATION AND DETERMINATION

WHEREAS:

A. On December 14, 2015 (the **December 2015 Assignment**), the Commission issued an amended and restated assignment pursuant to subsection 6(3) of the Act, assigning certain of its powers and duties under the Act to each "Director" as that term is defined in subsection 1(1) of the Act, acting individually.

B. Under subsection 1(1) of the Act, "Director" means the Executive Director of the Commission, a Director or Deputy Director of the Commission, or a person employed by the Commission in a position designated by the Executive Director.

C. The December 2015 Assignment provides that the Executive Director of the Commission shall from time to time determine which one or more other Directors, in each case acting alone, should, as an administrative matter, exercise each of the powers or perform each of the duties assigned by the Commission in paragraph 2 of the Assignment, each of which powers may also be exercised and performed by the Executive Director, acting alone.

D. On March 4, 2010, the Executive Director issued a designation and determination (the **March 2010 Designation**) whereby the Executive Director, among other things: (i) revoked the previous existing designation and determination, (ii) designated certain positions, whether or not in an acting capacity, for the purposes of the definition of "Director" contained in subsection 1(1) of the Act, and (iii) determined that, in addition to the Executive Director acting alone, each Director (other than certain specified Directors) may exercise the powers and perform the duties assigned by the Commission to Directors in an assignment issued by the Commission pursuant to subsection 6(3) of the Act on February 2, 2010 and any other successor assignment in effect from time to time, until otherwise determined by the Executive Director.

E. The Executive Director considers it desirable to amend and restate the March 2010 Designation to reflect: (i) the change in name of a branch of the Commission; (ii) the elimination of a position in the Compliance and Registrant Regulation Branch; and (iii) the change in responsibilities of staff of the Corporate Finance Branch for purposes of granting exemptions from fees for the late filing of insider reports on Form 55-102F2 under Commission Rule 13-502 *Fees*.

NOW THEREFORE, the Executive Director:

1. revokes the March 2010 Designation;

2. designates each of the following positions, whether or not in an acting capacity, for the purposes of the definition of "Director" contained in subsection 1(1) of the Act:

   (a) each Manager and Assistant Manager in the Corporate Finance Branch of the Commission,

   (b) each Manager, Assistant Manager, and Registration Supervisor in the Compliance and Registrant Regulation Branch of the Commission,

   (c) each Manager and Assistant Manager in the Market Regulation Branch of the Commission,

   (d) each Manager and Assistant Manager in the Enforcement Branch of the Commission,

   (e) each Manager and Assistant Manager in the Investment Funds and Structured Products Branch of the Commission,

   (f) the Chief Accountant of the Commission, and

   (g) the General Counsel of the Commission;

3. designates the Supervisor-Business Processes and each Senior Legal Counsel and Senior Accountant in the Corporate Finance Branch of the Commission for the purposes of the definition of "Director" contained in subsection 1(1) of the Act, but solely for the purpose of granting exemptions from fees for the late filing of insider reports on Form 55-102F2 under Commission Rule 13-502 *Fees*; and

4. determines that, in addition to the Executive Director acting alone, each Director, other than the Supervisor-Business Processes and each Senior Legal Counsel and Senior Accountant in the Corporate Finance Branch of the Commission, may exercise the powers and perform the duties assigned by the Commission to Directors in the December 2015 Assignment and any successor assignment in effect from time to time, until otherwise determined by the Executive Director.

DATED at Toronto this 18th day of April, 2017.

“Leslie Byberg”
Executive Director
Ontario Securities Commission

1.1.2 CSA Consultation Paper 52-403 Auditor Oversight – Issues in Foreign Jurisdictions

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Consultation Paper 52-403
Auditor Oversight
Issues in Foreign Jurisdictions

April 25, 2017

I. Introduction

The Canadian Securities Administrators (**CSA** or **we**) are publishing this consultation paper (the **Paper**) for a 60-day comment period to invite stakeholders to provide views on the desirability and feasibility of introducing requirements for oversight of work done by a foreign audit firm relating to the audit of a reporting issuer's financial statements.

This Paper describes a proposal from the Canadian Public Accountability Board (**CPAB**) to the CSA to amend National Instrument 52-108 *Auditor Oversight* (**NI 52-108**) to require certain audit firms involved in the audit of a reporting issuer's financial statements to register as a participating audit firm (**PAF**). This Paper also describes potential disclosure enhancements to inform stakeholders about any restrictions CPAB has faced in inspecting audit work performed.

The CSA will review and assess submissions put forward by stakeholders on the proposal and identify a course of action.

II. Background

NI 52-108 requires each audit firm that prepares an auditor's report for a reporting issuer to have a participation agreement with CPAB. A participation agreement, among other things, permits CPAB to inspect a PAF to assess compliance with applicable rules and professional standards in connection with the issuance of an auditor's report on the financial statements of a reporting issuer.

In recent years CPAB has expressed concern with the number of instances where it was denied access to inspect audit work performed in a foreign jurisdiction. CPAB is also concerned that stakeholders, including audit committees, may not be fully aware of such access restrictions for certain reporting issuer audits.

We acknowledge that CPAB currently faces challenges in accessing audit work performed in certain foreign jurisdictions, and that it continues to consider ways to respond to these challenges. Auditors are important gatekeepers in our market, and the ability of CPAB to inspect their work contributes to public confidence in the integrity of financial reporting.

III. Component Auditor registration

CPAB has requested that the CSA amend NI 52-108 to require certain audit firms involved in the audit of a reporting issuer's financial statements to register as a PAF, which would give CPAB a legal basis to inspect the audit work done by these audit firms in relation to reporting issuer audits.

A number of reporting issuers have operations in a foreign jurisdiction that differs from the jurisdiction where their head office resides. This may present challenges for auditors of such reporting issuers due to different languages, laws and business practices in the foreign jurisdiction. In responding to those challenges, some PAFs may ask an audit firm (a Component Auditor) in a foreign jurisdiction to perform work that forms part of the audit evidence supporting a PAF's auditor's report. A Component Auditor could be a member of the PAF's international network, or an unrelated foreign or domestic audit firm.

If a PAF decides to use the work of a Component Auditor, the PAF must comply with Canadian Auditing Standard 600 *Special Considerations – Audits of Group Financial Statements (Including the Work of Component Auditors)* (**CAS 600**),[1] which clarifies that the PAF is responsible for the direction, supervision and performance of the overall audit. Although CAS 600 requires the PAF to document the type of work performed by a Component Auditor, there is no requirement for the PAF to retain in its files a copy of the work performed by the Component Auditor.

[1] CAS 600 is consistent with a corresponding International Standard on Auditing (ISA 600). The International Audit and Assurance Standards Board is currently examining whether clarifications or amendments are needed to ISA 600. However, any future changes are unlikely to address the foreign jurisdiction access issues discussed in this Paper.

In order to assess whether sufficient audit evidence has been obtained to support the PAF's audit opinion, CPAB has determined that it must have access to a substantial portion of the audit work performed. However, CPAB has encountered some instances where a substantial portion of the audit work has been performed by a Component Auditor in a foreign jurisdiction, and CPAB was not permitted access to inspect the work.

According to CPAB, in 2016 a foreign Component Auditor was involved in a significant portion of the audit[2] for approximately 597 reporting issuer audits in 95 foreign jurisdictions. These reporting issuers had a market capitalization of $0.3 trillion as of September 30, 2016, which represented approximately 11% of the total market capitalization of $2.7 trillion for all reporting issuers on TMX exchanges.[3] However, it is not clear what portion of the $0.3 trillion represents foreign operations.

CPAB has represented that a requirement in NI 52-108 for certain Component Auditors to register with CPAB would provide it a legal basis to access audit working papers in most foreign jurisdictions, although there would continue to be a small number of foreign jurisdictions where barriers to access would not be resolved. Further detail about the use of foreign Component Auditors for reporting issuer audits can be found in Appendix A, including the following information:

- Reporting issuer audits that involve foreign components in the United States, United Kingdom and Australia, comprise 37% of the total number of reporting issuers whose audits involve foreign Component Auditors, and 90% of the market capitalization.[4]

- If a Component Auditor registration requirement was in place CPAB has represented that it would continue to be restricted from inspecting work in China. CPAB has also represented that it is not clear whether working papers in Burkina Faso, Egypt, Ghana, Guatemala and Zambia would be accessible.

The introduction of a Component Auditor registration requirement may create some new challenges, as described below:

i. ***Challenges in finding Component Auditors to perform the work***

An existing Component Auditor may be unwilling to continue providing services to a PAF if it must be subject to inspection by CPAB. This would require the PAF to identify a new Component Auditor or travel to the foreign jurisdiction to perform the work itself. In some situations an existing PAF may be unwilling to continue providing audit services due to the difficulties relating to those two options; the PAF may not find a suitable Component Auditor or may not be willing or able to perform the work itself. As a result, the reporting issuer would have to engage a new auditor. In some situations a reporting issuer may even have difficulty finding a new auditor. Such changes in audit arrangements would cause disruption to reporting issuers.

ii. ***Potential for higher audit fees charged to reporting issuers***

A Component Auditor may charge additional fees in connection with being subject to additional oversight. If a PAF performs the audit work in a foreign jurisdiction that was previously audited by a Component Auditor, the PAF may charge additional fees to compensate for additional costs incurred. In each case the result would be higher audit fees charged to the reporting issuer.

Currently, the United States is the only jurisdiction we are aware of that requires certain Component Auditors to register with the audit oversight regulator. However, the basis for having such requirement may partially be due to unique features with respect to the United States reporting regime.

The United States audit oversight regulator, the Public Company Accounting Oversight Board (**PCAOB**), requires an audit firm that plays a 'substantial role' in an audit of a public company to register with it. An audit firm plays a substantial role in an audit if it performs:

a) material services that a public accounting firm uses or relies on in issuing all or part of its auditor's report, or

b) the majority of the audit procedures with respect to a subsidiary or component of any issuer, the assets or revenues of which constitute 20% or more of the consolidated assets or revenues of such issuer necessary for the principal auditor to issue an auditor's report.[5]

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2 A Component Auditor would be involved in a significant portion of the audit if the assets or revenues it audited constitute 20% or more of the consolidated assets or revenues of the reporting issuer.

3 https://www.tsx.com/resource/en/1398

4 In the CPAB Report *Access to Foreign Jurisdictions*, November 2016, CPAB stated that these are well regulated jurisdictions where CPAB has existing or in-process MOUs facilitating working paper access. CPAB stated that given their long established regulatory and legal regimes, these are not considered high risk jurisdictions.

5 PCAOB Rules, Rule 1001 paragraph (p)(ii).

We note that the PCAOB's registration requirement does not ensure access. For example, we note that the PCAOB currently is prevented from inspecting the U.S.-related audit work and practices of PCAOB-registered firms in certain European countries, China and Hong Kong (the latter to the extent their audit clients have operations in China).[6] The PCAOB publishes a list of instances where it has been denied access to inspect audit work of registered firms.

Question 1: Is a Component Auditor registration requirement the way to proceed to assist CPAB in obtaining access to inspect work performed by foreign audit firms? If not, please suggest other ways to address CPAB's access challenges. Please explain the reasons for your views.

Question 2: Are there any additional implications, other than those discussed above, to consider in assessing whether to require a Component Auditor to register with CPAB?

Question 3: If NI 52-108 is amended to require Component Auditor registration:

(a) Should the requirement be based on an asset and revenue threshold that is equivalent to that used in the PCAOB's 'substantial role' threshold? If not, please specify your recommended threshold, if any, and explain why that threshold would be more appropriate.

(b) Should certain components of an entity be exempt when applying the threshold referred to in (a), such as investments accounted for using the equity method?

IV. Public disclosure about CPAB access restrictions

CSA staff are considering whether to amend a national instrument to require additional transparency about situations where CPAB has been prevented from inspecting the work of a PAF or Component Auditor.

If a reporting issuer has significant operations outside of Canada, its continuous disclosure documents should include information about the magnitude of its foreign operations along with the risks involved with operating in those foreign jurisdictions. Despite stakeholders having information on the impact of foreign operations from the reporting issuer's perspective, there is no requirement for public disclosure of how the foreign operations impact the audit of the reporting issuer's financial statements, or CPAB's ability to inspect the audit work performed in the foreign jurisdiction.

In 2015, CPAB published a list of the 10 largest foreign jurisdictions by market capitalization in which CPAB did not have access to working papers. The 2015 publication also identified six significant foreign jurisdictions where CPAB requested, but was denied access to inspect working papers.[7] In 2016, CPAB reported that the number of foreign jurisdictions where CPAB has requested, but was denied access to inspect working papers had increased to eight.[8] In its publications CPAB did not identify which reporting issuers were being inspected when access was denied.

In recent years, the PCAOB has emphasized the importance of stakeholders understanding how the use of foreign audit firms impacts an entity's audit and corresponding PCAOB oversight. For example, the PCAOB maintains a list on its website of each instance where it has been prevented from inspecting the work and practices of a PCAOB-registered firm. The list identifies the name of the issuer, name of the auditor, and location the auditor resides.[9]

Disclosure about restrictions CPAB faced when inspecting a specific reporting issuer's audit would make stakeholders aware of situations where they were deprived of the potential benefits of a CPAB inspection of the auditor.

Disclosure about specific instances of access restrictions CPAB faced would not result in fulsome information about all reporting issuer audits that involve Component Auditors in foreign jurisdictions. Disclosure about the use of a Component Auditor in a foreign jurisdiction would only occur if CPAB has had access restricted as part of an inspection, with disclosure of the restriction referring to the reporting issuer audit that CPAB inspected. If a different reporting issuer used the same Component Auditor, but CPAB did not request access for an inspection, then there would be no disclosure that the Component Auditor was involved in that reporting issuer's audit.

6 https://pcaobus.org/International/Inspections/Pages/IssuerClientsWithoutAccess.aspx

7 CPAB Report *Access to Foreign Jurisdictions*, November 2015.

8 CPAB Report *Access to Foreign Jurisdictions*, November 2016.

9 https://pcaobus.org/International/Inspections/Pages/IssuerClientsWithoutAccess.aspx

Question 4: Would additional transparency about situations where CPAB has been prevented from inspecting the work of a PAF or Component Auditor that plays a 'substantial role' be useful to investors and others, and if so in what situations? Please explain the reasons for your views, including any potential implications that we should consider if such disclosure was required.

Question 5: If we were to require this disclosure, who should provide the disclosure - CPAB or reporting issuers? Please explain the reasons for your views.

V. Comments and submissions

We invite participants to provide input on the issues outlined in this public consultation paper. You may provide written comments in hard copy or electronic form. The consultation period expires June 24, 2017.

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

Please submit your comments in writing on or before June 24, 2017. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA regulators.

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax : 514-864-6381
Consultation-en-cours@lautorite.qc.ca

Appendix A

Reporting Issuer Audits with Foreign Component Auditors that Play a Substantial Role *

Country of the Component	# of Reporting Issuers	Market Capitalization – $ Billions
With Audit Regulators		
United Kingdom[1 2]	88	937.2
United States[1 2]	81	1,036.9
Australia[1 2]	51	373.6
China[3]	24	23.0
Brazil	18	8.0
South Africa	13	2.4
Germany[1]	12	6.6
France[1]	11	25.5
Turkey	9	2.0
New Zealand	8	2.7
Spain[4]	7	0.5
Belgium[5]	4	5.4
Sweden[4 5]	3	4.4
Egypt[6]	2	2.9
Austria[4]	2	1.9
Portugal[4]	2	-
Norway	1	36.2
Netherlands[1]	1	12.9
Slovakia[4]	1	2.6
Without Audit Regulators		
Mexico[4]	38	46.5
Argentina	22	30.3

Columbia	19	5.6
Peru	15	2.2
Chile	13	8.9
Philippines	7	3.4
Ghana[6]	5	3.3
Burkina Faso[6]	4	2.4
Tunisia[4]	3	0.1
Zambia[6]	1	7.5
Guatemala[6]	1	5.2
Other[7]	131	16.6
Total	**597**	**2,616.7**

1 CPAB has a sharing agreement in place with the audit regulator.

2 In the CPAB Report *Access to Foreign Jurisdictions*, November 2016, CPAB stated that these are well-regulated jurisdictions where CPAB has existing or in process MOUs facilitating working paper access. CPAB stated that given their long established regulatory and legal regimes, these are not considered high risk jurisdictions.

3 CPAB has represented that access to working papers would continue to be restricted even if a Component Auditor registration requirement was in place.

4 In the CPAB Report *Access to Foreign Jurisdictions*, November 2016, CPAB identified these as jurisdictions where CPAB has requested and been denied access to Component Auditor working papers. CPAB has represented that if a Component Auditor registration requirement was in in place, CPAB would have access to Component Auditor working papers in these jurisdictions.

5 CPAB in process of negotiating a sharing agreement with the audit regulator.

6 CPAB's understanding is that the PCAOB has not requested access to information in this jurisdiction, and as a result it is not clear whether a Component Auditor registration requirement would result in CPAB getting access.

7 The composition of this category includes countries with, and without, audit regulators.

* **Content for this appendix was provided by CPAB based on information available as at September 30, 2016.**

1.2 Notices of Hearing

1.2.1 MM Café Franchise Inc. et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
MM CAFÉ FRANCHISE INC., TECHOCAN INTERNATIONAL CO. LTD.,
1727350 ONTARIO LIMITED, MARIANNE GODWIN, DAVE GARNET CRAIG and
HAIYAN (HELEN) GAO JORDAN

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION and
MM CAFÉ FRANCHISE INC., DAVE GARNET CRAIG, and MARIANNE GODWIN

NOTICE OF HEARING
(Sections 127 and 127.1 of the Securities Act)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5 (the "Act"), at the offices of the Commission at 20 Queen Street West, 17th Floor, in the City of Toronto, commencing on the 24th day of April, 2017 at 1:00 p.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the Settlement Agreement dated April 13, 2017 between Staff of the Commission ("Staff"), MM Café Franchise Inc., Dave Garnet Craig, and Marianne Godwin;

BY REASON OF the allegations set out in the Amended Amended Statement of Allegations of Staff, dated July 26, 2016;

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by counsel 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 that 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 plus 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 18th day of April, 2017.

"Grace Knakowski"
Secretary to the Commission

1.2.2 Money Gate Mortgage Investment Corporation et al. – ss. 127(1), (5)

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

AND

MONEY GATE MORTGAGE INVESTMENT CORPORATION,
MONEY GATE CORP., MORTEZA KATEBIAN and
PAYAM KATEBIAN

NOTICE OF HEARING
(Subsections 127(1) and (5) of the Securities Act)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing (the "Hearing") pursuant to section 127 of the *Securities Act*, RSO 1990, c S.5, (the "Act") at the offices of the Commission at 20 Queen Street West, 17th Floor, Toronto, Ontario, on April 27, 2017 at 10:00 a.m. or as soon thereafter as the hearing can be held;

TO CONSIDER whether, in the opinion of the Commission, it is in the public interest, pursuant to subsections 127(1) and (5) of the Act, for the Commission to issue a temporary order that:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, all trading in securities of Money Gate Mortgage Investment Corporation ("MGMIC") shall cease;

(b) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contain'/ed in Ontario securities law do not apply to MGMIC, Money Gate Corp., Morteza Katebian and Payam Katebian; and

(c) to make such other orders as the Commission considers appropriate.

BY REASON OF such allegations and evidence as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceedings 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 that party and such party is not entitled to any further notice of the proceedings;

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 April, 2017.

"Grace Knakowski"
Secretary to the Commission

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 Home Capital Group Inc. et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
HOME CAPITAL GROUP INC., GERALD SOLOWAY,
ROBERT MORTON and MARTIN REID

NOTICE OF HEARING
(Sections 127 and 127.1 of the Securities Act)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to subsections 127(1) and 127.1 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 May 4, 2017 at 1:00 p.m., or as soon thereafter as the hearing can be held;

TO CONSIDER whether, in the Commission's opinion, it is in the public interest for the Commission to make the following orders:

(i) that trading in any securities or derivatives by Gerald Soloway ("Soloway"), Robert Morton ("Morton") and Martin Reid ("Reid"), cease permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1) of the Act;

(ii) that acquisition of any securities by Soloway, Morton and Reid is prohibited permanently or for such other period as is specified by the Commission, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

(iii) that any exemptions contained in Ontario securities law do not apply to Home Capital Group Inc. ("HCG"), Soloway, Morton and Reid permanently or for such other period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1) of the Act;

(iv) that HCG submit to a review of its practices and procedures and institute such changes as may be ordered by the Commission under paragraph 4 of subsection 127(1) of the Act;

(v) that HCG, Soloway, Morton and Reid be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

(vi) that Soloway, Morton and Reid resign any positions that each of them holds as a director or officer of an issuer pursuant to paragraph 7 of subsection 127(1) of the Act;

(vii) that Soloway, Morton and Reid are prohibited from becoming or acting as a director or officer of any issuer permanently or for such other period as is specified by the Commission, pursuant to paragraph 8 of subsection 127(1) of the Act;

(viii) that HCG, Soloway, Morton and Reid pay an administrative penalty of not more than $1 million for each failure by each of them to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;

(ix) that each of HCG, Soloway, Morton and Reid disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;

(x) that each of HCG, Soloway, Morton and Reid pay the costs of the investigation and the hearing, pursuant to section 127.1 of the Act; and

(xi) such other order as the Commission considers appropriate in the public interest.

BY REASON OF the allegations set out in the Statement of Allegations of Staff of the Commission dated April 19, 2017, and such additional allegations as counsel may advise and the Commission may permit;

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 demand, 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 plus 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 April, 2017.

"Grace Knakowski"
Secretary to the Commission

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

AND

IN THE MATTER OF
HOME CAPITAL GROUP INC., GERALD SOLOWAY,
ROBERT MORTON and MARTIN REID

STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

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

I. Overview

1. Home Capital Group Inc. ("HCG") is in the business of offering residential and commercial lending to clients who do not meet the criteria of a bank or larger financial institution. HCG's residential mortgage portfolio constitutes approximately 90% of HCG's business. As a lending business whose primary product is residential mortgages, HCG's growth and performance are measured in part by the number of new mortgages originated ("Originations") in any given quarter.

2. On July 10, 2015, HCG announced that an ongoing review of its business partners had led it to terminate certain brokers, causing an immediate drop in Originations. The next trading day, HCG's stock price fell 18.9%, resulting in an approximate $600 million loss in market capitalization and significant investor harm.

3. Prior to this announcement, from February 2015 until July 2015, HCG misled its shareholders as to the immediate and on-going causes of the decline in Originations. Internally, HCG knew it had terminated certain brokers because it had discovered fraud in HCG's broker channels. In fact, in February 2015, HCG was completing a six-month investigation into fraudulent employment income documentation ("Project Trillium") which was overseen by a special committee of the Board of Directors ("the Board"). Project Trillium confirmed that HCG was receiving fraudulent employment income documentation through its broker channels which had not been detected by HCG's underwriting controls. In particular, the findings of Project Trillium highlighted the scale of the fraudulent documentation flowing through HCG, and the serious systemic underwriting control deficiencies within HCG. Given the findings of Project Trillium, HCG implemented two significant changes: (1) termination of certain broker relationships; and (2) specific remediation of its underwriting processes and controls.

4. The changes implemented by HCG had a significant detrimental effect on Originations. First, the termination of brokers, which occurred mainly from November 2014 through the beginning of January 2015, caused an immediate drop in Originations because those specific brokers had historically referred significant volumes of business to HCG. Second, HCG's changes to its underwriting processes and controls also negatively impacted Originations as they caused HCG's processing time for mortgage applications to increase significantly, resulting in brokers sending applications to other lenders. Finally, as a result of the planned remediation of controls across all lines of the residential mortgage lending business, HCG itself planned a scale-back of business growth.

5. By February 10, 2015, the following principal investigative findings, remediation planning and action from Project Trillium were known by HCG:

- The insured ("Accelerator") mortgage business was down by 32.5% compared to Q3 2014;
- Effective January 15, 2015, Accelerator volume targets were being reduced by 50% to $100 million per month;
- HCG had terminated 4 underwriters, 2 brokerages and 30 brokers. There were a number of other brokers on management's watch list;
- The terminated brokers had a cumulative total of $881.4 million in Originations in 2014, representing approximately 10% of HCG's total 2014 Originations;
- Significant changes to the internal control structure were required to increase the accountability of the front line of the business, including separating sales from underwriting and implementing an employment income verification team;
- While testing was complete on the Accelerator side of the business, there was a concern that if brokers had supplied fraudulent employment and income documentation on the insured side of the business, they might be

doing the same thing for uninsured ("Classic") mortgages. Work continued on the exposure assessment related to the Classic mortgage portfolio. The Corporate Compliance group was re-verifying employment and income information with employers for a sample of mortgages to salaried borrowers;

- Brokers were moving their business to other lenders because of increased processing times at HCG; and
- Executive compensation was deferred in conjunction with Project Trillium findings, including the compensation of Gerald Soloway ("Soloway"), Chief Executive Officer ("CEO") and Martin Reid ("Reid"), President.

6. HCG filed its 2014 annual financial statements and Management Discussion & Analysis ("MD&A") (collectively the "2014 Annual Filing") on February 11, 2015 and its Q1 2015 interim MD&A ("Q1 2015 Interim Filing") on May 6, 2015. In its 2014 Annual Filing and Q1 2015 Interim Filing, HCG made materially misleading statements, blaming the decline in Originations on external vagaries such as macroeconomics, seasonality and competitive markets. Within HCG, it was known that the decline could not be attributed solely to the external factors HCG outlined in its public disclosures. Accordingly, each of the 2014 Annual Filing and Q1 2015 Interim Filing were made in breach of subsection 122(1)(b) of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act").

7. Further, statements made on HCG's May 7, 2015 earnings call breached subsection 126.2 (1) of the Act because they were materially misleading concerning the causes of the drop in Originations.

8. Subsequent to HCG having failed to comply with its continuous disclosure obligations, in June 2015, the Chair of the Audit Committee of the Board ("Audit Committee") received a Whistleblower memorandum from a Vice President at HCG dated June 1, 2015 entitled, "*Failure to Comply with Timely and Continuous Disclosure Obligations and Related Concerns – Fraudulent Mortgages*". The Whistleblower's memorandum was submitted under the Whistleblower Policy and the Code of Conduct & Ethics Policy of HCG.

9. Finally, on July 10, 2015, for the first time, HCG began to tell its shareholders the reasons for the drop in Originations, by way of the news release issued on July 10, 2015 (the "July 10th NR") and material change report filed on July 17, 2015 ("the July 17th MCR"). Notably, the facts disclosed in the July 10th NR were known to HCG by February 10, 2015. HCG was also aware that significant changes to the internal control structure would be required by February 10, 2015. All of the foregoing constituted a material change in the business and operations of HCG. Accordingly, HCG was required to issue a new release and material change report within 10 days of the material change, in compliance with section 75(1) and (2) of the Act. This did not occur. In addition, the disclosure made in the July 10th NR and July 17th MCR was not sufficient to enable a reader to appreciate the significance and impact of the material change and therefore did not comply with Form 51-102F3 – *Material Change Report* ("51-102F3") of National Instrument 51-102 – *Continuous Disclosure Obligations* ("NI 51-102").

II. The Respondents

10. HCG is a reporting issuer in the province of Ontario, as well as all of the other provinces in Canada. Its registered and principal office is located in Toronto, Ontario. The common shares of HCG are listed on the Toronto Stock Exchange. HCG is a holding company whose principal business is conducted through its wholly owned subsidiary, Home Trust Company (the "Trust"), a federally regulated financial institution.

11. Soloway was the CEO and a director of HCG, Robert Morton ("Morton") was HCG's Chief Financial Officer ("CFO"), and Reid its President during the period of the alleged non-compliance by HCG with Ontario securities law.

III. Background Information

A. The Importance of Originations to the Business of HCG

12. HCG's residential mortgage business consists predominantly of two portfolios: (1) the Accelerator mortgages, which are mostly insured by Canada Mortgage and Housing Corporation; and (2) the Classic mortgages, which are not insured.

13. HCG had traditionally positioned itself as a growth company and continued to do so through 2014 and into 2015. Analysts and investors consider the number of Originations to be a material metric of HCG's continued growth. HCG itself normally reported on Originations each quarter. In HCG's 2014 Annual Report, Originations are specifically highlighted under the heading "Growing Our Core Business", and again under "Building Our Asset Base" where HCG states:

> Over the course of 2014, we renewed focus on Accelerator, our insured residential mortgage product. As a result of our efforts, originations for this component of our portfolio increased by 76.4% in 2014. This business segment continues to be one of our key offerings and helps to fulfill our mandate to offer a full line of products that meets the needs of borrowers and brokers.

14. Analysts consistently asked questions about Originations and HCG's disclosure regarding Originations on earnings calls.

15. HCG distributes its lending products through its broker channels. Accordingly, HCG's relationships with brokers are integral to Originations and to HCG's business.

B. Project Trillium and HCG's Internal Understanding of the Findings

16. In June 2014, HCG became aware of irregularities associated with Accelerator applications handled by one or more of its underwriters. As a result, in August 2014, HCG launched an investigation known as Project Trillium to determine the scope, extent and cause of the problem. HCG discovered that its Accelerator underwriting team, including one of its highest volume underwriters, was falsely documenting that they had completed income verification steps when they had not actually done so ("Phantom Ticking") for a large proportion of mortgages underwritten, and further that employment/income information used to support the mortgage applications had been falsified.

17. Project Trillium revealed that HCG's internal lines of defence had failed and its underwriting department was processing fraudulent documentation undetected. It further revealed that HCG's underwriting policy was being circumvented because the practice of Phantom Ticking was a "learned" or systemic practice within the Accelerator underwriting group.

18. As a result of the findings of Project Trillium, HCG began terminating underwriters who were implicated in the conduct described above. By mid-November 2014, HCG had terminated three underwriters and another underwriter resigned based solely on the findings of Project Trillium.

19. HCG also terminated brokers and brokerages, which occurred mainly from November 2014 through January 2015. By February 10, 2015, HCG had terminated brokers and brokerages that had generated a cumulative total of $881.4 million in Originations in 2014, representing approximately 10% of HCG's total 2014 Originations. As ultimately noted by HCG in its July 10th NR and July 17th MCR, these terminations had an immediate negative impact on Originations.

20. Remediation of controls also had a predictable negative effect on Originations and HCG itself planned a scale-back of business to allow for implementation of remedial changes. In January 2015 management reported to the Board that, effective January 1, 2015, insured Originations would undergo a reduction in volume targets of $100 million per month during the period of remediation of control groups and lines of defence (a 50% reduction of original targets). Further, in a presentation by Reid entitled Project Trillium: Management Remediation Planning, management of HCG confirmed its understanding of the way ahead by writing, "slower business growth over the next quarter will give us the opportunity to develop and implement fundamental strategic changes to the business."

IV. Particulars of HCG's Public Disclosure

A. Misleading Disclosures Made in February 2015

21. Following HCG's broker terminations and the planned remediation, HCG's public disclosure, made pursuant to the requirements of the Act and as required under NI 51-102, was materially misleading.

(i) 2014 Annual Filing

22. HCG filed its 2014 Annual Filing on February 11, 2015. The 2014 Annual Filing did not disclose the broker terminations, the significant remediation or the effect of these changes on Originations. These material facts, individually or collectively, would have been considered important by a reasonable investor in making a decision to buy, sell or hold HCG's securities.

23. Instead, the 2014 Annual Filing stated that the decline in Accelerator Originations reflected both seasonal factors and the very competitive market for prime insured mortgages. These statements were, in a material respect and at the time and in light of the circumstances under which the statements were made, misleading or untrue or did not state a fact required to be stated or that was necessary to make the statement not misleading, contrary to subsection 122(1)(b) of the Act and the requirements of NI 51-102.

24. Despite all that was known to HCG by the time of this filing, HCG added only the following three sentences to the Operational Risk section of its MD&A concerning the emergence of various types of fraud:

> In addition to cyber-crime, the Company is continuously exposed to other various types of fraud stemming from the nature of the Company's business. For example, the Company must often rely on information provided by customers and other third parties in its decisions to enter into transactions such as extending

credit. The recent increasing pace of advancement in available technology has increased the sophistication and complexity of potential fraud crimes to which the Company is exposed.

25. Further, in an email dated February 9, 2015, two days before filing the 2014 Annual Filing, the CFO Morton stated that the additional disclosure related to Project Trillium was "… buried pretty deep within existing wording on cyber risk. I would be impressed if someone even asked about it."

26. Soloway and Morton certified the 2014 Annual Filing (including the Annual Information Form) as CEO and CFO, respectively. The 2014 Annual Filing did not set out the material facts known to HCG, Soloway and Morton at the time. Soloway and Morton failed to comply with subsection 122(1)(b) of the Act and National Instrument 52-109 – Certification of Disclosure in Issuers' Annual and Interim Filings ("NI 52-109") by certifying the 2014 Annual Filing which failed to set out material facts about a drop in Originations and the cause of the drop in Originations.

B. Misleading Disclosure in May 2015

(i) Q1 2015 Interim Filings

27. HCG filed its Q1 2015 Interim Filing on May 6, 2015. The Q1 2015 Interim Filing stated that "the first quarter was characterized by a traditionally slow real estate market, exacerbated by very harsh winter conditions. The Company has remained cautious in light of continued macroeconomic conditions and continues to perform ongoing reviews of its business partners ensuring that quality is within the Company's risk appetite."

28. One week before HCG filed its Q1 2015 Interim Filing, HCG had knowledge of the negative impact of the termination of brokers and remedial actions on Origination volumes. In his "1st Quarter 2015" Report ("President's Report") dated April 29, 2015, Reid stated that the decrease in Originations for Q1 2015 was mainly due to Project Trillium remedial actions. The President's Report further stated that HCG's "share of broker channel has deteriorated, mainly as a result of Trillium remediation."

29. HCG was also aware that the terminations and remedial process changes could have a negative effect on Origination volumes beyond Q1 2015. In a memo dated May 4, 2015 (the "May 4 Memo"), Morton advised the Audit Committee that the reduction in Originations for Q1 2015 could not be attributed to weather and seasonality alone and that the reduction had the potential to affect more than first quarter Origination numbers. Morton raised a concern about the need to publicly disclose the fact that brokers had been terminated. Morton was also advised that management had determined that, based on current forecasted information, HCG might not meet its annual financial targets in 2015.

30. In addition, in the May 4 Memo, Morton advised that a decision had been made to add disclosure in HCG's filings in respect of "the recent impact the de-listing of brokers has had and may have on the results of the Company."

31. Still, in its Q1 2015 Interim Filing, HCG continued to mislead investors by explicitly attributing the first quarter Origination results to a traditionally slow real estate market, harsh winter, macroeconomics and an "on-going review of its business partners."

32. Investors were entitled to a transparent discussion in the MD&A of the commitments, events, risks and uncertainties facing HCG. Instead, HCG added a further two sentences to the Operational Risk section of the MD&A, which stated that HCG may encounter a financial loss as a result of an event with a third party service provider and that HCG may change relationships as appropriate. The disclosure was not sufficient to allow an investor to appreciate the reasons for the drop in Originations or the material risk to future growth of HCG that the termination of brokers and remediation of controls represented.

33. These facts known to HCG would have been considered important by a reasonable investor in making a decision to buy, sell or hold HCG securities. As such, the statements in the Q1 2015 Interim Filing about the cause for the decline in Originations were, in a material respect and at the time and in light of the circumstances under which the statements were made, misleading or untrue or did not state a fact required to be stated or that was necessary to make the statement not misleading, contrary to subsection 122(1)(b) of the Act and the requirements of NI 51-102.

34. Soloway and Morton certified the Q1 2015 Interim Filing as CEO and CFO, respectively. Soloway and Morton failed to comply with subsection 122(1)(b) of the Act and NI 52-109 by certifying the Q1 2015 Interim Filing which failed to set out material facts about a drop in Originations and the causes of the drop in Originations or the material risk to future growth of HCG that the termination of brokers and remediation of controls represented.

(ii) May 7, 2015 Earnings Call

35. Soloway, Morton and Reid participated in an earnings call with analysts held on May 7, 2015 following the filing of HCG's Q1 2015 Interim Filing. During the May 7, 2015 earnings call, Soloway and Reid made statements that were materially misleading or untrue.

36. Soloway was asked:

> Q: The first question I have is going back to originations, I totally get how, given what was going on with macro, well, you guys would be more kind of cautious on originations in the traditional business. I'm just trying to understand, I guess, from the prime insured side, are you guys saying that you were also kind of a bit careful there too, this being an insured product? Is that part of the reason why the originations kind of were where they were?

37. Soloway, simply responded - "Yes." Reid added, "... as Gerry pointed out earlier, just with the technology change, there were some bumps there. Just given the smaller size of the accelerator product, it was probably a little more noticeable there."

38. The analyst asked further, "Okay. So it was –okay, so it was a little bit of teething pains. But were you guys being a little more cautious on underwriting? I'm just trying to get a sense of, has it been because maybe brokers have been losing some market share, whether or not it's been small competition within the broker channel or to ...". Soloway replied, "None of that has changed. I think it's very similar to what it was last year. There isn't a dramatic one quarter change. There's been no new competitor. There's been no new change in brokers. Brokers are exactly the same in my estimate."

39. Specifically, when asked about the decline in Originations for Q1 2015, Soloway attributed the continuing decline in originations to a range of factors including cold weather, macroeconomic conditions and a cautious approach to lending. Given the information known to Soloway, including as contained in the May 4 Memo and the President's Report, his statements were materially misleading and untrue.

40. On May 7, 2015, HCG, Soloway and Reid made statements contrary to section 126.2(1) of the Act that he knew or reasonably ought to have known, were in a material respect and at the time and in light of the circumstances under which they were made, and did not state one or more facts that were required to be stated or were necessary to make the statements not misleading. These statements would reasonably be expected to have a significant effect on the market price or value of HCG's securities.

41. Morton and Reid authorized, permitted or acquiesced in HCG's and Soloway's misleading and untrue statements and are deemed to have failed to comply with Ontario securities law pursuant to section 129.2 of the Act.

C. Untimely Disclosure of the Material Change in July 2015

42. The terminations of brokers and the subsequent remediation arising out of the findings of Project Trillium, including changes to HCG's underwriting controls and procedures, constituted a material change in HCG's business or operations. HCG was aware of the material change by no later than February 10, 2015.

43. HCG did not issue a news release in relation to this material change until July 10, 2015. However, the facts disclosed in the July 10th NR and in the July 17th MCR and the remediation of controls were known to HCG in February 2015.

44. HCG breached subsections 75(1) and (2) of the Act and Part 7 of NI 51-102 by failing to issue a news release forthwith, and by failing to file a material change report within 10 days of February 10, 2015.

45. In addition, the July 10th NR and July 17th MCR disclosures were not sufficient for a reader to understand the actual nature of the material change, nor the significance of their impact on immediate and future quarters, and, as such, did not comply with Part 7 of NI 51-102 and Item 5 of Form 51-102F3 and subsection 122(1)(b) of the Act.

D. Conduct Contrary to Ontario Securities Law and the Public Interest

46. In summary, Staff allege the following breaches of Ontario securities law:

(a) HCG failed to satisfy its continuous disclosure obligations in its 2014 Annual Filing and Q1 2015 Interim Filing, by making statements that in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statement not misleading, contrary to subsection 122(1)(b) of the Act;

(b) Each of Soloway and Morton falsely certified the 2014 Annual Filing and Q1 2015 Interim Filing by stating that the filings did not contain misrepresentations, contrary to subsection 122(1)(b) of the Act;

(c) HCG, Soloway and Reid made materially misleading statements on the May 7, 2015 earnings call by failing to tell the market the reasons for the decrease in Origination volumes and by failing to state facts that were required to be stated or that were necessary to make the statements not misleading, contrary to subsection 126.2(1) of the Act. These statements would reasonably be expected to have a significant effect on the market price or value of HCG's securities;

(d) HCG failed to satisfy its continuous disclosure obligations by failing to file a news release forthwith and to file a material change report within 10 days of a material change in the business, operations or capital of HCG, contrary to section 75 of the Act and Part 7 of NI 51-102;

(e) HCG made materially misleading statements in the July 10th NR and the July 17th MCR, which did not contain sufficient disclosure for a reader to appreciate the significance and impact of the material change, contrary to subsection 122(1)(b) of the Act and item 5 of Form 51-102F3 of NI 51-102; and

(f) Each of Soloway, Morton and Reid authorized, permitted or acquiesced in the above contraventions of the Act by HCG and are deemed to have failed to comply with Ontario securities law pursuant to section 129.2 of the Act.

47. Based on the foregoing, HCG, Soloway, Morton and Reid breached the Act and NI 51-102 and acted in a manner contrary to the public interest.

48. The statements made by officers of HCG on behalf of HCG during the earnings call on May 7, 2015 were misleading and therefore contrary to the public interest.

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

DATED at Toronto, Ontario this 19th day of April 2017.

1.3.2 Global 8 Environmental Technologies, Inc. et al. – ss. 127(1), (10)

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

AND

IN THE MATTER OF
GLOBAL 8 ENVIRONMENTAL TECHNOLOGIES, INC.,
HALO PROPERTY SERVICES INC.,
CANADIAN ALTERNATIVE RESOURCES INC.,
RENÉ JOSEPH BRANCONNIER and CHAD DELBERT BURBACK

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 May 17, 2017 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 René Joseph Branconnier ("Branconnier") that:

   a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Branconnier cease until the later of (i) February 2, 2036 and (ii) the date on which all monetary orders in the Alberta Securities Commission's (the "ASC") Order dated February 2, 2016 (the "ASC Order") for which Branconnier is responsible have been paid in full to the ASC, except he is not precluded from trading in securities through a registrant (who has first been given a copy of the ASC Order and a copy of the Order in this proceeding, if granted) in:

      i. registered retirement savings plans, registered retirement income funds, registered education savings plans or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for the benefit of one or more of Branconnier, his spouse and his dependent children;

      ii. one other account for Branconnier's benefit; or

      iii. both;

   b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Branconnier cease until the later of (i) February 2, 2036 and (ii) the date on which all monetary orders within the ASC Order for which Branconnier is responsible have been paid in full to the ASC, except he is not precluded from purchasing securities through a registrant (who has first been given a copy of the ASC Order and a copy of the Order in this proceeding, if granted) in:

      i. registered retirement savings plans, registered retirement income funds, registered education savings plans or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for the benefit of one or more of Branconnier, his spouse and his dependent children;

      ii. one other account for Branconnier's benefit; or

      iii. both;

   c. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Branconnier until the later of (i) February 2, 2036 and (ii) the date on which all monetary orders within the ASC Order for which Branconnier is responsible have been paid in full to the ASC;

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

e. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Branconnier be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager until the later of (i) February 2, 2036 and (ii) the date on which all monetary orders within the ASC Order for which Branconnier is responsible have been paid in full to the ASC;

2. against Chad Delbert Burback ("Burback") that:

a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Burback cease until the later of (i) February 2, 2028 and (ii) the date on which all monetary orders within the ASC Order for which Burback is responsible have been paid in full to the ASC, except he is not precluded from trading in securities through a registrant (who has first been given a copy of the ASC Order and a copy of the Order in this proceeding, if granted) in:

i. registered retirement savings plans, registered retirement income funds, registered education savings plans or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for the benefit of one or more of Burback, his spouse and his dependent children;

ii. one other account for Burback's benefit; or

iii. both;

b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Burback cease until the later of (i) February 2, 2028 and (ii) the date on which all monetary orders within the ASC Order for which Burback is responsible have been paid in full to the ASC, except he is not precluded from purchasing securities through a registrant (who has first been given a copy of the ASC Order and a copy of the Order in this proceeding, if granted) in:

i. registered retirement savings plans, registered retirement income funds, registered education savings plans or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for the benefit of one or more of Burback, his spouse and his dependent children;

ii. one other account for Burback's benefit; or

iii. both;

c. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Burback until the later of (i) February 2, 2028 and (ii) the date on which all monetary orders within the ASC Order for which Burback is responsible have been paid in full to the ASC;

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

e. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Burback be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager until the later of (i) February 2, 2028 and (ii) the date on which all monetary orders within the ASC Order for which Burback is responsible have been paid in full to the ASC;

3. against Global 8 Environmental Technologies, Inc. ("G8") that:

a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities of G8 be prohibited permanently;

b. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by G8 cease permanently, except that G8 be permitted to trade securities of G8 for which a filed (final) prospectus has been receipted by the Director of the Commission;

c pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by G8 be prohibited permanently, except that G8 be permitted to acquire securities of G8 for which a filed (final) prospectus has been receipted by the Director of the Commission;

d. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to G8 permanently; and

4 against Halo Property Services Inc. ("Halo") that:

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

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

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

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

5. against Canadian Alternative Resources Inc. ("CAR") that:

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

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

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

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

6. 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 April 17, 2017, and by reason of the ASC Order, and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that at the hearing on May 17, 2017 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 Securities 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 17th day of April, 2017.

"Grace Knakowski"
Secretary to the Commission

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

AND

IN THE MATTER OF
GLOBAL 8 ENVIRONMENTAL TECHNOLOGIES, INC.,
HALO PROPERTY SERVICES INC.,
CANADIAN ALTERNATIVE RESOURCES INC.,
RENÉ JOSEPH BRANCONNIER and CHAD DELBERT BURBACK

STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

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

I. OVERVIEW

1. Global 8 Environmental Technologies, Inc. ("G8"), Halo Property Services Inc. ("Halo"), Canadian Alternative Resources Inc. ("CAR"), René Joseph Branconnier ("Branconnier") and Chad Delbert Burback ("Burback") (collectively, the "Respondents") are subject to an order made by the Alberta Securities Commission (the "ASC") dated February 2, 2016 (the "ASC Order") that imposes sanctions, conditions, restrictions or requirements upon them.

2. In its findings on liability dated June 5, 2015 (the "ASC Findings"), a panel of the ASC (the "ASC Panel") found that G8, Branconnier and Burback engaged in unregistered trading in securities and the distribution of securities without a prospectus, contrary to sections 75 and 110 of the Alberta *Securities Act*, RSA 2000, c S-4 (the "Alberta Act"). The ASC Panel further found that:

   (i) Halo and CAR engaged in the distribution of securities without a prospectus, contrary to section 110 of the Alberta Act;

   (ii) Halo, CAR, Branconnier and Burback made prohibited representations relating to the future value of securities, contrary to section 92(3) of the Alberta Act;

   (iii) all of the Respondents made materially misleading or untrue statements to investors, contrary to section 92(4.1) of the Alberta Act;

   (iv) Branconnier and Burback authorized and acquiesced in the contravention of Alberta securities laws by G8, Halo and CAR, contrary to section 199(1) of the Alberta Act (as it appeared from July 1, 2006 to December 17, 2014); and

   (v) all of the Respondents acted contrary to the public interest.

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

The ASC Findings

Background

4. Between May 2005 and June 2009, G8 promoted itself as an environmental business which would develop "Environmental Technology Centres" ("ETCs") to meet its clients' needs. During this time, G8 sold certain of its shares and warrants (together, "G8 Securities") to Alberta investors (the "G8 Operation").

5. On July 30, 2009, prior to the commencement of the hearing, the ASC issued a temporary order prohibiting trading in securities of G8 and prohibiting G8 from trading in all securities and from using the exemptions provided under Alberta securities law.

6. Halo and CAR were two companies connected to each other, and their planned operations contained an environmental aspect. Between November 2009 and March 2012, Halo and CAR securities were pitched and sold to investors as a

package. The investments were structured as loans to Halo backed by CAR shares and options to purchase CAR shares ("Halo/CAR Securities").

Respondents

7. G8 was a Nevada company incorporated under a different name in 1995. As of February 2013, G8 had never been registered under the Alberta Act, been a reporting issuer in Alberta, or filed a prospectus with the ASC.

8. Halo was a company incorporated in British Columbia in 2005. As of February 2013, Halo had never been registered under the Alberta Act, been a reporting issuer in Alberta, or filed a prospectus with the ASC.

9. CAR was incorporated in the Yukon in 2010. As of February 2013, CAR had never been registered under the Alberta Act, been a reporting issuer in Alberta, or filed a prospectus with the OSC.

10. As of the date of the ASC Findings, Branconnier was a resident of British Columbia. Branconnier had never been registered with the ASC or any other regulatory body to sell securities. Branconnier was the guiding mind of G8, Halo, CAR, and of the Halo/CAR Operation as well as the *de facto* director and officer of G8 during the material time.

11. As of the date of the ASC Findings, Burback was a resident of Alberta. As of May 20, 2010, Burback had not been registered under the Alberta Act. Burback was a director and, at times, the chief financial officer of G8 during the material time. Burback was a director and officer (treasurer) of Halo and a director of CAR.

Other Respondents – ASC Proceeding

12. Milverton Capital Corporation ("Milverton") was named as a respondent in the ASC proceedings, however, no adverse findings were made against Milverton by the ASC Panel.

Background

G8 Operation

13. The conduct related to the G8 Operation for which G8, Branconnier, and Burback were sanctioned took place between May 2005 and June 2009 ("G8 Fundraising Period").

14. G8 was an environmental company as of July 7, 2005 (the date of a previous name change), or possibly earlier that year. G8 presented itself as operating in four areas: earth, air, fire and water. G8's stated business model was solving environmental problems with a process that would lead to "site specific" Environmental Technology Centres ("ETC"), for example, ranging from a plant, to a solar panel on a light post, to an organic waste conversion process; however, G8 never completed any ETCs.

15. During the G8 Fundraising Period, G8 raised money from investors by selling G8 Securities. The illegal trades and distributions totalled between $5 million and approximately $9 million.

16. G8 raised money from investors by selling G8 Securities, purportedly relying on the family, friends and business associates exemption under the Alberta Act. G8 did not use a prospectus. The ASC Panel found that the evidence was clear that exemptions were not available for many of the trades and distributions of G8 Securities during the relevant period.

17. G8 employed "agents" to sell G8 Securities and paid them a 15% commission. No specific training was given to those selling G8 Securities regarding how to apply the family, friends, and business associates exemption.

18. None of G8, Branconnier and Burback was registered to trade in securities in Alberta.

19. During the G8 Fundraising Period, Branconnier was involved in the distribution of G8 Securities. For example, Branconnier: (i) contracted (through Milverton) to provide investment-related services to G8; (ii) was involved (through Milverton) in providing and processing documentation for the sales; (iii) conducted G8 operational meetings at which fundraising and securities sales were discussed; (iv) consulted with G8 selling agents; (v) reviewed and appeared in a G8 promotional video (the "G8 Video") (which he knew would be viewed by prospective investors); and (vi) was involved in the content and preparation of printed G8 marketing materials.

20. Burback also engaged in acts in furtherance of sales of G8 Securities, in connection with at least some of the illegal trades and distributions effected by one of the selling agents for G8, by signing G8 subscription agreements and accepting cheques.

21. Some of G8's marketing materials, including the G8 Video, G8's website and printed materials, contained several materially misleading or untrue statements, including that:

- "an investment in [G8] was secure and guaranteed," when the investment was not secure;
- G8 "had an extensive history of building waste management facilities," when G8 did not have any ETCs or any other types of facility;
- G8 "was selling products," when G8 had not sold any products and was not at a stage of being able to sell products; and
- G8 possessed technology, when the evidence was clear that G8 did not own any technology.

22. Branconnier was the guiding mind of G8. He was part of the G8 Video, and was involved in the content, preparation and approval of the G8 website, G8 Video and printed marketing materials.

23. Burback was part of the G8 Video, showed the video to some investors, told them about the G8 website, and distributed some of G8's marketing materials.

24. The ASC Panel found that G8, Branconnier, and Burback, knew or reasonably ought to have known that the statements were misleading or untrue and that they knew or reasonably ought to have known that the misleading or untrue statement would reasonably have been expected to have a significant effect on the market price or value of G8 Securities.

25. In its Findings with respect to the G8 Investments, the ASC Panel concluded that:

a. G8, Branconnier and Burback illegally traded and distributed G8 Securities, contrary to sections 75(1)(a) and 110(1) of the Alberta Act.

b. G8, Branconnier and Burback made materially misleading or untrue statements to investors, contrary to section 92(4.1) of the Alberta Act.

c. Branconnier and Burback authorized and acquiesced in all of the contraventions found against G8 through acts of employees or agents, contrary to section 199(1) of the Alberta Act (as it appeared from July 1, 2006 to December 17, 2014).

Halo/CAR Operation

26. The conduct related to the Halo/CAR Operation for which Halo, CAR, Burback and Branconnier were sanctioned took place between November 2009 and March 2012 ("Halo/CAR Fundraising Period").

27. Halo had entered into an agreement to license nitrogen-generating technology from a US company named ZEEOT, Inc. ("Zeeot"). Under the agreement, Halo was to receive the exclusive right for ten years to sell "ZEEOT Liquid Nitrogen Powered Energy Storage Systems" in Canada, primarily through the use of generators. Halo "vended the licence into CAR", with CAR planning to market the licensed products.

28. Halo and CAR were pitched and sold to investors as a package. The investments were structured as loans to Halo backed by CAR shares and options to purchase CAR shares ("Halo/CAR Securities").

29. During the Halo/CAR Fundraising Period, approximately $200,000 was raised through illegal distributions.

30. Halo/CAR raised money from investors by selling Halo/CAR Securities, purportedly relying on the family, friends and business associates exemption. While some Halo/CAR investors did qualify for an exemption, many did not.

31. No prospectus was filed with respect to the Halo/CAR distributions.

32. The ASC Panel found that Branconnier distributed Halo/CAR Securities, and at least some of those distributions were illegal. Branconnier was involved in various meetings that included some discussion of contacting investors and in recruiting at least one agent to sell Halo/CAR Securities. The Halo/CAR fundraising documentation was sent to and administered at a business address where Branconnier also had a home. Furthermore, most (if not all) of the Halo/CAR investor money was deposited directly into a bank account of Milverton, a company in which Branconnier was also a guiding mind.

33. The ASC Panel found that Burback effected some of the illegal distributions of Halo/CAR securities, directly trading or acting in furtherance of trading. For example, his signature appeared on the Halo/CAR loan and option documents, and he referred several investors who invested directly through him (of which no exemption would have been available for at least two of those investors). Burback, along with Branconnier, also took part in a conversation with the investment advisor registered with the ASC.

34. A sales brochure for Halo (the "Halo Brochure") was the marketing document used in the Halo/CAR Operation on behalf of Halo and CAR. The Halo brochure contained price projections which the ASC Panel found to be undertakings made with the intention of effecting trades in CAR shares. The implication of listing in the Halo Brochure was sufficiently connected in time to the mentioned share price increase to meet the temporal connection specified in ASC Staff's allegations.

35. The Halo Brochure also contained misleading or untrue statements made to investors, including:

    a. Statements about the viability of the technology and system:

        i. the ZEEOT (Halo/CAR) technology was "proven";

        ii. the Halo generator could draw nitrogen from air and produce energy; and

        iii. the Halo generator "could replace all fossil fuels";

    b. Statements about Halo and CAR's financial projections:

        iv. Halo/CAR could have by 2011 revenues of over $83,000,000 and net income of $33,500,000 and that it further could by 2014 have revenues of over $1 billion and net income of $500,000,000.

36. Branconnier was the guiding mind of Halo and CAR. He gave final approval to the Halo Brochure and told those selling the Halo/CAR Securities to use the document. The ASC Panel found that Branconnier was ultimately responsible for the content of the Halo Brochure and its use to persuade prospective investors.

37. Burback distributed the Halo Brochure and presented the information to investors and some prospective investors. Burback made the same representations as contained within the Halo Brochure to two investors who had, at least partly, invested with him. Burback discussed the projections contained within the Halo Brochure with at least one investor.

38. The ASC Panel found that Halo, CAR, Branconnier and Burback knew or reasonably ought to have known that the statements were misleading or untrue, and that they would reasonably have been expected to have a significant effect on the market price or value of Halo/CAR securities.

39. In its Findings with respect to the Halo/CAR Operation, the ASC Panel concluded that:

    a. Halo, CAR, Branconnier and Burback illegally distributed Halo/CAR Securities, contrary to section 110(1) of the Alberta Act.

    b. Halo, CAR, Branconnier and Burback made prohibited representations regarding the future value of CAR shares, contrary to section 92(3)(a) of the Alberta Act.

    c. Halo, CAR, Branconnier and Burback made materially misleading or untrue statements to investors, contrary to section 92(4.1) of the Alberta Act.

    d. Branconnier and Burback authorized and acquiesced in all of the contraventions found against Halo and CAR through acts of employees or agents, contrary to section 199(1) of the Alberta Act (as it appeared from July 1, 2006 to December 17, 2014).

The ASC Order

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

    a. against Branconnier:

        i. under sections 198(1)(b) and (c) of the Alberta Act, Branconnier cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, until the

later of (i) 2 February 2036 and (ii) the date on which all monetary orders under sections 199 and 202 of the Albert Act for which Branconnier is responsible have been paid in full to the ASC, except he is not precluded from trading in or purchasing securities through a registrant (who has first been given a copy of the ASC Order) in:

1. registered retirement savings plans, registered retirement income funds, registered education savings plans or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for the benefit of one or more of Branconnier, his spouse and his dependent children;

2. one other account for Branconnier's benefit; or

3. both;

ii. under section 198(1)(d) and (e) of the Alberta Act, Branconnier resign all positions he holds as a director or officer of any issuer, registrant or investment fund manager, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer, registrant or investment fund manager, until the later of (i) 2 February 2036 and (ii) the date on which all monetary orders under sections 199 and 202 of the Alberta Act for which Branconnier is responsible have been paid in full to the ASC;

iii. under section 198(1)(e.3) of the Alberta Act, Branconnier is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, until the later of (i) 2 February 2036 and (ii) the date on which all monetary orders under sections 199 and 202 of the Alberta Act for which Branconnier is responsible have been paid in full to the ASC;

iv. under section 199 of the Alberta Act, Branconnier pay to the ASC an administrative penalty of $350,000; and

v. under section 202 of the Alberta Act, Branconnier pay to the ASC $65,000 of the costs of the ASC's investigation and hearing.

b. against Burback:

i. under section 198(1)(b) and (c) of the Alberta Act, Burback cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, until the later of (i) 2 February 2028 an (ii) the date on which all monetary orders under section 199 and 202 of the Alberta Act for which Burback is responsible have been paid in full to the ASC, except he is not precluded from trading in or purchasing securities through a registrant (who has first been given a copy of the ASC Order) in:

1. registered retirement savings plans, registered retirement income funds, registered education savings plans or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for the benefit of one or more of Burback, his spouse and his dependent children;

2. one other account for Burback's benefit; or

3. both;

ii. under sections 198(1)(d) and (e) of the Alberta Act, Burback resign all positions he holds as director or officer of any issuer, registrant or investment fund manager, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer, registrant or investment fund manager, until the later of (i) 2 February 2028 and (ii) the date on which all monetary orders under sections 199 and 202 of the Alberta Act for which Burback is responsible have been paid in full to the ASC;

iii. under section 198(1)(e.3) of the Alberta Act, Burback is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, until the later of (i) 2 February 2028 and (ii) the date on which all monetary orders under sections 199 and 202 of the Alberta Act for which Burback is responsible have been paid in full to the ASC;

iv. under section 199 of the Alberta Act, Burback pay to the ASC an administrative penalty of $75,000; and

v. under section 202 of the Alberta Act, Burback pay to the ASC $35,000 of the costs of the ASC's investigation and hearing.

c. against G8:

i. under sections 198(1)(a), (b) and (c) of the Alberta Act, all trading in or purchasing of securities of G8 cease, G8 cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to G8, permanently, except that these orders do not preclude trading in or purchasing of securities of G8 for which a filed (final) prospectus has been receipted by the ASC's Executive Director.

d. against Halo:

i. under sections 198(1)(a), (b) and (c) of the Alberta Act, all trading in or purchasing of securities of Halo cease, Halo cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to Halo, permanently.

e. against CAR:

i. under sections 198(1)(a), (b) and (c) of the Alberta Act, all trading in or purchasing of securities of CAR cease, CAR cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to CAR, permanently.

III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

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

42. 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.

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

44. 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.

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

DATED at Toronto, this 17th day of April, 2017.

1.5 Notices from the Office of the Secretary

1.5.1 MM Café Franchise Inc. et al.

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

AND

**IN THE MATTER OF
MM CAFÉ FRANCHISE INC.,
TECHOCAN INTERNATIONAL CO. LTD.,
1727350 ONTARIO LIMITED, MARIANNE GODWIN,
DAVE GARNET CRAIG and
HAIYAN (HELEN) GAO JORDAN**

AND

**IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and MM CAFÉ FRANCHISE INC.,
DAVE GARNET CRAIG, and MARIANNE GODWIN**

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and MM Café Franchise Inc., Dave Garnet Craig, and Marianne Godwin.

The hearing will be held on April 24, 2017 at 1:00 p.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated April 18, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.2 Money Gate Mortgage Investment Corporation et al.

**FOR IMMEDIATE RELEASE
April 19, 2017**

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

AND

**IN THE MATTER OF
MONEY GATE MORTGAGE
INVESTMENT CORPORATION, MONEY GATE CORP.,
MORTEZA KATEBIAN and PAYAM KATEBIAN**

TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on April 27, 2017 at 10:00 a.m. to consider whether, in the opinion of the Commission, it is in the public interest pursuant to subsections 127(1) and (5) of the Act, for the Commission to issue a temporary order that:

a) pursuant to paragraph 2 of subsection 127(1) of the Act, all trading in securities of Money Gate Mortgage Investment Corporation ("MGMIC") shall cease;

b) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to MGMIC, Money Gate Corp., Morteza Katebian and Payam Katebian; and

c) to make such other orders as the Commission considers appropriate.

A copy of the Notice of Hearing dated April 19, 2017 and the Application to Issue a Temporary Order dated April 7, 2017 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.3 Home Capital Group Inc. et al.

FOR IMMEDIATE RELEASE
April 19, 2017

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

AND

IN THE MATTER OF
HOME CAPITAL GROUP INC.,
GERALD SOLOWAY,
ROBERT MORTON and
MARTIN REID

TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on May 4, 2017 at 1:00 p.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 April 19, 2017 and Statement of Allegations of Staff of the Ontario Securities Commission dated April 19, 2017 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.4 Global 8 Environmental Technologies, Inc. et al.

FOR IMMEDIATE RELEASE
April 20, 2017

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

AND

IN THE MATTER OF
GLOBAL 8 ENVIRONMENTAL TECHNOLOGIES, INC.,
HALO PROPERTY SERVICES INC.,
CANADIAN ALTERNATIVE RESOURCES INC.,
RENÉ JOSEPH BRANCONNIER and
CHAD DELBERT BURBACK

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 May 17, 2017 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 April 17, 2017 and Statement of Allegations of Staff of the Ontario Securities Commission dated April 17, 2017 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.5 MM Café Franchise Inc.et al.

FOR IMMEDIATE RELEASE
April 20, 2017

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

AND

IN THE MATTER OF
MM CAFÉ FRANCHISE INC.,
TECHOCAN INTERNATIONAL CO. LTD.,
1727350 ONTARIO LTD.,
MARIANNE GODWIN,
DAVE GARNET CRAIG and
HAIYAN (HELEN) GAO JORDAN

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

1. the Final Interlocutory Appearance on April 21, 2017 is vacated and shall take place on April 28, 2017 at 11:30 a.m.; and

2. the hearing dates of April 27 and 28, 2017 are vacated and the merits hearing shall commence on May 1, 2017 at 10:00 a.m. and continue on May 3, 4, 5, 8, 9, 10, 23, 24, 26, 30 and 31 and June 1 and 2, 2017.

A copy of the Order dated April 20, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.6 Pro-Financial Asset Management Inc. et al.

FOR IMMEDIATE RELEASE
April 21, 2017

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

AND

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

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

A copy of the Reasons and Decision dated April 20, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.7 Eco Oro Minerals Corp.

FOR IMMEDIATE RELEASE
April 24, 2017

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

AND

IN THE MATTER OF
ECO ORO MINERALS CORP.

AND

IN THE MATTER OF
A HEARING AND REVIEW OF A DECISION OF
THE TORONTO STOCK EXCHANGE

TORONTO – The Commission issued an Order following a hearing held in the above named matter.

A copy of the Order dated April 23, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.8 MM Café Franchise Inc. et al.

FOR IMMEDIATE RELEASE
April 24, 2017

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

AND

IN THE MATTER OF
MM CAFÉ FRANCHISE INC.,
TECHOCAN INTERNATIONAL CO. LTD.,
1727350 ONTARIO LIMITED,
MARIANNE GODWIN,
DAVE GARNET CRAIG and
HAIYAN (HELEN) GAO JORDAN

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and MM CAFÉ FRANCHISE INC.,
DAVE GARNET CRAIG and MARIANNE GODWIN

TORONTO – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and MM Café Franchise Inc., Dave Garnet Craig, and Marianne Godwin.

A copy of the Order dated April 24, 2017 and Settlement Agreement dated April 13, 2017 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.9 Mark Steven Rotstein and Equilibrium Partners Inc.

FOR IMMEDIATE RELEASE
April 25, 2017

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

AND

IN THE MATTER OF
MARK STEVEN ROTSTEIN AND
EQUILIBRIUM PARTNERS INC.

TORONTO – The Commission issued its Oral Reasons for Approval of a Settlement following the Settlement Hearing held in the above named matter.

A copy of the Oral Reasons for Approval of a Settlement dated April 11, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.10 MM Café Franchise Inc. et al.

FOR IMMEDIATE RELEASE
April 24, 2017

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

AND

IN THE MATTER OF
MM CAFÉ FRANCHISE INC.,
TECHOCAN INTERNATIONAL CO. LTD.,
1727350 ONTARIO LTD.,
MARIANNE GODWIN,
DAVE GARNET CRAIG and
HAIYAN (HELEN) GAO JORDAN

TORONTO – The Commission issued an Order in the above noted matter which provides that the following hearing dates are vacated:

1. the Final Interlocutory Appearance on April 28, 2017; and

2. the hearing dates of May 1, 3, 4, 5, 8, 9, 10, 23, 24, 26, 30 and 31 and June 1 and 2, 2017.

A copy of the Order dated April 24, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Citigroup Global Markets Canada Inc.

Headnote
NP 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Hybrid Application – Filer requested relief from the trade confirmation and statement of account requirements in securities laws where Filer acts as a dealer in accepting orders for "Give-up Transactions" that involve the purchase or sale of options on equities or indexes that are listed on one or more marketplaces – Filer then forwards the orders, either directly or through an agent, to a broker (the executing agent) for the relevant marketplace, which executing agent, will execute the Give-up Transactions in accordance with the Institutional Customer's instructions and then "give up" the Give-up Transactions to the Institutional Customer's clearing broker for clearing, settlement and/or custody – The service provided by Filer and the executing agent limited to trade execution only – Relief granted with respect to give-up trades for institutional customers provided that a give-up trade agreement is executed with institutional customer and clearing broker and that clearing broker agrees to provide the customers with statements which include give-up trade details.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 36(1).

Instruments Cited

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 14.14.

April 18, 2017

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, SASKATCHEWAN, AND
NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF
CITIGROUP GLOBAL MARKETS CANADA INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in Ontario has received an application from the Filer for a decision under the securities legislation of the jurisdiction of the principal regulator (the **Legislation**) for an exemption, in the context of Give-up Transactions (as defined below), from the requirement (the **Statement of Account Requirement**) that a dealer must deliver a statement of account to each client at least once every three months, or at the end of a month if the client has requested statements on a monthly basis or if a transaction was effected in the client's account during the month (the **Passport Exemption**).

The securities regulatory authority or regulator in each of Ontario, Saskatchewan, and Newfoundland and Labrador (the **Jurisdictions**) (the **Coordinated Exemptive Relief Decision Makers**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption, in the context of Give-up Transactions, from the requirement (the **Trade Confirmation Requirement**) that every registered dealer that has acted as principal or agent in connection with any purchase or sale of a security must promptly send by pre-paid mail or deliver to the client a written confirmation of the transaction (the **Coordinated Exemption**).

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

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

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

(c) the decision with respect to the Passport Exemption evidences the decision of the principal regulator; and

(d) the decision with respect to the Coordinated Exemption evidences the decision of each Coordinated Exemptive Relief Decision Maker.

Interpretation

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

Representations

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

1. The Filer is registered as an investment dealer under the securities legislation of each of the provinces and territories of Canada, and as a derivatives dealer under the *Derivatives Act* (Québec).

2. The Filer is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) and the TSX Venture Exchange and a participating organization of the Toronto Stock Exchange.

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

4. The Filer acts as a dealer in accepting orders for Give-up Transactions (as defined below) that involve the purchase or sale of options on equities or indexes that are listed on one or more marketplaces (**Options**).

5. **Give-up Transactions** are purchases or sales of Options by investors, each of whom is an 'institutional customer' within the meaning of IIROC Dealer Member Rule 1.1 (each, an **Institutional Customer**), that have an existing relationship as a client with a clearing broker but wish to use the trade execution services of one or more dealers and executing brokers for the purpose of executing such purchases or sales. Following execution of such purchases and sales, the executing brokers "give-up" the Give-up Transaction to the Institutional Customer's clearing broker for clearing, settlement and/or custody.

6. Under the circumstances contemplated by this Application, the Institutional Customer will place their Options orders with the Filer. The Filer is not a member of the relevant options marketplaces and is not in a position to execute options trades itself. In furtherance of its customer relationships, the Filer is able to provide access to options execution (**options execution access services**). The Filer will forward the orders, either directly or through an agent, to a broker (the **executing agent**) for the relevant marketplace, which executing agent, as agent for the Filer, will execute the Give-up Transactions in accordance with the Institutional Customer's instructions and then "give up" the Give-up Transactions to the Institutional Customer's clearing broker for clearing, settlement and/or custody (the **Give-up Arrangement**). The service provided by the Filer and the executing agent pursuant to the Give-up Arrangement is limited to trade execution only.

7. The clearing broker maintains an account for each Institutional Customer that is administered in accordance with the terms and conditions of the account documentation of the clearing broker that has been signed by the Institutional Customer.

8. For a Give-up Transaction, the Institutional Customer does not open an account with the Filer or the executing agent, and neither the Filer, nor the executing agent, receives any money, securities, margin or collateral from the Institutional Customer.

9. The Give-up Arrangement is made by agreements entered into between the Institutional Customer, the Filer, and the clearing broker and agreements with the executing agent in respect of the Give-up Arrangement.

10. Although each of the Filer and the executing agent is responsible for record-keeping, bookkeeping, custody and other administrative functions (**Account Services**) in respect of its own clients, it does not provide Account Services for execution-only customers in Give-up Transactions. Such Account Services remain the responsibility of those clients' clearing brokers. However, the Filer will open an account for the Institutional Customer solely for the purpose of recording the order flow through an omnibus arrangement with the Filer's agent.

11. The executing agent does, however, record all Give-up Transactions that it executes. A daily control performed by the executing agent's back-office identifies any Options positions held by the executing agent to be given up to the relevant clearing brokers on behalf of their clients based on existing Give-up Arrangements. If a clearing broker rejects a proposed allocation, the executing agent contacts the person who executed the trade to obtain clarifying instructions and then allocates the position in accordance with the instructions so received.

12. The Filer's agent prepares monthly or transaction-by-transaction invoices detailing all Give-up Transactions (including the amount of any commissions due for execution and handling thereof) that the executing agent conducted during the month for each Institutional Customer pursuant to a Give-up Arrangement. The Filer's agent delivers or causes to be delivered such invoices to the clearing broker who then reconciles the Give-up Transactions with its own records.

13. The clearing broker will have the primary relationship with the Institutional Customers and is responsible for risk monitoring, overall trade

monitoring as well as reporting trade confirmations and sending out statements of account.

14. The clearing broker is subject to the Trade Confirmation Requirement and Statement of Account Requirement in respect of its Institutional Customers in Give-up Transactions.

15. In Canada, the Filer will take reasonable steps to ensure that, prior to forwarding a trade to an executing agent, the executing agent will comply with or have obtained its own relief from the Trade Confirmation Requirement and the Statement of Account Requirement in respect of these Give-up Transactions.

16. With respect to Options listed in the United States, the Filer is not an executing broker on a U.S. marketplace, so in order to execute trades in Options listed in the United States, the Filer must send those orders to a U.S. broker-dealer for execution.

17. The Filer is, in all material respects, in compliance with all IIROC requirements relating to the maintenance of records of transaction orders. The Filer is not in default of securities legislation in any jurisdiction.

18. Application of the Trade Confirmation Requirement and Statement of Account Requirement to the Filer when it provides only trade execution services in respect of Give-up Transactions:

    (a) would be duplicative and confusing because delivery of the required trade confirmations and statements of account to execution-only Institutional Customers would capture only some, not all, of the information that would be contained in the trade confirmations and statements of account delivered to the same Institutional Customers by their clearing brokers; and

    (b) would not be required to establish an audit trail or to facilitate reconciliation of Give-up Transactions as between an executing agent and a clearing broker.

Decision

Each of the principal regulator and the Coordinated Exemptive Relief Decision Makers is satisfied that the decision meets the test set out in the Legislation for the relevant securities regulatory authority or regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Passport Exemption is granted, and the decision of the Coordinated Exemptive Relief Decision Makers under the Legislation is that the Coordinated Exemption is granted, provided in each case that:

(a) the Filer is registered as an investment dealer and a member of IIROC;

(b) the Filer provides options execution access services or trade execution services in respect of Give-up Transactions only for Institutional Customers;

(c) the Filer enters into Give-up Agreements with the clearing broker and the Institutional Customer and agreements with the executing agent in respect of the Give-up Arrangement; and

(d) the clearing broker has agreed to provide each Institutional Customer with written trade confirmations and statements of account that include information for any Give-up Transaction.

In respect of Relief from the Trade Confirmation Requirement (The Coordinated Exemption)

"Janet Leiper"
Commissioner
Ontario Securities Commission

"Deborah Leckman"
Commissioner
Ontario Securities Commission

And in respect of Relief from the Statement of Account Requirement (The Passport Exemption)

"Marrianne Bridge"
Deputy Director, Compliance and Registrant Regulation
Ontario Securities Commission

2.2 Orders

2.2.1 Kiska Metals Corporation

Headnote

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

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

AND

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

AND

IN THE MATTER OF
KISKA METALS CORPORATION
(THE FILER)

ORDER

Background

The securities regulatory authority or regulator in each of the Jurisdictions (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 British Columbia 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 Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland, 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* 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 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.

Peter Brady
Executive Director
British Columbia Securities Commission

2.2.2 MM Café Franchise Inc. et al.

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

AND

IN THE MATTER OF
MM CAFÉ FRANCHISE INC.,
TECHOCAN INTERNATIONAL CO. LTD.,
1727350 ONTARIO LTD.,
MARIANNE GODWIN,
DAVE GARNET CRAIG and
HAIYAN (HELEN) GAO JORDAN

ORDER

WHEREAS

1. on March 23, 2016, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5 (the "Act") in relation to a Statement of Allegations filed by Staff of the Commission ("Staff") on March 23, 2016, to consider whether it is in the public interest to make certain orders against MM Café Franchise Inc., DCL Healthcare Properties Inc., Culturalite Media Inc., Café Enterprise Toronto Inc., Techocan International Co. Ltd., 1727350 Ontario Ltd., Marianne Godwin, Dave Garnet Craig, Frank DeLuca, Elaine Concepcion and Haiyan (Helen) Gao Jordan;

2. on April 29, 2016, Staff filed an Amended Statement of Allegations;

3. on July 26, 2016, Staff filed an Amended Amended Statement of Allegations withdrawing certain allegations against Haiyan (Helen) Gao Jordan and a Notice of Withdrawal wholly withdrawing the allegations against DCL Healthcare Properties Inc., Culturalite Media Inc., Café Enterprise Toronto Inc., Frank DeLuca and Elaine Concepcion;

4. on March 24, 2017, the Commission approved a Settlement Agreement between Staff, Haiyan (Helen) Gao Jordan and Techocan International Co. Ltd.;

5. on March 24, 2017, Staff filed a Notice of Withdrawal wholly withdrawing the allegations against 1727350 Ontario Ltd.;

6. the Final Interlocutory Appearance is scheduled for April 21, 2017 at 10:00 a.m.;

7. the merits hearing is scheduled to commence on April 27, 2017 and continue on April 28, May 1, 3, 4, 5, 8, 9, 10, 23, 24, 26, 30 and 31 and June 1 and 2, 2017; and

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

IT IS ORDERED that:

1. the Final Interlocutory Appearance on April 21, 2017 is vacated and shall take place on April 28, 2017 at 11:30 a.m.; and

2. the hearing dates of April 27 and 28, 2017 are vacated and the merits hearing shall commence on May 1, 2017 at 10:00 a.m. and continue on May 3, 4, 5, 8, 9, 10, 23, 24, 26, 30 and 31 and June 1 and 2, 2017.

DATED at Toronto this 20th day of April, 2017.

"Timothy Moseley"

2.2.3 Eco Oro Minerals Corp. – ss. 8(3), 21.7 and 127(1)

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

AND

IN THE MATTER OF
ECO ORO MINERALS CORP.

AND

IN THE MATTER OF
A HEARING AND REVIEW OF A DECISION OF
THE TORONTO STOCK EXCHANGE

ORDER
(Sections 8(3), 21.7 and 127(1) of the Securities Act)

WHEREAS:

A. On March 27, 2017, pursuant to sections 8(3), 21.7 and 127(1) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**"), Courtenay Wolfe and Harrington Global Opportunities Fund Ltd. (collectively, the "**Applicants**") filed a Notice of Application with the Ontario Securities Commission (the "**Commission**") for a hearing in respect of the issuance of 10,600,000 common shares (the "**New Shares**") of Eco Oro Minerals Corp. ("**Eco Oro**") by Eco Oro to four shareholders of Eco Oro on or about March 16, 2017, and the decision of the Toronto Stock Exchange (the "**TSX**") on March 10, 2017 (the "**TSX Decision**") to grant conditional approval for the issuance of the New Shares (the "**Application**");

B. On April 7, 2017, the Commission granted leave to intervene in the Application to three intervenors, namely Trexs Investments, LLC, Amber Capital LP and Paulson & Co. Inc. (collectively, the "**Intervenors**");

C. The Commission heard the Application on April 19, 20 and 21, 2017 and oral and written submissions were delivered by the Applicants, the TSX, Eco Oro, the Intervenors and Staff of the Commission ("**Staff**");

D. The Commission is of the opinion that the TSX Decision should be set aside and that it is in the public interest to make an order under sections 8(3) and 21.7 of the Act to require shareholder approval for the issuance of the New Shares; and

E. Since the issuance of the New Shares has closed, the Commission is of the opinion that the additional orders below are necessary and in the public interest to give effect to the Commission's decision to require such shareholder approval so that it operates, to the extent practicable, as if the issuance of New Shares had not been permitted to close prior to the date hereof;

IT IS HEREBY ORDERED THAT:

1. The TSX Decision is set aside;

2. At a meeting of shareholders to be held no later than September 30, 2017, Eco Oro shall seek approval, as described in paragraph 3 below, of the issuance of New Shares to the Intervenors and Anna Stylianides (each a "**New Share Recipient**") to the extent that Eco Oro and a New Share Recipient have not otherwise reversed the issuance of that New Share Recipient's New Shares;

3. The shareholder approval sought by Eco Oro under paragraph 2 shall be calculated in accordance with the TSX Company Manual and shall ask shareholders to either:

   (a) ratify the issuance of the New Shares; or

   (b) instruct the board of directors of Eco Oro to take all necessary steps to reverse the issuance of the New Shares;

4. If the shareholders vote to instruct the board of directors of Eco Oro to take all necessary steps to reverse the issuance of the New Shares, the board of directors of Eco Oro shall forthwith implement those instructions;

5. Unless and until the shareholders of Eco Oro ratify the issuance of the New Shares:

   (a) the New Shares are cease traded pursuant to subsection 127(1) of the Act; and

   (b) Eco Oro and the Chair of any Eco Oro shareholder meeting shall not consider the New Shares to be issued and outstanding for the purposes of voting at the Annual General and Special Meeting of Shareholders scheduled for April 25, 2017, and any adjournment thereof, and at any other meeting of shareholders of Eco Oro; and

6. If any issue arises in connection with this Order, any of the parties may apply to the Commission for further direction.

DATED at Toronto, this 23rd day of April, 2017.

"D. Grant Vingoe"

"Monica Kowal"

"Frances Kordyback"

2.2.4 MM Café Franchise Inc. et al.

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

AND

IN THE MATTER OF
MM CAFÉ FRANCHISE INC.,
TECHOCAN INTERNATIONAL CO. LTD.,
1727350 ONTARIO LTD.,
MARIANNE GODWIN,
DAVE GARNET CRAIG and
HAIYAN (HELEN) GAO JORDAN

ORDER

WHEREAS

1. on March 23, 2016, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5 (the "Act") in relation to a Statement of Allegations filed by Staff of the Commission ("Staff") on March 23, 2016, to consider whether it is in the public interest to make certain orders against MM Café Franchise Inc., DCL Healthcare Properties Inc., Culturalite Media Inc., Café Enterprise Toronto Inc., Techocan International Co. Ltd., 1727350 Ontario Ltd., Marianne Godwin, Dave Garnet Craig, Frank DeLuca, Elaine Concepcion and Haiyan (Helen) Gao Jordan;

2. on April 29, 2016, Staff filed an Amended Statement of Allegations;

3. on July 26, 2016, Staff filed an Amended Amended Statement of Allegations withdrawing certain allegations against Haiyan (Helen) Gao Jordan and a Notice of Withdrawal wholly withdrawing the allegations against DCL Healthcare Properties Inc., Culturalite Media Inc., Café Enterprise Toronto Inc., Frank DeLuca and Elaine Concepcion;

4. on March 24, 2017, the Commission approved a Settlement Agreement between Staff and Haiyan (Helen) Gao Jordan and Techocan International Co. Ltd.;

5. on March 24, 2017, Staff filed a Notice of Withdrawal wholly withdrawing the allegations against 1727350 Ontario Ltd.;

6. the Final Interlocutory Appearance is scheduled for April 28, 2017 at 11:30 a.m.;

7. the merits hearing is scheduled to commence on May 1, 2017 and continue on May 3, 4, 5, 8, 9, 10, 23, 24, 26, 30 and 31 and June 1 and 2, 2017;

8. on April 18, 2017, the Commission issued a Notice of Hearing pursuant to sections 127 and 127.1 of the Act to announce that it would hold a hearing to consider whether it is in the public interest to approve a Settlement Agreement entered into between Staff and Marianne Godwin, Dave Garnet Craig and MM Café Franchise Inc., and on April 24, 2017, the Commission approved the Settlement Agreement;

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

IT IS ORDERED that the following hearing dates are vacated:

1. the Final Interlocutory Appearance on April 28, 2017; and

2. the hearing dates of May 1, 3, 4, 5, 8, 9, 10, 23, 24, 26, 30 and 31 and June 1 and 2, 2017.

DATED at Toronto this 24th day of April, 2017.

"Timothy Moseley"

2.3 Orders with Related Settlement Agreements

2.3.1 MM Café Franchise Inc. et al. – ss. 127(1), 127.1

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

AND

IN THE MATTER OF
MM CAFÉ FRANCHISE INC.,
TECHOCAN INTERNATIONAL CO. LTD.,
1727350 ONTARIO LIMITED,
MARIANNE GODWIN,
DAVE GARNET CRAIG and
HAIYAN (HELEN) GAO JORDAN

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION and
MM CAFÉ FRANCHISE INC., DAVE GARNET CRAIG and MARIANNE GODWIN

ORDER
(Subsection 127(1) and section 127.1 of the Securities Act)

WHEREAS:

1. on March 23, 2016, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing pursuant to subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5 (the "**Act**") to consider whether it is in the public interest to make orders against MM Café Franchise Inc., Techocan International Co. Ltd., 1727350 Ontario Limited, Marianne Godwin, Dave Garnet Craig, and Haiyan (Helen) Gao Jordan, in connection with the allegations set out in the Statement of Allegations of Staff of the Commission ("**Staff**") dated March 23, 2016, and amended April 24, 2016 and July 26, 2016 (the "**Amended Amended Statement of Allegations**");

2. MM Café Franchise Inc. ("**MMCF**"), Dave Garnet Craig ("**Craig**"), and Marianne Godwin ("**Godwin**") (collectively, the "**Settling Respondents**") entered into a Settlement Agreement with Staff dated April 13, 2017, (the "**Settlement Agreement**") in which the Settling Respondents agreed to a proposed settlement of this proceeding, subject to the approval of the Commission;

3. On April 18, 2017, the Commission issued a Notice of Hearing pursuant to sections 127 and 127.1 of the Act to announce that it would hold a hearing to consider whether it is in the public interest to approve a settlement agreement entered into between Staff and the Settling Respondents;

4. the Commission reviewed the Settlement Agreement, the Notice of Hearing, and the Amended Amended Statement of Allegations of Staff, and heard submissions from counsel for the Settling Respondents and from Staff; and

5. the Commission is of the opinion that it is in the public interest to make this Order;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;

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

3. the acquisition of any securities by MMCF is prohibited permanently, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

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

5. Godwin shall resign any positions that she holds as a director or officer of an issuer, pursuant to paragraph 7 of section 127(1);

6. Godwin is prohibited from becoming or acting as a director or officer of any issuer for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8 of section 127(1) of the Act;

7. Godwin shall resign any positions that she holds as a director or officer of a registrant, pursuant to paragraph 8.1 of section 127(1);

8. Godwin is prohibited from becoming or acting as a director or officer of a registrant for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8.2 of section 127(1) of the Act;

9. Godwin shall resign any positions that she holds as a director or officer of an investment fund manager, pursuant to paragraph 8.3 of section 127(1);

10. Godwin is prohibited from becoming or acting as a director or officer of an investment fund manager for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8.4 of section 127(1) of the Act;

11. Godwin shall pay costs in the amount of $1,000, pursuant to section 127.1 of the Act;

12. Should Godwin take, complete, and pass the “Partners, Directors and Senior Officers Course” (or equivalent) offered by the Canadian Securities Institute and pay the costs ordered in paragraph 11, Staff will consent to an order pursuant to section 144 of the Act varying the time period specified in paragraphs 6, 8, and 10 of this Order to 2 years commencing from the date of this Order;

13. Notwithstanding the provisions of paragraph 12, until the entire amount of the payment set out in paragraph 11 is paid in full, the provisions of paragraphs 6, 8, and 10 shall continue in force without any limitation as to time period;

14. Craig shall resign any positions that he holds as a director or officer of an issuer, pursuant to paragraph 7 of section 127(1);

15. Craig is prohibited from becoming or acting as a director or officer of any issuer for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8 of section 127(1) of the Act;

16. Craig shall resign any positions that he holds as a director or officer of a registrant, pursuant to paragraph 8.1 of section 127(1);

17. Craig is prohibited from becoming or acting as a director or officer of a registrant for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8.2 of section 127(1) of the Act;

18. Craig shall resign any positions that he holds as a director or officer of an investment fund manager, pursuant to paragraph 8.3 of section 127(1);

19. Craig is prohibited from becoming or acting as a director or officer of an investment fund manager for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8.4 of section 127(1) of the Act;

20. Craig shall pay costs in the amount of $1,000, pursuant to section 127.1 of the Act; and

21. Should Craig take, complete, and pass the “Partners, Directors and Senior Officers Course” (or equivalent) offered by the Canadian Securities Institute and pay the costs ordered in paragraph 20, Staff will consent to an order pursuant to section 144 of the Act varying the time period specified in paragraphs 15, 17, and 19 of this Order to 2 years commencing from the date of this Order.

DATED at Toronto, this 24th day of April, 2017.

“Timothy Moseley”

“AnneMarie Ryan”

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

AND

IN THE MATTER OF
MM CAFÉ FRANCHISE INC.,
TECHOCAN INTERNATIONAL CO. LTD.,
1727350 ONTARIO LIMITED,
MARIANNE GODWIN,
DAVE GARNET CRAIG and
HAIYAN (HELEN) GAO JORDAN

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION and
MM CAFÉ FRANCHISE INC., DAVE GARNET CRAIG and MARIANNE GODWIN

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Ontario Securities Commission (the "**Commission**") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "**Act**"), it is in the public interest for the Commission to make certain orders regarding MM Café Franchise Inc. ("**MMCF**"), Dave Garnet Craig ("**Craig**"), and Marianne Godwin ("**Godwin**") (collectively, the "**Settling Respondents**") in respect of the conduct described herein.

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("**Staff**") recommend settlement of the proceeding commenced by the Notice of Hearing dated March 23, 2016, (the "**Proceeding**") against the Settling Respondents according to the terms and conditions set out in Part VI of this Settlement Agreement (the "**Settlement Agreement**"). The Settling Respondents consent to the making of an order in the form attached as Schedule "A" (the "**Order**"), based on the facts set out below.

3. For the purposes of this Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Settling Respondents agree with the facts as set out in Part III and the conclusion in Part IV of this Settlement Agreement.

PART III – AGREED FACTS

A. Background

4. The conduct at issue in this proceeding took place between July 2011 and December 2013 (the "Material Time").

5. Craig is an Ontario resident. He has never been registered with the Commission in any capacity.

6. Craig was employed with Yogen Fruz until October 2011.

7. Godwin is an Ontario resident. She has never been registered with the Commission in any capacity.

8. On September 6, 2011, Craig and Godwin incorporated MMCF for the use of the trademark, likeness, and rights of publicity for Marilyn Monroe related to the development and franchising of cafes, quick service restaurants, casual chic restaurants, fast casual restaurants, theme based restaurants, fine dining restaurants, and merchandise products such as t-shirts, glasses, bags, mugs, books, hats, souvenirs, food, and beverage products.

9. Craig was the Chief Development Officer and a director of MMCF.

10. Godwin is the Chief Executive Officer and a director of MMCF.

11. MMCF retained an agent to solicit investors to invest in MMCF via the purchase of MMCF shares. While a majority of these investors were located in China, at least four were located in Ontario.

12. As a result of this activity, MMCF raised approximately $5.1 million from approximately 21 investors during the Material Time, some of whom were enrolled in the Provincial Nominee Immigration Program.

13. On May 1, 2014, Godwin filed an exemption from prospectus requirements with the Commission.

B. Illegal Distribution by MMCF

14. The trades in MMCF's securities were "distributions" as defined in subsection 1(1) of the Act as the securities had not been previously issued.

15. MMCF has never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of the MMCF shares.

16. Some of the investors did not qualify as accredited investors or meet other applicable exemptions from prospectus requirements.

17. Accordingly, MMCF traded in securities for which a preliminary prospectus or prospectus was not filed with the Commission and for which exemptions were not properly relied upon, contrary to subsection 53(1) of the Act.

C. Liability of Directors and Officers

18. During the Material Time, Craig and Godwin, the directors and officers of MMCF, authorized, permitted, or acquiesced in MMCF's non-compliance with Ontario securities law.

D. Mitigating Factors

19. None of the Settling Respondents have previously been found to have breached the Act.

20. None of the Settling Respondents have previously been registered with the Commission in any capacity.

21. The Settling Respondents cooperated during Staff's investigation, and have voluntarily agreed to enter into this Settlement Agreement.

22. The Settling Respondents relied on a third-party adviser to manage investor relations, and there is no evidence that they knowingly breached the Act.

PART IV – NON-COMPLIANCE WITH ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

23. By engaging in the conduct described above, the Settling Respondents admit and acknowledge that they have breached Ontario securities law and engaged in conduct contrary to the public interest. In particular:

(i) MMCF traded in securities when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to subsection 53(1) of the Act, in circumstances where there were no exemptions to the prospectus requirement available under Ontario securities law;

(ii) Craig, being one of the officers and directors of MMCF, authorized, permitted or acquiesced in MMCF's non-compliance with Ontario securities law and accordingly failed to comply with Ontario securities law, contrary to section 129.2 of the Act;

(iii) Godwin, being one of the officers and directors of MMCF, authorized, permitted or acquiesced in MMCF's non-compliance with Ontario securities law and accordingly failed to comply with Ontario securities law, contrary to section 129.2 of the Act; and

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

PART V – RESPONDENTS' POSITION

24. Craig requests that the panel at the Settlement Hearing consider the following mitigating circumstances:

(i) At the time Craig began working for MMCF on a full-time basis, a third party adviser had already solicited investor funds;

(ii) Craig's primary role with MMCF was creative director and chief of development. Although he signed financial documents as part of his duties as director, he did not have primary responsibility for the financial record keeping of MMCF; and

(iii) Craig has limited financial resources.

25. Godwin requests that the panel at the Settlement Hearing consider the following mitigating circumstances: She is presently semi-retired and has limited financial resources.

26. Staff has no evidence contrary to the statements in paragraphs 24 and 25.

PART VI – TERMS OF SETTLEMENT

27. The Settling Respondents agree to the terms of settlement set forth below.

28. The Settling Respondents consent to the Order, pursuant to which it is ordered that:

(a) the Settlement Agreement is approved;

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

(c) the acquisition of any securities by MMCF is 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 MMCF permanently, pursuant to paragraph 3 of subsection 127(1) of the Act;

(e) Godwin shall resign any positions that she holds as a director or officer of an issuer, pursuant to paragraph 7 of section 127(1);

(f) Godwin is prohibited from becoming or acting as a director or officer of any issuer for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8 of section 127(1) of the Act;

(g) Godwin shall resign any positions that she holds as a director or officer of a registrant, pursuant to paragraph 8.1 of section 127(1);

(h) Godwin is prohibited from becoming or acting as a director or officer of a registrant for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8.2 of section 127(1) of the Act;

(i) Godwin shall resign any positions that she holds as a director or officer of an investment fund manager, pursuant to paragraph 8.3 of section 127(1);

(j) Godwin is prohibited from becoming or acting as a director or officer of an investment fund manager for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8.4 of section 127(1) of the Act;

(k) Godwin shall pay costs in the amount of $1,000, pursuant to section 127.1 of the Act;

(l) Should Godwin take, complete, and pass the "Partners, Directors and Senior Officers Course" (or equivalent) offered by the Canadian Securities Institute and pay the costs ordered in subparagraph (k), Staff will consent to an order pursuant to section 144 of the Act varying the time period specified in subparagraphs (f), (h), and (j) to 2 years commencing from the date of this Order;

(m) Notwithstanding the provisions of subparagraph (l), until the entire amount of the payment set out in subparagraph (k) is paid in full, the provisions of subparagraphs (f), (h), and (j) shall continue in force without any limitation as to time period;

(n) Craig shall resign any positions that he holds as a director or officer of an issuer, pursuant to paragraph 7 of section 127(1);

(o) Craig is prohibited from becoming or acting as a director or officer of any issuer for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8 of section 127(1) of the Act;

(p) Craig shall resign any positions that he holds as a director or officer of a registrant, pursuant to paragraph 8.1 of section 127(1);

(q) Craig is prohibited from becoming or acting as a director or officer of a registrant for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8.2 of section 127(1) of the Act;

(r) Craig shall resign any positions that he holds as a director or officer of an investment fund manager, pursuant to paragraph 8.3 of section 127(1);

(s) Craig is prohibited from becoming or acting as a director or officer of an investment fund manager for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8.4 of section 127(1) of the Act;

(t) Craig shall pay costs in the amount of $1,000, pursuant to section 127.1 of the Act; and

(u) Should Craig take, complete, and pass the "Partners, Directors and Senior Officers Course" (or equivalent) offered by the Canadian Securities Institute and pay the costs ordered in subparagraph (t), Staff will consent to an order pursuant to section 144 of the Act varying the time period specified in subparagraphs (o), (q), and (s) to 2 years commencing from the date of this Order.

29. MMCF undertakes to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in subparagraphs (b) through (d), above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

30. Godwin undertakes to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in subparagraphs (e) through (m), above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

31. Craig undertakes to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in subparagraphs (n) through (u), above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

32. Craig and Godwin agree to attend in person at the hearing before the Commission to consider the proposed settlement.

33. Craig will pay the amount set out in subparagraph (t), above, via certified cheque or law firm trust cheque prior to the approval of this settlement.

34. Godwin agrees to make the payment specified in subparagraph (k), above, by post-dated cheque(s) prior to the issuance of any Commission order approving this Settlement Agreement.

35. The Settling Respondents acknowledge that this Settlement Agreement and proposed Order may form the basis for parallel orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to the Settling Respondents. The Settling Respondents should contact the securities regulator of any other jurisdiction in which it/he/she may intend to engage in any securities related activities, prior to undertaking such activities.

PART VII – STAFF COMMITMENT

36. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law against the Settling Respondents in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of the paragraph below.

37. If the Commission approves this Settlement Agreement and a Settling Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against that Settling Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement. In addition, if this Settlement Agreement is approved by the Commission, and a Settling Respondent fails to comply with the terms of the Settlement Agreement, the Commission is entitled to bring any proceedings necessary to recover any pecuniary amounts agreed to by that Settling Respondent set out in Part VI.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

38. The parties will seek approval of this Settlement Agreement at a public hearing (the "**Settlement Hearing**") before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with this Settlement Agreement and the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168.

39. Staff and the Settling Respondents agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Settling Respondents' conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

40. If the Commission approves this Settlement Agreement, the Settling Respondents agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

41. If the Commission approves this Settlement Agreement, none of the parties will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

42. Whether or not the Commission approves this Settlement Agreement, the Settling Respondents will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

43. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

(a) this Settlement Agreement and all discussions and negotiations between Staff and the Settling Respondents before the settlement hearing takes place will be without prejudice to Staff and the Settling Respondents; and

(b) Staff and the Settling Respondents will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

44. All parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement, subject to the parties' need to make submissions during the public hearing.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

45. This Settlement Agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

46. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated at Toronto this 13th day of April, 2017.

"Marianne Godwin"
MM Café Franchise Inc.
Per: Marianne Godwin, Director and CEO

I am authorized to bind the corporation

Dated at Toronto this 13th day of April, 2017.

"Dave Garnet Craig"
MM Café Franchise Inc.
Per: Dave Garnet Craig, Director and CDO

I am authorized to bind the corporation

Dated at Toronto this 13th day of April, 2017.

"Dave Garnet Craig"
Dave Garnet Craig

Dated at Toronto this 13th day of April, 2017.

"Marianne Godwin"
Marianne Godwin

Dated at Toronto this 13th day of April, 2017.

"Jeff Kehoe"
Jeff Kehoe
Director, Enforcement Branch of the Ontario Securities Commission

Schedule "A"

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

AND

IN THE MATTER OF
MM CAFÉ FRANCHISE INC.,
TECHOCAN INTERNATIONAL CO. LTD.,
1727350 ONTARIO LIMITED,
MARIANNE GODWIN,
DAVE GARNET CRAIG and
HAIYAN (HELEN) GAO JORDAN

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION and
MM CAFÉ FRANCHISE INC. and MARIANNE GODWIN

ORDER
(Subsections 127(1) and 127.1)

WHEREAS:

1. on March 23, 2016, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing pursuant to subsections 127(1) and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") to consider whether it is in the public interest to make orders, as specified therein, against and in respect of MM Café Franchise Inc., Techocan International Co. Ltd., 1727350 Ontario Limited, Marianne Godwin, Dave Garnet Craig, and Haiyan (Helen) Gao Jordan. The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("**Staff**") dated March 23, 2016, and amended April 24, 2016 and July 26, 2016 (the "**Amended Amended Statement of Allegations**");

2. MM Café Franchise Inc. ("**MMCF**"), Dave Garnet Craig ("**Craig**"), and Marianne Godwin ("**Godwin**") (collectively, the "**Settling Respondents**") entered into a Settlement Agreement with Staff dated April 13, 2017, (the "**Settlement Agreement**") in which the Settling Respondents agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated March 23, 2016, subject to the approval of the Commission;

3. On April 13, 2017, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a settlement agreement entered into between Staff and the Settling Respondents;

4. the Settling Respondents acknowledge that failure to pay in full any monetary sanctions and/or costs ordered will result in the Settling Respondents' name being added to the list of "Respondents Delinquent in Payment of Commission Orders" published on the OSC website;

5. the Settling Respondents acknowledge that this Order may form the basis for parallel orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to the Settling Respondents. The Settling Respondents should contact the securities regulator of any other jurisdiction in which it/she may intend to engage in any securities related activities, prior to undertaking such activities;

6. the Commission has reviewed the Settlement Agreement, the Notices of Hearing, and the Amended Amended Statement of Allegations of Staff, and heard submissions from counsel for the Settling Respondents and from Staff; and

7. the Commission is of the opinion that it is in the public interest to make this Order;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;

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

3. the acquisition of any securities by MMCF is prohibited permanently, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

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

5. Godwin shall resign any positions that she holds as a director or officer of an issuer, pursuant to paragraph 7 of section 127(1);

6. Godwin is prohibited from becoming or acting as a director or officer of any issuer for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8 of section 127(1) of the Act;

7. Godwin shall resign any positions that she holds as a director or officer of a registrant, pursuant to paragraph 8.1 of section 127(1);

8. Godwin is prohibited from becoming or acting as a director or officer of a registrant for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8.2 of section 127(1) of the Act;

9. Godwin shall resign any positions that she holds as a director or officer of an investment fund manager, pursuant to paragraph 8.3 of section 127(1);

10. Godwin is prohibited from becoming or acting as a director or officer of an investment fund manager for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8.4 of section 127(1) of the Act;

11. Godwin shall pay costs in the amount of $1,000, pursuant to section 127.1 of the Act;

12. Should Godwin take, complete, and pass the “Partners, Directors and Senior Officers Course” (or equivalent) offered by the Canadian Securities Institute and pay the costs ordered in paragraph 11, Staff will consent to an order pursuant to section 144 of the Act varying the time period specified in paragraphs 6, 8, and 10 to 2 years commencing from the date of this Order;

13. Notwithstanding the provisions of paragraph 12, until the entire amount of the payment set out in paragraph 11 is paid in full, the provisions of paragraphs 6, 8, and 10 shall continue in force without any limitation as to time period;

14. Craig shall resign any positions that he holds as a director or officer of an issuer, pursuant to paragraph 7 of section 127(1);

15. Craig is prohibited from becoming or acting as a director or officer of any issuer for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8 of section 127(1) of the Act;

16. Craig shall resign any positions that he holds as a director or officer of a registrant, pursuant to paragraph 8.1 of section 127(1);

17. Craig is prohibited from becoming or acting as a director or officer of a registrant for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8.2 of section 127(1) of the Act;

18. Craig shall resign any positions that he holds as a director or officer of an investment fund manager, pursuant to paragraph 8.3 of section 127(1);

19. Craig is prohibited from becoming or acting as a director or officer of an investment fund manager for a period of 5 years commencing from the date of this Order, pursuant to paragraph 8.4 of section 127(1) of the Act;

20. Craig shall pay costs in the amount of $1,000, pursuant to section 127.1 of the Act; and

21. Should Craig take, complete, and pass the “Partners, Directors and Senior Officers Course” (or equivalent) offered by the Canadian Securities Institute and pay the costs ordered in paragraph 20, Staff will consent to an order pursuant to

section 144 of the Act varying the time period specified in paragraphs 15, 17, and 19 to 2 years commencing from the date of this Order.

DATED at Toronto, this 24th day of April, 2017.

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Pro-Financial Asset Management Inc. et al.

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

AND

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

REASONS AND DECISION

Hearing:	April 11-15, 18, 20-22, 25-29, June 13, 15-16 and September 15, 2016		
Decision:	April 20, 2017		
Panel:	Christopher Portner	–	Commissioner and Chair of the Panel
	Judith N. Robertson	–	Commissioner
	AnneMarie Ryan	–	Commissioner
Appearances:	Derek Ferris Catherine Weiler Alexandra Matushenko	–	For Staff of the Commission
	Alistair Crawley Michael L. Byers	–	For Stuart McKinnon
	No one appeared on behalf of Pro-Financial Asset Management Inc.		

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REASONS AND DECISION

I. INTRODUCTION

A. Overview

[1] This proceeding involves allegations that Pro-Financial Asset Management Inc. ("**PFAM**"), Stuart McKinnon, PFAM's President and Chief Executive Officer ("**McKinnon**"), and John Farrell, PFAM's Chief Compliance Officer ("**Farrell**"), committed numerous breaches of Ontario securities laws. Such alleged breaches include numerous administrative, accounting, compliance and oversight failures. In addition, there are numerous allegations of failures relating to nine series of principal protected notes ("**PPNs**") distributed on behalf of two banks by PFAM, which failures resulted in a deficiency of $1,222,549.45 (the "**PPN Deficiency**") owing to holders of the PPNs (the "**Noteholders**").

[2] This proceeding was initiated by a Notice of Hearing dated December 9, 2014 which was issued by the Ontario Securities Commission (the "**Commission**") and named PFAM, McKinnon and Farrell as the respondents, and by a Statement of Allegations dated December 8, 2014 (the "**Statement of Allegations**") issued by Staff of the Commission ("**Staff**").

[3] Farrell settled the allegations against him by entering into a Settlement Agreement with Staff which was approved by the Commission on June 26, 2015. Neither the terms of the Settlement Agreement nor any admissions by Farrell may be used in this proceeding.

B. The Respondents

[4] The following is a brief description of PFAM and McKinnon, the remaining respondents (together, the "Respondents") following Farrell's settlement with Staff.

1. Pro-Financial Asset Management Inc.

[5] PFAM was incorporated in Ontario on November 6, 2002 under the name Pro-Hedge Funds Inc. which was changed to Pro-Financial Asset Management Inc. on January 17, 2006. PFAM was registered as:

(a) A limited market dealer from January 21, 2004 until September 28, 2009;

(b) An investment counsel and portfolio manager from October 19, 2005 to September 28, 2009; and

(c) An exempt market dealer ("**EMD**") from September 28, 2009 until May 17, 2013 when its registration as an EMD was suspended on consent.

[6] PFAM was also registered as an adviser in the category of portfolio manager and acted in that capacity for certain managed accounts until February 27, 2015 when this registration was also suspended. As of February 2015, PFAM no longer carried on any registrable activity.

[7] Prior to October 28, 2010, the date on which the McKinnon Family Trust entered into a Share Purchase Agreement with the Butler Family Trust,[1] the McKinnon Family Trust owned all of the issued and outstanding shares of PFAM.

2. Stuart McKinnon

[8] McKinnon graduated from the University of Western Ontario with a degree in Economics in 1986 and started his career as an equity trader on the floor of the Toronto Stock Exchange. McKinnon was the indirect owner, President, Chief Executive Officer and a director of PFAM from the date of its incorporation and has been registered with the Commission in various capacities since 1987 including as an officer and director of PFAM, as a registered dealing representative and as PFAM's Ultimate Responsible Person ("**URP**") and Ultimate Designated Person ("**UDP**").

[9] McKinnon also owned and controlled Legacy Investment Management Inc. ("**Legacy**"), a financial services firm which was registered as a mutual fund dealer and limited market dealer. Legacy and PFAM shared offices and accounting personnel and some of PFAM's personnel also performed duties for Legacy.

[10] In late 2013, McKinnon caused Legacy to transfer its assets and advisers to De Thomas Financial Corp. ("**De Thomas**"), a mutual fund and exempt market dealer. McKinnon continued to be a shareholder, officer, director, UDP and dealing representative of Legacy in the categories of EMD and mutual fund dealer until November 29, 2013.

[1] As contemplated by the Share Purchase Agreement, Anthony Cox also purchased PFAM common shares, however, the agreement relating to such purchase was not entered into evidence. See also Footnote 2.

[11] McKinnon's registrations as a dealing representative and UDP and his approval as an officer and director of PFAM were suspended on February 27, 2015 following the suspension of PFAM's registration by the Commission on May 17, 2013. A Notice of Reinstatement was filed on January 17, 2014, however, the reinstatement of McKinnon's registration was not approved. An application for Reactivation of Registration with De Thomas, which was filed on behalf of McKinnon on June 12, 2015, remains pending.

C. The Allegations

[12] In the Statement of Allegations, Staff alleges that, during the material time between May 2003 and August 2014:

(a) PFAM failed to deal fairly, honestly and in good faith with its clients in breach of its obligations under subsection 2.1(1) of OSC Rule 31-505 – *Conditions of Registration* ("**Rule 31-505**");

(b) PFAM failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances and, in doing so, breached the standard of care for investment fund managers under subsection 116(b) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**");

(c) PFAM failed to maintain the minimum working capital required of a registered firm and failed to report its capital deficiency contrary to section 12.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**");

(d) PFAM failed to keep satisfactory books, records or other documents contrary to subsection 19(1) of the Act and sections 11.5 and 11.6 of NI 31-103;

(e) PFAM failed to establish, maintain and apply policies and procedures that establish an adequate system of controls and supervision contrary to section 11.1 of NI 31-103 and subsection 32(2) of the Act;

(f) McKinnon, as an officer and director of PFAM, authorized, permitted or acquiesced in the beaches by PFAM set out in paragraphs [12](a) to (e) above and is thereby deemed to have breached subsection 2.1(1) of Rule 31-505, subsection 116(b) of the Act, sections 11.1 and 12.1 of NI 31-103, subsections 19(1) and 32(2) of the Act and sections 11.5 and 11.6 of NI 31-103 pursuant to section 129.2 of the Act; and

(g) McKinnon breached his obligations as URP and UDP of PFAM contrary to former subsection 1.3(2) of Rule 31-505 and, on and after September 28, 2009, contrary to section 5.2 of NI 31-103.

[13] Staff also alleges that PFAM's and McKinnon's foregoing conduct was contrary to the public interest.

[14] In response to Staff's allegations, McKinnon submits, among other things, that:

(a) The PPNs are excluded from the definition of a security within the meaning of the Act and, even if the PPNs were securities, section 8.5 of NI 31-103 provides that trades of the PPNs would be exempt if made through a registered dealer;

(b) PFAM's activities with respect to the PPNs were not registrable conduct and did not involve dealings with clients within the meaning of Rule 31-505;

(c) Staff's allegations amount, at the most, to negligence on the part of PFAM and do not rise to the threshold of intentional misconduct necessary to find liability under section 2.1 of Rule 31-505;

(d) PFAM was not a party to any contract with the Noteholders and any acts or omissions it may have made did not affect the rights of the Noteholders to full payment by the issuing banks;

(e) In his capacity as the Chief Executive Officer of PFAM, McKinnon was not personally responsible for record-keeping and the documentary evidence substantiates that he endeavoured to ensure that PFAM's physical and electronic records were safely and securely stored;

(f) He made *bona fide* efforts to ensure that PFAM's compliance systems were in accordance with industry standards; and

(g) If Staff cannot demonstrate that the conduct of the Respondents violated any of the specific provisions alleged, it would be inappropriate to find that such conduct was contrary to the public interest.

D. Merits Hearing

[15] The merits hearing in this matter (the "**Hearing**") was conducted over 17 days commencing on April 11, 2016 and concluding on June 16, 2016. Following the filing of their written submissions, the parties made oral submissions to the Panel on September 15, 2016.

[16] McKinnon was represented by counsel throughout the Hearing. PFAM was not represented and did not participate, provide evidence or make submissions at the Hearing.

E. Witnesses Called

[17] Staff called the following 13 witnesses:

(a) Employees of the Commission

(i) Michael Denyszyn, a senior legal counsel in the Commission's Compliance and Registrant Regulation Branch (the "**CRR Branch**");

(ii) Estella Tong, a senior accountant in the CRR Branch;

(iii) Susan Thomas, a senior legal counsel in the Commission's Investment Funds and Structured Products Branch (the "**IF Branch**"); and

(iv) Michael Ho, a senior forensic accountant in the Commission's Enforcement Branch ("**Ho**" and the "**Enforcement Branch**", respectively).

(b) Issuing Banks for the PPNs

(i) Paul Drumm, a Managing Director of BNP Paribas (Canada) ("**Drumm**" and "**BNP**", respectively); and

(ii) Diletta Prando, a Managing Director, General Counsel and Corporate Secretary of Société Génerale (Canada) ("**Prando**" and "**SGC**", respectively).

(c) Former employees of PFAM

(i) Michael Butler, PFAM's former President ("**Butler**")[2];

(ii) Anthony Cox, PFAM's former Chief Financial Officer ("**CFO**") and Chief Operating Officer ("**Cox**");

(iii) Ralph Bozzo, PFAM's former Manager of Operations ("**Bozzo**");

(iv) Milind Jog, PFAM's former Director of Sales and National Sales Manager ("**Jog**"); and

(v) Zora Atlija, PFAM's former Director of Finance ("**Atlija**").

(d) Service providers to PFAM

(i) David Chan, a representative of The Investment Administration Solution Inc., PFAM's record-keeper ("**Chan**" and "**IAS**", respectively); and

(ii) Dawn Bell, a representative of Concentra Trust, the trustee and escrow agent for the PPNs ("**Bell**" and "**Concentra**", respectively).

[18] McKinnon testified on his own behalf and called Samantha Pinto, PFAM's former CFO ("**Pinto**"), as a witness. PFAM did not participate in or call any witnesses at the Hearing.

[2] Butler became the President of PFAM on November 1, 2010 and remained in that position for just over five months until his employment was terminated by McKinnon on April 14, 2011. Cox became the Chief Financial Officer and Chief Operating Officer of PFAM on November 1, 2010 and resigned on April 15, 2011. Both Butler, indirectly through the Butler Family Trust, and Cox remained shareholders of PFAM after they ceased to be employed by PFAM.

II. PRELIMINARY MATTERS

A. Standard of Proof

[19] Commission proceedings apply the civil standard of proof on a balance of probabilities. It is not disputed that this civil standard of proof applies to this proceeding. In *F.H. v McDougall* [2008] 3 SCR 41 ("***McDougall***"), the Supreme Court of Canada stated that proof on a balance of probabilities requires the trier of fact to decide whether it is more likely than not that an alleged event occurred.[3] In making such a determination, the evidence must be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.[4]

B. Admission of Hearsay Evidence

[20] Some of the evidence tendered by the parties at the Hearing was hearsay. Hearsay evidence is admissible in hearings before the Commission pursuant to section 15 of the *Statutory Powers Procedure Act*, RSO 1990, c S.22. Hearing panels have broad discretion to admit evidence at a hearing including any oral testimony and any document or other thing relevant to the subject matter of the proceeding. A panel can rely on hearsay evidence that is corroborated or consistent with other documentary evidence.[5]

C. Assessment of Credibility

[21] Credibility is an important issue in this proceeding. Some of McKinnon's testimony conflicts in material respects with the testimony of Staff's witnesses or is inconsistent with the documentary evidence. In his written submissions dated August 19, 2016 ("**McKinnon's Written Submissions**"), McKinnon submits that, when weighing and considering the evidence, the Commission should consider that five of Staff's witnesses, namely, Prando, Bell, Chan, Butler and Cox, are involved in litigation with McKinnon and/or PFAM, either personally or through their employer or a corporation. McKinnon also notes that Bozzo was in litigation with PFAM prior to the dismissal of his grievance against PFAM and is now employed by IAS. McKinnon submits that Bozzo's evidence is fundamentally unreliable and that we should ascribe no weight to any of his uncorroborated evidence. McKinnon also submits that the testimony of each of Chan, Butler and Cox is not reliable as it is motivated by self-interest.

[22] In *Springer v Aird & Berlis LLP* (2009), 96 OR (3d) 325, Mr. Justice Newbould of the Ontario Superior Court of Justice cited with approval O'Halloran J.A.'s statement in *R v. Pressley* (1948), 94 CCC 29 (BCCA) that the most satisfactory judicial test of truth lies in its harmony with the preponderance of probabilities disclosed by the facts and circumstances in the conditions of a particular case.

[23] In assessing a witness's credibility, the trier of fact may consider:

(a) an assessment of the witness' general integrity, powers of observation, capacity to remember and the accuracy of statements of the witness;

(b) the extent to which the witness' evidence is internally consistent;

(c) the extent to which the witness' evidence is consistent with other proven or undisputed facts; and

(d) in the rarest of cases, the demeanour of the witness.

(*North American Financial Group Inc.* (2013), 36 OSCB 12095 at para 258)

[24] In cases where there is conflicting testimony and where the trier of fact is deciding whether a fact occurred on a balance of probabilities, finding the evidence of one party credible may well be conclusive of the result because that evidence is inconsistent with that of the other party. In such cases, believing one party will mean explicitly or implicitly that the other party was not believed on the important issue in the case.[6]

[25] Disbelief of a witness's evidence on one issue may well taint the witness' evidence on other issues, but an unfavourable credibility finding against a witness does not, of itself, constitute evidence that can be used to prove a fact in issue.[7] In assessing McKinnon's credibility and that of other witnesses, we have carefully considered whether their evidence is in harmony with the preponderance of probabilities disclosed by the facts and circumstances of this proceeding and have made reference to the issue of credibility where relevant.

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3 *McDougall,* para 44.
4 *McDougall*, para 46.
5 *Maple Leaf Investment Fund Corp* (2011), 34 OSCB 11551, para 47.
6 *McDougall*, at para 86.
7 *McDougall*, at para 95.

III. THE PPNs – DID PFAM FAIL TO DEAL FAIRLY, HONESTLY AND IN GOOD FAITH WITH ITS CLIENTS?

A. Background and Submissions

[26] Staff alleges that PFAM engaged in improper conduct which resulted in or contributed to the PPN Deficiency and is the basis of the allegation that PFAM failed to deal fairly, honestly and in good faith with its clients in breach of its obligations under subsection 2.1(1) of Rule 31-505. A representative of a registered dealer or a registered adviser is also required to deal fairly, honestly and in good faith with his or her clients under subsection 2.1(2) of Rule 31-505.

[27] As the phrase "fairly, honestly and in good faith" is not defined in the Act, Staff points to the following definitions of "fairly" and "honest" found in *Webster's Encyclopaedic Dictionary*[8] and the definition of "good faith" found in *Black's Law Dictionary*[9] which provide a useful context for the discussion which follows:

> **Fairly:** in a just and equitable manner.
>
> **Honest:** never deceiving, stealing or taking advantage of the trust of others; sincere, truthful.
>
> **Good faith:** a state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage.

[28] In response, McKinnon acknowledges PFAM's shortcomings in relation to the PPNs, however, he asserts that "… Staff's allegations amount, at most, to negligence and do not rise to the threshold of intentional misconduct necessary to find liability under s. 2.1 of Rule 31-505."[10] McKinnon submits that the responsibility for the failures that caused the PPN Deficiency is shared with other parties and that the Noteholders ultimately received payment of the amount of the PPN Deficiency from the Banks.

[29] McKinnon also submits that PFAM's management of the PPNs was outside the scope of subsection 2.1(1) of Rule 31-505 as (i) the PPNs were not securities; (ii) PFAM's conduct in relation to the PPNs was more analogous to that of a back office entity and did not constitute registrable activity; and (iii) the Noteholders were not clients of PFAM within the meaning of subsection 2.1(1) of Rule 31-505.

[30] We will first review the issues raised by McKinnon and summarized in paragraph [29] above and, in the final part of this section, will return to the question of whether PFAM breached its obligation to deal fairly, honestly and in good faith with its clients.

B. Overview of the Principal Protected Notes

[31] Prando and Drumm, respectively, Managing Directors of SGC and BNP (together, the "**Banks**") testified that a PPN is an investment product which promises to repay, at a minimum, the capital invested if the note is held to maturity. Principal protected notes are usually issued by banks and the returns are linked to some other investment such as a fund or a basket of securities. At maturity, the noteholder receives the capital invested plus a return, if any, on the referenced fund or basket of securities.

[32] Prando and Drumm also testified that the Noteholders could sell their respective PPNs before maturity (an early redemption) on a secondary market provided by the Banks and at a price determined by the Banks. The price received for early redemptions might be less than the capital invested and might be subject to an early termination fee.[11]

[33] PPNs having an aggregate value of approximately $95 million were sold through PFAM to the Noteholders between 2003 and 2006. The PPNs were sold in nine series and 13 tranches, with maturity dates between December 31, 2010 and December 12, 2016.

[34] Of the nine series of PPNs sold through PFAM, three were issued by BNP and six were issued by SGC. The first two series issued by SGC were sold through Legacy, however, PFAM assumed responsibility for these series when Legacy withdrew from its involvement with the PPNs in 2005.

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8 *Webster's Encyclopaedic Dictionary,* Canadian ed. (New York, NY: Lexicon Publications Inc., 1988), pp. 338 and 465.

9 *Black's Law Dictionary*, 9th ed. (St. Paul, MN: West Publishing Co., 2009), p. 762.

10 McKinnon's Written Submissions, para 128.

11 The agreements, which are described in paragraph [35], provide that an affiliate of BNP and SGC would facilitate a secondary market under certain circumstances and purchase the PPNs from the Noteholders. While the secondary market theoretically included both sales and purchases, in practice, it was mainly used to allow the Noteholders to sell their investments prior to maturity. Accordingly, the practice became known at PFAM as early redemptions, however, the PPNs were not actually redeemed but were purchased by a Bank affiliate. We have adopted the PFAM convention of using the term early redemption for secondary market sales.

[35] PFAM entered into agreements with each of the Banks (collectively, the "Bank Agreements") pursuant to which PFAM agreed to provide advisory, distribution and other services in relation to the PPNs and for which PFAM was paid fees at closing and through the term of the respective series of PPNs. PFAM's role was essentially the same for all of the PPNs although each of the Banks described its agreements differently.[12]

[36] Pursuant to the Bank Agreements, PFAM undertook, among other things, to maintain the books and records relating to the PPNs, communicate with the Noteholders, provide marketing services and assist the Banks in the identification of sales channels, receive funds from the Noteholders and transfer the funds to the Banks on closing, act as a conduit for early redemption orders and transfer the proceeds from early redemptions and/or maturities from the Banks to the Noteholders.

[37] Both Prando and Drumm testified that PFAM was engaged to provide the retail distribution network that the Banks lacked. PFAM engaged directly with the Noteholders through its own salesforce and used its network of other dealers for such purpose. Prando testified that, during the distribution phase, PFAM was selling and marketing the PPNs and, as it was not merely a passive receiver of purchase orders, it was paid a selling fee. PFAM also received fees through the term of the PPNs as compensation for its on-going duties in the administration of the PPNs, including early redemptions and maturities.

[38] PFAM represented and warranted to each of the Banks that it was either registered as a dealer under the laws of each jurisdiction in which such registration was required and in which PFAM sold or procured purchasers in respect of the PPNs or that it held all material licences, permits, registrations and approvals necessary to perform its obligations under the relevant Bank Agreement.

[39] PFAM engaged IAS as record-keeper, and Concentra was engaged by PFAM and the Banks as trustee and escrow agent, to assist PFAM in fulfilling its responsibilities under the Bank Agreements. As the principal intermediary between the Banks and the Noteholders, PFAM was required to maintain the books and records, including the details of the Noteholders and their investments, necessary to effect the initial investment and all early redemptions or payments on maturity. The PFAM records, as reflected on the IAS system, reflected the individual Noteholder positions (even when there was another dealer acting for that Noteholder). The Banks had no information relating to individual Noteholders. The records of the Banks and Concentra were maintained at the PPN level, i.e., the Banks recorded the initial funds received from PFAM and made adjustments to the global notes outstanding as early redemptions were processed in bulk. Any changes in ownership of the PPNs as a result of purchases or early redemptions would be recorded at the Noteholder level by PFAM on the IAS system.

[40] On the first maturity of the PPNs in December 2010, the amount received by PFAM from SGC was $197,031 more than the amount that was required to be remitted to Noteholders. On the second maturity of the PPNs in December 2011, the amount received by PFAM from SGC was $114,803 less than the amount that was required to be remitted to Noteholders. In both cases, PFAM paid Noteholders on the basis of the records maintained on the IAS system and did not inform SGC, Concentra or IAS of the discrepancies.[13]

[41] On the third maturity date in December 2012, PFAM estimated that there would be a large shortfall of over $500,000.[14] Subsequent analysis revealed a total estimated shortfall of approximately $1.9 million across all of the outstanding PPNs. At that time, there was also approximately $750,000 in the PFAM trust account for the PPNs which, when offset against the estimated maturity shortfalls, resulted in the PPN Deficiency of approximately $1.2 million.

[42] In their testimony, the representatives of BNP, SGC, IAS and Concentra were consistent in asserting that there should be no variance between the records of the Banks, the trustee and the record-keeper with respect to the units held by the Noteholders. They testified that routine and frequent reconciliations are the industry method for the early identification and correction of any errors which could give rise to such discrepancies and that the revelation of the PPN Deficiency was without precedent.

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12 PFAM also acted as Investment Advisor/Manager for six of the series of PPNs, however, its conduct as Investment Advisor/Manager was not at issue in this proceeding.

13 In some cases, these funds were not transferred to Noteholders immediately and remained in the PFAM trust account pending receipt of client instructions.

14 Pinto advised the Commission in a telephone conversation on December 19, 2012 that there was a large difference of under $1.0 million, however, Pinto confirmed in her testimony that she could have calculated a $508,127 shortfall with the information she had on December 12, 2012. Butler and Cox estimated a shortfall of approximately $660,000 based on the information provided to them by Bozzo in November 2012.

C. Legal Issues

1. Are the PPNs Securities Within the Meaning of Subsection 1(1) of the Act?

(a) Background and Submissions

[43] Subsection 1(1) of the Act provides that a "security" includes:

> (e) a bond, debenture, note or other evidence of indebtedness or a share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than,
>
> …
>
> (ii) evidence of a deposit issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada), by a credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* applies, by a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or by an association to which the *Cooperative Credit Associations Act* (Canada) applies. [Emphasis added.]

[44] Although the parties agree that the PPNs were issued by banks listed in Schedule II to the *Bank Act* (Canada)[15] (the "**Bank Act**"), McKinnon submits that the PPNs, which he states are also known as deposit notes, are excluded from the definition of "security" because the PPNs were evidence of bank deposits and therefore benefitted from the exemption in subsection 1(1)(e)(ii) of the Act set out in paragraph [43] above.

[45] To support his position, McKinnon refers to the information statements of the Banks which stated that each PPN was a direct, unsecured deposit obligation of the applicable Bank and that amounts owing under the PPNs were unconditionally guaranteed by the parent company of the applicable Bank.

[46] McKinnon also submits that PPNs are federally regulated by the *Principal Protected Notes Regulations*, SOR/2008-180 (the "**PPN Regulations**"), which were enacted under the Bank Act, the *Cooperative Credit Associations Act*[16] and the *Trust and Loan Companies Act*[17]. He further submits that compliance with the PPN Regulations is enforced by the Office of the Superintendent of Financial Institutions ("**OSFI**") and that OSFI may intervene if assets are not satisfactorily accounted for or a regulated entity is committing an unsafe or unsound practice.

[47] Finally, McKinnon submits that the thorough review of the Canadian PPN market between 2006 and 2012 conducted by the Canadian Securities Administrators (the "**CSA**") did not result in any provincial PPN legislation or regulations.

[48] Staff submits that the following characteristics of the PPNs are consistent with the definition of a "security" under subsection 1(1)(e) of the Act, namely, that: (i) the PPNs were marketed and sold as investments through registered dealers;[18] (ii) global certificates evidencing the total subscriptions of each series of PPNs were issued in registered form to The Canadian Depository for Securities Limited ("**CDS**") and deposited with CDS; (iii) the PPNs were subscribed for and redeemed through FundSERV; (iv) each PPN series was assigned a mutual fund order code; (v) the Banks made a secondary market available to the Noteholders; (vi) the financial terms of the PPNs were complex and structured more like derivative securities than deposits; (vii) sales and trailer commissions were paid on sales of the PPNs; (viii) the Banks did not consider the PPNs as deposits of the Banks insured under the *Canada Deposit Insurance Corporation Act*[19] (the "**CDIC Act**"); (ix) the Noteholders had the potential to earn gains based on the performance of the basket of securities underlying the PPNs; and (x) some of the information statements represented to the Noteholders that "No securities commission or similar authority in Canada has in any way passed upon the merits of the securities offered hereunder."[20]

[49] Staff submits that the Banks relied on the specified debt exemption under subsection 73.1(1) of the Act[21] in order to be exempt from the prospectus requirements of the Act. In this regard, in separate letters to the Commission from Jog and Pinto dated April 23, 2013 and September 30, 2013, respectively, PFAM stated that the distributions of PPNs "were

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15 SC 1991, c 46.
16 SC 1991, c 48.
17 SC 1991, c 45.
18 See for example, Exhibits 13, 19 and 24 at p.1.
19 RSC 1985, c C-3.
20 Exhibit 2, p. 1.
21 Subsection 73.1(1) of the Act provides that the prospectus requirement does not apply to a distribution of a debt security that is issued or guaranteed by a bank listed in Schedule I, II or III to the *Bank Act*.

effected by the issuers in reliance on the 'specified debt' exemption which is available for distributions of certain debt securities issued by banks."[22]

[50] In response to McKinnon's position with respect to the information statements described in paragraph [45] above, Staff notes that the information statements explicitly state that the PPNs will not constitute deposits that are insured under the CDIC Act and, in the case of the PPNs issued by BNP, the information statements also provide that the PPNs were not deposits under any other insurance regime.

[51] In response to McKinnon's submissions relating to the PPN Regulations, Staff submits that the PPN Regulations impose disclosure obligations on the issuers of PPNs but do not govern the activities of a registrant of the Commission acting in the role of a market intermediary.

[52] In response to McKinnon's submissions relating to the CSA review of the Canadian PPN market, Staff submits that the notices issued by the CSA with respect to its review of PPNs clearly demonstrate that the CSA views some PPNs as securities and points to CSA Multilateral Staff Notice 46-303 – *Principal Protected Notes* ("**CSA Notice 46-303**") which states, among other things, that "Any registrant that sells a security, including a PPN that is sold under a prospectus and registration exemption, must comply with the know your client (KYC) and suitability obligations."[23]

(b) Analysis and Findings

[53] It is clear from the evidence, including the characteristics of PPNs described in paragraph [49] above, that the PPNs are securities within the meaning of subsection 1(1) of the Act, and that all parties to the PPN transactions to which this proceeding relates, including PFAM, which had the benefit of legal advice, and the Banks, treated the PPNs as securities governed by the securities laws of Ontario.

[54] McKinnon's submissions relating to the applicable regulatory regime are substantially based on his analysis of the PPN Regulations and his assertion that the CSA review of the Canadian PPN market did not result in any provincial PPN legislation or regulations. In our view, and consistent with the submissions of Staff, the PPN Regulations do no more than establish certain disclosure obligations relating to PPNs and neither establish, nor purport to establish, rules governing PPNs. It follows that we reject McKinnon's submission that subsections 645(1) and 648(1)(d) of the Bank Act provide the basis for OSFI to intervene in any matter relating to a breach of the PPN Regulations which is clearly not provided or contemplated by the PPN Regulations and would be totally inconsistent with the well-established regulatory regime relating to securities.

[55] For the foregoing reasons, we find that each of the PPNs issued to the Noteholders was a "security" within the meaning of subsection 1(1) of the Act.

2. Was PFAM's Role Relating to the PPNs Registrable Conduct?

(a) Background and Submissions

[56] Prior to September 28, 2009, subsection 25(1)(a) of the Act provided that no person or company shall trade in a security unless the person or company was registered as a dealer or as a salesperson, partner or officer of a registered dealer. Since that date, subsection 25(1) of the Act provides that, unless exempt, a person or company shall not engage in or hold himself, herself or itself out as engaging in the "business of trading" in securities unless the person or company is registered in accordance with Ontario securities laws.

[57] As detailed in Staff's written submissions dated August 5, 2016 ("**Staff's Written Submissions**"), the requirement that someone be "in the business" before the dealer registration requirement is engaged is referred to as the "business trigger" which came into effect on September 28, 2009 with the amendment to subsection 25(1) of the Act, as noted above, and the adoption of NI 31-103.

[58] Staff submits that Legacy and PFAM were market intermediaries in 2003 and 2004, respectively, and, as a result, did not have an exemption from registration available for their activities relating to the PPNs. As a result and as required, both Legacy and PFAM became registered as dealers in the category of limited market dealers.

[59] Subsection 1.1(2) of OSC Rule 14-501 – *Definitions* provides that:

> "market intermediary" means a person or company that engages or holds himself, herself or itself out as engaging in Ontario in the business of trading in securities as principal or agent…[and]

[22] Exhibit 49, p. 1; Exhibit 380, p. 1.
[23] CSA Notice 46-303, p. 2.

includes a person or company that engages or holds himself, herself or itself out as engaging in the business of,

(a) entering into agreements or arrangements with underwriters or issuers, in connection with distributions of securities, to purchase or sell such securities,

(b) participating in distributions of securities as a selling group member,

(c) making a market in securities, or

(d) trading in securities with accounts fully managed by the person or company as agent or trustee,

whether or not the person or company engages in trading in securities purchased for investment only.

[60] Section 1.3 of Companion Policy 31-103CP – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103CP**") sets out a number of concepts that form the basis of the registration regime including the requirement to register, the business trigger for trading and registration, and fitness for registration. The section describes the following non-exhaustive list of factors that the Commission considers relevant in determining whether an individual or firm is trading or advising in securities for a business purpose and would therefore be subject to the dealer or adviser registration requirement:

(a) Engaging in activities similar to a registrant;

(b) Intermediating trades or acting as a market maker;

(c) Directly or indirectly carrying on the activity with repetition, regularity or continuity;

(d) Being, or expecting to be, compensated; and

(e) Directly or indirectly soliciting.

[61] Staff cites *Momentas Corp.* (2006), 29 OSCB 7408 ("***Momentas***") in which the Commission acknowledged that, traditionally, the term "market intermediary" has been "an individual or company who is interposed between the issuer and the investing public". The Commission also noted that receiving compensation from the proceeds of an offering is indicative of being a market intermediary.[24]

[62] Staff submits that, in respect of PFAM's activities in the marketing, distribution, sales and redemptions of PPNs, PFAM clearly acted as a market intermediary and engaged in the business of trading in securities, both before and after September 28, 2009, and relies in this regard on the following:

(a) PFAM's and Legacy's registration as dealers in the category of limited market dealer which enabled them to trade in prospectus-exempt securities such as the PPNs;

(b) The Agency Agreements with SGC pursuant to which PFAM agreed to act as SGC's agent and offer the PPNs for sale and assist in marketing and selling PPNs to investors through its relationships with various dealers;

(c) The representations by PFAM in the Agency Agreements that it was registered as a dealer under the laws of each jurisdiction in which such registration was required and in which PFAM sold or procured purchasers in respect of the PPNs;

(d) PFAM's facilitation of secondary market trading of PPNs pursuant to the Escrow and Administration Agreements with the Banks;

(e) As required by SGC, the provision by PFAM of an opinion from its legal counsel that PFAM was registered as a limited market dealer which Prando testified was "in keeping with the requirement that our agents be registered in some fashion, be subject to the jurisdiction of a Securities Commission, be subject to conduct, business conduct and financial requirements that go with such registration.";[25]

[24] *Momentas,* paras 53 and 62.
[25] Hearing Transcript, April 13, 2016, p. 59.

(f) The Marketing Services and Administration Agreements with BNP pursuant to which PFAM agreed to assist BNP in selling PPNs to investors through its relationships with various dealers;

(g) The collection by PFAM of subscription proceeds for the PPNs electronically through FundSERV and manually by cheque payable to PFAM, the proceeds of which would be forwarded to Concentra;

(h) The payment of sales commissions to PFAM on closing, consistent with PFAM being engaged in registrable conduct, and the receipt by PFAM of trailer and agency fees for its services;

(i) The receipt by PFAM of secondary market sales requests from dealers through the IAS system which were forwarded on an aggregated basis for each series of PPNs to the Banks;

(j) The receipt and payment of redemption proceeds for PPNs;

(k) Seven of the eight PFAM compliance manuals included sections entitled "Market Intermediary Activities" which described PFAM's policies and procedures for deposit notes or PPNs issued by the Banks; and

(l) Descriptions in PFAM's compliance manuals of conduct relating to PPNs which would amount to acts in furtherance of trades including the provision of information statements and subscription agreements to investors, establishing a secondary market price and receiving cheques from clients payable to PFAM.

[63] McKinnon submits that, even if the PPNs were securities, PFAM's activities in relation to the PPNs did not require registration. Although PFAM made representations in the Bank Agreements that it was registered under securities legislation, no evidence was adduced that such registration was necessary. In this regard, McKinnon points to Prando's testimony that she did not recall if there was a legal requirement to be registered to distribute the PPNs and Drumm's testimony that he had no direct knowledge as to whether or not registration would be required. McKinnon also relies on subsection 8.21(2)(e) of NI 31-103 which provides that "The dealer registration requirement does not apply in respect of a trade in … a debt security issued by or guaranteed by a Canadian financial institution or a Schedule III bank ..."

[64] McKinnon submits that, even if registration may have been required to distribute the PPNs (which he disputes), that is a matter that is distinct from whether or not PFAM's activities in the secondary market required registration. He notes that the issues which arose with respect to the PPNs did so because of early redemptions of the PPNs by Noteholders, which were not solicited by PFAM and with respect to which they would have been advised by their investment advisers. McKinnon submits that PFAM's conduct with respect to the PPNs was more analogous to that of a back-office entity (that processes trades through registrants) which qualifies for this exemption, rather than to a registrant which owes specific duties to its investing clients related to its provision of investment advice. McKinnon relies on section 8.5 of NI 31-103 which provides that trades will be exempt if made through a registered dealer, in this case the registrants in PFAM's dealer network, and not PFAM.

(b) Analysis and Findings

[65] In our view, the list of factors set out in paragraph [60] above, which the Commission considers relevant in determining whether a firm is trading or advising in securities for a business purpose and which trigger the requirement to comply with the registration regime, clearly apply to PFAM and establish that PFAM was acting as a market intermediary. The same is true of PFAM's activities in the marketing, distribution and sale of PPNs and in the secondary market for PPNs described in paragraph [62] above, a fact reflected in PFAM's own Policy and Procedures Manuals.[26]

[66] It is clear from the evidence that PFAM's responsibilities were extensive, as detailed above, and, accordingly, we reject McKinnon's submission that PFAM's conduct in respect of the PPNs was analogous to that of a back-office entity. The existence of another registrant in a chain of securities transactions does not change the character and nature of the role and responsibilities of PFAM as a market intermediary. We also note that there were many instances in which PFAM or Legacy were the only dealers of record.

[67] In exactly the manner described in *Momentas*, PFAM was interposed between the issuer banks and the investing public, either directly or indirectly through another registrant. Accordingly, for the foregoing reasons, we find that PFAM was acting as a market intermediary with respect to the distribution and sale of the PPNs to the Noteholders and with respect to its role in the secondary market for the PPNs and its activities in that regard were clearly registrable.

[26] See for example section 7 of each of Exhibits 448, 449 and 450 which states that PFAM may act as an intermediary in facilitating a secondary market for the PPNs.

3. Were the Noteholders Clients of PFAM?

(a) Background and Submissions

[68] Staff submits that, in *Sextant Capital Management Inc.* (2011), 34 OSCB 5863 ("***Sextant***") and *Norshield Asset Management (Canada) Ltd.* (2010), 33 OSCB 7171 ("***Norshield***"), the Commission took a broad view of who can be considered a client within the meaning of section 2.1 of Rule 31-505. In *Norshield*, two service providers, who provided portfolio management and marketing services for the investment products offered by the investment vehicle, were alleged to have breached their registrant obligations under section 2.1 of Rule 31-505. The Commission applied a broad interpretation to the registrant's obligation under section 2.1 of Rule 31-505 and held that the investors in the investment vehicle were "clients" of the service providers.

[69] Staff submits that, when interpreting a registrant's duty to act fairly, honestly and in good faith, the Commission should have regard to the purposes of the Act and refers in this regard to the Commission's decision in *Black* (2015), 38 OSCB 2043 ("***Black***"). Staff submits that, in *Black*, the Commission found that "[a]s the Act's mandate is protective in nature, it is appropriate to interpret the Act in a purposive manner to achieve the Act's mandate to protect Ontario's capital markets."[27] Accordingly, Staff submits that it would be inconsistent with the purpose of section 2.1 of Rule 31-505 to define "clients" narrowly so as to carve out certain activities of registrants from the requirement to act fairly, honestly and in good faith.

[70] Based on a purposive interpretation of the term "clients", Staff submits that all of the Noteholders who purchased PPNs during the initial distribution of the PPNs and all of those who sought to sell PPNs in the secondary market should be considered PFAM's clients within the meaning of section 2.1 of Rule 31-505.

[71] Staff submits that the following evidence supports Staff's position that, as a registrant, PFAM owed an obligation to all of the Noteholders to act fairly, honestly and in good faith:

- According to PFAM's compliance manual, the general duty on each registrant to deal fairly, honestly and in good faith extended to all "customers and clients;"[28]
- According to the market intermediary section of PFAM's compliance manual, PFAM accepted cheques from "clients" payable to "Pro-Financial Asset Management Inc. In Trust" and to PPN investors as the "proposed client base".[29]
- All the subscription and redemption proceeds were handled by PFAM and investor monies flowed through the PFAM Trust Account.
- PFAM was paid sales and trailing commissions for marketing and selling PPNs to investors and these fees were paid out of investor monies.
- PFAM played a key role in collecting secondary market sale requests, submitting them to the Banks, updating the price on the IAS system and ensuring that the redemption proceeds were paid to clients.

(Staff's Written Submissions, para 388)

[72] McKinnon submits that the historical context of Rule 31-505 supports the interpretation of the term "client" in the context of the "client model" of a retail brokerage firm, in which the dealer and its advisers owe specifically defined duties to their clients. Nothing in the current or former rule suggests that it was intended to, or should, apply to conduct by any registered dealer or adviser that did not relate to its activities as a dealer or adviser.

[73] McKinnon submits that both the title of Rule 31-505, "Conditions of Registration", and the heading of section 2.1, "General Duties", suggest that the section applies to the governance of activities requiring or engaging a firm's registration. He further submits that the usage of the word "deal" in section 2.1 suggests that there must be some sort of transactional or business nexus between the registered dealer/adviser and its clients that would exclude merely incidental contact or impact.

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27 *Black*, para 78.
28 Exhibit 450, p. 5.
29 Exhibit 450, p. 26.

[74] McKinnon points to a number of Commission decisions in which Rule 31-505 has been applied. In McKinnon's submission, liability has been found in cases involving direct harm to persons who are clearly "clients" caused by disreputable conduct involving or relating to the provision of investment advice. These cases include:

(a) 'Boiler room' operations;[30]

(b) The forging of retail clients' signatures;[31]

(c) Requiring retail clients to sign a disclaimer releasing the dealer from investment losses;[32]

(d) Causing retail investors to purchase unsuitable investments without properly knowing the clients or explaining risks, including the use of high pressure sales tactics or excessive leverage;[33]

(e) Failing to substantially comply with rules of self-regulatory organizations and requiring retail clients to absorb losses from unsuitable trades;[34]

(f) Making misrepresentations about investment products as well as other "reprehensible" conduct;[35]

(g) Selling stock as principal at excessive markups;[36]

(h) Engaging in transactions with clients that created conflicts of interest;[37] and

(i) Failing to disclose material facts about the financial viability of an underlying investment.[38]

(McKinnon's Written Submissions, para 114)

[75] McKinnon submits that, in *Norshield*, the Commission used the terms "investor" and "clients" interchangeably to conclude that the respondents had breached section 2.1 of Rule 31-505 and that the decision was not consistent with *Sextant*. McKinnon further submits that the Commission should treat the decision in *Norshield* with considerable caution and, in any event, PFAM's function as an administrative agent did not directly affect the performance of the PPNs from the perspective of the Noteholders. Accordingly, the degree of proximity between the Noteholders and PFAM is distinguishable from that of the portfolio manager and unitholders in *Sextant* and *Norshield*.

[76] Finally, McKinnon takes the position that, for Rule 31-505 to apply in this proceeding, the term "clients" would also have to be interpreted so broadly as to apply to any investor who may be indirectly affected by a firm's performance of its contractual duties to a third party. McKinnon submits that such an unnatural interpretation would be inconsistent with the regulatory regime and the well-established meaning of the term "client" in the securities industry.

(b) Analysis and Findings

[77] In *Norshield*, the Commission held that two registrants who communicated information to investors which was based on artificially inflated net asset values and engaged in transactions that gave preference to particular redemption requests over others, breached their duties to act fairly, honestly and in good faith under section 2.1 of Rule 31-505. In the appeal of the Commission's decision in *Norshield*, the Divisional Court held that:

> The problem, as seen by the appellants, is that Rule 31-505 is general in the responsibility it imposes. In the absence of any specific set of facts against which to measure its requirements, it would be difficult to define with any precision the boundaries of dealing "fairly, honestly and in good faith" with his or her clients. This being so, the appellants say that the Rule should be narrowly interpreted, at least as to whom it is to be applied. They say "investors" are not "clients", as referred to in the Rule, and should not be treated as such. This approach presumes that the words "clients" and "investors" are necessarily independent of each other. The word "client" may be a general term of broad application. It is not unreasonable to suggest that the word "investor" is narrower in its

30 *EA Manning Ltd.* (1995), 18 OSCB 5317, p. 21.
31 *Obasi* (2011), 34 OSCB 3012 at para 15; *Reaney* (2015), 38 OSCB 6413, paras 141, 153 and 155.
32 *Kingsmont Investment Management Inc.* (2013), 36 OSCB 9577, paras 23 and 24.
33 *Hopper* (2009), 32 OSCB 1645, para 78.
34 *Argosy Securities Inc.* (2016), 39 OSCB 4040, para 83.
35 *DeLellis* (1998), 21 OSCB 305, paras 17 and 32-36.
36 *Curia* (2000), 23 OSCB 7505, p.4.
37 *Mark Edward Valentine* (2005), 28 OSCB 59, para 48.
38 *North American Financial Group Inc.* (2015), 38 OSCB 617, paras 28 and 266-268.

> meaning and, in certain circumstances, can be subsumed within the term "client". This is the case here.[39]

[78] PFAM's duties in respect and on behalf of the Noteholders were extensive and, in our view, entirely consistent with the duties of a market intermediary and registrant to its clients. As we have already found that these activities constituted registrable activities and related to the business of securities trading, it is entirely consistent that those on whose behalf these activities were undertaken should be considered clients and be afforded all of the protections available under the Act. PFAM was not merely a back office provider which recorded or settled trades. They accepted orders on behalf of clients, dealt with the issuer banks on behalf of clients and accepted funds from and on behalf of clients. For the foregoing reasons, we find that the Noteholders were clients of PFAM for the purposes of Rule 31-505.

[79] We also note that PFAM's activities in relation to the Banks likely constituted registrable activities relating to securities notwithstanding McKinnon's submissions that the Banks were not clients of PFAM and that Staff's suggestion that PFAM mislead the Banks and thus violated section 2.1 of Rule 31-505 only serves to "muddy the waters". As Staff has not made submissions that the Banks should also be considered clients of PFAM, we have not considered the issue further.

D. Did PFAM Fail to Deal Fairly, Honestly and in Good Faith with its Clients?

1. The PPN Deficiency

[80] Having concluded that (i) the PPNs were securities within the meaning of the Act; (ii) PFAM was a market intermediary with regard to the PPNs and its activities were therefore registrable; and (iii) the Noteholders were clients of PFAM, we address below PFAM's conduct in relation to the PPNs and the PPN Deficiency.

[81] Staff alleges that, as adviser, selling agent and/or notes administrator of the nine series of PPNs, PFAM engaged in the following conduct which resulted in or contributed to the PPN Deficiency and that such conduct constituted a failure to act fairly, honestly and in good faith with is clients:

(a) Unsupported redemption requests;

(b) The mishandling of redemption payments;

(c) The failure to account for monies in PFAM's trust account;

(d) Deficiencies in the PPN records: and

(e) The failure to communicate and investigate the PPN Deficiency.

[82] As noted in paragraph [28] above, McKinnon acknowledges PFAM's shortcomings in relation to the PPNs, however, he asserts that the allegations concern, more properly, the adequacy of PFAM's policies and controls and are appropriately considered in the context of those allegations and not under section 2.1 of Rule 31-505.

[83] It is McKinnon's submission that the case law is clear that innuendo, or suggestions that conduct is merely concerning or inappropriate, will not be sufficient to find liability under section 2.1 of Rule 31-505 and that there must be proof of real misconduct. McKinnon argues that *Sextant* and *Norshield*, which expand the scope of section 2.1 beyond its traditional application, are distinguishable because they contain critical elements which are lacking in this proceeding, namely, (i) self-interest or self-dealing on behalf of the registrant; (ii) a conflict of interest by the registrant; and (iii) substantial harm to "clients'.

2. Unsupported Redemption Requests and the Mishandling of Redemption Payments

(a) Background and Submissions

[84] Staff alleges that PFAM made unsupported redemption requests and mishandled redemption payments by applying different trade prices without the knowledge or agreement of the Banks, Concentra or the Noteholders. Staff submits that the unsupported redemption requests were misrepresentations of the actual client redemption requests and the application of different trade prices were a misrepresentation of the Banks' prices and, accordingly, PFAM's conduct was dishonest and contrary to Rule 31-505.

[39] *Norshield Asset Management (Canada) Ltd.,* 2011 ONSC 4685, para 88.

[85] By letter to the Enforcement Branch dated April 23, 2013, PFAM provided the Commission with its report relating to the cause of the PPN Deficiency (the "**First Reconciliation Report**"). The Report identified several factors which contributed to the PPN Deficiency, the most important of which were the price differences and the estimation process used in connection with the early redemptions of PPNs.[40]

[86] The First Reconciliation Report stated that the prices paid to PFAM by the Banks for early redemptions often differed from the prices PFAM paid to the Noteholders. Exhibit 9 of the First Reconciliation Report shows that there was a net overpayment of $566,839 from PFAM to Noteholders for early redemptions across all series of the PPNs. However, the Report also shows that some of the Noteholders were underpaid and the holders of two series of PPNs received less in total than the amounts the Banks had paid to PFAM on their behalf.

[87] The First Reconciliation Report also identified PFAM's practice of "estimated" early redemption requests as an important contributor to the PPN Deficiency. According to the Report, PFAM would routinely submit early redemption requests to the Banks for more units than were actually requested by Noteholders. This resulted in the records of the Banks indicating fewer PPNs outstanding than the Noteholders actually held and, therefore, the amount paid by the Banks at maturity would be less than was required to pay the actual PPNs outstanding. PFAM did not attribute a specific dollar amount of the PPN Deficiency to this cause.

[88] According to the analysis prepared by Ho, approximately 11,814 units (approximately $1.2 million par value of PPNs) more than the number requested by Noteholders were redeemed by PFAM, making unsupported redemption requests the largest contributing factor to the PPN Deficiency. Ho agreed that the price differences would also have contributed to the PPN Deficiency; however, he did not have sufficient information to identify that amount accurately. When cross-examined, Ho indicated that the methodology used in the First Reconciliation Report, while "reasonable", reflected the poor state of PFAM's records and was not exact as it may have combined the effects of the price and quantity differences. When re-examined by Staff, Ho testified that the lack of a complete set of trade records prevented PFAM from matching the specific Bank trade with the specific client order. Accordingly, there is some uncertainty around the Banks' price for each specific client order making it impossible, according to Ho, to place an accurate value on the contribution that price differences made to the PPN Deficiency.

[89] Prando and Drumm testified that they had no knowledge of the above-described conduct on the part of PFAM. In their view, any price which was different from that which was actually paid by the Banks was outside the expected conduct under their respective agreements with PFAM. Drumm testified that there was only one price at which the PPNs were purchased and sold and that the PFAM price variance made no sense. Prando testified that SGC did not quote two prices, that PFAM did not have the discretion to establish a price for early redemption and that its role was intended solely as a conduit. She also testified that SGC viewed the different prices paid to the Noteholders as a breach of section 4.2 of SGC's Escrow and Administration Agreement with PFAM. Chan's testimony was entirely consistent with and supported the testimony of Prando and Drumm.

[90] Similarly, each of SGC, BNP, IAS and Concentra was confounded by PFAM making early redemption requests that were unsupported by Noteholder orders, also known as the "estimation process". Drumm testified that there was no need or provision for an estimation process and that he found it baffling. Prando testified that SGC issued approximately 100 PPNs between 2004 and 2006, including those with PFAM, and that it was the first time that SGC had ever seen a notion such as an estimation process in connection with the early redemption of notes. She also testified that extra orders were contrary to SGC's agreements with PFAM. Bell testified that Concentra eventually required PFAM to provide evidence of Noteholder requests for redemptions because no trade should happen without a client request. Chan was emphatic in stating during his testimony that there was no place for estimations and that estimations were not necessary.

[91] PFAM's explanations for its conduct varied. The First Reconciliation Report and the second such report dated September 30, 2013 explained that the price differences resulted from timing issues in the early redemption process. As stated in the First Reconciliation Report, "The purchase price contracted by the [Banks] several months before the settlement date often differed from the price received by clients at actual [settlement] date."[41] The First Reconciliation Report goes on to state that differences in cut-off dates between the Banks and the IAS system "required" PFAM to estimate the number of PPNs to redeem in excess of actual Noteholder requests in order to avoid penalties imposed by FundSERV.

[92] Bozzo testified that the foregoing practices were long-standing and, at least since 2009, had been discussed and approved by senior management of PFAM, including McKinnon. Bozzo also testified that he was instructed by Farrell and McKinnon to "request a little bit more" when making redemption requests[42] to avoid the work of informing dealers and Noteholders of a change in the cut-off dates for early redemptions which occurred sometime between 2008 and

[40] The term estimation process used by PFAM is described by Staff as unsupported redemption requests.
[41] First Reconciliation Report, p. 6.
[42] Hearing Transcript, April 20, 2016, p. 33.

2009. Bozzo further testified that, while he did submit unsupported redemption requests, he did not control the prices and amounts which Noteholders were paid.

[93] Jog, who assumed responsibility for the redemption process in early 2013, learned of the price differences and estimation process from Bozzo, and researched their contributions to the PPN Deficiency for the purposes of the First Reconciliation Report. Jog testified that timing differences and system constraints gave rise to the price differences. He also testified that the price differences were the "bulk" of the problem and speculated that PFAM started to redeem excess PPNs to cover the shortfall created in the trust account by the price differences.

[94] During his testimony, McKinnon denied having any personal knowledge of the early redemption process, the use of estimates leading to the unsupported redemption requests and/or price variations. In his submissions, McKinnon points to "inconsistencies" between the Bank Agreements and what occurred in practice and stated that "Ho agreed that PFAM's explanation of the structural issues which led to a price variance were reasonable, and that this price variance led to an overpayment to Noteholders, which in turn needed to be funded somehow."[43] He asserts that only Bozzo's testimony supports Staff's theory that McKinnon encouraged or otherwise authorized PFAM to engage in price differences or the unsupported redemption requests and that a more plausible explanation is that Bozzo unilaterally implemented the estimation process on an ad hoc basis without seeking authorization. McKinnon further asserts that the contractual responsibility to reconcile and recognize any discrepancy was ultimately Concentra's, an appointee of PFAM and the Banks. McKinnon points to discrepancies existing at the initiation of the PPNs and inconsistencies in the Banks' practices throughout the period as evidence of the shared responsibility for the PPN Deficiency. Finally, McKinnon submits that, regardless of the causes of the PPN Deficiency, the Noteholders were not at risk because of the Banks' obligations to pay the Noteholders on the maturity of the PPNs, which, in fact, is what ultimately occurred.

(b) Analysis and Findings

[95] In the First Reconciliation Report and in subsequent correspondence with Staff, a number of PFAM employees described the use of an estimation process leading to unsupported client requests and price variances without any indication that this was not PFAM's normal practice, or that it was the work of a rogue employee.

[96] The analysis undertaken by Ho shows that, from the outset of PFAM's involvement, client redemptions were made at prices that were different from the Banks' trade prices. This was confirmed by Jog in his testimony. The practice predated Bozzo's involvement and continued throughout the relevant period, despite the high staff turnover at PFAM.

[97] In seven out of eight PFAM compliance manuals provided to Staff, a section entitled "Market Intermediary Activities" describes the practice of PFAM buying and selling PPNs in the secondary market to facilitate Noteholder requests at prices established by PFAM "… which may be different than those established by the [Banks]". The manuals go on to describe controls such as authorization by senior management, limits on the price variation allowed, the maximum total risk acceptable to PFAM and the circumstances in which profits could be generated; all indicating that applying a different price from the price used by the Banks was standard practice. PFAM's internal compliance checklists for the period from 2010 to 2013 also confirm Bozzo's testimony that the prices for the PPNs were the responsibility of the portfolio management group and accounting and not Bozzo's. In addition, the First Reconciliation Report states that smaller note redemptions (fewer than 2,000 units), were paid without requesting funds from the Banks, further indicating PFAM's practice of purchasing the PPNs as principal which would confirm the details in the manuals described above.

[98] Similarly, the large redemption in the amount of $203,500 in September 2004, which was not related to a Noteholder request as confirmed by Ho and Jog, supports Staff's allegations and casts doubt on McKinnon's explanation that Bozzo was acting alone as that redemption occurred several years prior to Bozzo's employment. McKinnon's alternate explanation that this unsupported redemption request was the result of an error also seems unlikely. There was no evidence of a reversal of the redemption in support of McKinnon's alternate explanation.

[99] Finally, on January 30 2013, after the magnitude of the PPN Deficiency had been identified and Staff had been alerted to the fact by Butler and Cox, Pinto, the CFO of PFAM at the time, submitted a redemption request for $385,000 par value to BNP without an underlying Noteholder request. Bozzo could not have been responsible as he had been dismissed by PFAM on January 28, 2013. Pinto testified that there was no Noteholder request supporting this trade request and that she continued to press Concentra to process the trade, despite its concerns and the clear instructions from Staff that no payments should be made to any of the Noteholders without a full reconciliation.

[100] The evidence shows that McKinnon was actively involved in the discussion about whether to make the redemption request described in paragraph [99] above, as summarized in Bozzo's e-mail message to McKinnon of January 25, 2013. While McKinnon instructed Bozzo not to proceed with the request on January 28, 2013 and then terminated

[43] McKinnon's Written Submissions, para 139.

Bozzo's employment on the same day for transferring confidential documents to his personal e-mail account, the same unsupported redemption request was made only two days later by Pinto. Under the circumstances, it would be inconceivable that Pinto acted without McKinnon's full knowledge and agreement. The reason for this redemption request was unrelated to any timing or operational issues, but was solely and improperly motivated by PFAM's desire to cover the shortfall in the amounts owed to Noteholders for the recently matured PPNs. We have considered Bozzo's testimony with care given the obvious animosity between him and McKinnon and have concluded that we can accept his testimony where it is consistent with other proven or undisputed facts or with the preponderance of probabilities disclosed by the facts.

[101] We agree with Staff that the expected conduct of a registrant when acting as an agent is to comply exactly with the instructions provided by its client. Making any adjustments to a client order without the express authorization of the client and/or interposing the registrant as a principal to an agency transaction without the knowledge of the other participants introduces risk and is unacceptable conduct. We are also persuaded that the evidence supports Staff's position that the practice of unsupported redemption requests and price variance at PFAM was more than the behaviour of a single employee acting alone.

[102] Substituting a different price in a securities transaction than the actual trade price is dishonest and this conduct was not mitigated by the fact that the price paid to Noteholders was often higher. While some Noteholders may have received a benefit from PFAM's conduct in the form of higher prices which they were not entitled to receive, others received lower prices than they were entitled to receive and those whose PPNs matured after December 2012 were harmed by the extended delay of up to two years and the opportunity costs they incurred as a result of the PPN Deficiency. In addition, the Banks were harmed and were obligated to pay approximately $1.2 million more than they would otherwise have been required to pay.

[103] For the foregoing reasons, we find that PFAM knowingly made redemption requests that were unsupported by Noteholder requests and mishandled redemption payments by applying different trade prices and that this conduct was improper. PFAM's misrepresentation of the Noteholders' orders to the Banks and the Banks' prices to the Noteholders was dishonest and a breach of PFAM's obligation to deal fairly, honestly and in good faith with its clients.

3. Failure to Account for Monies in the PFAM Trust Account and Deficiencies in the Records for the PPNs

(a) Background and Submissions

[104] Staff alleges that the money held in PFAM's trust account belonged to clients and not to PFAM and that PFAM had a fiduciary responsibility to handle trust assets in a manner which put the clients' interests ahead of PFAM's interests. Staff also alleges that PFAM's failure to account for monies in its trust account is a serious breach of its general obligation to act fairly, honestly and in good faith in dealings with its clients.

[105] Staff points to the inability of either PFAM or Staff investigators to completely reconcile the trust account as evidence of PFAM's mismanagement, notwithstanding the considerable time and resources spent on the task. Staff highlights Ho's analysis of the trust account transactions for 2009 (based on Pinto's worksheets) which provided no explanation for differences totalling $979,206 between the amount paid for redemptions on the basis of the trust account and the amount paid for redemptions on the basis of the IAS records. Staff also highlights the improper use of funds from one series of PPNs to pay Noteholders in another series of PPNs.

[106] McKinnon does not provide a specific response to Staff's allegations regarding PFAM's management of the PPN trust account other than stating that there was a lack of malicious intent and that any shortcomings were the result of inadequate resources. During his testimony, McKinnon denied any knowledge of monies from the PPN trust account being used for inappropriate purposes.

(b) Analysis and Findings

[107] The lack of appropriate reconciliation practices, which are designed to identify and allow for the correction of any discrepancies as they arise, appeared to be a permanent feature of PFAM's operations. Further complicating any analysis is the fact that, until 2010, funds from the PPNs as well as other products were comingled in a single PFAM trust account. Notwithstanding the eventual establishment of a separate trust account for the PPNs, Cox and Atlija testified that the same account was used for all PPNs and opening balances were never reconciled.

[108] Ho and Chan testified that the records of the inflows to the trust account from the Banks through Concentra were clear and matched expectations, i.e., the Banks paid the full amount of all redemption requests and those funds were deposited to the PFAM trust account. Chan also determined that the IAS records were in complete accord with the records of the Noteholders, i.e., the total amount owing to the Noteholders was accurate as stated on the IAS system.

We note in this regard that the Banks ultimately paid the Noteholders on the basis of the IAS records. Accordingly, in the opinion of Chan, the real source of the PPN Deficiency was the movement of funds from the PFAM trust account for which there was incomplete documentation and for which PFAM had sole responsibility. We agree with Chan's assessment.

[109] Of serious concern is the fact that PFAM could not provide any documentation or otherwise account for many of the movements of funds to and from the trust account. For example, Ho's analysis demonstrated that there were 140 undocumented movements of funds with the largest undocumented withdrawal being $872,760 and the largest undocumented deposit being $384,750. We can only draw a negative inference from this lack of documentation given the size of the PPN Deficiency.

[110] If all of the funds received by PFAM from the Banks in excess of what was required to pay the actual Noteholder redemptions had remained in the trust account for the benefit of the Noteholders, the PPN Deficiency would have been much smaller, notwithstanding the over-payments through higher prices.

[111] There is troubling evidence of PFAM's apparent habitual improper use of the funds received in trust for the Noteholders. The analysis by Ho of the PPN trust account for the period December 31, 2010 to July 9, 2012 is illuminating in this regard. Ho's analysis showed that the funds received from the Banks for redemption or maturity payments for seven of the PPN series were less than the payments made by PFAM, and that the funds received from two of the PPN series were greater than the payments made by PFAM. Ho concluded that the foregoing showed that the funds received from the maturity of certain series were used to fund the deficits in other series. We agree with Ho's conclusion.

[112] There was also other evidence of a casual acceptance by PFAM, including McKinnon, of the proposition that a "surplus" in one series of the PPNs could be used to cover a "deficit" in another series of the PPNs. The evidence showed that McKinnon had knowledge of projected surpluses and deficits across the PPNs, starting at least with the first maturity in December 2010 and the Bozzo analysis in May 2012. When asked why he did not take more vigorous action to determine the source of these discrepancies, McKinnon testified that he focused on the net difference of $13,000, implying that it was acceptable to use the surplus from one series to make up the deficit of another. McKinnon testified that he was more interested in essentially the bottom line and that "Thirteen thousand over $100 million was just a very small amount".[44] McKinnon's attitude with respect to funds held in trust was completely improper and a direct contravention of PFAM's fundamental obligation as a registrant to deal fairly, honestly and in good faith with its clients.

[113] For the foregoing reasons, we find that PFAM failed to account for monies in the trust account and failed to maintain appropriate records which contributed to the shortfall of approximately $1.2 million and harm to the Noteholders who were not paid on the maturity of their respective PPNs.

4. Failure to Communicate and Investigate the PPN Deficiency

(a) Background and Submissions

[114] The final element of Staff's allegations in relation to Rule 31-505 is PFAM's failure to investigate and communicate the PPN Deficiency to the appropriate parties when it first arose in December 2010. Prando testified that SGC was not advised of this surplus or the subsequent deficiency for the series which matured on December 15, 2011. SGC was also not informed of PFAM's failure to pay the proceeds of the series which matured on December 19, 2012, until February 12, 2013 all of which aggravated the PPN Deficiency by allowing it to continue and increase.

[115] McKinnon denies knowledge of a "broader structural problem or discrepancy in records" prior to the December 2012 maturity. He maintains that he was not involved in the day-to-day operations relating to the PPNs and assumed that, if there had been an issue, he should have been informed by his staff. McKinnon points to instances of deliberate deception by Bozzo in response to Bozzo's assertion that McKinnon was completely apprised of the problems relating to the PPNs.

(b) Analysis and Findings

[116] The evidence is clear that the surplus received by PFAM on the initial maturity in December 2010 triggered some action by PFAM; however, it was all internally focused with no communication to external parties. Bozzo informed McKinnon of the 2010 surplus by e-mail and McKinnon responded by inquiring whether the other series of PPNs were in surplus or not. Bozzo, Butler and Cox testified that a discussion, which included McKinnon, was held at PFAM to determine the correct course of action with regard to the surplus. Instructions were provided to PFAM's staff to

[44] Hearing Transcript, June 13, 2016, p. 146.

reconcile the trust account; however, there is no evidence that a reconciliation was completed and no evidence that any external party was informed of the surplus. In fact, McKinnon's reaction in an e-mail message to Bozzo on December 31, 2010 was "Finally some good news …. !!!!!!! Please do not let anyone know yet ..."[45]

[117] In August 2011, McKinnon requested that Bozzo prepare a reconciliation of the PPN balances of IAS, Concentra and the trust account.[46] The evidence also establishes that, in December 2011, when the second PPN series matured and resulted in a shortfall of $114,803, McKinnon asked Bozzo and Colin Hodgins, the CFO at the time, to confirm that there were no issues with the maturing series of PPNs.[47] In May 2012, McKinnon asked Bozzo to prepare a PPN summary which showed a net surplus across all series of PPNs of approximately $13,000, however, there were large variations in shortfalls and surpluses across the different series. McKinnon immediately requested information on the maturity dates of the individual PPNs, and asked Colin Hodgins to see him about the matter. Yet again in July 2012, McKinnon asked the CFO to review the trust account reconciliation to determine if there was a credit balance. The foregoing suggests that McKinnon was well-informed and understood the scope of the problem, notwithstanding his testimony that he "assumed everything was humming along fine."[48] There is no evidence that any of the reconciliations requested by McKinnon or recommended by IAS, Atlija or Cox were ever completed.

[118] The evidence is also clear that, while McKinnon did not personally perform the tasks related to the operations of the PPNs, he was an engaged and involved senior officer to whom the accounting and operations staff reported except for the brief period of Cox's employment. We note that PFAM only had 14 or 15 employees and that the three person accounting staff worked in close proximity to McKinnon.

[119] On the basis of the evidence, we find that it is more likely than not that the PPN Deficiency was a known issue at PFAM and known to McKinnon, and that, while there were some attempts to define and understand the scope of the problem internally, PFAM did nothing to communicate the issue externally. If the source of the problem had been a shared responsibility, it is more likely than not that PFAM would have engaged with the Banks, Concentra and/or IAS to identify the source of the problem and determine liability and remedial action. Instead, the evidence supports the conclusion that the PPN Deficiency was a problem of PFAM's own-making and that its failure to inform the Banks, Concentra, IAS and the Noteholders resulted from its self-interested desire to conceal the problem.

[120] We also find that, whether or not the factors contributing to the PPN Deficiency were a product of deliberate malfeasance or a product of multiple operational failures, McKinnon's complete denial of any knowledge of the problems relating to the PPNs before December 2012 is not credible.

[121] For the foregoing reasons, we find that PFAM failed to investigate and communicate the known operational and accounting issues which allowed the problems to continue and increase, thereby eventually resulting in the PPN Deficiency and, in so doing, failed to deal fairly, honestly and in good faith with its clients in breach of its obligations under subsection 2.1(1) of Rule 31-505.

IV. OTHER DUTIES REQUIRED OF PFAM AS A REGISTRANT

A. Did PFAM Breach the Standard of Care Required of an Investment Manager?

1. Background and Submissions

[122] PFAM acted as the investment fund manager ("**IFM**") of nine prospectus-qualified mutual funds (the "**Pro-Index Funds**") under the transition provisions of section 16.4 of NI 31-103.

[123] On March 28, 2013, PFAM filed its annual audited and interim financial statements and management reports of fund performance ("**MRFPs**") for the year ended December 31, 2012 (the "**December 2012 MRFPs**") for each of the Pro-Index Funds and, on August 29, 2013, PFAM filed its semi-annual MRFPs for the period ended June 30, 2013 (the "**June 2013 MRFPs**") for each of the Pro-Index Funds.

[124] MRFPs are required to disclose the management expense ratio (the "**MER**") of each fund which must be calculated in accordance with section 15.1 of National Instrument 81-106 – *Investment Fund Continuous Disclosure* ("**NI 81-106**"). PFAM published incorrect calculations of the MERs for the Pro-Index Funds in both the December 2012 MRFPs and the June 2013 MRFPs. On March 6, 2014, PFAM filed a press release, as ordered by the Commission, which provided, among other things, disclosure relating to the incorrect MERs and the corrected ratios.

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45 Exhibit 167.
46 Exhibit 171.
47 Exhibit 508.
48 Hearing Transcript, June 15, 2016, p. 94.

[125] On January 15, 2014, PFAM's counsel advised the IF Branch that the existing prospectus receipted for the Pro-Index Funds on January 14, 2013 had not been renewed as the result of inadvertence. As a result of PFAM's failure to renew the prospectus, the distribution of the Pro-Index Funds under that prospectus could no longer continue which necessitated a formal lapse date extension application to the Commission which was granted. Two further extension applications were made by PFAM, the second of which was denied by the Commission, largely as a result of PFAM's failure to file annual financial statements for the Pro-Index Funds. As a result, the prospectus for the Pro-Index Funds lapsed and the distribution of the Pro-Index Funds ceased on April 21, 2014.

[126] PFAM failed to file annual audited financial statements and MRFPs for the Pro-Index Funds for the year ended December 31, 2013 within the time period prescribed by NI 81-106. PFAM similarly failed to deliver the T3 Statements of Trust Income Allocations and Designations (the "**T3 Slips**") to the unitholders of the Pro-Index Funds on time.

[127] Subsection 1(1) of the Act defines an investment fund as "a mutual fund or a non-redeemable investment fund" and an IFM as "a person or company that directs the business, operations or affairs of an investment fund".

[128] The statutory duties of IFMs are set out in section 116 of the Act, which provides as follows:

> **Standard of care, investment fund managers** – Every investment fund manager,
>
> (a) shall exercise the powers and discharge the duties of their office, honestly, in good faith and in the best interests of the investment fund; and
>
> (b) shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

[129] On the foregoing basis, Staff submits that the statutory duty of care under subsection 116(b) of the Act extends to the unitholders of the funds which IFMs manage and not just to the funds themselves.

[130] McKinnon did not object to Staff's foregoing submission that an IFM's statutory duty of care under subsection 116(b) of the Act extends to the unitholders of the funds managed by the IFM, a submission with which we agree.

[131] Staff alleges that by (i) disclosing inaccurate MERs in the December 2012 MRFPs and the June 2013 MRFPs; (ii) failing to take the steps necessary to ensure that the Pro-Index Funds' renewal prospectus, annual and interim financial statements and annual and interim MRFPs were filed on a timely basis; and (iii) failing to deliver 2013 T3 Slips to unitholders on time, PFAM failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances and, in doing so, breached the standard of care for IFMs under subsection 116(b) of the Act.

[132] McKinnon submits that the degree of care, diligence and skill required depends on the "circumstances" which requires the Commission to adopt a context-specific approach in determining whether or not the section has been breached. McKinnon also submits that subsection 116(b) should be read in harmony with subsection 116(a) which requires that each IFM act honestly, in good faith and in the best interests of the investment fund.

[133] McKinnon does not contest Staff's allegations that PFAM's conduct with respect to the failure to renew the prospectus on time, and making calculation errors in respect of the MERs is a violation of subsection 116(b) of the Act. McKinnon does, however, point to external circumstances which adversely affected PFAM's ability to perform its duties despite its best intentions and disputes Staff's allegations that the late filings of the audited financial statements, MRFPs and tax slips fell below the standard set out in subsection 116(b) of the Act in the circumstances and also disputes that he authorized, permitted or acquiesced in any violations of subsection 116(b) of the Act.

[134] With respect to the late filing of financial statements, MRFPs and the late delivery of T3 Slips, McKinnon submits that the delays were the result of PFAM "… seeking to ensure that the unitholders in the Pro-Index Funds did not have to bear the burden of the excessive and unreasonable fees demanded by IAS"[49] and, in so doing, PFAM was, in fact, fulfilling its fiduciary obligations and acting in the best interests of the unitholders.

[135] With respect to the lapsed prospectus, McKinnon's submissions highlight the resource challenges that PFAM was experiencing at that time. He points to the loss of staff and legal support at the same time as the increase in demands from the on-going sale process and the PPN Deficiency as key factors that prevented PFAM from filing on time. McKinnon asserts that the lapse was unintentional and resulted in significant and foreseeable adverse consequences for PFAM which would have been avoided if it had been possible to do so.

[49] McKinnon's Written Submissions, para 160.

[136] With respect to the incorrect MERs, McKinnon submits that he was not aware of any issues in the MRFPs at the time that he approved them and that, while Pinto advised him that she had calculated them at the fund level, he was not at that time aware of what that meant. McKinnon further submits that his approval of calculations was based on the advice he received from PFAM's CFO and does not equate to an intent on his part to violate securities laws.

2. Analysis and Findings

[137] There is no dispute that the Pro-Index Funds' prospectus was not renewed on time and eventually lapsed, that the December 31, 2013 financial statements and MRFPs were filed 67 days late, that the interim financial reports and MRFPs were filed 133 days late and that the T3 Slips were delivered to unitholders over 60 days late.

[138] There is also no dispute that the MERs published by PFAM in the December 2012 MRFPs and the June 2013 MRFPs were incorrect. Staff of the IF Branch was alerted to the possibility of incorrect MER calculations in June 2013 and requested documentation from PFAM. PFAM was unable to provide the original calculations for December 2012 and supplied only fund level calculations for June 2013, despite the requirement for the calculation to be completed at the class level.

[139] PFAM's press release dated March 6, 2014 which disclosed the corrected MERs reflected the fact that, of the 26 MERs originally reported as at December 31, 2012, the ratio was increased in 24 cases and decreased in two and the ratios for all of the 26 MERs originally reported as at June 30, 2013 were increased by material amounts. As a result, the investors had been misled for the better part of a year with respect to the costs of their investments.

[140] McKinnon had no explanation for the incorrect MERs and testified that, although he approved the MRFPs as a director of PFAM, he did so in reliance on the expertise of Pinto. Pinto had no explanation for the errors in the December 31, 2012 calculations and cited her use of estimates for the class-level calculations as an explanation for the June 30, 2013 errors.

[141] It is clear that the evidence supports McKinnon's submission that PFAM was under great operational and financial stress. There is no doubt that, by June 2013, the continuing effects of staff turnover, client redemptions, the PPN Deficiency and regulatory scrutiny had combined to create a nearly impossible operating environment at PFAM. It is also no surprise that errors occurred and filing and other deadlines were missed.

[142] We do not agree, however, that a difficult operating environment is a sufficient defense to Staff's allegations of breaches of the IFM's duty of care. The duty to provide accurate and timely disclosure to investors regarding the management of the assets they have entrusted to the IFM as a fiduciary does not vary depending on the circumstances of the IFM's business. These are fundamental duties that are the minimum requirements of an IFM and, if an IFM is not able to meet these standards, it should seek to transfer the role to another IFM which is capable of doing so without delay.

[143] We also do not agree that a nefarious intent is necessary for there to be a breach. The standard is an objective standard and IFMs are required by the Act to "exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances".

[144] There is no evidence that the errors in the calculation of the MERs were intentional, despite the fact that virtually all of the errors created results that were significantly more favourable to PFAM. The evidence does, however, support a finding of a lack of care, diligence and/or skill.

[145] Pinto testified that she (i) failed to ensure accurate MERs when acting as a supervisor; (ii) promoted the use of estimates based on personal judgement instead of complying with the statutory requirements when performing the work herself; and (iii) continued to fail to produce accurate calculations even following Staff's intervention. All of these failures are evidence of a lack of care, diligence and/or skill on the part of PFAM as an IFM.

[146] The prospectus lapse, late filings of financial statements and the late delivery of T3 Slips were no doubt partly a result of PFAM's operating stresses at the time. However, in these matters, the evidence is more supportive of a wilful disregard for the best interests of the investment fund than McKinnon's assertion that these failures resulted from PFAM trying to advance the investment funds' best interests.

[147] The dispute with IAS was long-standing and multi-faceted. IAS had terminated its agreement with PFAM and had commenced the arbitration of its unpaid fees in April 2013. In September 2013, a full six months prior to the regulatory deadline for filing the financial statements for the Pro-Index Funds, IAS wrote to PFAM to clearly outline the terms and conditions on which IAS would prepare the annual financial statements. PFAM did not, however, request exemptive relief until March 28, 2014, the last business day prior to the deadline.

[148] Similarly, PFAM had already missed the deadline for the prospectus renewal filing when it requested a lapse date extension in early 2014. There is no evidence that PFAM had been working toward the filing or that the missed deadline was "inadvertent" as claimed by McKinnon.

[149] The result of these failures was that unitholders were left with no current disclosure regarding their investments at a time of general concern about PFAM's ability to continue in business. The prospectus lapse also resulted in a lack of liquidity for existing unitholders and reduced options for managing their investments. Clearly, this result was not in the best interests of the investment fund or its unitholders.

[150] The foregoing specific breaches follow years of regulatory concerns about PFAM's management practices. Starting with the first review by the Commission in 2009, errors in fundamental calculations and inappropriate management practices surfaced every time a light was shone on PFAM's operations. These regulatory concerns are described in greater detail in paragraphs [184] and [207] below.

[151] The turnover of staff, the financial stress and the regulatory scrutiny experienced by PFAM were issues that would cause a reasonably prudent person to conclude that greater scrutiny by PFAM's UDP and board of directors was warranted. It is not unreasonable to expect that the appropriate degree of care, diligence and skill exercised by a board of directors during periods of operating stress should be greater than during periods of optimal operating conditions. Notwithstanding the foregoing, there was no evidence of enhanced engagement or oversight by McKinnon or by PFAM's board of directors. Instead, in his testimony and submissions, McKinnon endeavoured to maintain his distance by attributing the errors solely to the individual staff members who had direct responsibility.

[152] At every point, the focus of PFAM and of McKinnon, who controlled and had oversight of all aspects of PFAM's business as the Chief Executive Officer and as a member of PFAM's board of directors together with his wife and Farrell[50], appears to have been on furthering the business operations of PFAM rather than on the best interests of the investment fund as required under subsection 116(b) of the Act.

[153] For the foregoing reasons, we find that PFAM failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances and, in doing so, breached the standard of care for IFMs under subsection 116(b) of the Act.

B. Did PFAM Fail to Maintain the Required Minimum Working Capital and Report its Capital Deficiency?

1. Background and Submissions

[154] Section 12.1 of NI 31-103 sets out the working capital requirements for registered firms and further provides that a registered firm must notify the regulator as soon as possible if, at any time, its working capital was less than the amount required.

[155] The minimum capital required by PFAM was $50,000.[51] The parties did not dispute that this minimum working capital requirement amount applied to PFAM.

[156] PFAM was indebted to Laurence Financial Services Corp. ("**Laurence Financial**") in connection with a loan by Laurence Financial in the amount of $500,000 which was evidenced by a Fixed Rate Promissory Note dated April 24, 2008 (the "**Laurence Loan**"). The terms of the Laurence Loan required PFAM to pay 59 monthly instalments with a final balloon payment of $304,142.23 which was due on May 1, 2013. As of May 1, 2012, the balloon payment became a short-term liability which was required to be included in the calculation of PFAM's working capital.

[157] In November 2012, approximately 19 months after they ceased to be employees of PFAM, Butler and Cox expressed concerns to the CRR Branch about PFAM's solvency and other issues based on information which they had obtained while undertaking their due diligence prior to joining PFAM in 2010 as investors and officers and the documents they received from Bozzo.

[158] As a result, the CRR Branch informed PFAM that they wished to conduct a site visit to review the monthly working capital calculations for the period May to October 2012. At the site visit, which took place on November 21, 2012, Pinto provided PFAM's working capital calculations for the period May to October 2012 which showed that PFAM had maintained the required working capital during the period and that, on October 31, 2012, PFAM's working capital exceeded the required amount by $19,498.

[159] Staff requested the financial statements to support the working capital calculations and Pinto responded that she needed to review them first.[52] After repeated requests, Pinto provided the unaudited financial statements on November

[50] Pinto replaced Farrell following Farrell's departure from PFAM.
[51] Subsection 12.1(3)(b) of NI 31-103.

30, 2012. Pinto also provided a revised working capital calculation which showed that PFAM's working capital was at least $183,367 less than the required amount. Notably, this calculation did not include the Laurence Loan balloon payment as a short-term liability.

[160] Pinto advised Staff that McKinnon had arranged a loan in the amount of $200,000 from his mother to cover the working capital deficiency. Pinto did not advise Staff that the loan from McKinnon's mother was not subordinated, as required, if the amount of the loan was to be eligible for inclusion in the working capital calculation.

[161] In early December 2012, Staff prepared its own calculation of PFAM's working capital position which showed a working capital deficiency of $634,423 as at October 31, 2012. Staff's calculations of working capital for the period May to November 2012 showed that PFAM's working capital was from $141,000 to $224,000 less than the minimum amount required for each month during the period.

[162] The day after the CRR Branch visit, McKinnon sent an e-mail message to Laurence Financial requesting a call and, on the following day, sent another e-mail message requesting an extension of the term of the Laurence Loan, stating that the balloon payment on May 1, 2013 affected PFAM's working capital. Following discussions with Laurence Financial, on March 12, 2013, the term of the Laurence Loan was extended by five years to May 2018.

[163] Staff submits that the working capital requirement is "a fundamental feature of the registrant regulation regime"[53] and that, as UDP, McKinnon was responsible for ensuring that his firm met this requirement.

[164] Staff submits that the evidence shows that PFAM failed to include the Laurence Loan balloon payment of $304,142.23 as a current liability in its calculations of working capital for the period May 31, 2012 to October 31, 2012. Had it done so, Staff further submits that PFAM would have been capital deficient for the entire period by at least $125,000.

[165] Staff submits that despite McKinnon's duty to report a working capital deficiency to the Commission as soon as possible and to rectify the deficiency within 48 hours, PFAM did not report any working capital deficiency from May 2012 until October 31, 2012. Staff also points out that it was only after Staff's review that PFAM revised its calculations and finally reported a capital deficiency nine days later, noting that the revised calculation still did not include the Laurence Loan balloon payment even though McKinnon had contacted Laurence Financial at least a week earlier.

[166] Staff submits that a breach of section 12.1 of NI 31-103 does not require knowledge and, accordingly, McKinnon's claim that he was unaware of the working capital deficiency until November 2012 or that he relied on his accounting staff to prepare the calculation and did not take into account the current liabilities does not alter PFAM's breach of section 12.1 of NI 31-103. Staff points to the decision of the Director of the CRR Branch in *Takota* which states that:

> It is the responsibility of the registrant to ensure compliance with Ontario securities law. The failure to meet the minimum capital requirements occurred as a result of errors created by a professional accounting firm when it established the accounting system for Takota and completed itsfinancial statements… Even though the registrant retained a professional accounting firm to establish their accounting system, the obligation to establish appropriate internal controls and systems remains with the registrant.
>
> (*Takota*, para 10)

[167] McKinnon submits that he cannot be held responsible for the working capital deficiency because he did not possess knowledge of all of the relevant facts and was, therefore, unaware that PFAM was in a capital deficient position. He also points out that, on many occasions, he injected his personal capital into PFAM to keep it solvent and in compliance with regulatory requirements. He further submits that he was not aware that the loan from his mother needed to be subordinated.

[168] McKinnon submits that the evidence shows that his assumption that PFAM did not have a problem with working capital was not unreasonable and that he relied on his accounting staff and Farrell, who was the Chief Compliance Officer ("**CCO**") at the time, to review the working capital calculations. McKinnon testified that he "would look at the bottom line to ensure that we were capital – our capital was onside. I don't know how to calculate the working capital and I didn't do it. I relied on the staff that did it for me obviously."[54]

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52 It should be noted that Pinto had only joined PFAM as CFO on October 12, 2012, less than six weeks prior to Staff's site visit on November 21, 2012.

53 *Takota Asset Management Inc.* (2013), 36 OSCB 7808 ("***Takota***"), para 6.

54 Hearing Transcript, June 15, 2016, pp. 126-127.

[169] McKinnon also submits that there was no intent on the part of PFAM to hide information from Staff or to purposely delay reporting a working capital deficiency. He maintains that he was not aware that the Laurence Loan needed to be included in the short-term liability calculation and that the reason it took nine days after the Staff visit to prepare revised calculations was that Pinto was new to PFAM and they needed time to review the financial statements and confirm the validity of the working capital calculations.

2. Analysis and Findings

[170] Previous decisions of Directors of the Commission have held that the working capital requirement is a fundamental feature of the registrant regulation regime as solvency is one of the three pillars of suitability for registration[55] and that all registrants are required to meet the capital requirements of the Act.[56] As stated by the Director in his decision in *Pente Investment Management Ltd.* (2006), 29 OSCB 6795 ("***Pente***"):

> Maintaining minimum free capital is a serious regulatory obligation placed on registrants. This requirement helps to protect investors from insolvency and fosters confidence in Ontario's capital markets.
>
> (*Pente*, para 10)

[171] There is no doubt that PFAM had a responsibility as a registrant to maintain adequate working capital and also had a duty to report to CRR Staff as soon as possible if the working capital was less than the minimum amount required for two consecutive days. As UDP, McKinnon was responsible for ensuring that PFAM maintained the minimum capital required and he cannot absolve himself from this responsibility by indicating that he relied on his staff to make sure that the calculation was correct.

[172] As PFAM was a small firm which had experienced significant staff turnover including two CFOs in 2012 (one of whom had health problems), it is possible that McKinnon may not have been aware that the Laurence Loan needed to be moved to the short-term liability category immediately on May 1, 2012. However, it is clear from Chan's testimony that McKinnon had concerns about working capital in the summer of 2012 and, in fact, had discussed his concerns relating to working capital with Chan on a number of occasions over a period of three years. As a result, it is not credible that, by the end of October 2012, McKinnon was not aware that the Laurence Loan balloon payment was coming due in approximately six months and that he did not appreciate that the payment of a $304,000 debt would have a significant effect on PFAM's working capital.

[173] Even if McKinnon was unaware of the fact that the Laurence Loan balloon payment had to be included in the working capital calculation beforehand, he would have known following the meeting with CRR Staff on November 21, 2012 and yet the balloon payment was still not included in the revised calculations provided to CRR Staff on November 30, 2012.

[174] None of the mitigating factors cited by McKinnon – namely, that he relied on his accounting staff to calculate working capital, that Pinto had been at the firm less than six weeks, whether the Laurence Loan should be considered short-term debt and the treatment of IAS credit memos which were discussed extensively with Chan – alter the fact that, as of the end of October 2012, PFAM did not have the required working capital and did not inform the Commission, as it was required to do.

[175] We note that McKinnon caused PFAM to repay the loan from his mother on May 17, 2013, the same day that PFAM's registration was suspended by the temporary order of the Commission.

[176] For the foregoing reasons, we find that PFAM breached its obligation to maintain the minimum working capital required of a registered firm and failed to report its working capital deficiency, contrary to section 12.1 of NI 31-103.

C. Did PFAM Fail to Keep Satisfactory Books and Records?

[177] Subsection 19(1) of the Act provides that:

> **Record-keeping** – Every market participant shall keep the following records:
>
> 1. Such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others.

[55] *Takota*, para 6.
[56] *Pente*, para 10.

2. Such books, records and other documents as may otherwise be required under Ontario securities law.

3. Such books, records and other documents as may reasonably be required to demonstrate compliance with Ontario securities law.

[178] Staff submits that, in addition to complying with subsection 19(1) of the Act, registrants[57] must also comply with sections 11.5 and 11.6 of NI 31-103 which require registrants to accurately record their business activities, financial affairs and client transactions and maintain those records in a safe location and in a durable form so that the firm is able to demonstrate compliance with applicable securities legislation. Subsection 11.5(2) specifies the types of records which are required under subsection 11.5(1).

[179] Staff submits that, contrary to subsection 19(1) of the Act and sections 11.5 and 11.6 of NI 31-103, PFAM failed to maintain and retain appropriate books and records for several key areas. The paragraphs which follow summarize Staff's submissions, McKinnon's response, where applicable, and our views:

(a) Trust Account Disbursements

Staff requested supporting documents for 125 transactions in the trust account in its Summons dated February 14, 2014. In response, Pinto stated that Staff's request was "extensive" and asked Staff to narrow the scope of the request. However, even after Staff narrowed the request to 13 transactions, PFAM did not provide the requested supporting documentation. In McKinnon's Written Submissions, he argues that the documents were difficult to access or find because PFAM had moved multiple times which necessitated placing the documentation in storage.

Regardless of the fact that PFAM had moved, the maintenance of documentation in a safe, secure and accessible place is required of all market participants. Many market participants store documents in electronic form or in offsite locations due to space limitations at their office locations but are still able to readily access those documents. The fact that PFAM had moved its office location does not reduce its responsibility to store the documents in a secure fashion and be able to produce them at the request of the Commission.

(b) Calculation of Original 2012 MERs

PFAM was also unable to provide its original calculations for the December 2012 MERs calculations when requested to do so by Staff. McKinnon submitted that the calculations were performed by an employee who had left PFAM and that it was not possible to locate the required information in her e-mail or records, some of which had been shredded prior to her leaving PFAM. However, at the time that the calculations were completed for the December 2012 MERs, copies of the calculations should have been placed in a file that was kept in a safe and secure location, as required. No required documentation should be kept solely in one employee's files and records but must be retained in a secure location with the documentation that market participants are required to maintain.

(c) Monthly Approval Form 31-103F for May to October 2012

During his interview by Staff on July 30, 2014, McKinnon provided an undertaking to confirm that the Form 31-103F1s, which had been provided to Staff in November 2012 (covering the period from May to October 2012), regarding working capital calculations had been approved by him and, if not, that he would provide the Forms that had been approved by him. In a subsequent letter to Staff, McKinnon's counsel advised that he was unable to confirm that the Forms had been approved by him and did not have access to the original Forms which had been approved. During the Hearing, both McKinnon and Pinto testified that the Form 31-103F1s were reviewed, approved and signed (electronically) by McKinnon but were unable to provide the actual signed Forms. In McKinnon's Written Submissions, McKinnon simply states that PFAM did not have access to the specific Forms which had been approved, and did not provide an explanation. Once again, PFAM was unable to provide the records which it was required to maintain as part of its record-keeping obligations.

(d) Management Fees-Contra Line Item

Ho testified that Staff had requested information regarding the line item "Management Fees – Contra" in the general ledger for the Pro-Index Funds in December 2013. By letter to Staff dated January 17, 2014, PFAM's counsel advised Staff that they were having difficulty obtaining the required information from IAS. PFAM did not at any time provide the requested information to Staff. In McKinnon's Written Submissions, McKinnon

[57] In its submissions relating to subsection 19(1) of the Act, Staff refers to "registrants" rather than "market participants". The term "market participant" is defined by Subsection 1(1) of the Act to include the term "registrant".

argues that they had followed-up with IAS on three occasions in January 2014 and states only that IAS was unwilling to provide the information in question. Regardless of whether IAS did or did not co-operate in providing the information in 2014, PFAM's obligation was to maintain adequate records and supporting documentation for items in the general ledger of the Pro-Index Funds as specified in subsection 11.5(1) of NI 31-103, namely, records that would "permit timely creation and audit of financial statements and other financial information required to be filed or delivered".

(e) Expenses Waived/Absorbed by Manager

Staff submits that PFAM was unable to provide an explanation for the line item "Expenses Waived/Absorbed by Manager" in PFAM's financial statements for 2012 and 2013, and refers to the compelled interview of Pinto on July 17, 2014 in which she stated that only IAS could explain the expenses waived or absorbed by the manager. McKinnon submits that Staff provided no evidence during the Hearing that a request for the information was made. As Staff did not raise the issue with Pinto during her testimony at the Hearing and Chan's testimony with respect to the issue was only based on his understanding of the practices of fund managers, we are unable to make a determination with respect to this specific alleged failure.

[180] We might find it understandable if PFAM's failure to produce documents was isolated or related to a specific transaction, time or area of its business. However, the evidence presented during the Hearing demonstrated that PFAM was unable to produce documents related to numerous critical areas of its business, including documents required for trust account reconciliation, working capital calculations, the PPN Deficiency, the MER calculations for the Pro Index Funds and financial reporting for the funds. It is clear from the evidence that PFAM did not properly record or maintain the documents related to its business activities as required and, in at least eight separate instances, PFAM's response to requests by Staff for documentation was that the records were unavailable and some records were never provided.

[181] For the foregoing reasons, we find that PFAM failed to maintain appropriate books, records and other documents as required by subsection 19(1) of the Act and sections 11.5 and 11.6 of NI 31-103.

D. Did PFAM Fail to Maintain Appropriate Controls and Compliance Systems?

[182] Subsection 32(2) of the Act provides as follows:

> **Duty to establish controls, etc.** – Every registrant that is a registered dealer, registered adviser or registered investment fund manager shall establish and maintain systems of control and supervision in accordance with the regulations for controlling his, her or its activities and supervising his, her or its representatives.

[183] Section 11.1 of NI 31-103 and NI 31-103CP provide further guidance on the importance of effective compliance and how an effective compliance system would provide the appropriate controls and supervision. Specifically, NI 31-103CP states that "operating an effective compliance system is essential to a registered firm's continuing fitness for registration" and that such a compliance system "should include controls and monitoring systems that are reasonably likely to identify non-compliance at an early stage and supervisory systems that allow the firm to correct non-compliant conduct in a timely manner".[58]

[184] In May 2009, the CRR Branch conducted a compliance review of PFAM. Following the review, a report was sent to McKinnon that identified significant deficiencies that would "significantly impact your firm's fitness for registration"[59] citing a lack of a compliance system, among other things. Terms and conditions were imposed which required PFAM to employ a consultant to work with PFAM to resolve the issues. A follow-up review by the CRR Branch was carried out in May 2011 and the subsequent report to PFAM was more explicit about PFAM's lack of a suitable compliance system, identifying, among other deficiencies under securities law, "an inadequate compliance system, UDP not adequately performing responsibilities, and CCO not adequately performing responsibilities."[60]

[185] Staff submits that the following conduct demonstrates PFAM's failure to establish and maintain systems of control and supervision contrary to subsection 32(2) of the Act and section 11.1 of NI 31-103:

(a) Submitting unsupported redemption requests to the Banks;

(b) Making redemption payments to the Noteholders at different prices than those that were used by the Banks for redemption proceeds paid to Concentra;

58 NI 31-103CP, section 11.1.
59 Exhibit 148.
60 Exhibit 237.

(c) Failing to properly account for monies received in the PFAM trust account;

(d) Using the surplus from the initial series of PPNs to make redemption or maturity payments for other PPN series;

(e) Failing to discover that there was a shortfall on the maturity of the Pro 706 Series of PPNs;

(f) Failing to properly investigate and communicate the PPN Deficiency to the Banks, Concentra, IAS and the Noteholders;

(g) Failing to ensure that adequate controls were in place for the calculation of the MERs for the Pro-Index Funds;

(h) Failing to renew the prospectus for the Pro-Index Funds; and

(i) Failing to ensure adequate controls for the calculation and maintenance of PFAM's working capital calculations.

[186] In McKinnon's Written Submissions, McKinnon admits that the evidence does reveal areas in which PFAM's controls and compliance systems did not detect or prevent some issues. However, he submits that he made *bona fide* efforts to ensure that PFAM's compliance systems were in accordance with industry standards.

[187] We acknowledge that McKinnon made some efforts, but the fact remains that the actions that he did take were inadequate to address the compliance system deficiencies. Two separate CRR Branch Compliance Field Review Reports identified numerous compliance deficiencies and cited the lack of an adequate compliance system.

[188] For the foregoing reasons, we find that PFAM failed to establish and maintain systems of controls and supervision contrary to subsection 32(2) of the Act and section 11.1 of NI 31-103.

V. MCKINNON'S RESPONSIBILITIES

A. Did McKinnon authorize, permit or acquiesce in PFAM's breaches?

1. Background and Submissions

[189] Section 129.2 of the Act attaches liability to officers and directors of a corporation for its non-compliance with Ontario securities law as follows:

> **Directors and officers** – For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

[190] Staff submits that, as a director and officer of PFAM, McKinnon authorized, permitted or acquiesced in PFAM's non-compliance with Ontario securities law and, accordingly, he should be deemed to have failed to comply with Ontario securities law pursuant to section 129.2 of the Act.

[191] Staff submits that McKinnon was actively involved in PFAM's operations and was aware of and participated in the following conduct:

(a) PFAM's failure to deal fairly, honestly and in good faith with its clients;

(b) PFAM's breach of its standard of care as an IFM;

(c) PFAM's failure to maintain required working capital;

(d) PFAM's failure to keep satisfactory books and records; and

(e) PFAM's failure to maintain adequate internal controls and systems.

[192] Staff relies on the decision in *Momentas* in which the Commission determined that:

> … the threshold for liability under section 122 and 129.2 is a low one, as merely acquiescing in the conduct or activity in question will satisfy the requirement of liability. The degree of knowledge of intention found in each of the terms "authorize", "permit" and "acquiesce" varies significantly. "Acquiesce" means to agree or consent quietly without protest. "Permit" means to allow, consent, tolerate, give permission, particularly in writing. "Authorize" means to give official approval or permission, to give power or authority or to give justification.
>
> (*Momentas*, para 118)

[193] McKinnon and Staff agree on the applicable legal test for section 129.2 as articulated in *Momentas*. However, McKinnon submits that section 129.2 of the Act specifically requires that the director or officer have knowingly participated in the non-compliance. McKinnon further submits that Staff is required to prove that he possessed the requisite knowledge and intent necessary to demonstrate he either authorized, permitted or acquiesced in any alleged violation by PFAM.

[194] McKinnon relies on a decision of the Alberta Court of Appeal which held that, to sustain a conviction under subsection 194(1)(a) or (b) of the Alberta *Securities Act*[61], it was necessary to prove pursuant to section 194(4) that the officer or director "authorized, permitted or acquiesced" in a misrepresentation. The Court held that the "provision has not been construed as one of strict liability, but rather one that incorporates a subjective *mens rea*."[62]

[195] Staff disputes McKinnon's submissions relating to knowing participation and intent and submits that is not the standard that has been articulated by the Commission and that merely acquiescing in the conduct will satisfy the requirement for liability under section 129.2 of the Act. In this regard, Staff points to the Commission's decision in *Bluestream Capital Corp.* (2015), 38 OSCB 2333 ("***Bluestream***") in which the Commission reaffirmed the low threshold for liability pursuant to section 129.2 of the Act and held that "merely acquiescing to the conduct or activity in question will satisfy the requirements for liability; in other words, passive consent is all that is required".[63]

2. Analysis and Findings

[196] McKinnon was the indirect owner, President, Chief Executive Officer and a director of PFAM since its incorporation and was actively involved in PFAM's business. While certain employees of PFAM were responsible for performing working capital calculations, MER calculations and various other reporting requirements under Ontario securities law, they all reported to McKinnon. Reliance on other employees to perform certain duties does not absolve McKinnon from liability for PFAM's non-compliance as an officer and director.

[197] McKinnon signed PFAM's cheques, approved the MER calculations and was responsible for ensuring that PFAM maintained the required minimum capital. Although McKinnon did not personally perform all of the tasks relating to the PPNs which we address above in these Reasons, he was the directing mind of PFAM and exercised full control of PFAM's accounting and operations staff and sat in close proximity to them. McKinnon's failure to address the circumstances which gave rise to the PPN Deficiency and his authorization, permission or acquiescence in the use of a "surplus" in one PPN series to cover a "deficit" in another PPN series was completely improper given that the funds were held in trust. In summary, McKinnon permitted or acquiesced in PFAM's breach of its fundamental obligation to deal fairly, honestly and in good faith with its clients.

[198] For the foregoing reasons, we find that, as a director and officer of PFAM, McKinnon authorized, permitted or acquiesced in PFAM's non-compliance with Ontario securities law and is therefore deemed to also have not complied with Ontario securities law pursuant to section 129.2 of the Act.

B. Did McKinnon Fulfill His URP and UDP Responsibilities?

1. Background and Submissions

[199] As PFAM's URP from October 19, 2005 to September 28, 2009, McKinnon had the ultimate responsibility for ensuring PFAM's compliance with Ontario securities law pursuant to Rule 31-505. As PFAM's UDP since October 26, 2009, McKinnon was obligated to comply with section 5.1 of NI 31-103 which provides that:

> **Responsibilities of the ultimate designated person** – The ultimate designated person of a registered firm must do all of the following:

61 RSA 2000 c S-4.
62 *Alberta (Securities Commission) v Workum,* 2010 ABCA 405, para 134.
63 *Bluestream*, para 50.

(b) supervise the activities of the firm that are directed towards ensuring compliance with securities legislation by the firm and each individual acting on the firm's behalf;

(c) promote compliance by the firm, and individuals acting on its behalf, with securities legislation.

[200] NI 31-103CP provides that the intention of the UDP designation is to ensure that responsibility for a registered firm's compliance systems rests at the very top of the firm. The UDP has an obligation to establish, maintain and apply policies and procedures that support effective compliance with the applicable securities regulation which includes having sufficient trained resources as well as an effective system of controls and oversight.

[201] In promoting a culture of compliance, the UDP must ensure that a firm's compliance program manages any potential risks related to compliance failure and any potential risks which would result in harm being caused to investors or the markets or in financial losses or reputational damage to the firm.

[202] Staff submits that McKinnon failed to meet his responsibilities as PFAM's UDP by failing to supervise the activities of PFAM and by failing to promote compliance with securities legislation. Staff points to the following evidence which, in Staff's submission, demonstrates McKinnon's failure to supervise the activities of PFAM directed towards compliance with securities legislation:

(a) Unsupported redemption requests and the use of estimates;

(b) Using prices for the payment of redemption proceeds that were different from the prices used by the Banks to pay to Concentra;

(c) The surplus in the Pro 101 Series of PPNs and the subsequent failure by PFAM to investigate the cause and notify the other parties;

(d) The use by PFAM of the Pro 101 surplus to make redemption or maturity payments for other PPN Series;

(e) PFAM's failure to account for monies in PFAM's trust account;

(f) The CRR Branch Compliance Field Review report dated March 5, 2010, which is addressed in paragraph [207] below;

(g) PFAM's failure to notify the Commission of its working capital deficiency during the period of May 31 to October 31, 2012 until November 30, 2012;

(h) The inaccurate calculation of the June 2013 MERs by Pinto; and

(i) The approval of the MRFPs which included inaccurate MERs for December 2012 and June 2013.

[203] McKinnon submits that liability under section 5.1 of NI 31-103 is not strict and a URP or UDP is not necessarily prosecuted for the acts or omissions of his or her firm. He also submits that a finding that PFAM breached securities laws does not necessarily lead to a finding that McKinnon breached his obligations as URP or UDP.

[204] In his testimony and in his oral and written submissions, McKinnon repeatedly submits that he was not involved in the day-to-day operations of PFAM and relied on his staff to advise him of any problems which arose. McKinnon relies in this regard on *Rowan* (2008) 31 OSCB 6515 ("***Rowan***") in which the Commission stated that the UDP is "not operationally responsible for day-to-day compliance activities"[64] which, in McKinnon's submission, fall to the CCO. He also asserts that a finding that PFAM breached securities law does not necessarily lead to a finding that he breached his obligations as UDP.

[205] McKinnon submits that his obligations as URP or UDP must be read in conjunction with those of the CCO whose obligations under the former Rule 31-505 and the current NI 31-103 include establishing policies and procedures, monitoring and assessing compliance and reporting violations or potential violations to the UDP.

[64] *Rowan*, para 316.

[206] Finally, McKinnon submits that he performed his supervisory functions in a commercially reasonable manner in the circumstances and sought to establish and foster a climate of compliance. In McKinnon's submission, the documentary evidence and his own testimony suggest that McKinnon took his compliance responsibilities seriously.

2. Analysis and Findings

[207] In May 2009, staff of the CRR Branch conducted a compliance review of PFAM which resulted in the CRR Branch's Compliance Field Review Report dated March 5, 2010 which identified a number of serious issues. The Report, which was sent to McKinnon, should have been the first "red flag" to McKinnon in his role as UDP as the language used in the Report is direct and stark, stating that there were significant deficiencies that would "significantly impact your firm's fitness for registration"[65] and citing the lack of a compliance system, the CCO not adequately performing his responsibilities, the overstatement of net asset values and a prohibited loan from one of the Funds. The CRR Branch stipulated that PFAM had 21 days to address these deficiencies before Terms and Conditions were imposed on the firm. Subsequently, Terms and Conditions dated June 29, 2010 were imposed which required PFAM to hire a consultant to work with PFAM to develop a proper compliance system.

[208] A second CRR Branch compliance review was undertaken in May 2011 and the resulting CRR Compliance Field Review Report dated October 7, 2011 was even harsher in its assessment of PFAM's lack of a suitable compliance system. The Report stated that "your ultimate designated person, (UDP), Stuart McKinnon, has not adequately performed his responsibilities under securities law" and "your CCO, John Farrell, has not adequately performed his responsibilities under securities law."[66]

[209] While we would agree that McKinnon was not involved in performing the daily operations of PFAM and may not have had working knowledge of the detailed processes followed by his staff, he cannot absolve himself of responsibility for oversight of these activities and for his responsibility to ensure that the firm was being appropriately managed to ensure compliance. In this regard, we note that the Commission in Rowan, on which McKinnon relies, states clearly that:

> Each firm must have a UDP who is responsible for the firm's overall compliance with regulatory requirements as well as overseeing the development and implementation of its compliance practices and procedures.
>
> (*Rowan*, para 316)

[210] As UDP, McKinnon reviewed and approved the firm's compliance manuals. He stated in his testimony that all employees were required to sign an acknowledgment form stating that they had reviewed and would comply with the compliance manual. Yet, on cross- examination, he said several times that he had not seen the section of the compliance manuals relating to the pricing of PPNs and was not aware that PFAM was establishing secondary market prices that were different from the Banks' prices. As UDP, and as the person who had established the PPN relationships with the Banks, it was McKinnon's responsibility to ensure that the PPNs were processed according to the terms of the Bank Agreements.

[211] Similarly, McKinnon was made aware that there was a discrepancy in PPN records in December 2010 when Bozzo informed him that there was a surplus of $197,031. He treated this as a windfall rather than as a red flag that there might be a deficit in another Series. Subsequently, in May 2012, when Bozzo sent him a report which showed imbalances in several PPN series, he said that he was not concerned because there was a net surplus of approximately $13,000. As we have previously found, this response meant that McKinnon permitted the use of surplus funds from one series of PPNs to settle a shortfall of funds on another series and, depending on the timing of maturities, it was likely that PFAM would have had a shortfall that PFAM would have been unable to pay. McKinnon's willful blindness to the seriousness of this issue demonstrates that he was not discharging his duties as UDP.

[212] On numerous occasions, PFAM was asked to produce various documents for review by the CRR Branch including working capital calculations, policies and procedures manuals, trust account and PPN reconciliations, that they were either unable to produce at all or took days, weeks or months to produce. There were many examples of accounting documents that were lost, destroyed or misplaced. The responsibility to maintain adequate books and records is a cornerstone of the appropriate oversight of any registrant firm and, while McKinnon may not have written or prepared any of these documents himself, as UDP, it was his responsibility to ensure that the firm prepared all of the required records and that they were maintained in a safe and secure fashion.

[213] A number of issues regarding the calculation of working capital have been raised in this proceeding. It is clear that the UDP must ensure that his firm has appropriate working capital to ensure the viability and solvency of the firm. In addition, McKinnon had taken the Partners, Directors and Senior Officers Course of the Canadian Securities Institute

[65] Exhibit 148, p. 1.
[66] Exhibit 237, pp. 1-2.

which requires, among other things, knowing how to calculate working capital. Yet McKinnon testified that he "didn't know how to calculate the working capital and didn't do it" and that he just looked at the "bottom line" to ensure that the working capital exceeded the minimum amount required. McKinnon was not entitled to delegate his responsibility relating to the adequacy of working capital to the CFO or the head of accounting. As UDP, he must ensure that he has competent staff with the appropriate qualifications to manage the ongoing calculation of working capital and he must review and assure himself that those calculations are being done correctly. Indeed, he was required to provide his certification as UDP that he had reviewed the working capital calculation and that he believed it to be correct.

[214] McKinnon failed to carry out his obligations as UDP by failing to appropriately supervise the activities of PFAM and by failing to establish and maintain the firm's required compliance with securities legislation. He also failed to promote a culture of compliance and oversee the effectiveness of PFAM's compliance system. The lack of a robust compliance system resulted in financial and regulatory risks which caused harm to investors and the markets as well as financial losses and reputational damage to the firm and the industry. This is the very reason that NI 31-103 assigns responsibility for a registrant's compliance system to the most senior level of the organizational structure.

[215] McKinnon argued during the Hearing that the repeated investigations, visits and demands for information from the CRR Branch adversely affected PFAM's ability to maintain and attract business and resulted in increased costs and loss of staff productivity. In closing oral submissions, his counsel stated:

> the progression or regression of the business of Pro-Financial and the different stresses it was under at different points of time financially as a result of its business disputes, <u>as a result of repeated and ongoing compliance field audits from CRR Staff, ultimately leading to a diminution of assets under management</u> and financial difficulties that led to the working capital deficiency. [Emphasis added.]
>
> (Hearing Transcript, September 15, 2016, p. 102)

[216] However, the compliance deficiencies found by the CRR Branch in its 2009 review were very clearly outlined to PFAM in the Report delivered in March 2010. The Report identified a lack of an effective compliance system and a CCO inadequately performing his responsibilities. It further enumerated numerous significant deficiencies related to the use of the trust account, net asset value calculations, fund accounting and regulatory reporting. Many of these deficiencies were inadequacies dating back several years (2005-2008). The Report also stated that PFAM had 21 days to address the deficiencies so that they could be "able to avoid the costs and administrative burdens of having terms and conditions imposed on its registration".[67] PFAM did not address the deficiencies and, as a consequence, Terms and Conditions were imposed by the CRR Branch on June 29, 2010. PFAM did engage a consultant (as specified in the Terms and Conditions), and did implement some of the recommended changes. However, the subsequent CRR Branch review in May 2011 resulted in a second report which again identified many significant deficiencies, some of which are summarized above in these Reasons.

[217] Had McKinnon and PFAM adequately addressed the concerns raised by the CRR Branch after its first review, they might have avoided many of the difficulties and regulatory costs which they later incurred. As UDP, McKinnon should have understood the seriousness of non-compliance with regulatory obligations and been far more proactive in ensuring that the compliance and regulatory requirements of the firm, as identified by the CRR Branch, were met.

[218] McKinnon's failures as UDP were extensive and significant and are simply indisputable. Accordingly, we find that, since October 19, 2005 and prior to September 28, 2009, McKinnon breached his obligations as PFAM's URP pursuant to subsection 1.3(2) of Rule 31-505 and, on or after September 28, 2009, he breached his obligations as PFAM's UDP pursuant to section 5.1 of NI 31-103.

VI. BREACHES OF ONTARIO SECURITIES LAW

[219] For the foregoing reasons, we find that:

(a) PFAM failed to deal fairly, honestly and in good faith with its clients, contrary to subsection 2.1(1) of Rule 31-505;

(b) PFAM failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances and, in doing so, breached the standard of care for IFMs, contrary to subsection 116(b) of the Act;

[67] Exhibit 148, p. 2.

(c) PFAM failed to maintain the minimum working capital required of a registered firm and failed to report its capital deficiency, contrary to section 12.1 of NI 31-103;

(d) PFAM failed to keep satisfactory books, records or other documents, contrary to subsection 19(1) of the Act and sections 11.5 and 11.6 of NI 31-103;

(e) PFAM failed to establish, maintain and apply policies and procedures that establish an adequate system of controls and supervision, contrary to subsection 32(2) of the Act and section 11.1 of NI 31-103;

(f) McKinnon, as a director and officer of PFAM, authorized, permitted or acquiesced in PFAM's breaches as set out above (a) through (e) and is therefore liable pursuant to section 129.2 of the Act; and

(g) McKinnon breached his obligations as URP and UDP of PFAM, contrary to section 5.2 of NI 31-103.

VII. CONDUCT CONTRARY TO THE PUBLIC INTEREST

[220] Staff alleges that the conduct of PFAM and McKinnon described in the Statement of Allegations was contrary to the public interest. The Commission's public interest jurisdiction is preventative in nature and prospective in orientation. It is intended to be exercised to prevent future harm to investors and Ontario capital markets.

[221] PFAM and McKinnon breached numerous provisions of Ontario securities law. PFAM failed to discharge the duties and responsibilities of a registered firm and McKinnon, as an officer and director of PFAM, authorized, permitted or acquiesced in those breaches and ultimately failed his responsibilities as URP and as UDP.

[222] For the foregoing reasons, we find that PFAM and McKinnon's conduct was contrary to the public interest.

VIII. SANCTIONS HEARING

[223] The parties are requested to contact the Office of the Secretary of the Commission by 5:00 p.m. on April 27, 2017 to schedule a sanctions hearing.

Dated at Toronto this 20th day of April, 2017.

"Christopher Portner"

"Judith N. Robertson"

"AnneMarie Ryan"

3.1.2 Mark Steven Rotstein and Equilibrium Partners Inc.

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

AND

IN THE MATTER OF
MARK STEVEN ROTSTEIN AND
EQUILIBRIUM PARTNERS INC.

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

Hearing:	April 11, 2017		
Decision:	April 11, 2017		
Panel:	Timothy Moseley	–	Chair of the Panel
	Monica Kowal	–	Vice-Chair
	AnneMarie Ryan	–	Commissioner
Appearances:	Yvonne B. Chisholm Evan Rankin (Student-at-law)	–	For Staff of the Commission
	Larry Ritchie Geoffrey Grove Alexis Beale	–	For the Respondents

ORAL REASONS AND DECISION

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the hearing as edited and approved by the panel, to provide a public record.

[1] Mr. Rotstein has admitted that he and his company Equilibrium Partners Inc. contravened subsections 25(1) and 25(3) of the *Securities Act*, RSO 1990, c S.5, by engaging in the business of trading in securities, and advising with respect to securities, without being registered.

[2] While the parties have reached an agreement as to the sanctions that ought to be imposed, our obligation is to consider whether to approve the agreement, which is the product of negotiation between Staff and the Respondents.

[3] We must still be satisfied that the agreed-upon sanctions are appropriate in the circumstances, and that it would be in the public interest to approve the settlement and issue the order contemplated by the agreement. For the reasons that follow, we find that it is in the public interest to approve the settlement and to issue the requested order.

[4] The Commission respects the negotiation process and accords significant deference to the resolution reached by the parties. This panel had the opportunity to meet with counsel for Staff and for the Respondents in a confidential conference. We reviewed the settlement agreement and we considered submissions from counsel. We wish to highlight the following.

[5] Mr. Rotstein had been registered under the *Securities Act* for more than 15 years, until 2014. This is his third regulatory settlement in five years. In 2012, he settled with the Investment Industry Regulatory Organization of Canada (**IIROC**), admitting that he had, for over a decade, signed client names on account and investment documents, and had passed the signatures off as those of the clients. In 2014, he again settled with IIROC, admitting that he had entered a trade for a client without the client's knowledge or authorization.

[6] That brings us to the misconduct in this matter, which was serious. It brought the advising and trading that he and Equilibrium Partners Inc. conducted outside the protections of Ontario securities law. In addition, and like his past misconduct with respect to client signatures, Mr. Rotstein's conduct was dishonest, in that he impersonated some clients when dealing with registrants. Underlying this misconduct was Mr. Rotstein's mistaken assumption that he was doing his clients a favour. He wasn't. They will be inconvenienced, and they were placed at greater risk.

[7] Mr. Rotstein's conduct over the years also suggests strongly that he saw the rules as an inconvenience, and that he has, or at least had, a clear disregard for securities regulation. That is an incorrect and dangerous attitude for anyone

who wishes to participate in the capital markets, and it is especially concerning for someone who has had a career in those markets.

[8] We do note that as it turned out, it does not appear that the respondents' clients suffered any losses as a result of the misconduct. We also note that the respondents cooperated with Staff's investigation, and that Mr. Rotstein acknowledges the seriousness of his misconduct, and expresses remorse.

[9] Had this matter proceeded to a contested hearing, the respondents might very well have been subject to greater sanctions than those called for by this agreement. It is not uncommon for registrants and former registrants to be permanently barred from the capital markets for repeated dishonest conduct. While we consider the agreed-upon sanctions to be at the low end of the reasonable range, we do acknowledge that this proposed settlement resolves the proceeding with certainty and in an efficient way, saving the costs that would be incurred in a contested hearing against the Respondents.

[10] Staff and the respondents submit that this proposed settlement is in the public interest, and we agree. For all these reasons, we approve the settlement agreement as requested and we will issue an order substantially in the form of Schedule 'A' to that agreement.

Dated at Toronto this 11th day of April, 2017.

"Timothy Moseley"

"Monica Kowal"

"AnneMarie Ryan"

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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 ofRevocation
Emerald Bay Energy Inc.	10 May 2016	21 April 2017

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

THERE IS NOTHING TO REPORT THIS WEEK.

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

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Chapter 5

Rules and Policies

5.1.1 Amendments to National Instrument 24-101 Institutional Trade Matching and Settlement and Changes to Companion Policy 24-101CP to National Instrument 24-101 Institutional Trade Matching and Settlement

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice

Amendments to National Instrument 24-101
Institutional Trade Matching and Settlement
and
Changes to Companion Policy 24-101CP to National Instrument
24-101 *Institutional Trade Matching and Settlement*

April 27, 2017

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are adopting amendments to National Instrument 24-101 *Institutional Trade Matching and Settlement* (**Instrument** or **NI**) and changes to Companion Policy 24-101 *Institutional Trade Matching and Settlement* (**Companion Policy** or **CP**) (collectively, the NI and CP are referred to as **NI 24-101**). The amendments to the NI and changes to the CP are referred to collectively in this Notice as the **Revisions**.

Some of the Revisions are being made in anticipation of shortening the standard settlement cycle for equity and long-term debt market trades in Canada from three days after the date of a trade (**T+3**) to two days after the date of a trade (**T+2**). The move to a T+2 settlement cycle is expected to occur on September 5, 2017, at the same time as the markets in the United States are expected to move to a T+2 settlement cycle.

In some jurisdictions, government ministerial approvals are required for the implementation of the amendments to the Instrument. Provided all necessary approvals are obtained, we expect the amendments will come into force, with certain transitional relief, in all CSA jurisdictions on September 5, 2017 (see "**Discussion – 3. Effective date of Revisions and transitional provisions**"). Additional information regarding the adoption of the amendments to the NI in each province or territory is, where applicable, included in Annex G. The text of the amendments to the NI, and text of the changes to the CP, follow after this Notice in Annexes C and D, respectively, and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.nssc.novascotia.ca
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca

This Notice includes the following Annexes:

- Annex A: list of comment letters
- Annex B: summary of comments on "Proposed Revisions" (defined below) and CSA responses
- Annex C: amendments to the NI (including the Forms)
- Annex D: changes to the CP
- Annex E: blackline version of the NI reflecting the amendments to the NI (including the Forms)
- Annex F: blackline version of the CP reflecting the changes to the CP
- Annex G: local matters (where applicable)

Background

We published for comment on August 18, 2016 for 90 days proposed amendments to the Instrument and changes to the Companion Policy (collectively, the **Proposed Revisions**). As we explained in the *Notice and Request for Comments* (the **Request Notice**),[1] the purposes of the Proposed Revisions were twofold:

- To facilitate the move to a T+2 settlement cycle (while NI 24-101 does not currently expressly mandate a T+3 settlement cycle, nor would prevent the migration to T+2, there are a number of provisions that require revision to facilitate the move to T+2), and

- To update, modernize and clarify certain provisions of NI 24-101.

In addition to seeking comment on the Proposed Revisions, we published at the same time CSA Consultation Paper 24-402 *Policy Considerations for Enhancing Settlement Discipline in a T+2 Settlement Cycle Environment* (**Consultation Paper**).[2] The Consultation Paper sought stakeholder views on the adequacy of today's settlement discipline regime for the Canadian equity and debt markets that are moving to a standard T+2 settlement cycle. The Consultation Paper explored, for regulatory consideration, possible new measures that might enhance settlement discipline and mitigate potential risk of increased settlement fails as the markets move to T+2. Such measures were to be over and above the Proposed Revisions.[3]

We received seven comment letters on both the Proposed Revisions and Consultation Paper. A list of the commenters is attached in Annex A to this Notice. We have considered the comments received, and thank all commenters for their submissions. We provide a summary of the comments on the Proposed Revisions, together with our responses, in Annex B to this Notice.

We briefly discuss some of the key comments and our responses below under "Discussion". CSA staff propose to bring forward for publication later in 2017 a summary of the feedback we received on the Consultation Paper, together with staff's analysis of such feedback (**Feedback Analysis**).

The Revisions being adopted today by the CSA are based solely on the Proposed Revisions. We do not propose to implement at this time any additional measures arising from the Consultation Paper to prepare for the move to T+2 as a result of the feedback received.[4] The Feedback Analysis will provide further details.

Recent developments on investment fund settlement timelines

The CSA has held ongoing discussions with the conventional mutual fund industry regarding the industry's transition to a T+2 settlement cycle. Three industry associations, an industry outsourcing and technology vendor and a clearing agency have been consulted in this regard. These industry stakeholders and service providers have requested that the CSA provide guidance regarding the adoption of a T+2 settlement cycle by conventional mutual funds. The CSA jurisdictions anticipate addressing this in a separate publication.

Discussion

Defined terms or expressions used in this Notice, which are not otherwise defined or given a meaning in this Notice, share the meanings provided in the Request Notice.

This section of the Notice is divided into three parts.

- In part 1, we discuss key Revisions that relate to the migration to T+2 settlement. These Revisions do not affect NI 24-101's current institutional trade matching (**ITM**) deadline of noon on T+1, nor its exception reporting ITM threshold of 90 percent.

---

1 See CSA Notice and Request for Comments: Proposed Amendments to NI 24-101 *Institutional Trade Matching and Settlement*, Changes to Companion Policy 24-*101 Institutional Trade Matching and Settlement*, and CSA Consultation Paper 24-402 *Policy Considerations for Enhancing Settlement Discipline in a T+2 Settlement Cycle Environment*, August 18, 2016, (2016), 39 OSCB 7225.

2 See Annex E of Request Notice, at p. 7276.

3 Such measures were also over and above the changes being made by the industry to the rulebooks, procedures, standard agreements and other documentation of the marketplaces, SROs and clearing agencies to reflect the move to T+2 from T+3. For a discussion of these industry changes, see the Request Notice at p. 7226-7, and Consultation Paper at p. 7280. For example, the Investment Industry Regulatory Organization of Canada (**IIROC**) has proposed amendments to its Universal Market Integrity Rules, Dealer Member Rules, and Form 1 to facilitate the investment industry's move to T+2 settlement. See IIROC Notice 16-0177 *Amendments to facilitate the investment industry's move to T+2*, available at: http://www.osc.gov.on.ca/documents/en/Marketplaces/iiroc_20160728_iiroc-notice-16-0177.pdf.

4 Almost all commenters say that the existing settlement discipline regime is adequate and largely capable of meeting a T+2 settlement cycle.

- In part 2, we discuss key Revisions that clarify or modernize certain provisions of NI 24-101.
- In part 3, we describe the effective date for implementing the Revisions and certain transitional provisions in response to concerns expressed by commenters with implementing the Revisions on September 5, 2017.

1. T+2-related Revisions

(a) References to "T+3"

While the primary focus of the Instrument is on having ITM policies and procedures to match institutional trades no later than noon on T+1, NI 24-101 contains a number of references to T+3. We are removing these references or, where appropriate, replacing them with references to "T+2".

(b) Non-North American trades

We proposed in the Request Notice to repeal the provisions that extend the ITM deadline to noon on T+2 where a DAP/RAP trade results from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside the North American region (**non-North American trades**). Most commenters agreed with repealing these provisions. Some commenters noted that a longer deadline could subject market participants, who are waiting for a trade to settle on T+2, to increased risks of a failed trade. Some who commented about removing the extended deadline for matching non-North American trades also indicated that such a change should not be onerous given that it would align Canada with T+2 settlement cycles in other jurisdictions. This includes the T+2 settlement cycle in use today in Europe, Hong Kong, Australia and New Zealand, as well as the T+2 settlement cycle standard proposed for the United States and Mexico as of September 5, 2017.[5]

As a result, we are repealing the provisions of NI 24-101 relating to non-North American trades. These provisions are no longer appropriate in a standard T+2 settlement environment. The extended deadline of noon on T+2 for non-North American trades leaves insufficient time to solve problems and avoid failed trades; instead, parties need to match earlier on T+1 regardless of the cross-border nature of the trade, so that they have time to address issues and avoid failed trades.

2. Revisions to clarify or modernize NI 24-101

(a) Application to ETFs

As noted in the Request Notice, NI 24-101 does not currently apply to a trade in a security of a mutual fund to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies. Mutual fund trades were originally carved out of NI 24-101 because traditional purchase and redemption transactions in mutual fund securities were not cleared and settled through the facilities of a clearing agency, such as CDS Clearing and Depository Services Inc. (**CDS**). As exchange traded funds (**ETFs**) are mutual funds and therefore subject to NI 81-102, ETF securities that are bought and sold like any other stock on the secondary markets and settled through the facilities of CDS, are not subject to NI 24-101.

In the Request Notice we expressed the view that a secondary-market trade in an ETF security that settles through the facilities of CDS should be subject to NI 24-101, particularly the trade matching requirements of the Instrument (Parts 3 and 4). Such trades bring the same risks to our markets and the clearing and settlement infrastructure that serves our markets as any other typical trade in equity or fixed-income securities. In addition, non-redeemable investment funds that trade on a marketplace and settle through CDS are currently subject to the Instrument. We are of the view that all investment funds that are traded on a marketplace should be treated in the same way under the Instrument. Some commenters noted that, since NI 24-101 came into

[5] Since the publication of our Request Notice in August 2016:

- The U.S. Securities and Exchange Commission (**SEC**) published for comment in September 2016 a release (**SEC Proposed Release**) proposing to amend SEC Rule 15c6-1(a) *Settlement Cycle* under the Securities Exchange Act of 1934 to shorten the standard settlement cycle for most broker-dealer transactions from T+3 to T+2. See SEC Release No. 34-78962; File No. S7-22-16 (RIN 3235-AL86), *Amendment to Securities Transaction Settlement Cycle*; Proposed rule; September 28, 2016; available at: https://www.sec.gov/rules/proposed/2016/34-78962.pdf. The SEC adopted these amendments on March 22, 2017 in a final release (**SEC Final Release**). See SEC Release No. 34-80295; File No. S7–22–16 (RIN 3235–AL86), *Securities Transaction Settlement Cycle*; Final rule; published in Federal Register, March 29, 2017; available at: https://www.gpo.gov/fdsys/pkg/FR-2017-03-29/pdf/2017-06037.pdf. The "compliance date" set out in the SEC Final Release for meeting the new T+2 standard is September 5, 2017.
- Grupo Bolsa Mexicana de Valores (the Mexican Stock Exchange) recently announced that it will change trade settlement dates for many equity products and warrants to T+2 from the current T+3 starting September 5, 2017, subject to the approval and implementation by the U.S. financial services industry of the move to T+2 on such date (according to a Notice from Grupo Bolsa Mexicana de Valores dated February 16, 2017 to "Traders and Head Traders of the Mexican Equity Market", as set forth in a widely distributed email dated February 21, 2017 from the Canadian Capital Markets Association (**CCMA**)).

force in 2007, the volume of ETF issuers and transactions has increased, but has not posed a challenge in respect of the timely matching of these trades. Commenters also said that ETFs are already included in the ITM matching data published by CDS.

We are narrowing the scope of the current exception for investment funds by amending paragraph (f) of section 2.1 of the NI to clarify that the Instrument does not apply to a purchase governed by Part 9, or a redemption governed by Part 10, of NI 81-102. Part 9 governs purchases of securities of a mutual fund, and Part 10 governs redemptions of investment fund securities. Moreover, the Forms and Companion Policy are being amended to clarify that DAP/RAP trades in ETF securities are to be included in the exception reports under Form 24-101F1 by registered firms as "equity" DAP/RAP trades, and not as "debt" DAP/RAP trades.

(b) Clearing agency definition

In the Request Notice, we expressed our view that the defined term "clearing agency" needed to be updated, given the growing number of, and the broader range of services provided by, clearing agencies operating in Canada since 2007. Accordingly, we have amended the definition as proposed.

(c) MSU systems and business continuity planning requirements

We proposed in the Request Notice to amend section 6.5 of the NI and related CP provisions, which set out systems and business continuity planning requirements for matching service utilities (**MSU**). The purpose of such Proposed Revisions was to align them with similar provisions in other rules applicable to marketplaces, information processors, clearing agencies and trade repositories. However, some commenters expressed concerns with these Proposed Revisions. Among other reasons, one commenter noted that regulators should not impose new obligations on MSUs that are overly onerous, as they could jeopardize the continuity and availability of MSU services to Canadian market participants. One commenter also suggested that a formal "substitute compliance" regime be considered with respect to these requirements in circumstances where an MSU is already complying with analogous requirements of its home regulator in a foreign jurisdiction.

CSA staff will consider further policy work on systems and related requirements applicable to MSUs at a later time. Consequently, we will not proceed at this time with the Proposed Revisions to section 6.5 of the NI and section 4.5 of the CP.

3. Effective date of Revisions and transitional provisions

(a) Effective date of Revisions

As mentioned above, we expect the amendments to the Instrument will come into force on September 5, 2017 in all CSA jurisdictions, subject to obtaining government ministerial approvals in certain CSA jurisdictions. We chose this date so that the Revisions are implemented at the same time as the markets in the United States are expected to transition from a T+3 settlement cycle to a T+2 settlement cycle.[6] The U.S. securities industry has identified September 5, 2017 as the target date for the transition to a T+2 settlement cycle to occur. Similarly, the SEC has determined a "compliance date" of September 5, 2017 for meeting a new T+2 settlement standard for broker-dealer transactions under recently adopted amendments to SEC Rule 15c6-1(a) *Settlement Cycle* enacted under the Securities Exchange Act of 1934.[7] However, while remote, it is possible that this target or compliance date may be extended if certain regulatory and industry contingencies are not achieved on time.[8]

As a result, while we have specified September 5, 2017 as the earliest date when the Revisions will become effective, the amending instrument that implements the Revisions contains language that will allow for the effective date to be extended in order to match a delay of the U.S. transition to a T+2 settlement cycle, should the U.S. target-compliance date be extended for whatever reason. In the event that the U.S. compliance date is extended, for transparency purposes the CSA jurisdictions expect to publish a subsequent notice to highlight such a date extension.

(b) Transitional provisions for delivery of Forms 24-101F1, 24-101F2 and 24-101F5 for calendar quarter that includes the effective date

Under section 4.1 of the Instrument, each calendar quarter is a reporting period for the purposes of delivering an exception report in Form 24-101F1. Commenters expressed concerns that, because September 5, 2017 falls within the calendar quarter ending September 30, 2017, registered firms delivering exception reports in Form 24-101F1 for that quarter could potentially be subject to two different sets of reporting requirements in that quarter. Essentially, if the Revisions related to reporting were brought into force on September 5, 2017, firms might report their ITM rates based on two different methodologies: first, using

6 See "Priorities" on the CCMA Website, at: http://ccma-acmc.ca/en/priorities/. See also CSA Staff Notice 24-312 – *Preparing for the Implementation of T+2 Settlement* dated April 2, 2015, available at: http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20150402_24-312_t2-settlement.htm.

7 See the SEC Final Release.

8 See the SEC Proposed Release, at pages 76-77.

their current methodology for reporting ITM rates for the period from July 1, 2017 to September 4, 2017, and second, using a different methodology for reporting ITM rates for the period from September 5, 2017 to September 30, 2017.

We have considered these comments, and included specific transitional provisions in the instrument amending the NI to address this issue. The transitional provisions also apply to the reporting requirements of clearing agencies and MSUs with respect to Forms 24-101F2 and 24-101F5, respectively. The transitional relief for registered firms relates only to determining whether an exception report is necessary for the calendar quarter and, if it is, the form required for that report. However, September 5, 2017 (or such later date, as discussed above) remains the effective date for having policies and procedures to reflect the amended matching requirements regarding ETFs and non-North American trades. A registered dealer or a registered advisor must establish, maintain, and enforce policies and procedures designed to achieve matching as soon as practical after a DAP/RAP trade for an institutional investor is executed and in any event no later than 12 p.m. (noon) on T+1.

The transitional relief would permit a registered firm to calculate its relevant ITM percentages for determining whether it needs to file an exception report for the calendar quarter during which the Revisions are implemented, and, where applicable, for completing the report, as if the Revisions do not come into force until the beginning of the following calendar quarter. Therefore, if the effective date is September 5, 2017, registered firms would be entitled to continue to use their current methodologies for calculating whether they meet the 90% ITM threshold for the entire calendar quarter ending September 30, 2017. For example, to the extent that a firm currently differentiates between North American DAP/RAP trades and non-North American DAP/RAP trades, or between ETF DAP/RAP trades and other equity DAP/RAP trades, for the purposes of its exception reports, it would not need to change mid-quarter its methodology for completing the report for the calendar quarter ending September 30, 2017.

As revised, section 3.4 of the Companion Policy encourages registered firms to complete their Form 24-101F1 through the NI 24-101 on-line portal on the CSA website.[9] It is important to note that the CSA will not modify the on-line version of Form 24-101F1 to reflect the relevant changes made to the Form in the Revisions until after 45 days following the end of the calendar quarter during which the Revisions are implemented. Therefore, we encourage registered firms to file their on-line exception reports for the calendar quarter during which the Revisions are implemented on the current version of the Form, and not the revised Form.

CSA Staff Notice 24-305

In order to reflect the Revisions, CSA staff plan to update and republish CSA Staff Notice 24-305 *Frequently Asked Questions About National Instrument 24-101 – Institutional Trade Matching and Settlement and Related Companion Policy* later this year.

Questions

Questions with respect to this Notice may be referred to:

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[9] In Ontario, it is mandatory to file the Form electronically through the on-line portal on the CSA Website. See OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission*.

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ANNEX A

LIST OF COMMENTERS ON PROPOSED REVISIONS AND CONSULTATION PAPER

Barbara Amsden
Canadian Capital Markets Association
CIBC World Markets Inc.
Investment Industry Association of Canada
Omgeo Canada Matching Ltd. (two letters)
RBC Dominion Securities Inc.

ANNEX B

SUMMARY OF PUBLIC COMMENTS ON PROPOSED REVISIONS

1. Theme/question	2. Summary of comments	3. General responses
General		
Support for T+2 amendments	Commenters expressed appreciation for the CSA's work towards the transition to T+2, one emphasizing the CSA's contribution for raising awareness of T+2 within broader sectors of industry.	We acknowledge and thank the commenters for their remarks.
Current ITM data	A commenter suggests that the Canadian industry is already capable of meeting a T+2 standard on average, as evident from the data shown in Table B-1 of Appendix B of the Consultation Paper. It highlights that the data shows an increase in trade matching volume rates between 2007 and December 2015, including: • A doubling in percentages entered by midnight on T and approaching a quadrupling in matching by that time • A 16% increase in the percentage of trades entered and an almost 50% increase in trades matched by noon on T+1 ready for settlement on T+2.	We thank the commenter for this comment. Appendix B of the Consultation Paper includes additional analysis of the ITM data.
National Instrument 24-101 *Institutional Trade Matching*		
Non-North American Trades	Most commenters agree with the proposal to repeal the provisions that extend the institutional trade matching deadline to noon on T+2 for non-North American trades. One commenter notes that the longer deadline could subject those waiting for a trade to settle on T+2 to increased risk of failed trades. Another commenter notes that regardless of the complexities with foreign investments and cross border transactions, today non-North American trades are typically matched and settled efficiently. Although this commenter also says that some firms might need to improve their processes, it does not expect material long-term disruptions. Another commenter notes that this should not be an onerous change given that it aligns Canada with what participants are currently accustomed to for T+2 settlement in the Europe, Australia, New Zealand, etc.	We are repealing the provisions of NI 24-101 relating to non-North American trades. As indicated in the accompanying CSA Notice, in a T+2 settlement environment, the extended institutional trade matching deadline of noon on T+2 leaves insufficient time to solve problems and avoid failed trades.
Alternatives to T+2	One commenter notes that there are no reasonable alternatives to the proposed changes and that a detailed cost-benefit analysis is not required given the full Canadian industry agreement. Also, given the significantly interconnected nature, and relative sizes, of the Canadian and U.S. capital markets, the change to T+2 with the U.S. is required.	We agree with these comments. See: CSA Staff Notice 24-312 *Preparing for the Implementation of T+2 Settlement*, April 2, 2015; and CSA Staff Notice 24-314 *Preparing for the Implementation of T+2 Settlement: Letter to Registered Firms*, May 26, 2016; (2016), 39 OSCB 4873.

1. Theme/question	2. Summary of comments	3. General responses
Application to ETFs	One commenter notes that, despite the increased volume of ETF issuers and transactions since NI 24-101 came into force in 2007, it has not posed a significant challenge on the timely matching of these trades. Two commenters also note that ETFs are already included in the matching data published by CDS.	We are amending paragraph 2.1(f) of the NI by narrowing the scope of the current exception for investments funds. As indicated in the Notice accompanying this publication, secondary market trading in ETFs brings the same risks to our markets and the clearing and settlement infrastructure as other typical trades in equity or fixed-income securities.
MSU systems and business continuity planning	One commenter says that any new obligations imposed upon MSUs should not be viewed as overly onerous by the MSUs as it could potentially jeopardize the continuity of the MSUs service to Canadian market participants. This commenter also notes the importance of bilateral discussions with MSUs to ensure an appropriate balance in any such proposals. Another commenter expresses concern regarding the timing obligations, noting that may represent a challenge to the extent that they are out of step with non-Canadian regulatory requirements.	We are not proceeding with the Proposed Revisions to section 6.5 of the NI and section 4.5 of the CP regarding MSU systems and business continuity requirements at this time, as we will consider further policy work on this matter.[1]
Annual MSU testing requirements	One commenter submits that conducting capacity stress tests of its systems and testing its business continuity plans, including disaster recovery, on a minimum annual basis, may be unnecessarily prescriptive. This commenter suggests that it may be more effective to adopt a collaborative approach between the MSU and the regulator as to the frequency of testing, thereby enabling assessment and adjustment of expectations in response to changes in technology and market practices.	
Substituted compliance	One commenter submits that given the interconnected nature of market infrastructure, it is important to consider a degree of formalized substitute compliance. For example, where an MSU complies with the requirements of a foreign regulator, e.g. *Regulation SCI* in the U.S., such activities could be deemed to satisfy any analogous requirements in NI 24-101.	
Transitional phase	Two commenters identify an issue with the target implementation date, September 5, 2017, in relation to reporting requirements for registered firms. One commenter notes that the target implementation date falls mid-month and mid-quarter in a reporting period for which an exception report might have to be filed. It states that providing transitional relief for one quarter posed little, if any, systemic risk or risk for investors. It suggests that the CSA implement exception reporting effective in the fourth calendar quarter of 2017 and that reporting for	We have included specific transitional provisions in the instrument amending the NI to address this issue. As indicated in the Notice accompanying this publication, the transitional provisions apply to the reporting requirements of registered firms, clearing agencies and MSUs. The transitional relief would permit a registered firm to calculate its relevant ITM percentages for determining whether it needs to file an exception report for the calendar quarter in which the Revisions are implemented,

[1] The proposed amendments to section 6.5 of the NI in the Request Notice had also included the addition of new sections 6.6 to 6.8 of the Instrument, as well as certain revisions to Form 24-101F3 *Matching Service Utility – Notice of Operations*. The proposed changes to section 4.5 of the CP had also included the addition of new sections 4.6 to 4.8 of the Companion Policy.

1. Theme/question	2. Summary of comments	3. General responses
	the third quarter would remain on the same basis as currently (or a corresponding quarter, should the implementation date be moved). The commenter further recommends, for some matching parties, that there be no requirement for exception reporting for the third-calendar quarter of 2017.	and, where applicable, for completing the report, as if the Revisions do not come into force until the following calendar quarter. However, September 5, 2017 (or such later date, if the transition to T+2 is delayed) remains the effective date for having policies and procedures to reflect the amended matching requirements regarding ETFs and non-North American trades.
Companion Policy 24-101 *Institutional Trade Matching*		
MSU systems and business continuity planning, including annual testing requirements	One commenter notes that subsection 4.5(1) of the CP should be supplemented to include references to equivalent, non-Canadian technology guidelines.	See our comment above with respect to the Proposed Revisions to the MSU systems and business continuity planning requirements of the NI.

ANNEX C

AMENDMENTS TO
NATIONAL INSTRUMENT 24-101
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT

1. National Instrument 24-101 Institutional Trade Matching and Settlement is amended by this Instrument.

2. Section 1.1 is amended

(a) by replacing the definition of "clearing agency***" with:***

"clearing agency" means a recognized clearing agency that operates as a "securities settlement system" as defined in section 1.1 of National Instrument 24-102 *Clearing Agency Requirements*;**,**

(b) in the definition of "DAP/RAP trade***" by,***

(i) adding "in a security***" immediately after "***means a trade***", and***

(ii) replacing "made***" with "***completed***" in paragraph (b),***

(c) by repealing the definitions of "North American region***" and "***T+3***", and***

(d) in the definition of "T+2***" by replacing "***;***" following "***means the second business day following T***" with "."***

3. Section 1.2 is amended by replacing subsection (2) with the following:

(2) For the purposes of this Instrument, in Québec, a clearing agency includes a clearing house and a settlement system within the meaning of the *Securities Act* (Québec)**.**.

4. Paragraph 2.1(f) is replaced with the following:

(f) a purchase governed by Part 9, or a redemption governed by Part 10, of National Instrument 81-102 *Investment Funds*,**.**

5. Section 3.1 is amended

(a) in subsection (1) by

(i) replacing "shall***" with "***must***", and***

(ii) adding "Eastern Time***" after "***12 p.m. (noon)***", and***

(b) by repealing subsection (2).

6. Section 3.2 is amended by replacing "shall***" with "***must***".***

7. Section 3.3 is amended

(a) in subsection (1) by

(i) replacing "shall***" with "***must***", and***

(ii) adding "Eastern Time***" after "***12 p.m. (noon)***", and***

(b) by repealing subsection (2).

8. Sections 3.4 and 4.1 are amended by replacing "shall***" with "***must***".***

9. Section 5.1 is amended by replacing "through which trades governed by this Instrument are cleared and settled shall***" with "***must***".***

10. Sections 6.1 to 8.1 are amended by replacing "shall***" with "***must***" wherever it appears.***

11. Form 24-101F1 is amended by replacing the instructions before the heading "Exhibits" with the following:

INSTRUCTIONS:

Deliver this form for both equity and debt DAP/RAP trades together with Exhibits A, B and C pursuant to section 4.1 of the Instrument, covering the calendar quarter indicated above, within 45 days of the end of the calendar quarter if

(a) less than 90 per cent of the equity and/or debt DAP/RAP trades executed by or for you during the quarter matched within the time required in Part 3 of the Instrument, or

(b) the equity and/or debt DAP/RAP trades executed by or for you during the quarter that matched within the time required in Part 3 of the Instrument represent less than 90 per cent of the aggregate value of the securities purchased and sold in those trades.

Include DAP/RAP trades in an exchange-traded fund (ETF) security in the equity DAP/RAP trades statistics. Exhibit A(1) applies only to trades in equity and ETF securities. Exhibit A(2) applies only to trades in debt and other fixed-income securities.**.**

12. Form 24-101F1 is amended by replacing* Exhibit A – DAP/RAP trade statistics for the quarter *with the following:

Exhibit A – DAP/RAP trade statistics for the quarter

If applicable, complete Table 1 or 2, or both, below for each calendar quarter. Deadline means noon Eastern time on T+1.

(1) Equity DAP/RAP trades (includes ETF trades)

Entered into the clearing agency by deadline (to be completed by dealers only)				*Matched (to be completed by dealers and advisers)*							
# of trades	**%**	**$ value of trades**	**%**	**# of trades matched**	**%**	**$ value of trades matched**	**%**	**# of trades matched by deadline**	**%**	**$ value of trades matched by deadline**	**%**

(2) Debt DAP/RAP trades

Entered into the clearing agency by deadline (to be completed by dealers only)				*Matched (to be completed by dealers and advisers)*							
# of trades	**%**	**$ value of trades**	**%**	**# of trades matched**	**%**	**$ value of trades matched**	**%**	**# of trades matched by deadline**	**%**	**$ value of trades matched by deadline**	**%**

Legend

"# of Trades" is the total number of transactions in the calendar quarter;
"$ Value of Trades" is the total value of the transactions (purchases and sales) in the calendar quarter.

13. Form 24-101F1 is amended in Exhibit B and C by replacing "Companion Policy 24-101CP***" with "***Companion Policy 24-101***".***

14. Form 24-101F2 is amended by replacing the instructions before the heading "Exhibits" with the following:

INSTRUCTIONS:

Deliver this form together with all exhibits pursuant to section 5.1 of the Instrument, covering the calendar quarter indicated above, within 30 days of the end of the calendar quarter.

Include client trades in an exchange-traded fund (ETF) security in the equity trades statistics.

Exhibits must be provided in an electronic file, in the following file format: "CSV" (Comma Separated Variable) (e.g., the format produced by Microsoft Excel)*.*.

15. Form 24-101F2 is further amended in Exhibit A, in Tables 1 and 2, by

(a) deleting the row titled "T+3***", and***

(b) replacing ">T+3***" with "***>T+2***".***

16. Form 24-101F3 is amended under the heading "*INSTRUCTIONS:*" by

(a) deleting "or 10.2(4)***",***

(b) replacing "shall***" with "***must***", and***

(c) deleting the following:

If you are delivering Form 24-101F3 pursuant to section 10.2 (4) of the Instrument, simply indicate at the top of this form under "Date of Commencement Information" that you were already carrying on business as a matching service utility in the relevant jurisdiction on the date that Part 6 of the Instrument came into force*.*

17. Form 24-101F4 is amended under the heading "*INSTRUCTIONS:*" by replacing "shall***" with "***must***" in the second paragraph.***

18. Form 24-101F5 is amended under the heading "*INSTRUCTIONS:*" by

(a) adding the following paragraph after the first paragraph:

Include DAP/RAP trades in an exchange-traded fund (ETF) security in the equity DAP/RAP trades statistics*., and*

(b) replacing "shall***" with "***must***" wherever it appears.***

19. Form 24-101F5 is amended in Exhibit C, Tables 1 and 2, by

(a) deleting the row titled "T+3***", and***

(b) replacing ">T+3***" with "***>T+2***".***

Transition

Registered firm's exception report – former rules apply to first quarter ending after the effective date

20. (1) For the purposes of the calculations under National Instrument 24-101 *Institutional Trade Matching and Settlement* that determine whether, with respect to the first calendar quarter ending after the effective date, Form 24-101F1 must be delivered under section 4.1 of that Instrument, a registered firm may make the determination under that Instrument as it was in force on the day before the effective date unless the effective date is the first day of a calendar quarter.

(2) If a registered firm is required to deliver Form 24-101F1, and the effective date is not the first day of a calendar quarter, with respect to the first calendar quarter ending after the effective date, the firm may comply with the requirement by delivering the version of Form 24-101F1 that was in force on the day before the effective date.

Clearing agency's operations report – former rules apply to first quarter ending after the effective date

21. For the purposes of section 5.1 of National Instrument 24-101 *Institutional Trade Matching and Settlement*, a clearing agency may comply with the requirement to deliver Form 24-101F2, with respect to the first calendar quarter ending

after the effective date, by delivering the version of Form 24-101F2 that was in force on the day before the effective date unless the effective date is the first day of a calendar quarter.

Matching service utility's operations report – former rules apply to first quarter ending after the effective date

22. For the purposes of section 6.4(1) of National Instrument 24-101 *Institutional Trade Matching and Settlement*, a matching service utility may comply with the requirement to deliver Form 24-101F5, with respect to the first calendar quarter ending after the effective date, by delivering the version of Form 24-101F5 that was in force on the day before the effective date unless the effective date is the first day of a calendar quarter.

Meaning of effective date

23. For the purposes of sections 20 to 22 of this Instrument, "effective date" means the date this Instrument comes into force.

Effective Date

In one or more jurisdictions, the means by which this Instrument may be brought into force may differ from that set out in section 24 of this Instrument. Regardless of the means, the effective date will be the same in all jurisdictions.

24. (1) Except in Alberta, Ontario, Québec, the Northwest Territories, the Yukon, Nunavut, and Prince Edward Island, this Instrument comes into force on the later of the following:

(a) September 5, 2017;

(b) if this Instrument is filed with the Registrar of Regulations after September 5, 2017, on the day on which it is filed with the Registrar of Regulations.

(2) In Alberta, Ontario, Québec, the Northwest Territories, the Yukon, Nunavut and Prince Edward Island this Instrument comes into force on the later of the following:

(a) September 5, 2017;

(b) in the event that the SEC extends the current compliance date of September 5, 2017 for broker-dealers in the United States to meet a new T+2 settlement standard under the amendments to Rule 15c6-1, the extended date set by the SEC to be such compliance date.

(3) For the purposes of paragraph (2)(b),

(a) "SEC" means the United States Securities and Exchange Commission;

(b) "Rule 15c6-1" means SEC Rule 15c6-1, *Securities Transactions Settlement*, Exchange Act Release No. 33023 (Oct. 6, 1993), 58 FR 52891, 52893 (Oct. 13, 1993); generally cited as: 17 CFR 240.15c6-1; and

(c) "amendments to Rule 15c6-1" means amendments made by the SEC to Rule 15c6-1 published on March 29, 2017 in the Federal Register in the United States to shorten the standard settlement cycle for most broker-dealer transactions from T+3 to T+2, as set forth in SEC Release No. 34-80295; File No. S7-22-16 (RIN 3235-AL86), *Securities Transaction Settlement Cycle*; Final rule.

ANNEX D

CHANGES TO
COMPANION POLICY 24-101
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT

1. Companion Policy 24-101 Institutional Trade Matching and Settlement is changed by this Document.

2. The title of the Companion Policy is replaced by the following:

COMPANION POLICY 24-101
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT

3. Subsection 1.2(2) is changed by replacing, in the last sentence of footnote 3, the words "within one hour of the execution of the trade***" with "***by no later than 6 pm on the day of the trade***".***

4. Paragraph 1.2(3)(c) is changed by replacing footnote 5 by the following:

[5] See, for example, section 14.12 of NI 31-103 and IIROC Member Rule 200.1(h)*.*

5. Subsection 1.3(1) (including footnotes) is replaced by the following (including a footnote):

(1) *Clearing agency*

While the terms "clearing agency" and "recognized clearing agency" are generally defined in securities legislation,[6] we have defined *clearing agency* for the purposes of the Instrument to narrow its scope to a recognized clearing agency that operates as a securities settlement system. The term *securities settlement system* is defined in National Instrument 24-102 *Clearing Agency Requirements* as a system that enables securities to be transferred and settled by book entry according to a set of predetermined multilateral rules. Today, the definition of *clearing agency* in the Instrument applies to CDS Clearing and Depository Services Inc. (**CDS**). For the purposes of the Instrument, a clearing agency includes, in Québec, a clearing house and settlement system within the meaning of the *Securities Act* (Québec). See subsection 1.2(2). [footnote 6: See, for example, s. 1(1) of the *Securities Act* (Ontario).]

6. Subsection 1.3(4) is changed by replacing the words "the Joint Financial Questionnaire and Report of the Canadian SROs***" with "***IIROC Form 1, Part II***".***

7. Section 2.2 is changed by

(a) adding "Eastern Time***" after "***12p.m. (noon)***",***

(b) deleting the second and third sentences, and

(c) adding after the first sentence the following new sentence (including a footnote):

The policies and procedures requirement of Part 3 of the Instrument is consistent with the overarching obligation of a registered firm to manage the risks associated with its business in accordance with prudent business practices.[7] [footnote 7: See s. 11.1 of NI 31-103, which requires registered firms to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with their business in accordance with prudent business practices.]

8. Section 3.1 is changed by

(a) replacing in paragraph (a), the words "a percentage target of the DAP/RAP trades***" with "***90 percent of the DAP/RAP trades (by volume and value)***", and***

(b) replacing the first word "They …***" in the second sentence of paragraph (b) with the following:***

DAP/RAP trades in exchange-traded funds are reportable in the equities category of DAP/RAP trades.

Form 24-101F1 should only be submitted for DAP/RAP trades for the type of security (equity or debt) that did not meet the 90 percent threshold by the relevant timeline. If a registered firm does not meet the threshold for

both equity and debt DAP/RAP trades, then it should submit the Form for both equity and debt DAP/RAP trades (i.e., by completing both tables in Exhibit A of Form 24-101F1). If the firm does not meet the threshold only for one type of security (i.e., for equity but not debt, or for debt but not equity), it should only submit the Form for the one type of security, by completing only one of the tables in Exhibit A of Form 24-101F1. A registered firm … **.**

9. Paragraph 3.2(b) is changed by

(a) replacing the first sentence with the following:

The Canadian securities regulatory authorities may consider the consistent inability to meet the matching percentage target as evidence that either the policies and procedures of one or more of the trade matching parties have not been properly designed or, if properly designed, have been inadequately complied with.***, and***

(b) replacing, in the second sentence, the word "will***" with "***may***".***

10. Section 3.3 is changed by replacing "participants or users/subscribers***" with "***participants, users or subscribers***".***

11. Section 3.4 is changed by replacing "may***" with "***are encouraged to***".***

12. Subsection 4.1(1) is changed by

(a) replacing the first word ("The…***") in the second sentence with the following "***For the purposes of the Instrument, the…***", and***

(b) adding the following text (including a footnote) after the last sentence:

In Québec, a person or company that seeks to provide centralized facilities for matching must, in addition to the requirements of the Instrument, apply for recognition as a matching service utility or for an exemption from the requirement to be recognized as a matching service utility pursuant to the *Securities Act* (Québec) or *Derivatives Act* (Québec). In certain other jurisdictions, in addition to the requirements of the Instrument, such person or company may be required to apply either for recognition as a clearing agency or for an exemption from the requirement to be recognized as a clearing agency.[10] [footnote 10: See, for example, the scope of the definition of "clearing agency" in s. 1(1) of the *Securities Act* (Ontario), which includes providing centralized facilities "for comparing data respecting the terms of settlement of a trade or transaction".]**.**

13. Section 4.2 is changed by replacing "Sections 6.1(1) and 10.2(4) of the Instrument require …***" with "***Subsection 6.1(1) of the Instrument requires***".***

14. Section 5.1 is changed by

(a) replacing "T+3***" with "***T+2***", and***

(b) renumbering footnote 10 to 11.

15. This Document becomes effective on the same day as the instrument amending National Instrument 24-101 *Institutional Trade Matching and Settlement* (see Annex C of this Notice) becomes effective***.***

***

ANNEX E

BLACKLINE VERSION TO
NATIONAL INSTRUMENT 24-101
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT

The amendments reflected in this blackline are being brought into force at the earliest on September 5, 2017 (effective date). However, it is possible that the effective date may be extended under certain circumstances. Moreover, the application of the amended provisions in the National Instrument is subject to certain transitional relief. Please see sections 20 to 24 of the instrument that amends this National Instrument in Annex C of this publication.

TABLE OF CONTENTS

NATIONAL INSTRUMENT 24-101
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions –

In this Instrument,

"clearing agency" means, a recognized clearing agency that operates as a "securities settlement system" as defined in section 1.1 of National Instrument 24-102 *Clearing Agency Requirements*;

~~(a) in Ontario, a clearing agency recognized by the securities regulatory authority under section 21.2 of the *Securities Act* (Ontario),~~

~~(b) in Québec, a clearing house for securities recognized by the securities regulatory authority, and~~

~~(c) in every other jurisdiction, an entity that is carrying on business as a clearing agency in the jurisdiction;~~

"custodian" means a person or company that holds securities for the benefit of another under a custodial agreement or other custodial arrangement;

"DAP/RAP trade" means a trade in a security

(a) executed for a client trading account that permits settlement on a delivery against payment or receipt against payment basis through the facilities of a clearing agency, and

(b) for which settlement is ~~made~~completed on behalf of the client by a custodian other than the dealer that executed the trade;

"institutional investor" means a client of a dealer that has been granted DAP/RAP trading privileges by the dealer;

"marketplace" has the same meaning as in National Instrument 21-101 *Marketplace Operation*;

"matching service utility" means a person or company that provides centralized facilities for matching, but does not include a clearing agency;

~~"North American region" means Canada, the United States, Mexico, Bermuda and the countries of Central America and the Caribbean;~~

"registered firm" means a person or company registered under securities legislation as a dealer or adviser;

"trade-matching agreement" means, for trades executed with or on behalf of an institutional investor, a written agreement entered into among trade-matching parties setting out the roles and responsibilities of the trade-matching parties in matching those trades and including, without limitation, a term by which the trade-matching parties agree to establish, maintain and enforce policies and procedures designed to achieve matching as soon as practical after a trade is executed;

"trade-matching party" means, for a trade executed with or on behalf of an institutional investor,

(a) a registered adviser acting for the institutional investor in processing the trade,

(b) if a registered adviser is not acting for the institutional investor in processing the trade, the institutional investor unless the institutional investor is

(i) an individual, or

(ii) a person or company with total securities under administration or management not exceeding $10 million,

(c) a registered dealer executing or clearing the trade, or

(d) a custodian of the institutional investor settling the trade;

"trade-matching statement" means, for trades executed with or on behalf of an institutional investor, a signed written statement of a trade-matching party confirming that it has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after a trade is executed;

"T" means the day on which a trade is executed;

"T+1" means the next business day following T;

"T+2" means the second business day following T~~;"T+3" means the third business day following T~~.

1.2 Interpretation – trade matching and ~~Eastern Time~~clearing agency –

(1) In this Instrument, matching is the process by which

(a) the details and settlement instructions of an executed DAP/RAP trade are reported, verified, confirmed and affirmed or otherwise agreed to among the trade-matching parties, and

(b) unless the process is effected through the facilities of a clearing agency, the matched details and settlement instructions are reported to a clearing agency.

(2) ~~Unless the context otherwise requires, a reference in this Instrument to~~For the purposes of this Instrument, in Québec, a clearing agency includes a clearing house and a settlement system within the meaning of the *Securities Act* (Québec).

~~(a) a time is to Eastern Time, and~~

~~(b) a day is to a twenty four hour day from midnight to midnight Eastern Time.~~

PART 2 APPLICATION

2.1 This Instrument does not apply to

(a) a trade in a security of an issuer that has not been previously issued or for which a prospectus is required to be sent or delivered to the purchaser under securities legislation,

(b) a trade in a security to the issuer of the security,

(c) a trade made in connection with a take-over bid, issuer bid, amalgamation, merger, reorganization, arrangement or similar transaction,

(d) a trade made in accordance with the terms of conversion, exchange or exercise of a security previously issued by an issuer,

(e) a trade that is a securities lending, repurchase, reverse repurchase or similar financing transaction,

(f) a ~~trade in a security of a mutual fund to which~~purchase governed by Part 9, or a redemption governed by Part 10, of National Instrument 81-102~~ *Mutual* *Investment* *Funds* applies~~,

(g) a trade to be settled outside Canada,

(h) a trade in an option, futures contract or similar derivative, or

(i) a trade in a negotiable promissory note, commercial paper or similar short-term debt obligation that, in the normal course, would settle in Canada on T.

PART 3 TRADE MATCHING REQUIREMENTS

3.1 Matching deadlines for registered dealer –

(1) A registered dealer ~~shall~~must not execute a DAP/RAP trade with or on behalf of an institutional investor unless the dealer has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after such a trade is executed and in any event no later than 12 p.m. (noon) Eastern Time on T+1.

(2) ~~Despite subsection (1), the dealer may adapt its policies and procedures to permit matching to occur no later than 12 p.m. (noon) on T+2 for a DAP/RAP trade that results from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the North American region.~~[REPEALED]

3.2 Pre-DAP/RAP trade execution documentation requirement for dealers –

A registered dealer ~~shall~~must not open an account to execute a DAP/RAP trade for an institutional investor or accept an order to execute a DAP/RAP trade for the account of an institutional investor unless its policies and procedures are designed to encourage each trade-matching party to

(a) enter into a trade-matching agreement with the dealer, or

(b) provide a trade-matching statement to the dealer.

3.3 Matching deadlines for registered adviser –

(1) A registered adviser ~~shall~~must not give an order to a dealer to execute a DAP/RAP trade on behalf of an institutional investor unless the adviser has established, maintains and enforces policies and procedures designed to achieve matching as soon as practical after such a trade is executed and in any event no later than 12 p.m. (noon) Eastern Time on T+1.

(2) ~~Despite subsection (1), the adviser may adapt its policies and procedures to permit matching to occur no later than 12 p.m. (noon) on T+2 for a DAP/RAP trade that results from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the North American region.~~ [REPEALED]

3.4 Pre-DAP/RAP trade execution documentation requirement for advisers –

A registered adviser ~~shall~~must not open an account to execute a DAP/RAP trade for an institutional investor or give an order to a dealer to execute a DAP/RAP trade for the account of an institutional investor unless its policies and procedures are designed to encourage each trade-matching party to

(a) enter into a trade-matching agreement with the adviser, or

(b) provide a trade-matching statement to the adviser.

PART 4 REPORTING BY REGISTERED FIRMS

4.1 Exception reporting requirement

A registered firm ~~shall~~must deliver Form 24-101F1 to the securities regulatory authority no later than 45 days after the end of a calendar quarter if

(a) less than 90 per cent of the DAP/RAP trades executed by or for the registered firm during the quarter matched within the time required in Part 3, or

(b) the DAP/RAP trades executed by or for the registered firm during the quarter that matched within the time required in Part 3 represent less than 90 per cent of the aggregate value of the securities purchased and sold in those trades.

PART 5 REPORTING REQUIREMENTS FOR CLEARING AGENCIES

5.1 A clearing agency ~~through which trades governed by this Instrument are cleared and settled shall~~must deliver Form 24-101F2 to the securities regulatory authority no later than 30 days after the end of a calendar quarter.

PART 6 REQUIREMENTS FOR MATCHING SERVICE UTILITIES

6.1 Initial information reporting –

(1) A person or company ~~shall~~must not carry on business as a matching service utility unless

(a) the person or company has delivered Form 24-101F3 to the securities regulatory authority, and

(b) at least 90 days have passed since the person or company delivered Form 24-101F3.

(2) During the 90 day period referred to in subsection (1), if there is a significant change to the information in the delivered Form 24-101F3, the person or company ~~shall~~must inform the securities regulatory authority in writing immediately of that significant change by delivering an amendment to Form 24-101F3 in the manner set out in Form 24-101F3.

6.2 Anticipated change to operations –

At least 45 days before implementing a significant change to any item set out in Form 24-101F3, a matching service utility ~~shall~~must deliver an amendment to the information in the manner set out in Form 24-101F3.

6.3 Ceasing to carry on business as a matching service utility –

(1) If a matching service utility intends to cease carrying on business as a matching service utility, it ~~shall~~must deliver a report on Form 24-101F4 to the securities regulatory authority at least 30 days before ceasing to carry on that business.

(2) If a matching service utility involuntarily ceases to carry on business as a matching service utility, it ~~shall~~must deliver a report on Form 24-101F4 as soon as practical after it ceases to carry on that business.

6.4 Ongoing information reporting and record keeping –

(1) A matching service utility ~~shall~~must deliver Form 24-101F5 to the securities regulatory authority no later than 30 days after the end of a calendar quarter.

(2) A matching service utility ~~shall~~must keep such books, records and other documents as are reasonably necessary to properly record its business.

6.5 System requirements –

For all of its core systems supporting trade matching, a matching service utility ~~shall~~must

(a) consistent with prudent business practice, on a reasonably frequent basis, and, in any event, at least annually,

(i) make reasonable current and future capacity estimates,

(ii) conduct capacity stress tests of those systems to determine the ability of the systems to process transactions in an accurate, timely and efficient manner,

(iii) implement reasonable procedures to review and keep current the testing methodology of those systems,

(iv) review the vulnerability of those systems and data centre computer operations to internal and external threats, including breaches of security, physical hazards and natural disasters, and

(v) maintain adequate contingency and business continuity plans;

(b) annually cause to be performed an independent review and written report, in accordance with generally accepted auditing standards, of the stated internal control objectives of those systems; and

(c) promptly notify the securities regulatory authority of a material failure of those systems.

PART 7 TRADE SETTLEMENT

7.1 Trade settlement by registered dealer –

(1) A registered dealer ~~shall~~must not execute a trade unless the dealer has established, maintains and enforces policies and procedures designed to facilitate settlement of the trade on a date that is no later than the standard settlement date for the type of security traded prescribed by an SRO or the marketplace on which the trade would be executed.

(2) Subsection (1) does not apply to a trade for which terms of settlement have been expressly agreed to by the counterparties to the trade at or before the trade was executed.

PART 8 REQUIREMENTS OF SELF-REGULATORY ORGANIZATIONS AND OTHERS

8.1 A clearing agency or matching service utility ~~shall~~must have rules or other instruments or procedures that are consistent with the requirements of Parts 3 and 7.

8.2 A requirement of this Instrument does not apply to a member of an SRO if the member complies with a rule or other instrument of the SRO that deals with the same subject matter as the requirement and that has been approved, non-disapproved, or non-objected to by the securities regulatory authority and published by the SRO.

PART 9 EXEMPTION

9.1 Exemption –

(1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 10 EFFECTIVE DATES AND TRANSITION

10.1 Effective dates

[LAPSED]

10.2 Transition

[LAPSED]

FORM 24-101F1

REGISTERED FIRM
EXCEPTION REPORT OF
DAP/RAP TRADE REPORTING AND MATCHING

CALENDAR QUARTER PERIOD COVERED:

From: _____ to: _____

REGISTERED FIRM IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of registered firm (if sole proprietor, last, first and middle name):

2. Name(s) under which business is conducted, if different from item 1:

3a. Address of registered firm's principal place of business:

3b. Indicate below the jurisdiction of your principal regulator within the meaning of NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*:

☐ Alberta
☐ British Columbia
☐ Manitoba
☐ New Brunswick
☐ Newfoundland & Labrador
☐ Northwest Territories
☐ Nova Scotia
☐ Nunavut
☐ Ontario
☐ Prince Edward Island
☐ Québec
☐ Saskatchewan
☐ Yukon

3c. Indicate below all jurisdictions in which you are registered:

☐ Alberta
☐ British Columbia
☐ Manitoba
☐ New Brunswick
☐ Newfoundland & Labrador
☐ Northwest Territories
☐ Nova Scotia
☐ Nunavut
☐ Ontario
☐ Prince Edward Island
☐ Québec
☐ Saskatchewan
☐ Yukon

4. Mailing address, if different from business address:

5. Type of business: ☐ Dealer ☐ Adviser

6. Category of registration:

7. (a) Registered Firm NRD number:

(b) If the registered firm is a participant of a clearing agency, the registered firm's CUID number:

8. Contact employee name:

Telephone number:

E-mail address:

INSTRUCTIONS:

Deliver this form for both equity and debt DAP/RAP trades together with Exhibits A, B and C pursuant to section 4.1 of the Instrument, covering the calendar quarter indicated above, within 45 days of the end of the calendar quarter if

(a) ~~less~~Less than 90 ~~per cent~~percent of the equity and/or debt DAP/RAP trades executed by or for you during the quarter matched within the time required in Part 3 of the Instrument, or

(b) ~~the~~The equity and/or debt DAP/RAP trades executed by or for you during the quarter that matched within the time required in Part 3 of the Instrument represent less than 90 ~~per cent~~percent of the aggregate value of the securities purchased and sold in those trades.

Include DAP/RAP trades in an exchange-traded fund (ETF) security in the equity DAP/RAP trades statistics. Exhibit A(1) applies only to trades in equity and ETF securities. Exhibit A(2) applies only to trades in debt and other fixed-income securities.

EXHIBITS:

Exhibit A – DAP/RAP trade statistics for the quarter

~~Complete Tables 1 and 2~~If applicable, complete Table 1 or 2, or both, below for each calendar quarter. Deadline means noon Eastern time on T+1.

(1) Equity DAP/RAP trades (includes ETF trades)

Entered into ~~CDS~~the clearing agency by deadline (to be completed by dealers only)				*Matched (to be completed by ~~deadline~~dealers and advisers)*							
# of ~~Trades~~trades	**%**	**$ ~~Value~~value of ~~Trades~~trades**	**%**	**# of ~~Trades~~ trades matched**	**%**	**$ ~~Value of Trades~~ value of trades matched**	**%**	**# of trades matched by deadline**	**%**	**$ value of trades matched by deadline**	**%**

(2) Debt DAP/RAP trades

Entered into ~~CDS~~the clearing agency by deadline (to be completed by dealers only)				*Matched (to be completed by ~~deadline~~dealers and advisers)*							
# of ~~Trades~~ trades	**%**	**$ ~~Value of Trades~~ value of trades**	**%**	**# of ~~Trades~~ trades matched**	**%**	**$ ~~Value~~ value of ~~Trades~~ trades matched**	**%**	**# of trades matched by deadline**	**%**	**$ value of trades matched by deadline**	**%**

Legend

"# of Trades" is the total number of transactions in the calendar quarter;
"$ Value of Trades" is the total value of the transactions (purchases and sales) in the calendar quarter.

Exhibit B – Reasons for not meeting exception reporting thresholds

Describe the circumstances or underlying causes that resulted in or contributed to the failure to achieve the percentage target for matched equity and/or debt DAP/RAP trades within the maximum time prescribed by Part 3 of the Instrument. Reasons given could be one or more matters within your control or due to another trade-matching party or service provider. If you have insufficient information to determine the percentages, the reason for this should be provided. See also Companion Policy 24-101~~CP~~ to the Instrument.

Exhibit C – Steps to address delays

Describe what specific steps you are taking to resolve delays in the equity and/or debt DAP/RAP trade reporting and matching process in the future. Indicate when each of these steps is expected to be implemented. The steps being taken could be internally focused, such as implementing a new system or procedure, or externally focused, such as meeting with a trade-matching party to determine what action should be taken by that party. If you have insufficient information to determine the percentages, the steps being taken to obtain this information should be provided. See also Companion Policy 24-101~~CP~~ to the Instrument.

CERTIFICATE OF REGISTERED FIRM

The undersigned certifies that the information given in this report on behalf of the registered firm is true and correct.

DATED at _____ this ____ day of _____ 20___

_____
(Name of registered firm - type or print)

_____
(Name of director, officer or partner - type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - type or print)

FORM 24-101F2
CLEARING AGENCY
QUARTERLY OPERATIONS REPORT OF
INSTITUTIONAL TRADE REPORTING AND MATCHING

CALENDAR QUARTER PERIOD COVERED:

From: _____ to: _____

IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of clearing agency:

2. Name(s) under which business is conducted, if different from item 1:

3. Address of clearing agency's principal place of business:

4. Mailing address, if different from business address:

5. Contact employee name:

   Telephone number:

   E-mail address:

INSTRUCTIONS:

Deliver this form together with all exhibits pursuant to section 5.1 of the Instrument, covering the calendar quarter indicated above, within 30 days of the end of the calendar quarter.

Include client trades in an exchange-traded fund (ETF) security in the equity trades statistics.

Exhibits ~~shall~~must be provided in an electronic file, in the following file format: " "CSV"" (Comma Separated Variable) (e.g., the format produced by Microsoft Excel).

EXHIBITS:

1. DATA REPORTING

Exhibit A – Aggregate matched trade statistics

For client trades, provide the information to complete Tables 1 and 2 below for each month in the quarter. These two tables can be integrated into one report. Provide separate aggregate information for trades that have been reported or entered into your facilities as matched trades by a matching service utility.

Month/Year: _____ (MMM/YYYY)

Table 1 – Equity trades:

	Entered into clearing agency by dealers				Matched in clearing agency by custodians			
	# of Trades	% Industry	$ Value of Trades	% Industry	# of Trades	% Industry	$ Value of Trades	% Industry
T								
T+1 - noon								
T+1								
T+2								
~~T+3~~								
>T+~~3~~2								
Total								

Table 2 – Debt trades:

	Entered into clearing agency by dealers				Matched in clearing agency by custodians			
	# of Trades	% Industry	$ Value of Trades	% Industry	# of Trades	% Industry	$ Value of Trades	% Industry
T								
T+1 - noon								
T+1								
T+2								
~~T+3~~								
>T+~~3~~2								
Total								

Legend

"# of Trades" is the total number of transactions in the month;
"$ Value of Trades" is the total value of the transactions (purchases and sales) in the month.

Exhibit B – Individual matched trade statistics

Using the same format as Exhibit A above, provide the relevant information for each participant of the clearing agency in respect of client trades during the quarter that have been entered by the participant and matched within the timelines indicated in Exhibit A.

CERTIFICATE OF CLEARING AGENCY

The undersigned certifies that the information given in this report on behalf of the clearing agency is true and correct.

DATED at _____ this ____ day of _____ 20___

_____
(Name of clearing agency - type or print)

_____
(Name of director, officer or partner - type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - type or print)

FORM 24-101F3
MATCHING SERVICE UTILITY
NOTICE OF OPERATIONS

DATE OF COMMENCEMENT INFORMATION:

Effective date of commencement of operations: _____ (DD/MMM/YYYY)

TYPE OF INFORMATION: ☐ INITIAL SUBMISSION ☐ AMENDMENT

MATCHING SERVICE UTILITY IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of matching service utility:

2. Name(s) under which business is conducted, if different from item 1:

3. Address of matching service utility's principal place of business:

4. Mailing address, if different from business address:

5. Contact employee name:

   Telephone number:

   E-mail address:

6. Legal counsel:

   Firm name:

   Telephone number:

   E-mail address:

GENERAL INFORMATION:

7. Website address:

8. Date of financial year-end: _____ (DD/MMM/YYYY)

9. Indicate the form of your legal status (e.g., corporation, limited or general partnership), the date of formation, and the jurisdiction under which you were formed:

   Legal status: ☐ CORPORATION ☐ PARTNERSHIP
   ☐ OTHER (SPECIFY):

   (a) Date of formation: _____ (DD/MMM/YYYY)

   (b) Jurisdiction and manner of formation:

10. Specify the general types of securities for which information is being or will be received and processed by you for transmission of matched trades to a clearing agency (e.g. exchange-traded domestic equity and debt securities, exchange-traded foreign equity and debt securities, equity and debt securities traded over-the-counter).

INSTRUCTIONS:

Deliver this form together with all exhibits pursuant to section 6.1~~ or 10.2(4)~~ of the Instrument.

For each exhibit, include your name, the date of delivery of the exhibit and the date as of which the information is accurate (if different from the date of the delivery). If any exhibit required is not applicable, a full statement describing why the exhibit is not applicable ~~shall~~must be furnished in lieu of the exhibit. To the extent information requested for an exhibit is identical to the information requested in another form that you have filed or delivered under National Instrument 21-101 *Marketplace Operation*, simply attach a copy of that other form and indicate in this form where such information can be found in that other form.

If you are delivering an amendment to Form 24-101F3 pursuant to section 6.1(2) or 6.2 of the Instrument, and the amended information relates to an exhibit that was delivered with such form, provide a description of the change and complete and deliver an updated exhibit. ~~If you are delivering Form 24-101F3 pursuant to section 10.2(4) of the Instrument, simply indicate at the top of this form under "Date of Commencement Information" that you were already carrying on business as a matching service utility in the relevant jurisdiction on the date that Part 6 of the Instrument came into force.~~

EXHIBITS:

1. CORPORATE GOVERNANCE

Exhibit A – Constating documents

Provide a copy of your constating documents, including corporate by-laws and other similar documents, as amended from time to time.

Exhibit B – Ownership

List any person or company that owns 10 per cent or more of your voting securities or that, either directly or indirectly, through agreement or otherwise, may control your management. Provide the full name and address of each person or company and attach a copy of the agreement or, if there is no written agreement, briefly describe the agreement or basis through which the person or company exercises or may exercise control or direction.

Exhibit C – Officials

Provide a list of the partners, officers, directors or persons performing similar functions who presently hold or have held their offices or positions during the current and previous calendar year, indicating the following for each:

1. Name.
2. Title.
3. Dates of commencement and expiry of present term of office or position and length of time the office or position held.
4. Type of business in which each is primarily engaged and current employer.
5. Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.
6. Whether the person is considered to be an independent director.

Exhibit D – Organizational structure

Provide a narrative or graphic description of your organizational structure.

Exhibit E – Affiliated entities

For each person or company affiliated to you, provide the following information:

1. Name and address of affiliated entity.
2. Form of organization (e.g., association, corporation, partnership).
3. Name of jurisdiction and statute under which organized.
4. Date of incorporation in present form.
5. Brief description of nature and extent of affiliation or contractual or other agreement with you.
6. Brief description of business services or functions.
7. If a person or company has ceased to be affiliated with you during the previous year or ceased to have a contractual or other agreement relating to your operations during the previous year, provide a brief statement of the reasons for termination of the relationship.

2. FINANCIAL VIABILITY

Exhibit F – Audited financial statements

Provide your audited financial statements for the latest financial year and a report prepared by an independent auditor.

3. FEES

Exhibit G – Fee list, fee structure

Provide a complete list of all fees and other charges imposed, or to be imposed, by you for use of your services as a matching service utility, including the cost of establishing a connection to your systems.

4. ACCESS

Exhibit H – Users

Provide a list of all users or subscribers for which you provide or propose to provide the services of a matching service utility. Identify the type(s) of business of each user or subscriber (e.g., custodian, dealer, adviser or other party).

If applicable, for each instance during the past year in which any user or subscriber of your services has been prohibited or limited in respect of access to such services, indicate the name of each such user or subscriber and the reason for the prohibition or limitation.

Exhibit I – User contract

Provide a copy of each form of agreement governing the terms by which users or subscribers may subscribe to your services of a matching service utility.

5. SYSTEMS AND OPERATIONS

Exhibit J – System description

Describe the manner of operation of your systems for performing your services of a matching service utility (including, without limitation, systems that collect and process trade execution details and settlement instructions for matching of trades). This description should include the following:

1. The hours of operation of the systems, including communication with a clearing agency.

2. Locations of operations and systems (e.g., countries and cities where computers are operated, primary and backup).

3. A brief description in narrative form of each service or function performed by you.

6. SYSTEMS COMPLIANCE

Exhibit K – Security

Provide a brief description of the processes and procedures implemented by you to provide for the security of any system used to perform your services of a matching service utility.

Exhibit L – Capacity planning and measurement

1. Provide a brief description of capacity planning/performance measurement techniques and system and stress testing methodologies.
2. Provide a brief description of testing methodologies with users or subscribers. For example, when are user/subscriber tests employed? How extensive are these tests?

Exhibit M – Business continuity

Provide a brief description of your contingency and business continuity plans in the event of a catastrophe.

Exhibit N – Material systems failures

Provide a brief description of policies and procedures in place for reporting to regulators material systems failures. Material systems failures include serious incidents that result in the interruption of the matching of trades for more than thirty minutes during normal business hours.

Exhibit O – Independent systems audit

1. Briefly describe your plans to provide an annual independent audit of your systems.

2. If applicable, provide a copy of the last external systems operations audit report.

7. INTEROPERABILITY

Exhibit P – Interoperability agreements

List all other matching service utilities for which you have entered into an *interoperability* agreement. Provide a copy of all such agreements.

8. OUTSOURCING

Exhibit Q – Outsourcing firms

For each person or company (outsourcing firm) with whom or which you have an outsourcing agreement or arrangement relating to your services of a matching service utility, provide the following information:

1. Name and address of the outsourcing firm.

2. Brief description of business services or functions of the outsourcing firm.

3. Brief description of the outsourcing firm's contingency and business continuity plans in the event of a catastrophe.

CERTIFICATE OF MATCHING SERVICE UTILITY

The undersigned certifies that the information given in this report on behalf of the matching service utility is true and correct.

DATED at _____ this _____ day of _____ 20____

_____
(Name of matching service utility - type or print)

_____
(Name of director, officer or partner - type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - type or print)

FORM 24-101F4
MATCHING SERVICE UTILITY
NOTICE OF CESSATION OF OPERATIONS

DATE OF CESSATION INFORMATION:

Type of information: ☐ VOLUNTARY CESSATION

☐ INVOLUNTARY CESSATION

Effective date of operations cessation: _____ (DD/MMM/YYYY)

MATCHING SERVICE UTILITY IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of matching service utility:

2. Name(s) under which business is conducted, if different from item 1:

3. Address of matching service utility's principal place of business:

4. Mailing address, if different from business address:

5. Legal counsel:

   Firm name:

   Telephone number:

   E-mail address:

INSTRUCTIONS:

Deliver this form together with all exhibits pursuant to section 6.3 of the Instrument.

For each exhibit, include your name, the date of delivery of the exhibit and the date as of which the information is accurate (if different from the date of the delivery). If any exhibit required is not applicable, a full statement describing why the exhibit is not applicable ~~shall~~must be furnished in lieu of the exhibit.

EXHIBITS:

Exhibit A

Provide the reasons for your cessation of business.

Exhibit B

Provide a list of all the users or subscribers for which you provided services during the last 30 days prior to you ceasing business. Identify the type(s) of business of each user or subscriber (e.g., custodian, dealer, adviser, or other party).

Exhibit C

List all other matching service utilities for which an *interoperability* agreement was in force immediately prior to cessation of business.

CERTIFICATE OF MATCHING SERVICE UTILITY

The undersigned certifies that the information given in this report on behalf of the matching service utility is true and correct.

DATED at _____ this_____ day of _____ 20____

_____
(Name of matching service utility - type or print)

_____
(Name of director, officer or partner - type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - type or print)

FORM 24-101F5
MATCHING SERVICE UTILITY
QUARTERLY OPERATIONS REPORT OF
INSTITUTIONAL TRADE REPORTING AND MATCHING

CALENDAR QUARTER PERIOD COVERED:

From: _____ to: _____

MATCHING SERVICE UTILITY IDENTIFICATION AND CONTACT INFORMATION:

1. Full name of matching service utility:

2. Name(s) under which business is conducted, if different from item 1:

3. Address of matching service utility's principal place of business:

4. Mailing address, if different from business address:

5. Contact employee name:

   Telephone number:

   E-mail address:

INSTRUCTIONS:

Deliver this form together with all exhibits pursuant to section 6.4 of the Instrument, covering the calendar quarter indicated above, within 30 days of the end of the calendar quarter.

Include DAP/RAP trades in an exchange-traded fund (ETF) security in the equity DAP/RAP trades statistics.

Exhibits ~~shall~~must be reported in an electronic file, in the following format: "CSV" (Comma Separated Variable) (e.g., the format produced by Microsoft Excel).

If any information specified is not available, a full statement describing why the information is not available ~~shall~~must be separately furnished.

EXHIBITS

1. SYSTEMS REPORTING

Exhibit A – External systems audit

If an external audit report on your core systems was prepared during the quarter, provide a copy of the report.

Exhibit B – Material systems failures reporting

Provide a brief summary of all material systems failures that occurred during the quarter and for which you were required to notify the securities regulatory authority under section 6.5(c) of the Instrument.

2. DATA REPORTING

Exhibit C – Aggregate matched trade statistics

Provide the information to complete Tables 1 and 2 below for each month in the quarter. These two tables can be integrated into one report.

Month/Year: _____ (MMM/YYYY)

Table 1 – Equity trades:

	Entered into matching service utility by dealer-users/subscribers				Matched in matching service utility by other users/subscribers			
	# of Trades	% Industry	$ Value of Trades	% Industry	# of Trades	% Industry	$ Value of Trades	% Industry
T								
T+1 – noon								
T+1								
T+2								
~~T+3~~								
>T+~~3~~2								
Total								

Table 2 – Debt trades:

	Entered into matching service utility by dealer-users/subscribers				Matched in matching service utility by other users/subscribers			
	# of Trades	% Industry	$ Value of Trades	% Industry	# of Trades	% Industry	$ Value of Trades	% Industry
T								
T+1 - noon								
T+1								
T+2								
~~T+3~~								
>T+~~3~~2								
Total								

Legend

"# of Trades" is the total number of transactions in the month;
"$ Value of Trades" is the total value of the transactions (purchases and sales) in the month.

Exhibit D – Individual matched trade statistics

Using the same format as Exhibit C above, provide the relevant information for each user or subscriber in respect of trades during the quarter that have been entered by the user or subscriber and matched within the timelines indicated in Exhibit C.

CERTIFICATE OF MATCHING SERVICE UTILITY

The undersigned certifies that the information given in this report on behalf of the matching service utility is true and correct.

DATED at _____ this ____ day of _____ 20___

_____
(Name of matching service utility- type or print)

_____
(Name of director, officer or partner - type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - type or print)

~~CANADIAN SECURITIES ADMINISTRATORS~~ANNEX F

BLACKLINE VERSION TO
COMPANION POLICY 24-101~~CP~~
~~TO NATIONAL INSTRUMENT 24-101~~
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT

The changes reflected in this blackline are being implemented at the earliest on September 5, 2017 (effective date). However, it is possible that the effective date may be extended under certain circumstances. Please see section 15 of the document that changes the Companion Policy in Annex D of this publication, together with section 24 of the instrument that amends the National Instrument in Annex C of this publication.

TABLE OF CONTENTS

COMPANION POLICY 24-101~~CP~~
~~TO NATIONAL INSTRUMENT 24-101–~~
INSTITUTIONAL TRADE MATCHING AND SETTLEMENT

PART 1 INTRODUCTION, PURPOSE AND DEFINITIONS[1]

1.1 Purpose of Instrument – National Instrument 24-101–*Institutional Trade Matching and Settlement* (Instrument) provides a framework in provincial securities regulation for more efficient and timely trade settlement processing, particularly institutional trades. The increasing volumes and dollar values of securities traded in Canada and globally by institutional investors mean existing back-office systems and procedures of market participants are challenged to meet post-execution processing demands. New requirements are needed to address the increasing risks. The Instrument is part of a broader initiative in the Canadian securities markets to implement straight-through processing (STP).[2]

1.2 General explanation of matching, clearing and settlement –

(1) *Parties to institutional trade* – A typical trade with or on behalf of an institutional investor might involve at least three parties:

- a registered adviser or other *buy-side* manager acting for an institutional investor in the trade–and often acting on behalf of more than one institutional investor in the trade (i.e., multiple underlying institutional client accounts)–who decides what securities to buy or sell and how the assets should be allocated among the client accounts;
- a registered dealer (including an Alternative Trading System registered as a dealer) responsible for executing or clearing the trade; and
- any financial institution or registered dealer (including under a *prime brokerage* arrangement) appointed to hold the institutional investor's assets and settle trades.

(2) Matching – A first step in settling a securities trade is to ensure that the buyer and the seller agree on the details of the transaction, a process referred to as trade confirmation and affirmation or trade *matching*.[3] A registered dealer who executes trades with or on behalf of others is required to report and confirm trade details, not only with the counterparty to the trade, but also with the client for whom it acted or the client with whom it traded (in which case, the client would be the counterparty). Similarly, a registered adviser or other buy-side manager is required to report trade details and provide settlement instructions to its custodian. The parties must agree on trade details–sometimes referred to as *trade data elements*– as soon as possible so that errors and discrepancies in the trades can be discovered early in the clearing and settlement process.

(3) Matching process – Verifying the trade data elements is necessary to *match* a trade executed on behalf of or with an institutional investor. Matching occurs when the relevant parties to the trade have, after verifying the trade data elements, reconciled or agreed to the details of the trade. Matching also requires that any custodian holding the institutional investor's assets be in a position to affirm the trade so that the trade can be ready for the clearing and settlement process through the facilities of the clearing agency. To illustrate, trade matching usually includes these following activities:

(a) The registered dealer notifies the buy-side manager that the trade was executed.

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1 In this Companion Policy, the terms "CSA", "we", "our" or "us" are used interchangeably and generally mean the same thing as *Canadian securities regulatory authorities* defined in National Instrument 14-101 – *Definitions*.

2 For a discussion of Canadian STP initiatives, see Canadian Securities Administrators' (CSA) Discussion Paper 24-401 on *Straight-through Processing* and Request for Comments, April 16, 2004 (2004) 27 OSCB 3971 to 4031 (Discussion Paper 24-401); and CSA Notice 24-301 – *Responses to Comments Received on Discussion Paper 24-401 on Straight-through Processing, Proposed National Instrument 24-101 Post-trade Matching and Settlement, and Proposed Companion Policy 24-101CP to National Instrument 24-101 Post-trade Matching and Settlement*, February 11, 2005 (2005) 28 OSCB 1509 to 1526.

3 The processes and systems for matching of "non-institutional trades" in Canada have evolved over time and become automated, such as retail trades on an exchange, which are matched or *locked-in* automatically at the exchange, or direct non-exchange trades between two participants of a clearing agency, which are generally matched through the facilities of the clearing agency. Dealer to dealer trades are subject to Investment Industry Regulatory Organization of Canada (IIROC) Member Rule 800.49, which provides that trades in non-exchange traded securities (including government debt securities) among dealers must be entered or accepted or rejected through the facilities of an "Acceptable Trade Matching Utility" ~~within one hour of~~by no later than 6 pm on the ~~execution~~day of the trade.

(b) The buy-side manager advises the dealer and any custodian(s) how the securities traded are to be allocated among the underlying institutional client accounts managed by the buy-side manager.[4] For so-called *block settlement trades*, the dealer sometimes receives allocation information from the buy-side manager based only on the number of custodians holding institutional investors' assets instead of on the actual underlying institutional client accounts managed by the buy-side manager.

(c) The dealer reports and confirms the trade details to the buy-side manager and clearing agency. The trade details required to be confirmed for matching, clearing and settlement purposes are generally similar to the information required in the customer trade confirmation delivered pursuant to securities legislation or self-regulatory organization (SRO) rules.[5]

(d) The custodian or custodians of the assets of the institutional investor verify the trade details and settlement instructions against available securities or funds held for the institutional investor. After trade details are agreed, the buy-side manager instructs the custodian(s) to release funds and/or securities to the dealer through the facilities of the clearing agency.

(4) *Clearing and settlement* – The *clearing* of a trade begins after the execution of the trade. After matching is completed, clearing will involve the calculation of the mutual obligations of participants for the exchange of securities and money – a process which generally occurs within the facilities of a clearing agency. The *settlement* of a trade is the moment when the securities are transferred finally and irrevocably from one participant to another in exchange for a corresponding transfer of money. In the context of settlement of a trade through the facilities of a clearing agency, often acting as central counterparty, settlement will be the discharge of obligations in respect of funds or securities, computed on a net basis, between and among the clearing agency and its participants. Through the operation of novation and set-off in law or by contract, the clearing agency becomes a counterparty to each trade so that the mutual obligation to settle the trade is between the clearing agency and each participant.

1.3 Section 1.1 – Definitions and scope –

(1) *Clearing agency* – While the terms "clearing agency" and "recognized clearing agency" are generally defined in securities legislation,[6] we have defined *clearing agency* for the purposes of the Instrument to narrow its scope to a recognized clearing agency that operates as a securities settlement system. The term *securities settlement system* is defined in National Instrument 24-102 *Clearing Agency Requirements* as a system that enables securities to be transferred and settled by book entry according to a set of predetermined multilateral rules. Today, the definition of ~~*clearing agency* applies only to The Canadian Depository for Securities Limited (CDS). The definition takes into account the fact that securities regulatory authorities in Ontario and Québec currently recognize or otherwise regulate clearing agencies in Canada under provincial securities legislation.[6] The functional meaning of *clearing agency* can be found in the securities legislation of certain jurisdictions.[7]~~ *clearing agency* in the Instrument applies to CDS Clearing and Depository Services Inc. (**CDS**). For the purposes of the Instrument, a clearing agency includes, in Québec, a clearing house and settlement system within the meaning of the *Securities Act* (Québec). See subsection 1.2(2).

(2) *Custodian* – While investment assets are sometimes held directly by investors, most are held on behalf of the investor by or through securities accounts maintained with a financial institution or dealer. The definition of *custodian* includes both a financial institution (non-dealer custodian) and a dealer acting as custodian (dealer custodian). Most institutional investors, such as pension and mutual funds, hold their assets through custodians that are prudentially-regulated financial institutions. However, others (like hedge funds) often maintain their investment assets with dealers under so-called *prime-brokerage* arrangements. A financial institution or dealer in Canada need not necessarily have a direct contractual relationship with an institutional investor to be considered a custodian of portfolio assets of the institutional

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[4] We remind registered advisers of their obligations to ensure fairness in allocating investment opportunities among their clients. An adviser must establish, maintain and apply policies and procedures that provide reasonable assurance that the firm and each individual acting on its behalf fairly allocates investment opportunities among its clients. If the adviser allocates investment opportunities among its clients, the firm's fairness policies should, at a minimum, indicate the method used to allocate the following: (i) price and commission among client orders when trades are bunched or blocked; (ii) block trades and initial public offerings (IPOs) among client accounts, and (iii) block trades and IPOs among client orders that are partially filled, such as on a pro-rata basis. The fairness policies should also address any other situation where investment opportunities must be allocated.

A summary of the fairness policies must be delivered to each client at the time the adviser opens an account for the client, and in a timely manner if there is a significant change to the summary last delivered to the client.

See sections 14.3 and 14.10 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) and section 14.10 of the Companion Policy to NI 31-103.

[5] See, for example, section ~~36 of the *Securities Act* (Ontario), The Toronto Stock Exchange (TSX) Rule 2-405~~14.12 of NI 31-103 and IIROC Member Rule 200.1(h).

[6] See, for example, s. 1(1) of the *Securities Act* (Ontario).

~~[6] CDS is also regulated by the Bank of Canada pursuant to the *Payment Clearing and Settlement Act* (Canada).~~

~~[7] See, for example, s. 1(1) of the *Securities Act* (Ontario).~~

investor for the purposes of the Instrument if it is acting as sub-custodian to a global custodian or international central securities depository.

(3) *Institutional investor* – A client of a dealer that has been granted DAP/RAP trading privileges is an institutional investor. This will likely be the case whenever a client's investment assets are held by or through securities accounts maintained with a custodian instead of the client's dealer that executes its trades. While the expression "institutional trade" is not defined in the Instrument, we use the expression in this Companion Policy to mean broadly any DAP/RAP trade.

(4) *DAP/RAP trade* – The concepts *delivery against payment* and *receipt against payment* are generally understood by the industry. They are also defined terms in the Notes and Instructions (Schedule 4) to ~~the *Joint Regulatory Financial Questionnaire and Report* of the Canadian SROs~~IIROC Form 1, Part II. All DAP/RAP trades, whether settled by a non-dealer custodian or a dealer custodian, are subject to the requirements of Part 3 of the Instrument. The definition of DAP/RAP trade excludes a trade for which settlement is made on behalf of a client by a custodian that is also the dealer that executed the trade.

(5) *Trade-matching party* – An institutional investor, whether Canadian or foreign-based, may be a trade-matching party. As such, it, or its adviser that is acting for it in processing a trade, should enter into a trade-matching agreement or provide a trade-matching statement under Part 3 of the Instrument. However, an institutional investor that is an individual or a person or company with total securities under administration or management not exceeding $10 million, is not a trade-matching party. A custodian that settles a trade on behalf of an institutional investor is also a trade-matching party and should enter into a trade-matching agreement or provide a trade-matching statement. However, a foreign global custodian or international central securities depository that holds Canadian portfolio assets through a local Canadian sub-custodian would not normally be considered a trade-matching party if it is not a clearing agency participant or otherwise directly involved in settling the trade in Canada.

(6) *Application of Instrument* – Part 2 of the Instrument enumerates certain types of trades that are not subject to the Instrument.

PART 2 TRADE MATCHING REQUIREMENTS

2.1 Trade data elements – Trade data elements that must be verified and agreed to are those identified by the SROs or the best practices and standards for institutional trade processing established and generally adopted by the industry. See section 2.4 of this Companion Policy. To illustrate, trade data elements that should be transmitted, compared and agreed to may include the following:

(a) *Security identification*: standard numeric identifier, currency, issuer, type/class/series, market ID; and

(b) *Order and trade information*: dealer ID, account ID, account type, buy/sell indicator, order status, order type, unit price/face amount, number of securities/quantity, message date/time, trade transaction type, commission, accrued interest (fixed income), broker settlement location, block reference, net amount, settlement type, allocation sender reference, custodian, payment indicator, IM portfolio/account ID, quantity allocated, and settlement conditions.

2.2 Trade matching deadlines for registered firms – The obligation of a registered dealer or registered adviser to establish, maintain and enforce policies and procedures, pursuant to sections 3.1 and 3.3 of the Instrument, will require the dealer or adviser to take reasonable steps to achieve matching as soon as practical after the DAP/RAP trade is executed and in any event no later than 12 p.m. (noon) Eastern Time on T+1. ~~If the trade results from an order to buy or sell securities received from an institutional investor whose investment decisions or settlement instructions are usually made in and communicated from a geographical region outside of the North American region, the deadline for matching is 12 p.m. (noon) on T+2 (subsections 3.1(2) and 3.3(2)). As defined, the North American region comprises Canada, the United States, Mexico, Bermuda and the countries of Central America and the Caribbean.~~The policies and procedures requirement of Part 3 of the Instrument is consistent with the overarching obligation of a registered firm to manage the risks associated with its business in accordance with prudent business practices.[7]

[7] See s. 11.1 of NI 31-103, which requires registered firms to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with their business in accordance with prudent business practices.

2.3 Choice of trade-matching agreement or trade-matching statement –

(1) *Establishing, maintaining and enforcing policies and procedures* –

(a) Under sections 3.2 and 3.4, a registered dealer's or registered adviser's policies and procedures must be designed to encourage trade-matching parties to (i) enter into a trade-matching agreement with the dealer or adviser or (ii) provide or make available a trade-matching statement to the dealer or adviser. The purpose of the trade-matching agreement or trade-matching statement is to ensure that all trade-matching parties have established, maintain, and enforce appropriate policies and procedures designed to achieve matching of a DAP/RAP trade as soon as practical after the trade is executed. If the dealer or adviser is unable to obtain a trade-matching agreement or statement from a trade-matching party, it should document its efforts in accordance with its policies and procedures.

(b) The parties described in paragraphs (a), (b), (c), and (d) of the definition "trade-matching party" in section 1.1 of the Instrument need not necessarily all be involved in a trade for the requirements of sections 3.2 and 3.4 of the Instrument to apply. There is no need for an adviser to be involved in the matching process of an institutional investor's trades for the requirement to apply. In this case, the trade-matching parties that should have appropriate policies and procedures in place would be the institutional investor, the dealer and the custodian.

(c) The Instrument does not provide the form of a trade-matching agreement or trade-matching statement other than it be in writing. Subsections (2) and (3) below provide some guidance on these documents. A trade-matching agreement or trade-matching statement should be signed by a senior executive officer of the entity to ensure its policies and procedures are given sufficient attention and priority within the entity's senior management. A senior executive officer would include any individual who is (a) the chair of the entity, if that individual performs the functions of the office on a full time basis, (b) a vice-chair of the entity, if that individual performs the functions of the office on a full time basis, (c) the president, chief executive officer or chief operating officer of the entity, and (d) a senior vice-president of the entity in charge of the entity's operations and back-office functions.

(2) *Trade-matching agreement* –

(a) A registered dealer or registered adviser need only enter into one trade-matching agreement with the other trade-matching parties for new or existing DAP/RAP trading accounts of an institutional investor for all future trades in relation to such account. The trade-matching agreement may be a single multi-party agreement among the trade-matching parties, or a network of bilateral agreements. A single trade-matching agreement is also sufficient for the general and all sub-accounts of the registered adviser or buy-side manager. If the dealer or adviser uses a trade-matching agreement, the form of such agreement may be incorporated into the institutional account opening documentation and may be modified from time to time with the consent of the parties.

(b) The agreement must specify the roles and responsibilities of each of the trade-matching parties and should describe the minimum standards and best practices to be incorporated into the policies and procedures that each party has in place. This should include the timelines for accomplishing the various steps and tasks of each trade-matching party for timely matching. For example, the agreement may include, as applicable, provisions dealing with:

For the dealer executing and/or clearing the trade:

- how and when the notice of trade execution (NOE) is to be given to the institutional investor or its adviser, including the format and content of the NOE (e.g., electronic);
- how and when trade details are to be entered into the dealer's internal systems and the clearing agency's systems;
- how and when the dealer is to correct or adjust trade details entered into its internal systems or the clearing agency's systems as may be required to agree to trade details with the institutional investor or its adviser;
- general duties of the dealer to cooperate with other trade-matching parties in the investigation, adjustment, expedition and communication of trade details to ensure trades can be matched within prescribed timelines.

For the institutional investor or its adviser:

- how and when to review the NOE's trade details, including identifying any differences from its own records;
- how and when to notify the dealer of trade differences, if any, and resolve such differences;
- how and when to determine and communicate settlement details and account allocations to the dealer and/or custodian(s);
- general duties of the institutional investor or its adviser to cooperate with other trade-matching parties in the investigation, adjustment, expedition and communication of trade details to ensure trades can be matched within prescribed timelines.

For the custodian settling the trade at the clearing agency:

- how and when to receive trade details and settlement instructions from institutional investors or their advisers;
- how and when to review and monitor trade details submitted to the clearing agency on an ongoing basis for items entered and awaiting affirmation or challenge;
- how and when to report to institutional investors or their advisers on an ongoing basis changes to the status of a trade and the matching of a trade;
- general duties of the custodian to cooperate with other trade-matching parties in the investigation, adjustment, expedition and communication of trade details to ensure trades can be matched within prescribed timelines.

(3) *Trade-matching statement* – A single trade-matching statement is sufficient for the general and all sub-accounts of the registered adviser or buy-side manager. A registered dealer or registered adviser may accept a trade-matching statement signed by a senior executive officer of a trade-matching party without further investigation and may continue to rely upon the statement for all future trades in an account, unless the dealer or adviser has knowledge that any statements or facts set out in the statement are incorrect. Mass mailings or emails of a trade-matching statement, or the posting of a single uniform trade-matching statement on a Website, would be acceptable ways of providing the statement to other trade-matching parties. A registered firm may rely on a trade-matching party's representations that the trade-matching statement was provided to the other trade-matching parties without further investigation.

(4) *Monitoring and enforcement of undertakings in trade-matching documentation* – Registered dealers and advisers should use reasonable efforts to monitor compliance with the terms or undertakings set out in the trade-matching agreements or trade-matching statements in accordance with their policies and procedures.

Registered dealers and advisers should also take active steps to address problems if the policies and procedures of other trade-matching parties appear to be inadequate and are causing delays in the matching process. Such steps might include imposing monetary incentives (e.g. penalty fees) or requesting a third party review or assessment of the party's policies and procedures. This approach could enhance cooperation among the trade-matching parties leading to the identification of the root causes of failures to match trades on time.

2.4 Determination of appropriate policies and procedures –

(1) *Best practices* – We are of the view that, when establishing appropriate policies and procedures, a party should consider the industry's generally adopted best practices and standards for institutional trade processing. It should also include those policies and procedures into its regulatory compliance and risk management programs.

(2) *Different policies and procedures* – We recognize that appropriate policies and procedures may not be the same for all registered dealers, registered advisers and other market participants because of the varying nature, scale and complexity of a market participant's business and risks in the trading process. For example, policies and procedures designed to achieve matching may differ among a registered dealer that acts as an "introducing broker" and one that acts as a "carrying broker".[8] In addition, if a dealer is not a clearing agency participant, the dealer's policies and procedures to expeditiously achieve matching should be integrated with the clearing arrangements that it has with any other dealer acting as carrying or clearing broker for the dealer. Establishing appropriate policies and procedures may

[8] See-IIROC Member Rule 35 — *Introducing Broker / Carrying Broker Arrangements*.

require registered dealers, registered advisers and other market participants to upgrade their systems and enhance their interoperability with others.[9]

2.5 Use of matching service utility – The Instrument does not require the trade-matching parties to use the facilities or services of a matching service utility to accomplish matching of trades within the prescribed timelines. However, if such facilities or services are made available in Canada, the use of such facilities or services may help a trade-matching party's compliance with the Instrument's requirements.

PART 3 INFORMATION REPORTING REQUIREMENTS

3.1 Exception reporting for registered firms –

(a) Part 4 of the Instrument requires a registered firm to complete and deliver to the securities regulatory authority Form 24-101F1 and related exhibits. Form 24-101F1 need only be delivered if less than ~~a percentage target~~90 percent of the DAP/RAP trades (by volume and value) executed by or for the registered firm in any given calendar quarter have matched within the time required by the Instrument. Tracking of a registered firm's trade matching statistics may be outsourced to a third party service provider, including a clearing agency or custodian. However, despite the outsourcing arrangement, the registered firm retains full legal and regulatory liability and accountability to the Canadian securities regulatory authorities for its exception reporting requirements. If a registered firm has insufficient information to determine whether it has achieved the percentage target of matched DAP/RAP trades in any given calendar quarter, it must explain in Form 24-101F1 the reasons for this and the steps it is taking to obtain this information in the future.

(b) Form 24-101F1 requires registered firms to provide aggregate quantitative information on their equity and debt DAP/RAP trades.

~~They~~DAP/RAP trades in exchange-traded funds are reportable in the equities category of DAP/RAP trades. Form 24-101F1 should only be submitted for DAP/RAP trades for the type of security (equity or debt) that did not meet the 90 percent threshold by the relevant timeline. If a registered firm does not meet the threshold for both equity and debt DAP/RAP trades, then it should submit the Form for both equity and debt DAP/RAP trades (i.e., by completing both tables in Exhibit A of Form 24-101F1). If the firm does not meet the threshold only for one type of security (i.e., for equity but not debt, or for debt but not equity), it should only submit the Form for the one type of security, by completing only one of the tables in Exhibit A of Form 24-101F1. A registered firm must also provide qualitative information on the circumstances or underlying causes that resulted in or contributed to the failure to achieve the percentage target for matched equity and/or debt DAP/RAP trades within the maximum time prescribed by Part 3 of the Instrument and the specific steps they are taking to resolve delays in the trade reporting and matching process in the future. Registered firms should provide information that is relevant to their circumstances. For example, dealers should provide information demonstrating problems with NOEs or reporting of trade details to the clearing agency. Reasons given for the failure could be one or more matters within the registered firm's control or due to another trade-matching party or service provider.

(c) The steps being taken by a registered firm to resolve delays in the matching process could be internally focused, such as implementing a new system or procedure, or externally focused, such as meeting with a trade-matching party to determine what action should be taken by that party. Dealers should confirm what steps they have taken to inform and encourage their clients to comply with the requirements or undertakings of the trade-matching agreement and/or trade-matching statement. They should confirm what problems, if any, they have encountered with their clients, other trade-matching parties or service providers. They should identify the trade-matching party or service provider that appears to be consistently not meeting matching deadlines or to have no reasonable policies and procedures in place. Advisers should provide similar information, including information demonstrating problems with communicating allocations or with service providers or custodians.

3.2 Regulatory reviews of registered firm exception reports –

(a) We will review the completed Forms 24-101F1 on an ongoing basis to monitor and assess compliance by registered firms with the Instrument's matching requirements. We will identify problem areas in matching, including identifying trade-matching parties that have no or weak policies and procedures in place to ensure matching of trades is accomplished within the time prescribed by Part 3 of the Instrument. Monitoring and assessment of registered firm matching activities may be undertaken by the SROs in addition to, or in lieu of, reviews undertaken by us.

[9] See Discussion Paper 24-401, at p. 3984, for a discussion of *interoperability*.

(b) ~~Consistent~~The Canadian securities regulatory authorities may consider the consistent inability to meet the matching percentage target ~~will be considered~~ as evidence ~~by the Canadian securities regulatory authorities~~ that either the policies and procedures of one or more of the trade matching parties have not been properly designed or, if properly designed, have been inadequately complied with. Consistently poor qualitative reporting ~~will~~may also be considered as evidence of poorly designed or implemented policies and procedures. See also section 2.3(4) of this Companion Policy for a further discussion of our approach to compliance and enforcement of the trade-matching requirements of the Instrument.

3.3 Other information reporting requirements – Clearing agencies and matching service utilities are required to include in Forms 24-101F2 and 24-101F5 certain trade-matching information in respect of their participants ~~or~~, users~~/~~ or subscribers. The purpose of this information is to facilitate monitoring and enforcement by the Canadian securities regulatory authorities or SROs of the Instrument's matching requirements.

3.4 Forms delivered in electronic form – Registered firms ~~may~~are encouraged to complete their Form 24-101F1 on-line on the CSA's website at the following URL addresses:

In English: http://www.securities-administrators.ca/industry_resources.aspx?id=52

In French: http://www.autorites-valeurs-mobilieres.ca/ressources_professionnelles.aspx?id=52

3.5 Confidentiality of information – The forms delivered to the securities regulatory authority by a registered firm, clearing agency and matching service utility under the Instrument will be treated as confidential by us, subject to the applicable provisions of the freedom of information and protection of privacy legislation adopted by each province and territory. We are of the view that the forms contain intimate financial, commercial and technical information and that the interests of the providers of the information in non-disclosure outweigh the desirability of making such information publicly available. However, we may share the information with SROs and may publicly release aggregate industry-wide matching statistics on equity and debt DAP/RAP trading in the Canadian markets.

PART 4 REQUIREMENTS FOR MATCHING SERVICE UTILITIES

4.1 Matching service utility –

(1) Part 6 of the Instrument sets out reporting, systems capacity, and other requirements of a matching service utility. ~~The~~For the purposes of the Instrument, the term *matching service utility* expressly excludes a clearing agency. A matching service utility would be any entity that provides the services of a post-execution centralized matching facility for trade-matching parties. It may use technology to match in real-time trade data elements throughout a trade's processing lifecycle. A matching service utility would not include a registered dealer who offers "local" matching services to its institutional investor-clients. In Québec, a person or company that seeks to provide centralized facilities for matching must, in addition to the requirements of the Instrument, apply for recognition as a matching service utility or for an exemption from the requirement to be recognized as a matching service utility pursuant to the *Securities Act* (Québec) or *Derivatives Act* (Québec). In certain other jurisdictions, in addition to the requirements of the Instrument, such person or company may be required to apply either for recognition as a clearing agency or for an exemption from the requirement to be recognized as a clearing agency.[10]

(2) A matching service utility would be viewed by us as an important infrastructure system involved in the clearing and settlement of securities transactions. We believe that, while a matching service utility operating in Canada would largely enhance operational efficiency in the capital markets, it would raise certain regulatory concerns. Comparing and matching trade data are complex processes that are inextricably linked to the clearance and settlement process. A matching service utility concentrates processing risk in the entity that performs matching instead of dispersing that risk more to the dealers and their institutional investor-clients. Accordingly, we believe that the breakdown of a matching service utility's ability to accurately verify and match trade information from multiple market participants involving large numbers of securities transactions and sums of money could have adverse consequences for the efficiency of the Canadian securities clearing and settlement system. The requirements of the Instrument applicable to a matching service utility are intended to address these risks.

4.2 Initial information reporting requirements for a matching service utility – ~~Sections~~Subsection 6.1(1) ~~and 10.2(4)~~ of the Instrument ~~require~~requires any person or company that carries on or intends to carry on business as a matching service utility to deliver Form 24-101F3 to the securities regulatory authority. We will review Form 24-101F3 to determine whether the person or company that delivered the form is an appropriate person or company to act as a

[10] See, for example, the scope of the definition of "clearing agency" in s. 1(1) of the *Securities Act* (Ontario), which includes providing centralized facilities "for comparing data respecting the terms of settlement of a trade or transaction".

matching service utility for the Canadian capital markets. We will consider a number of factors when reviewing the form, including:

(a) the performance capability, standards and procedures for the transmission, processing and distribution of details of trades executed on behalf of institutional investors;

(b) whether market participants generally may obtain access to the facilities and services of the matching service utility on fair and reasonable terms;

(c) personnel qualifications;

(d) whether the matching service utility has sufficient financial resources for the proper performance of its functions;

(e) the existence of, and interoperability arrangements with, another entity performing a similar function for the same type of security; and

(f) the systems report referred to in section 6.5(b) of the Instrument.

4.3 Change to significant information – Under section 6.2 of the Instrument, a matching service utility is required to deliver to the securities regulatory authority an amendment to the information provided in Form 24-101F3 at least 45 days before implementing a significant change involving a matter set out in Form 24-101F3. In our view, a significant change includes a change to the information contained in the General Information items 1-10 and Exhibits A, B, E, G, I, J, O, P and Q of Form 24-101F3.

4.4 Ongoing information reporting and other requirements applicable to a matching service utility –

(1) Ongoing quarterly information reporting requirements will allow us to monitor a matching service utility's operational performance and management of risk, the progress of interoperability in the market, and any negative impact on access to the markets. A matching service utility will also provide trade matching data and other information to us so that we can monitor industry compliance.

(2) Completed forms delivered by a matching service utility will provide useful information on whether it is:

(a) developing fair and reasonable linkages between its systems and the systems of any other matching service utility in Canada that, at a minimum, allow parties to executed trades that are processed through the systems of both matching service utilities to communicate through appropriate, effective interfaces;

(b) negotiating with other matching service utilities in Canada fair and reasonable charges and terms of payment for the use of interface services with respect to the sharing of trade and account information; and

(c) not unreasonably charging more for use of its facilities and services when one or more counterparties to trades are customers of other matching service utilities than the matching service utility would normally charge its customers for use of its facilities and services.

4.5 Capacity, integrity and security system requirements –

(1) The activities in section 6.5(a) of the Instrument must be carried out at least once a year. We would expect these activities to be carried out even more frequently if there is a significant change in trading volumes that necessitates that these functions be carried out more frequently in order to ensure that the matching service utility can appropriately service its clients.

(2) The independent review contemplated by section 6.5(b) of the Instrument should be performed by competent and independent audit personnel, in accordance with generally accepted auditing standards. Depending on the circumstances, we would consider accepting a review performed and written report delivered pursuant to similar requirements of a foreign regulator to satisfy the requirements of this section. A matching service utility that wants to advocate for that result must submit a request for discretionary relief.

(3) The notification of a material systems failure under section 6.5(c) of the Instrument should be provided promptly from the time the incident was identified as being material and should include the date, cause and duration of the interruption and its general impact on users or subscribers. We consider promptly to mean within one hour from the time the incident was identified as being material. Material systems failures include serious incidents that result in the interruption of the matching of trades for more than thirty minutes during normal business hours.

PART 5 TRADE SETTLEMENT

5.1 **Trade settlement by dealer –** Section 7.1 of the Instrument is intended to support and strengthen the general settlement cycle rules of the SROs and marketplaces. Current SRO and marketplace rules mandate a standard T+~~3~~2 settlement cycle period for most transactions in equity and long term debt securities.[~~10~~11] If a dealer is not a participant of a clearing agency, the dealer's policies and procedures to facilitate the settlement of a trade should be combined with the clearing arrangements that it has with any other dealer acting as carrying or clearing broker for the dealer.

PART 6 REQUIREMENTS OF SELF-REGULATORY ORGANIZATIONS AND OTHERS

6.1 **Standardized documentation –** Without limiting the generality of section 8.2 of the Instrument, an SRO may require its members to use, or recommend that they use, a standardized form of trade-matching agreement or trade-matching statement prepared or approved by the SRO, and may negotiate on behalf of its members with other trade-matching parties and industry associations to agree on the standardized form of trade-matching agreement or trade-matching statement to be used by all relevant sectors in the industry (dealers, buy-side managers and custodians).

[~~10~~11] See, for example, IIROC Member Rule 800.27 and TSX Rule 5-103(1).

ANNEX G

LOCAL MATTERS

In Ontario, the amendments to National Instrument 24-101 and other related materials were delivered to the Minister of Finance on April 26, 2017. The Minister may approve or reject the amendments or return for further consideration. The amendments will come into force on **September 5, 2017** (or such later date as may be required to coordinate with parallel U.S. regulatory changes).

Chapter 6

Request for Comments

6.1.1 Proposed National Instrument 91-102 Prohibition of Binary Options and Related Proposed Companion Policy

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment

Proposed National Instrument 91-102
Prohibition of Binary Options
and
Related Proposed Companion Policy

April 26, 2017

Introduction

We, the securities regulatory authorities in all Canadian jurisdictions other than British Columbia (collectively, the **Participating Jurisdictions**), are publishing the following for public comment:

- Proposed National Instrument 91-102 *Prohibition of Binary Options* (the **Instrument**);
- Proposed Companion Policy 91-102 *Prohibition of Binary Options* (the **CP**).

In this Notice, the Instrument and the CP are referred to collectively as the **Proposed Instrument**.

We are issuing this Notice to solicit comments on the Proposed Instrument. We welcome all comments on the Proposed Instrument and have also included specific questions in the Comments section below.

While the British Columbia Securities Commission is not an authority publishing the Proposed Instrument under this Notice, it anticipates that, subject to receiving the necessary approvals, it will, in the near future, publish for comment a proposed instrument that will be consistent with the Proposed Instrument described in this Notice.

The public comment period expires

- May 29, 2017 in Alberta and Québec,
- June 28, 2017 in Manitoba and Saskatchewan, and
- July 28, 2017 in all other Participating Jurisdictions.

We encourage commenters in all Participating Jurisdictions, to the extent possible, to provide their comments by May 29, 2017.

Certain Participating Jurisdictions are considering implementing a final rule in advance of other Participating Jurisdictions. However, we anticipate that the instrument that will ultimately be adopted in all CSA jurisdictions will be fully harmonized – e.g., through harmonizing amendments, where necessary.

Background

No individuals or firms are registered to sell binary options in Canada

By publishing the Proposed Instrument, we are not suggesting that current offerings of binary options in Canada are legal. Many of these products and the platforms selling them have been identified as vehicles to commit fraud. We emphasize that no offering of these products, including by a broker, dealer or platform, has been authorized in Canada. All current offerings in

Canada are therefore illegal, with only limited and narrow exceptions for transactions with highly sophisticated investors. Nevertheless, some persons are using misleading information to promote these products as legal and legally offered.

It is our intention that the Proposed Instrument will make it explicitly clear that these products may not be advertised, offered, sold or otherwise traded to an individual in Canada.

AMF Proposal

On February 1, 2017, the Québec Autorité des marchés financiers (**AMF**) proposed an amendment[1] to the Québec *Derivatives Regulation* that was intended to prohibit the offering of a binary option with a maturity of less than 30 days to an individual (the **AMF Proposal**). The Participating Jurisdictions are proposing the Proposed Instrument as a means of implementing a prohibition in line with that set out in the AMF Proposal. The AMF is considering withdrawing the AMF Proposal and instead recommending the adoption of the Proposed Instrument.

Binary options fraud

We are concerned by the growing number of complaints received regarding the marketing of products commonly called "binary options" to individuals. Binary options are also called a variety of other names, including but not limited to "all-or-nothing options", "asset-or-nothing options", "bet options", "cash-or-nothing options", "digital options", "fixed-return options" and "one-touch options". All contracts or instruments, however named, marketed or sold that meet this definition will be prohibited under the Proposed Instrument.

A significant number of the complaints and inquiries received by CSA members concern online binary options platforms. These unregistered platforms, typically located off-shore, promise quick and high-yielding returns from trading binary options. On some platforms, trading may actually take place but it is typically extremely difficult and often impossible to win on the bet (because the platform controls the odds and often the reference value of the underlying interest). In some cases, even if an individual theoretically does win, the winnings may appear as a credit on a trading account on the platform but their money is not transferred or returned. In many other cases, no trading actually takes place and the operation is purely a fraud set up to take money from individuals, including through cash advances processed through the target's credit card. Once a victim has lost their money, it is almost impossible to recuperate their losses.

Offering investment services or products to persons or companies in Canada, whether by telephone, online or in-person, is a regulated activity. It is illegal to offer investment services or products, including binary options not subject to the Proposed Instrument, in Canada without being registered as a dealer, with only limited and narrow exceptions for transactions with highly sophisticated investors.

Investing through unregistered offshore platforms or dealers can be risky and is a common red flag for investment fraud. Registration as a dealer is an important safeguard for investors, helping to ensure the suitability of the investment, and the character, proficiency and solvency of the dealer. The CSA encourage all investors to visit aretheyregistered.ca to check the registration of any person or company offering investment products, including binary options, to Canadians. Anyone who has invested with, or has concerns about, a binary options trading platform should contact their local securities regulator. We also encourage all investors to visit binaryoptionsfraud.ca.

Current regulation of binary options

We remind market participants that binary options, even binary options that are not subject to the Proposed Instrument, are derivatives and/or securities in each jurisdiction of Canada and that persons or companies advertising, offering, selling or otherwise trading such products to persons or companies in Canada are subject to securities legislation in Canada, including for example, anti-fraud provisions and requirements respecting registration, market conduct, and disclosure. Furthermore, in jurisdictions of Canada where binary options are regulated as securities, trading a binary option may be a distribution subject to the prospectus requirement.

In Québec, under the qualification regime, any person that wishes to create or market a derivative is required to apply to the AMF for qualification before the derivative is offered to the public. A qualified person may only market derivatives that have been duly authorized by the AMF as listed in its qualification decision or in a specific decision following an application by the qualified person. In addition, the qualified person must offer derivatives to the public through a registered dealer, or register with the AMF as a dealer.

[1] Draft Regulation to amend the Derivatives Regulation, February 1, 2017. The Notice, Draft Regulation and comments letters received in response to the Draft Regulation are available on the AMF website (www.lautorite.qc.ca).

The CSA consider a person or company to be trading in securities or derivatives in a local jurisdiction if that person or company offers or solicits trades of securities or derivatives to persons or companies in that local jurisdiction, including through a website or other electronic means.

Substance and Purpose of the Proposed Instrument

The purpose of the Proposed Instrument is to protect would-be investors from becoming victims of binary options fraud and from becoming victims of an illegal promotion of an extremely high risk product, by raising awareness among investors that these products are illegal and by disrupting the advertising and facilitation of these products. To this end, the Proposed Instrument will explicitly prohibit advertising, offering, selling or otherwise trading a binary option to an individual.

Summary of the Proposed Instrument

Prohibition

The Proposed Instrument prohibits advertising, offering, selling or otherwise trading a binary option with or to an individual. To prevent a party that offers a binary option from avoiding the prohibition by having their proposed client create a corporation or other type of entity to trade binary options, the Proposed Instrument also prohibits advertising, offering, selling or otherwise trading a binary option with or to or any other person or company that is created, or is primarily used, to trade a binary option.

The Proposed Instrument sets out a definition of "binary option" that is intended to capture a range of products that are, or are similar to, products that are commonly called binary options, regardless of how they are named.

Binary options

Binary options are based on the outcome of a yes/no proposition. If the outcome is yes, the buyer wins or is "in-the-money". If the answer is no, the buyer loses or is "out-of-the-money" and loses all, or nearly all, of their investment. The yes/no proposition is structured on the performance of an underlying interest referenced in the contract – for example, a currency, commodity, stock index, or share – or the occurrence of a specified event referenced in the contract – for example, the outcome of an election or a change in a benchmark interest rate. The time or time period specified in the contract for determining whether the predetermined condition or conditions are met is often very short, sometimes hours or even minutes. The buyer either

- is entitled to receive a fixed amount if the predetermined condition is met, i.e., the buyer wins or is "in-the-money", or
- loses all or nearly all of the amount paid if the predetermined condition is not met, i.e., the buyer loses or is "out-of-the-money".

Anticipated Costs and Benefits

The Proposed Instrument is directed at prohibiting trading a binary option with an individual. Individuals are the primary targets of fraudulent binary options platforms, and non-fraudulent binary options also pose significant risks to individuals. The Proposed Instrument is intended to help protect would-be investors from binary options fraud, by prohibiting advertising, offering, selling and otherwise trading a binary option to an individual. It is also intended to reduce investor confusion about this form of product by making it clear that binary options are prohibited for individuals.

Potential offerors of binary options will be prohibited from offering these products to individuals if the time or time period specified for determining whether the predetermined condition or conditions are met is less than 30 days from the date the binary option is entered into. However, we do not believe that the prohibition will have a negative impact on investors' access to necessary financial products.

We believe that the benefits to the market of reducing fraud and investor loss relating to binary options outweigh any costs of the Proposed Instrument.

Contents of Annexes

The following annexes form part of this CSA Notice:

- Annex A – Proposed National Instrument 91-102 *Prohibition of Binary Options*,
- Annex B – Proposed Companion Policy 91-102 *Prohibition of Binary Options*, and
- Annex C – Local Matters.

Comments

In addition to your comments on all aspects of the Proposed Instrument, we also seek specific feedback on the following questions:

1. Does the proposed definition of "binary option" capture contracts or instruments that should not be captured? If so, please specify the types of contracts or instruments that should not be captured and on what basis they would be captured.

2. The Proposed Instrument applies to binary options where the time period specified in the binary option for determining whether the predetermined condition or conditions are met is less than 30 days from the date the binary option is entered into. Is this time period appropriate? Please specify why or why not.

3. Staff considered a variety of options that would prevent circumvention of the binary options trading ban. These included provisions that would capture indirect trading by an individual through a company, trust or other entity. As currently drafted, the Proposed Instrument includes an anti-avoidance provision that would ban trading binary options with a person or company that is created, or primarily used, to trade binary options. We believe this approach captures our intent to prohibit attempted work-arounds of the binary options trading ban without increasing the complexity of the rule. Is the proposed provision unambiguous and clear, or should the scope of this provision be modified, for example, to more specifically extend to any person, company or other entity wholly-owned or controlled by an individual?

4. Do you believe the Proposed Instrument will accomplish the intended purpose of proposing it, as set out in this Notice?

Please provide your comments in writing by

- May 29, 2017 if responding to the Alberta Securities Commission or the Québec AMF,
- June 28, 2017 if responding to the Manitoba Securities Commission or the Financial and Consumer Affairs Authority of Saskatchewan, and
- July 28, 2017 if responding to any other Participating Jurisdiction.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In addition, all comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Please address your comments to each of the following:

Alberta Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

If you are submitting your comments prior to May 29, 2017, please send your comments only to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Grace Knakowski
Secretary
Ontario Securities Commission
20 Queen Street West
22nd floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

If you are submitting your comments after May 29, 2017 but prior to July 28, 2017, please send your comments only to the following address. Your comments will be forwarded to the remaining jurisdictions:

Grace Knakowski
Secretary
Ontario Securities Commission
20 Queen Street West
22nd floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Questions

Please refer your questions to any of:

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Senior Director, Derivatives Oversight
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ANNEX A

PROPOSED NATIONAL INSTRUMENT 91-102
PROHIBITION OF BINARY OPTIONS

Definition

1. In this Instrument, "binary option" means a contract or instrument that provides for only

(a) a fixed amount if the underlying interest referenced in the contract or instrument meets one or more predetermined conditions, and

(b) a lesser amount or zero if the underlying interest referenced in the contract or instrument does not meet one or more predetermined conditions.

Trading binary options with an individual prohibited

2. No person or company may advertise, offer, sell or otherwise trade a binary option with or to an individual.

Trading binary options with a person or company other than an individual prohibited

3. No person or company may advertise, offer, sell or otherwise trade a binary option with or to a person or company that is not an individual and that is created, or is primarily used, to trade a binary option.

Binary options of 30 days or longer

4. Sections 2 and 3 do not apply in respect of a binary option if the time specified in the binary option for determining whether one or more predetermined conditions is met is 30 days or more from the date the binary option is entered into.

Exemption – general

5. (1) Except in Québec, the regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.

(3) Except in Alberta, Ontario and Saskatchewan, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

Effective date

6. This Instrument comes into force on [●].

ANNEX B

PROPOSED COMPANION POLICY 91-102
PROHIBITION OF BINARY OPTIONS

Introduction

The purpose of National Instrument 91-102 *Prohibition of Binary Options* (the **Instrument**) is to help protect would-be investors from binary options fraud.

The purpose of this Companion Policy is to state the view of the members of the Canadian Securities Administrators (the "**CSA**" or "**we**") on various matters related to the Instrument.

We are concerned by complaints we have received regarding the marketing of products commonly called "binary options" to individuals. Many of these products and the platforms selling them have been identified as vehicles to commit fraud. Some persons have used misleading information to promote these products as legal and legally offered, despite not being authorized to offer these products to individuals in Canada. The Instrument explicitly prohibits advertising, offering, selling or otherwise trading a binary option (as defined in the Instrument) with or to an individual.

The CSA consider a person or company to be trading in securities or derivatives in a local jurisdiction if that person or company offers or solicits trades of securities or derivatives to persons or companies in that local jurisdiction, including through a website or other electronic means.

Definitions and interpretation

Unless defined in the Instrument or this Companion Policy, terms used in the Instrument and in this Companion Policy have the meaning given to them in securities legislation, including in National Instrument 14-101 *Definitions*. "Securities legislation" is defined in National Instrument 14-101 *Definitions*, and includes statutes and other instruments related to both securities and derivatives.

Interpretation of terms used or defined in the Instrument

Section 1 – Definition of "binary option"

The defined term "binary option" is intended to capture a range of products that are, or are similar to, products that are commonly called binary options, regardless of how they are named. Binary options are sometimes called a variety of other names, including but not limited to "all-or-nothing options", "asset-or-nothing options", "bet options", "cash-or-nothing options", "digital options", "fixed-return options" and "one-touch options".

Binary options are based on the outcome of a yes/no proposition, expressed as whether an underlying asset, event or value meets one or more predetermined conditions specified in the contract or instrument, at or during the time or time period specified in the contract or instrument. The specified time or time period for determining whether the predetermined condition or conditions are met is often very short, sometimes hours or even minutes.

Binary options typically exercise automatically; once the contract or instrument is entered into, there is no decision for either the buyer or the seller to make. The buyer either

- is entitled to receive a fixed amount if the predetermined condition is met, i.e., the buyer is "in-the-money", or
- loses all or nearly all of the amount paid if the predetermined condition is not met, i.e., the buyer is "out-of-the-money".

The yes/no proposition is structured on the performance of an underlying interest. For the purposes of the Instrument, we interpret "underlying interest" as the event or thing that the value or payment obligations of the binary option is based on, derived from or referenced to. The underlying interest of a binary option could be the

- occurrence of a specified event, e.g., the outcome of an election or a change in a benchmark interest rate, or
- performance or value of a security, index, currency, precious metal or any other commodity, price, rate, benchmark, variable or any other thing.

For example, a binary option may be based on a yes/no proposition such as whether:

- the value of the Canadian dollar will be above $0.75 US on a particular day;
- the price of a share in ABC Company will be above $14.37 at any time between two particular dates;
- the price of gold will be below $1082 at 3:42 pm on a particular day;
- the price of oil will be in the range of $48.00 – $49.99 at any time on a particular day; or
- there will be more than one inch of rain reported at a specified location on a specific day.

A binary option typically does not grant the buyer or seller any right or obligation to buy, sell, receive or deliver an underlying interest referenced in the contract or instrument. For example, if the yes/no proposition of a binary option is based on the value of a share price, the binary option would provide for settlement in cash and would not provide for delivery of the underlying share. Similarly, if the yes/no proposition of a binary option is based on the movement in the price of gold, the binary option would provide for settlement in cash and would not provide for delivery of physical gold.

Typically, the only rights under a binary option for the buyer or seller are an entitlement to receive or an obligation to pay (a) a fixed amount if the predetermined condition or conditions are met, and (b) a lesser amount or zero if the predetermined condition or conditions are not met. The payout structure of a binary option is non-linear; that is, the payout possibilities are discrete amounts that are specified at the time the contract or instrument is entered into (although the actual value of the payout amount may not be determined at the time the contract or instrument is entered into).

However the product is named, the prohibition in the Instrument applies if the product meets the definition of "binary option" and the specified time for determining whether the predetermined condition is met is less than 30 days from the date the contract or instrument is entered into.

Section 2 – Trading binary options with an individual prohibited

Section 2 prohibits advertising, offering or selling a binary option to an individual. Advertising, offering and selling are elements of "trade" or "trading". The phrase "or otherwise trade" includes soliciting and all other elements of "trade" or "trading", including an act in furtherance of a trade.

Section 3 – Trading binary options with a person or company other than an individual prohibited

Section 3 prohibits advertising, offering or selling a binary option to a person or company, other than an individual, that is created, or is primarily used, to trade a binary option. Section 3 is designed to support the prohibition in section 2, by preventing a party that offers a binary option from avoiding the prohibition by having their proposed client create a corporation or other type of entity to trade binary options.

Section 4 – Binary options of 30 days or longer

Section 4 carves out from the prohibitions in sections 2 and 3 a binary option for which the specified time period for determining whether the predetermined condition or conditions are met is 30 days or more from the date the binary option is entered into.

We remind market participants that binary options that are not subject to the Instrument are derivatives and/or securities in each jurisdiction of Canada. Any person or company advertising, offering, selling or otherwise trading such products to persons or companies in Canada is subject to securities legislation in Canada including, for example, anti-fraud provisions and requirements respecting registration, market conduct and disclosure. Furthermore, in jurisdictions of Canada where binary options are regulated as securities, trading a binary option may be a distribution subject to the prospectus requirement.

In Québec, under the qualification regime, any person that wishes to create or market a derivative is required to apply to the Autorité des marchés financiers for qualification before the derivative is offered to the public. A qualified person may only market derivatives that have been duly authorized by the Autorité des marchés financiers as listed in its qualification decision or in a specific decision following an application by the qualified person. In addition, the qualified person must offer derivatives to the public through a registered dealer, or register with the Autorité des marchés financiers as a dealer.

Offering investment services or products to persons or companies in Canada, whether by telephone, online or in-person, is a regulated activity. Investing through unregistered offshore platforms or dealers can be risky and is a common red flag for investment fraud. The CSA encourage all investors to visit aretheyregistered.ca to check the registration of any person or company offering investment products, including binary options, to Canadians. Anyone who has invested with, or has concerns about, a binary options trading platform should contact their local securities regulator. We also encourage all investors to visit binaryoptionsfraud.ca.

ANNEX C

LOCAL MATTERS

ONTARIO RULE-MAKING AUTHORITY

AUTHORITY FOR THE PROPOSED INSTRUMENT

In Ontario, the rule-making authority for the Proposed Instrument is in paragraphs 11, 13 and 35 of subsection 143(1) of the *Securities Act*.

- Paragraph 11 of subsection 143(1) provides the Commission with the authority to regulate the trading of derivatives.

- Paragraph 13 of subsection 143(1) provides the Commission with the authority to regulate trading in or advising about derivatives to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

- Paragraph 35 of subsection 143(1) provides the Commission with the authority to prescribe requirements relating to derivatives. In particular, subparagraph 35(vi) of subsection 143(1) of the OSA provides the Commission with the authority to make rules "[p]rescribing requirements relating to derivatives, including …. (vi) requirements that one or more classes of derivatives not be traded in Ontario".

6.1.2 Adoption of a T+2 Settlement Cycle for Conventional Mutual Funds – Proposed Amendments to National Instrument 81-102 Investment Funds

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

Notice and Request for Comment

Adoption of a T+2 Settlement Cycle for Conventional Mutual Funds

Proposed Amendments to National Instrument 81-102 *Investment Funds*

April 27, 2017

Introduction

The Canadian Securities Administrators, other than the British Columbia Securities Commission[1], (the **CSA** or **we**) are publishing for a 90-day comment period proposed amendments to National Instrument 81-102 *Investment Funds* (**NI 81-102**) and a consequential amendment to National Instrument 81-104 *Commodity Pools* (**NI 81-104**) to shorten the standard settlement cycle for conventional mutual funds[2] from three days after the date of a trade (**T+3**) to two days after the date of a trade (**T+2**) (the **Proposed Amendments**).

We are also providing guidance to conventional mutual funds regarding their expected adoption of a T+2 settlement cycle in light of the adoption of a T+2 settlement cycle in equity and long-term debt markets.

Substance and Purpose

On September 5, 2017, markets in the United States are expected to move to a T+2 settlement cycle. As it is in the public interest for Canadian market participants to match U.S. settlement cycles, the CSA is publishing, concurrently with this Notice, a Notice of Amendments that would harmonize settlement cycles to T+2 in Canada for equity and long-term debt markets and amend National Instrument 24-101 *Institutional Trade Matching and Settlement* (**NI 24-101**) (the **NI 24-101 Amendments**) to coincide with the adoption of a T+2 settlement cycle in the United States. Please see CSA *Notice Amendments to National Instrument 24-101 Institutional Trade Matching and Settlement and Changes to Companion Policy 24-101 Institutional Trade Matching and Settlement*.

A trade in a security of a conventional mutual fund is not subject to NI 24-101. However, the underlying equity and long-term debt securities owned by conventional mutual funds are subject to NI 24-101 and would settle at T+2.

Under NI 81-102, conventional mutual fund settlement must follow the requirements below (the **Current Requirements**):

- Cash received by a dealer or principal distributor for payment of a mutual fund security must be forwarded to the order receipt office of the mutual fund *as soon as practicable* and in any event no later than the third business day after the pricing date (subsection 9.4(1) of NI 81-102);
- Payment of the issue price of a security must be made on or before the third business day after the pricing date (subsection 9.4(2) of NI 81-102);
- In the event that payment is not received by the third business day after the pricing date of the security, the mutual fund must redeem the securities to which the purchase order pertains as if it had received an order for the redemption of the securities on the fourth business day after the pricing date or on the date the mutual fund first knows that the method of payment will not be honoured (subsection 9.4(4) of NI 81-102); and

[1] While the British Columbia Securities Commission is not an authority publishing the Proposed Amendments under this Notice, it anticipates that, subject to receiving the necessary approvals, it will, in the near future, publish for comment proposed amendments that will be consistent with the Proposed Amendments described in this Notice.

[2] A conventional mutual fund is a mutual fund that offers securities in continuous distribution under a simplified prospectus in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

- A mutual fund must pay the redemption proceeds for securities once a redemption order has been received within three business days after the date of calculation of the net asset value per security used in establishing the redemption price (subsection 10.4(1) of NI 81-102).

We note that this language is broad enough to permit conventional mutual funds to adopt a T+2 settlement cycle.

Guidance on the transition to a T+2 settlement cycle

Given that the standard settlement cycle for equity and long-term debt market trades in Canada is being shortened from T+3 to T+2, we are of the view that the requirement for a dealer or principal distributor to forward the cash or securities received for payment of the issue price of securities of a mutual fund to the mutual fund as soon as practicable would require conventional mutual funds to adopt a T+2 settlement cycle on the coming into force of the NI 24-101 Amendments, currently expected on September 5, 2017.

Additionally, with the Proposed Amendments, we wish to codify the expectation that conventional mutual funds will settle on T+2 to remove any possibility of confusion.

Summary of the Proposed Amendments

The Proposed Amendments amend sections 9.4 and 10.4 of NI 81-102 so as to remove references to a T+3 settlement cycle and replace them with references to a T+2 settlement cycle. The Proposed Amendments also amend paragraph 9.4(4)(a) of NI 81-102 so as to require a mutual fund, in the case where payment of the issue price of the securities has not been received, to redeem the securities on the third business day after the pricing date, rather than on the fourth. Furthermore, a consequential amendment will be made to section 6.3 of NI 81-104 to harmonize it with the new proposed wording of section 10.4 of NI 81-102.

Transition

Subject to the rule approval process, we anticipate publishing final rules aimed at implementing the Proposed Amendments in the late Summer of 2017 (**Publication Date**). We anticipate the Proposed Amendments will be proclaimed into force expeditiously after the Publication Date (**In Force Date**). After the In Force Date, the T+3 settlement cycle for conventional mutual funds will be replaced by a T+2 settlement cycle.

Local Matters

Certain jurisdictions are publishing other information required by local securities legislation. In Ontario, this information is contained in Annex E of this Notice.

Annexes

This Notice includes the following Annexes:

- Annex A: Amending Instrument for National Instrument 81-102 *Investment Funds*
- Annex B: Amending Instrument for National Instrument 81-104 *Commodity Pools*
- Annex C: Blackline of Select Provisions of National Instrument 81-102 *Investment Funds*
- Annex D: Blackline of Select Provisions of National Instrument 81-104 *Commodity Pools*
- Annex E: Local Matters

Deadline for Comments

Please submit your comments to the Proposed Amendments, in writing, on or before July 26, 2017. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Where to Send Your Comments

Address your submission to the CSA as follows:

Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Please send your comments only to the addresses listed below. Your comments will be forwarded to the other CSA member jurisdictions.

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

Madame Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Fax: 514-864-6381
Consultation-en-cours@lautorite.qc.ca

We would like your input on the proposed amendments. Please include a prominent reference to the subject matter of your comments. For example, please include a subject line similar to the following: “RE: Mutual Fund T+2 Settlement Amendments”.

Comments Received will be Publicly Available

Please note that we cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of written comments received during the comment period. In this context, you should be aware that some information which is personal to you, such as your email and address, may appear on certain CSA web sites. It is important that you state on whose behalf you are making the submission.

All comments will be posted on the Ontario Securities Commission web site at www.osc.gov.on.ca and on the Autorité des marchés financiers web site at www.lautorite.qc.ca.

Questions

Please refer your questions to any of the following CSA staff:

Jason Alcorn
Senior Legal Counsel
Financial and Consumer Services Commission (New Brunswick)
Tel: (506) 643-7857
Email: jason.alcorn@fcnb.ca

Heather Kuchuran
Senior Securities Analyst
Financial and Consumer Affairs Authority of Saskatchewan
Tel: (306) 787-1009
Email: heather.kuchuran@gov.sk.ca

Wayne Bridgeman
Deputy Director, Corporate Finance
The Manitoba Securities Commission, Securities Division
Tel: (204) 945-4905
Email: wayne.bridgeman@gov.mb.ca

Donna Gouthro
Senior Securities Analyst
Nova Scotia Securities Commission
Tel: (902) 424-7077
Email: Donna.Gouthro@novascotia.ca

Nick Hawkins
Legal Counsel, Investment Funds & Structured Products Branch
Ontario Securities Commission
Tel: (416) 596-4267
Email: nhawkins@osc.gov.on.ca

M^{e} Chantal Leclerc
Senior Policy Advisor, Investment Funds Branch
Autorité des marchés financiers
Tel: (514) 395-0337, ext. 4463
Email: chantal.leclerc@lautorite.qc.ca

Danielle Mayhew
Legal Counsel
Alberta Securities Commission
Tel: (403) 592-3059
Email: Danielle.Mayhew@asc.ca

Where to find more information

We are publishing the proposed amendments with this Notice, as well as blackline version of select provisions of NI 81-102. The Proposed Amendments are also available on websites of CSA members, including:

www.albertasecurities.com
www.fcaa.gov.sk.ca
www.mbsecurities.ca
www.osc.gov.on.ca
www.lautorite.qc.ca
www.fcnb.ca
nssc.novascotia.ca

ANNEX A

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 81-102 *INVESTMENT FUNDS*

1. National Instrument 81-102 Investment Funds is amended by this Instrument.

2. Section 9.4 is amended by

(a) replacing "third***" wherever it occurs with "***second***", and***

(b) in paragraph (4)(a), replacing "fourth***" with "***third***".***

3. Section 10.4 is amended by replacing "three***" wherever it occurs with "***two***".***

4. This Instrument comes into force ●.

ANNEX B

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 81-104 *COMMODITY POOLS*

1. National Instrument 81-104 Commodity Pools is amended by this Instrument.

2. Section 6.3 is amended by replacing "three***" with "***two***".***

3. This Instrument comes into force ●.

ANNEX C

Blackline of Select Provisions of National Instrument 81-102 *Investment Funds*

This blackline shows the proposed changes in Annex A to this Instrument.

9.4 Delivery of Funds and Settlement

(1) A principal distributor, a participating dealer, or a person or company providing services to the principal distributor or participating dealer must forward any cash or securities received for payment of the issue price of securities of a mutual fund to an order receipt office of the mutual fund so that the cash or securities arrive at the order receipt office as soon as practicable and in any event no later than the ~~third~~ second business day after the pricing date.

(2) Payment of the issue price of securities of a mutual fund must be made to the mutual fund on or before the ~~third~~ second business day after the pricing date for the securities by using any or a combination of the following methods of payment:

(a) by paying cash in a currency in which the net asset value per security of the mutual fund is calculated;

(b) by making good delivery of securities if

(i) the mutual fund would at the time of payment be permitted to purchase those securities,

(ii) the securities are acceptable to the portfolio adviser of the mutual fund and consistent with the mutual fund's investment objectives, and

(iii) the value of the securities is at least equal to the issue price of the securities of the mutual fund for which they are payment, valued as if the securities were portfolio assets of the mutual fund.

(3) [Repealed]

(4) If payment of the issue price of the securities of a mutual fund to which a purchase order pertains is not made on or before the ~~third~~ second business day after the pricing date or if the mutual fund has been paid the issue price by a cheque or method of payment that is subsequently not honoured,

(a) the mutual fund must redeem the securities to which the purchase order pertains as if it had received an order for the redemption of the securities on the ~~fourth~~ third business day after the pricing date or on the day on which the mutual fund first knows that the method of payment will not be honoured; and

(b) the amount of the redemption proceeds derived from the redemption must be applied to reduce the amount owing to the mutual fund on the purchase of the securities and any banking costs incurred by the mutual fund in connection with the dishonoured cheque.

(5) If the amount of the redemption proceeds referred to in subsection (4) exceeds the aggregate of issue price of the securities and any banking costs incurred by the mutual fund in connection with the dishonoured cheque, the difference must belong to the mutual fund.

(6) If the amount of the redemption proceeds referred to in subsection (4) is less than the issue price of the securities and any banking costs incurred by the mutual fund in connection with the dishonoured cheque,

(a) if the mutual fund has a principal distributor, the principal distributor must pay, immediately upon notification by the mutual fund, to the mutual fund the amount of the deficiency; or

(b) if the mutual fund does not have a principal distributor, the participating dealer that delivered the relevant purchase order to the mutual fund must pay immediately, upon notification by the mutual fund, to the mutual fund the amount of the deficiency …

10.4 Payment of Redemption Proceeds

(1) Subject to subsection 10.1(1) and to compliance with any requirements established by the mutual fund under paragraph 10.1(2)(b), a mutual fund must pay the redemption proceeds for securities that are the subject of a redemption order

(a) within ~~three~~ two business days after the date of calculation of the net asset value per security used in establishing the redemption price; or

(b) if payment of the redemption proceeds was not made at the time referred to in paragraph (a) because a requirement established under paragraph 10.1(2)(b) or a requirement of subsection 10.1(1) had not been satisfied, within ~~three~~ two business days of

(i) the satisfaction of the relevant requirement, or

(ii) the decision by the mutual fund to waive the requirement, if the requirement was a requirement established under paragraph 10.1(2)(b).

(1.1) Despite subsection (1), an exchange-traded mutual fund that is not in continuous distribution must pay the redemption proceeds for securities that are the subject of a redemption order no later than 15 business days after the valuation date on which the redemption price was established.

(1.2) A non-redeemable investment fund must pay the redemption proceeds for securities that are the subject of a redemption order no later than 15 business days after the valuation date on which the redemption price was established.

(2) The redemption proceeds for a redeemed security, less any applicable investor fees, must be paid to or to the order of the securityholder of the security.

(3) An investment fund must pay the redemption proceeds for a redeemed security by using any or a combination of the following methods of payment:

(a) by paying cash in the currency in which the net asset value per security of the redeemed security was calculated;

(b) with the prior written consent of the securityholder for a redemption other than an exchange of a manager-prescribed number of units, by making good delivery to the securityholder of portfolio assets, the value of which is equal to the amount at which those portfolio assets were valued in calculating the net asset value per security used to establish the redemption price.

(4) [Repealed]

(5) If the redemption proceeds for a redeemed security are paid in currency, an investment fund is deemed to have made payment

(a) when the investment fund, its manager or principal distributor mails a cheque or transmits funds in the required amount to or to the order of the securityholder of the securities; or

(b) if the securityholder has requested that redemption proceeds be delivered in a currency other than that permitted in subsection (3), when the investment fund delivers the redemption proceeds to the manager or principal distributor of the investment fund for conversion into that currency and delivery forthwith to the securityholder.

ANNEX D

Blackline of Select Provisions of National Instrument 81-104 *Commodity Pools*

This blackline shows the proposed changes in Annex B to this Instrument.

6.3 Payment of Redemption Proceeds

The references in subsection 10.4(1) of National Instrument 81-102 to " ~~three~~ two business days" shall be read as references to "15 days" in relation to commodity pools."

ANNEX E

Local Matters

The Ontario Securities Commission (the **Commission**) is publishing this Annex to supplement the CSA Notice.

Alternatives considered to the Proposed Amendments

The alternative to the Proposed Amendments would be not to proceed with making the Proposed Amendments to require conventional mutual funds to adopt a T+2 settlement cycle. Not proceeding with the Proposed Amendments would generally be inconsistent with the desire to facilitate the move to a T+2 settlement cycle, the industry support for the adoption of a T+2 settlement cycle, and any amendments made to NI 24-101 concerning ETF, equity and long-term debt markets that facilitate the adoption of a T+2 settlement cycle in those markets. Without the adoption of the Proposed Amendments, the industry led shift from a T+3 settlement cycle to a T+2 settlement cycle could result in some conventional mutual funds remaining on a T+3 settlement cycle. This situation would create investor confusion regarding the settlement cycle of securities of a particular conventional mutual fund.

Anticipated costs and benefits

As noted above, not proceeding with the Proposed Amendments would generally be inconsistent with the desire to facilitate the adoption of a T+2 settlement cycle. As the adoption of a T+2 settlement cycle is an industry led initiative, the costs of the adoption of a T+2 settlement cycle will, for the most part, be incurred regardless of the adoption of the Proposed Amendments. The Proposed Amendments will cause conventional funds to trade on the same settlement cycle as equity and long-term debt, and ETFs. The Proposed Amendments will require all conventional mutual funds to adopt a T+2 settlement cycle, thus avoiding investor confusion regarding the settlement cycle of securities of a particular conventional mutual fund.

Unpublished materials

In developing the Proposed Amendments, we have not relied on any significant unpublished study, report, or other written material.

Authority of the Proposed Amendments

The Proposed Amendments are being made under paragraph 143(1)31 of the *Securities Act* (Ontario). It authorizes the Commission to make rules regulating investment funds and the distribution and trading of the securities of investment funds including prescribing procedures applicable to investment funds, registrants and any other person or company in respect of sales and redemption of investment fund securities and payments for sales and redemptions.

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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

INVESTMENT FUNDS

Issuer Name:
BetaPro Gold Bullion 2x Daily Bull ETF
BetaPro Gold Bullion -2x Daily Bear ETF
BetaPro Crude Oil 2x Daily Bull ETF
BetaPro Crude Oil -2x Daily Bear ETF
BetaPro Natural Gas 2x Daily Bull ETF
BetaPro Natural Gas -2x Daily Bear ETF
BetaPro Silver 2x Daily Bull ETF
BetaPro Silver -2x Daily Bear ETF
Principal Regulator - Ontario
Type and Date:
Amendment #4 to Final Long Form Prospectus dated April 17, 2017
Received on April 18, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
HORIZONS ETFs MANAGEMENT (CANADA) INC.
Project #2495606

Issuer Name:
Capital Group Canadian Core Plus Fixed Income Fund (Canada)
Capital Group Canadian Focused Equity Fund (Canada)
Capital Group Emerging Markets Total Opportunities Fund (Canada)
Capital Group Global Balanced Fund (Canada)
Capital Group Global Equity Fund (Canada)
Capital Group International Equity Fund (Canada)
Capital Group U.S. Equity Fund (Canada)
Principal Regulator - Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated April 19, 2017
NP11-202 Preliminary Receipt dated April 20, 2017
Offering Price and Description:
Series T4 and F4 Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
CAPITAL INTERNATIONAL ASSET MANAGEMENT (CANADA), INC.
Project #2612895

Issuer Name:
East Coast Investment Grade Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated April 18, 2017
NP 11-202 Preliminary Receipt dated April 19, 2017
Offering Price and Description:
Offering: $200,000,000 - Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Arrow Capital Management Inc.
Project #2612612

Issuer Name:
Excel India Balanced Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated April 17, 2017
Received on April 20, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Excel Funds Management Inc.
Promoter(s):
Excel Funds Management Inc.
Project #2530422

Issuer Name:
Fidelity U.S. Dividend Fund
Fidelity U.S. Dividend Investment Trust
Fidelity U.S. Dividend Registered Fund
Fidelity Tactical High Income Fund
Principal Regulator - Ontario
Type and Date:
Amendment #4 to the AIF dated April 17, 2017
Received on April 18, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Fidelity Investments Canada Limited
Promoter(s):
Fidelity Investments Canada ULC
Project #2535350

Issuer Name:
Fidelity U.S. Dividend Private Pool
Principal Regulator - Ontario
Type and Date:
Amendment #2 to the AIF dated April 17, 2017
Received on April 18, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Promoter(s):
FIDELITY INVESTMENTS CANADA ULC
Project #2515520

Issuer Name:
Horizons Gold ETF (formerly Horizons COMEX® Gold ETF)
Horizons Silver ETF (formerly Horizons COMEX® Silver ETF)
Horizons Crude Oil ETF (formerly Horizons NYMEX® Crude Oil ETF)
Horizons Natural Gas ETF (formerly Horizons NYMEX® Natural Gas ETF)
Principal Regulator - Ontario
Type and Date:
Amendment #3 to Final Long Form Prospectus dated April 17, 2017
Received on April 18, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
HORIZONS ETFs MANAGEMENT (CANADA) INC.
Project #2495615

Issuer Name:
PowerShares Senior Loan Index ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated April 21, 2017
Received on April 21, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
INVESCO CANADA LTD.
Project #2575422

Issuer Name:
Redwood Canadian Preferred Share Fund (formerly Redwood Floating Rate Preferred Fund)
Redwood Core Income Equity Fund (formerly Connected Wealth Core Income Class)
Redwood Equity Growth Fund (formerly Redwood Equity Growth Class)
Redwood Global Equity Strategy Fund (formerly Redwood Global Equity Strategy Class)
Redwood Income Growth Fund (formerly Redwood Income Growth Class)
Redwood Infrastructure Income Fund
Redwood Tactical Asset Allocation Fund (formerly Connected Wealth Tactical Class)
Redwood Unconstrained Bond Class (formerly Redwood Flexible Bond Class)
Principal Regulator - Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated April 10, 2017
NP11-202 Preliminary Receipt dated April 18, 2017
Offering Price and Description:
ETF Units, Class A and Class F Units, ETF Shares, Series A and F Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
Redwood Asset Management Inc.
Project #2610753

NON-INVESTMENT FUNDS

Issuer Name:
Cobalt 27 Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated April 21, 2017
NP 11-202 Preliminary Receipt dated April 21, 2017
Offering Price and Description:
$200,000,000.00 - * Shares
Price: $* per Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Canaccord Genuity Corp.
TD Securities Inc.
Promoter(s):
-
Project #2613936

Issuer Name:
InMed Pharmaceuticals Inc. (formerly Cannabis Technologies Inc,)
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated April 20, 2017
NP 11-202 Preliminary Receipt dated April 20, 2017
Offering Price and Description:
$[*[- [*] Common Shares
Price: $[*] per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
-
Project #2613486

Issuer Name:
MedReleaf Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated April 19, 2017
NP 11-202 Preliminary Receipt dated April 19, 2017
Offering Price and Description:
* Common Shares - *$
Price: $* per Offered Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Promoter(s):
-
Project #2612740

Issuer Name:
Razor Energy Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated April 19, 2017
NP 11-202 Preliminary Receipt dated April 19, 2017
Offering Price and Description:
Up to $15,000,000.00 - Up to 5,000,000 Subscription Receipts each representing the right to receive one Common Share and one-half of one Warrant
Price: $3.00 per Subscription Receipt
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Canaccord Genuity Corp.
Eight Capital
National Bank Financial Inc.
Acumen Capital Finance Partners Limited
Macquarie Capital Markets Canada Ltd.
Promoter(s):
-
Project #2612946

Issuer Name:
Red Eagle Exploration Limited
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated April 18, 2017
NP 11-202 Preliminary Receipt dated April 18, 2017
Offering Price and Description:
Maximum Offering: $20,000,000.00 - 133,333,333 Units
Minimum Offering: $10,000,000.00 - 66,666,666 Units
Price: $0.15 per Unit
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
National Bank Financial Inc.
PI Financial Corp.
Promoter(s):
-
Project #2612483

Issuer Name:
Spin Master Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated April 21, 2017
NP 11-202 Preliminary Receipt dated April 21, 2017
Offering Price and Description:
$600,000,000.00 - Subordinate Voting Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Marathon Investment Holdings Ltd.
Trumbanick Investments Ltd.
LentilBerry Inc.
Project #2613685

Issuer Name:
STEP Energy Services Ltd.
Principal Regulator - Alberta
Type and Date:
Third Amended and Restated Preliminary Prospectus dated April 24, 2017 Amending and Restating the Second Amended and Restated Preliminary Prospectus dated April 13, 2017, which Amended and Restated the Amended and Restated Preliminary Prospectus dated February 27, 2017, which Amended and Restated the Preliminary Prospectus dated February 9, 2017.
NP 11-202 Preliminary Receipt dated April 24, 2017
Offering Price and Description:
$* - * Common Shares
Price: $10.00 per Common Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Raymond James Ltd.
BMO Nesbitt Burns Inc.
Peters & Co. Limited
RBC Dominion Securities Inc.
GMP Securities L.P.
National Bank Financial Inc.
Scotia Capital Inc.
AltaCorp Capital Inc.
Promoter(s):
-
Project #2582636

Issuer Name:
Summit Industrial Income REIT
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated April 18, 2017
NP 11-202 Preliminary Receipt dated April 19, 2017
Offering Price and Description:
$400,000,000.00 – Units, Debt Securities, Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2612535

Issuer Name:
Treasury Metals Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated April 20, 2017
NP 11-202 Preliminary Receipt dated April 20, 2017
Offering Price and Description:
Maximum Offering: $8,060,000.00 - A maximum of 12,400,000 Units
Price: $0.65 per Unit
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
PI Financial Corp.
Promoter(s):
-
Project #2613300

Issuer Name:
Zymeworks Inc.
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Base PREP Prospectus dated April 17, 2017 Amending and Restating the Preliminary Base PREP Prospectus dated March 31, 2017
NP 11-202 Preliminary Receipt dated April 18, 2017
Offering Price and Description:
US$[*] - 4,500,000.00 Common Shares
Price: US$[*] per Common Share
Underwriter(s) or Distributor(s):
Citigroup Global Markets Canada Inc.
Barclays Capital Canada Inc.
Wells Fargo Securities Canada, Ltd.
Canaccord Genuity Corp.
Cormark Securities Inc.
Promoter(s):
-
Project #2607519

Issuer Name:
Zymeworks Inc.
Principal Regulator - British Columbia
Type and Date:
Second Amended and Restated Preliminary Base PREP Prospectus dated April 24, 2017 Amending and Restating the Amended and Restated Preliminary Base PREP Prospectus dated April 17, 2017, which Amended and Restated the Preliminary Base PREP Prospectus dated March 31, 2017.
NP 11-202 Preliminary Receipt dated April 24, 2017
Offering Price and Description:
US$[*] - 4,500,000 Common Shares
Price: US$[*] Common Share
Underwriter(s) or Distributor(s):
Citigroup Global Markets Canada Inc.
Barclays Capital Canada Inc.
Wells Fargo Securities Canada, Ltd.
Canaccord Genuity Corp.
Cormark Securities Inc.
Promoter(s):
-
Project #2607519

Issuer Name:
Ag Growth International Inc.
Principal Regulator - Manitoba
Type and Date:
Final Short Form Prospectus dated April 18, 2017
NP 11-202 Receipt dated April 18, 2017
Offering Price and Description:
$75,000,000.00 - 4.85% Convertible Unsecured Subordinated Debentures
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
National Bank Financial Inc.
TD Securities Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
Raymond James Ltd.
Altacorp Capital Inc.
Laurentian Bank Securities Inc.
Promoter(s):
-
Project #2608683

Issuer Name:
Aztec Minerals Corp.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated April 19, 2017
NP 11-202 Receipt dated April 21, 2017
Offering Price and Description:
$3,500,000.00 Offering of Units- 10,000,000 Units at a price of $0.35 per Unit
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
-
Project #2583880

Issuer Name:
BUFFALO CAPITAL INC.
Principal Regulator - Manitoba
Type and Date:
Final CPC Prospectus (TSX-V) dated April 20, 2017
NP 11-202 Receipt dated April 20, 2017
Offering Price and Description:
MINIMUM OFFERING: $200,000.00 or 1,000,000 Common Shares
MAXIMUM OFFERING: $400,000.00 or 2,000,000 Common Shares
Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
PI Financial Corp.
Promoter(s):
Albert D. Friesen
Project #2594483

Issuer Name:
Chemtrade Logistics Income Fund
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated April 24, 2017
NP 11-202 Receipt dated April 24, 2017
Offering Price and Description:
$175,000,000.00 - 4.75% Convertible Unsecured Subordinated Debentures
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
TD Securities Inc.
Raymond James Ltd.
GMP Securities L.P.
Promoter(s):
-
Project #2610329

Issuer Name:
Element Fleet Management Corp. (formerly Element Financial Corporation)
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated April 20, 2017
NP 11-202 Receipt dated April 21, 2017
Offering Price and Description:
$3,750,000,000.00 - Debt Securities, Preferred Shares, Common Shares, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2611080

Issuer Name:
K-Bro Linen Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated April 18, 2017
NP 11-202 Receipt dated April 18, 2017
Offering Price and Description:
$50,160,000.00 - 1,320,000 Common Shares
Price: $38.00 per Common Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
Acumen Capital Finance Partners Limited
GMP Securities L.P.
Laurentian Bank Securities Inc.
Cormark Securities Inc.
National Bank Financial Inc.
Echelon Wealth Partners Inc.
Promoter(s):
-
Project #2608636

Issuer Name:
Leucrotta Exploration Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated April 19, 2017
NP 11-202 Receipt dated April 19, 2017
Offering Price and Description:
$80,000,550 - 33,333,400 Common Shares, price is $2.25 per Common Share
1,852,000 CEE Flow-Through Shares, price is$2.70 per CEE Flow-Through Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
National Bank Financial Inc.
Acumen Capital Finance Partners Limited
Clarus Securities Inc.
Desjardins Securities Inc.
Macquarie Capital Markets Canada Ltd.
Altacorp Capital Inc.
Cormark Securities Inc.
Paradigm Capital Inc.
RBC Dominion Securities Inc.
GMP Securities L.P.
Beacon Securities Limited
Canaccord Genuity Corp.
Raymond James Ltd.
Promoter(s):
-
Project #2608984

Issuer Name:
Trenchant Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated April 20, 2017
NP 11-202 Receipt dated April 21, 2017
Offering Price and Description:
Minimum Offering: $5,000,000.00
Maximum Offering: $20,000,000.00
9% Secured Convertible Debentures at a price of $1,000 per Debenture
Underwriter(s) or Distributor(s):
Industrial Alliance Securities Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Raymond James Ltd.
Echelon Wealth Partners Inc.
Mackie Research Capital Corporation
PI Financial Corp.
Hampton Securities Limited
Integral Wealth Securities Limited
Leede Jones Gable Inc.
Promoter(s):
Eric Boehnke
Project #2593147

Issuer Name:
TriStar Gold Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated April 21, 2017
NP 11-202 Receipt dated April 21, 2017
Offering Price and Description:
Minimum Offering: $4,000,000.00 or 13,333,333 Units
Maximum Offering: $7,000,000.00 or 23,333,333 Units
at a price of $0.30 per unit.
Underwriter(s) or Distributor(s):
Echelon Wealth Partners Inc.
Paradigm Capital Inc.
Promoter(s):
-
Project #2598639

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	DGW Capital Corp.	Exempt Market Dealer	April 19, 2017
Change In Registration Categories	Murchinson Ltd.	From: Portfolio Manager To: Portfolio Manager, Exempt Marker Dealer and Investment Fund Manager	April 24, 2017

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 TSX Inc. – Enhancement to the Opening Auction Functionality – Notice of Proposed Amendment and Request for Comments

TSX INC.

NOTICE OF PROPOSED AMENDMENT AND REQUEST FOR COMMENTS

ENHANCEMENT TO THE OPENING AUCTION FUNCTIONALITY

TSX Inc. ("TSX") is publishing this Notice of Proposed Amendment in accordance with the "Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto".

Market participants are invited to provide comments on the proposed changes. Comments should be in writing and delivered by May 29, 2017 to:

Carina Kwan
Legal Counsel, Regulatory Affairs
TMX Group
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
Email: marketregulation@osc.gov.on.ca

Comments will be made publicly available unless confidentiality is requested. Upon completion of the review by Commission staff, and in the absence of any regulatory concerns, notice will be published to confirm completion of Commission staff's review.

Proposed Amendment

TSX is seeking to introduce an enhancement to its current opening auction by introducing a new Limit on Open order type. Limit on Open "LOO" orders will trade in the opening auction, with any unexecuted portion being cancelled immediately before the commencement of the continuous trading session.

To implement this enhancement to TSX opening auction functionality, an amendment to the TSX Rule Book is needed to allow for the cancellation of LOO orders at the end of the opening allocation, before continuous trading commences (the "Proposed Amendment").

Please see Appendix A for a blackline of the Proposed Amendment to TSX Rule 4-701(7) and Appendix B for a clean version of the Proposed Amendment.

Rationale

Currently, if a limit order is sent to TSX for execution in the opening auction, any portion of the order that was not filled at the opening remains in the book for execution in the continuous trading session. The LOO order type will provide additional options for participants to manage their opening orders by specifying that the order is to participate only in the opening auction, subject

to its indicated limit price. The order will have the same standing in the opening allocation priority as a regular limit order participating in the opening auction.

Expected Date of Implementation

The Proposed Amendment and related functionality changes are expected to become effective in Q3 2017.

Expected Impact

The LOO order type will provide additional options for participants to manage their opening orders by specifying that the order is to participate only in the opening auction, subject to its indicated limit price.

Expected Impact of Proposed Changes on the Exchange's Compliance with Ontario Securities Law

The proposed changes will not impact TSX's compliance with Ontario securities law and in particular the requirements for fair access and maintenance of fair and orderly markets.

Estimated Time Required by Members and Service Vendors to Modify Their Own Systems after Implementation of the Proposed Amendments

This change is an extension of current functionality and behavior, by specifying an additional duration option on a standard limit order.

The proposed change is not expected to have significant impact, as this enhancement is an extension of the current order duration functionality on a limit order, and because adoption of the functionality is optional (the use of the LOO order type is not explicitly mandated).

Do the Changes Currently Exist in Other Markets or Jurisdictions

We understand that Aequitas Lit Book's opening auction for Aequitas-listed securities has a similar order type to the proposed LOO.

In addition, this feature is generally available on U.S. equities marketplaces.

APPENDIX A

BLACKLINE OF AMENDMENTS TO TSX RULE BOOK

PART 4 – TRADING OF SECURITIES

DIVISION 7 – POST OPENING

Rule 4-701 Execution of Trades at the Opening

(1) Subject to Rule 4-702, securities shall open for trading at the opening time, and any opening trades shall be at the calculated opening price.

Amended (February 24, 2012)

(2) The following orders shall be completely filled at the opening:

(a) market orders and better-priced limit orders; and

(b) MBF orders.

(c) **Repealed (October 15, 2012)**

(d) **Repealed (October 15, 2012)**

Amended (October 15, 2012)

(3) The following orders are eligible to participate in the opening but are not guaranteed to be filled:

(a) **Repealed (August 7, 2001)**

(b) limit orders at the opening price.

(c) **Repealed (October 15, 2012)**

Amended (October 15, 2012)

(4) Unless otherwise provided, trades shall be allocated among orders at the opening price in the following manner and sequence:

(a) trades shall be allocated to orders guaranteed a fill pursuant to Rule 4-701(2) then;

(b) all possible crosses shall be executed; then

(c) **Repealed (August 7, 2001)**

(d) to limit orders at the opening price according to time priority.

(5) **Repealed (August 7, 2001)**

(6) **Repealed (August 7, 2001)**

(7) Orders at the opening price that are not completely filled at the opening shall remain in the Book, at the opening price, subject to any conditions imposed on the order that would result in the cancellation of any portion of the order that was not filled at the calculated opening price.

Amended (●, 2017)

APPENDIX B

CLEAN VERSION OF AMENDMENTS TO TSX RULE BOOK

PART 4 – TRADING OF SECURITIES

DIVISION 7 – POST OPENING

Rule 4-701 Execution of Trades at the Opening

(1) Subject to Rule 4-702, securities shall open for trading at the opening time, and any opening trades shall be at the calculated opening price.

Amended (February 24, 2012)

(2) The following orders shall be completely filled at the opening:

(a) market orders and better-priced limit orders; and

(b) MBF orders.

(c) **Repealed (October 15, 2012)**

(d) **Repealed (October 15, 2012)**

Amended (October 15, 2012)

(3) The following orders are eligible to participate in the opening but are not guaranteed to be filled:

(a) **Repealed (August 7, 2001)**

(b) limit orders at the opening price.

(c) **Repealed (October 15, 2012)**

Amended (October 15, 2012)

(4) Unless otherwise provided, trades shall be allocated among orders at the opening price in the following manner and sequence:

(a) trades shall be allocated to orders guaranteed a fill pursuant to Rule 4-701(2) then;

(b) all possible crosses shall be executed; then

(c) **Repealed (August 7, 2001)**

(d) to limit orders at the opening price according to time priority.

(5) **Repealed (August 7, 2001)**

(6) **Repealed (August 7, 2001)**

(7) Orders at the opening price that are not completely filled at the opening shall remain in the Book, at the opening price, subject to any conditions imposed on the order that would result in the cancellation of any portion of the order that was not filled at the calculated opening price.

Amended (●, 2017)

13.2.2 TSX Inc. – Enhancements to Dark Trading Functionality – Notice of Proposed Amendments and Request for Comments

TSX INC.

NOTICE OF PROPOSED AMENDMENTS AND REQUEST FOR COMMENTS

ENHANCEMENTS TO DARK TRADING FUNCTIONALITY

TSX Inc. ("TSX") is publishing this Notice of Proposed Amendments in accordance with the "Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto".

Market participants are invited to provide comments on the proposed changes. Comments should be in writing and delivered by May 29, 2017 to:

Carina Kwan
Legal Counsel, Regulatory Affairs
TMX Group
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
Email: marketregulation@osc.gov.on.ca

Comments will be made publicly available unless confidentiality is requested. Upon completion of the review by Commission staff, and in the absence of any regulatory concerns, notice will be published to confirm completion of Commission staff's review and the Commission's approval.

Background

TSX is seeking to introduce enhancements to its current on-book dark offering in response to customer demand, in recognition of the continued evolution and growth of dark trading in Canada, and to remain competitive with the offerings of other marketplaces

At present, TSX's on-book dark functionality generally consists of dark limit orders, dark mid-point orders, and the option to include a 'Minimum Quantity' condition. After reviewing the offerings of other marketplaces and consulting with various stakeholders, we are proposing enhancements to our on-book dark functionality which are intended to better accommodate the range of dark strategies employed by TSX Participating Organizations and their clients, and to better facilitate integration of TSX into dealers' multi-venue dark routing strategies.

Details and Rationale

The proposed enhancements to TSX on-book dark functionality, as well as the proposed amendments to the TSX Rule Book to accommodate such enhancements (the "Proposed Amendments"), are discussed below.

1) Dark pegged order types

TSX will add the following dark pegged order types in order to accommodate a wider range of dark strategies than is currently afforded by TSX's existing dark offering.

Primary Peg

- Pegs to the same-side Protected NBBO.
- Offsets will be allowed and can be aggressive or passive but must be entered in valid tick increments.

- Booked Primary Pegs with aggressive offsets that would otherwise lock or cross with the opposite side Protected NBBO will be pegged at one-tick inside the opposite side Protected NBBO.

- Where the Protected NBBO spread is one tick or less, a Primary Peg with an aggressive offset will be pegged at the mid-point.

- Where there is no opposite-side NBBO, a Primary Peg will be executable at the less aggressive of its pegged value maximum or its limit price, subject to current TSX bid/ask tick limits.

Market Peg

- Pegs to the opposite-side Protected NBBO.

- Only passive offsets will be allowed, and will default to one-tick inside the opposite-side Protected NBBO. A Market Peg will never lock or cross with the opposite-side Protected NBBO.

- Offsets must be entered in valid tick increments.

- Market Pegs will float up to their stated limit price, and will remain executable at their stated limit.

- Market Pegs become non-executable where there is no opposite-side Protected NBBO.

Minimum Price Improvement Peg

- Will behave in the same manner as a Primary Peg with a one-tick aggressive offset, *except* as follows:

    - Where the pegged value would otherwise be the midpoint of the Protected NBBO spread (e.g., where the Protected NBBO spread compresses to two cents or less for a stock priced over $0.50), the peg will rest as a dark order at the same-side NBBO.

  Minimum Price Improvement Pegs will therefore never rest at the mid-point of the Protected NBBO. A participant that wishes to always peg with minimum price improvement, including at the midpoint when the spread is two ticks or less, can do so by using a Primary Peg with a one-tick aggressive offset.

For each of the above pegged order types, the following apply:

- The pegs will float up to their stated limit price, and will remain executable at their stated limit. This differs from current mid-point peg functionality where the peg becomes non-executable if the mid-point exceeds the order's limit price. Current mid-point peg functionality will remain unchanged.

- Pegged orders will not trade when the Protected NBBO is locked or crossed.

- Normal priority rules apply.

- Pegged orders become non-executable during the opening and closing auctions, and during the extended trading session.

- Pegged orders are sent to the IIROC Market Regulation Feed upon entry or trade. Changes in the price of the order resulting from changes to the Protected NBBO will not be provided to the IIROC Market Regulation Feed.

Note: Current functionality for mid-point pegs on TSX will remain unchanged.

2) 'Seek Dark Liquidity' only capability

TSX will add a 'Seek Dark Liquidity' (SDL) feature for use only with orders marked as IOC or FOK. The SDL feature will ensure that an incoming active order will execute only against resting orders that are dark. This feature will facilitate integration of TSX on-book dark into dealers' multi-venue dark routing strategies where attempting to access dark only or when sweeping dark before lit.

SDL can be set by participants with either of the two following options:

- Option 1 – Trade against dark resting orders at prices up to and including one tick inside the opposite side Protected NBBO (or the order's limit price if less aggressive).

- Option 2 – Trade against dark resting orders at prices up to and including the opposite-side Protected NBBO (or the order's limit price if less aggressive).

When Option 2 is selected, executions against dark liquidity resting at the opposite-side Protected NBBO will be subject to regulatory restrictions applicable to 'at-the-quote' dark trading.[1] Consequently, where there is resting visible liquidity on TSX at the opposite-side Protected NBBO, an incoming SDL order marked for Option 2 will only be executable against dark resting orders to a maximum of one tick inside the opposite side Protected NBBO.

3) Minimum Quantity and Minimum Interaction Size

Minimum Quantity

TSX is modifying the current Minimum Quantity (MinQty) functionality to make it more consistent with the similar feature offered by other markets, and to address participant feedback about the usability and outcomes via the current functionality. The existing MinQty functionality will be modified in the following ways:

- MinQty will be available for use with any dark order – specifically pegs, dark limit orders and SDL orders. (MinQty is currently only available for use with dark mid-point orders.)

- The current minimum 20 board lot condition applicable to MinQty usage will be removed.

- The priority benefit currently provided to a resting dark mid-point satisfying the MinQty usage condition will be removed. A dark order with a MinQty restriction will no longer have automatic priority over another resting dark order at the same price level.

MinQty will continue to be enforced on both active and passive fills. When enforced on active fills, MinQty determines the minimum aggregate volume that must be filled (regardless of the size of each individual fill) in order to execute actively. When enforced on passive fills, MinQty allows the resting order to be filled against a contra-side incoming order if the resting order will receive an execution of at least the MinQty size condition.

Minimum Interaction Size

TSX will introduce a new feature called 'Minimum Interaction Size' (MIS) intended to address participant concerns around potential information leakage when executing dark against small-sized contra-side orders.

MIS will determine the minimum size that a contra-side order must be in order to execute against it. Like MinQty, MIS will only be available for use with dark order types (pegs, dark limit orders and SDL orders).

MIS will be enforced on both active and passive fills. For active fills, MIS will be enforced to allow executions against resting contra-side dark orders that meet or exceed the specified MIS size. A MIS order will generally not proceed to execute actively at a subsequent price level where it would otherwise mean trading through dark resting orders that did not meet the MIS size. In these cases, the MIS order will either book and lock (dark) with the unexecuted smaller-sized resting dark orders or will cancel back based on the specified time-in-force condition. MIS will not be enforced if executing against resting contra-side visible orders.

When enforced on passive fills, MIS will allow the resting order to be filled against a contra-side incoming order when the original size of the incoming order meets or exceeds the resting order's MIS size condition.

If both MinQty and MIS are specified on an order, only the MIS will be applied.

4) Iceberg enhancements

Random refresh size for displayed quantity

TSX will provide additional means for iceberg users to obscure the presence of their iceberg order by providing an option to randomize the refresh size for the displayed quantity within a specified range.

[1] Requirements in section 6.6 of UMIR to execute visible before dark liquidity and minimum size requirements applicable to incoming orders (greater than 50 standard trading units or $100,000 in value).

Participants will be able to specify a +/- range which, when applied to their displayed quantity amount entered by the user, will establish the ceiling / floor for randomization of the refreshed display size. For example, an iceberg order with an entered display quantity of 700 and a +/- range of 500 shares will refresh the displayed quantity within the range of 200 to 1,200 shares. When a +/- range is selected, the initial displayed size will also be randomized.

In practice, the lower and upper bounds for any calculated range will always be constrained to a minimum of one board lot and a maximum of the total remaining order size.

Proposed Amendments to TSX Rule Book

To implement the Minimum Quantity changes above, certain amendments to the TSX Rule Book are required:

- remove the definition of 'Minimum Quantity' (which imposes a minimum size restriction); and
- remove the current priority allocation benefit for dark orders with a minimum quantity.

See the blacklined amendments in Appendix A to TSX Rules 1-101, 4-801(2) and 4-802(3). Please see Appendix B for a clean version of the Proposed Amendments.

Expected Date of Implementation

The proposed changes and related rule amendments are expected to become effective in Q3 2017.

Expected Impact

TSX is enhancing its current on-book dark functionality in response to customer demand, in recognition of the continued evolution and growth of dark trading in Canada, and to remain competitive with the offerings of other marketplaces.

The changes are intended to better accommodate the range of dark strategies employed by TSX Participating Organizations and their clients, and to better facilitate integration of TSX into dealers' multi-venue dark routing strategies.

Expected Impact of Proposed Changes on the Exchange's Compliance with Ontario Securities Law

The proposed changes will not impact TSX's compliance with Ontario securities law and in particular the requirements for fair access and maintenance of fair and orderly markets. TSX will continue to apply appropriate execution logic to ensure conformance with dark price improvement requirements under section 6.6 of UMIR.

Estimated Time Required by Members and Service Vendors to Modify Their Own Systems after Implementation of the Proposed Amendments

Most of the changes represent an extension of current functionality and behaviour, or are features already available on other markets. Adoption of the functionality is also optional on the basis that neither the use of dark orders nor the accessing of resting dark liquidity is explicitly mandated, and other options currently exist via dark offerings on other marketplaces.

Regardless, based on current planned implementation timelines, we anticipate that at least 90 days will be provided between regulatory approval of the proposed change and implementation which should be sufficient to allow adoption by those that wish to take advantage of the enhancements. These timelines are consistent with the expectations set out in OSC Staff Notice 21-706 *Marketplaces' Initial Operations and Material System Changes* applicable to 'material' systems changes and the launch of new marketplaces.

Do the Changes Currently Exist in Other Markets or Jurisdictions

These features are generally available on other Canadian marketplaces, or represent minor modifications to existing and available dark functionality.

APPENDIX A

BLACKLINE OF AMENDMENTS TO TSX RULE BOOK

PART 1 – INTERPRETATION

Rule 1-101 Definitions (Amended)

"**Minimum Quantity**" ~~means the minimum size for execution of an order which must not be less than such size as determined by the Exchange.~~

~~**Added (January 13, 2012)**~~**Repealed (●, 2017)**

PART 4 – TRADING OF SECURITIES

DIVISION 8 – POST OPENING

Rule 4-801 "Establishing Priority"

(1) A Long Life order at a particular price shall be executed prior to an order that is not a Long Life order at that price ("long-life priority"), except in the case of an Undisclosed Order, in which case no long-life priority is provided.

Added November 16, 2015

(2) Subject to Rule 4-801(1), a disclosed order shall be executed prior to an Undisclosed Order or any undisclosed portion of an order at the same price; and an undisclosed portion of an order shall be executed prior to an Undisclosed Order at the same price~~; and an Undisclosed Order with a Minimum Quantity shall be executed prior to an Undisclosed Order without a Minimum Quantity at the same price~~.

Amended January 13, 2012, ~~and~~ November 16, 2015 and ●, 2017

(3) Subject to Rule 4-801(1), Rule 4-801(2), and Rule 4-802, an order at a particular price shall be executed prior to any orders at that price entered subsequently, and after all orders entered previously ("time priority"), except as may be provided otherwise.

(4) An order shall lose time priority if its disclosed volume is increased and shall rank behind all other disclosed orders at that price.

Amended March 1, 2011 and November 16, 2015

Rule 4-802 Allocation of Trades (Amended)

(1) Subject to Rule 4-801(1) and Rule 4-801(2), an order that is entered for execution on the Exchange may execute without interference from any order in the Book if the order is:

(a) part of an internal cross;

(b) an unattributed order that is part of an intentional cross;

(c) part of an intentional cross entered by a Participating Organization in order to fill a client's Special Trading Session order;

(d) part of an exempt related security cross, provided that the order is exempt from interference only to the extent that there are no offsetting orders entered in the Book, at least one of which is an order entered by the same Participating Organization, which can fill both the client's order for the particular security, in whole or in part, and an equivalent volume of the client's order for the related security. Orders in the Book will only be considered to be offsetting orders if the related security spread on execution of the clients' orders against orders in the Book is equal to or more beneficial than the related security spread offered by the Participating Organization for the contingent cross arrangement;

(e) entered as part of a Specialty Price Cross; or

(f) part of a Designated Trade.

Amended January 13, 2012 and November 16, 2015

(2) Subject to subsection (1), an intentional cross executed on the Exchange will be subject to interference from orders in the Book from the same Participating Organization according to time priority, provided that such orders in the Book are attributed orders.

(3) Subject to Rule 4-801(1), ~~and~~ Rule 4-801(2), and any conditions imposed on either the tradeable order or the offsetting order that would otherwise prevent the two orders from executing against each other, a tradeable order that is entered in the Book and is not a Bypass Order shall be executed on allocation in the following sequence:

(a) to offsetting orders entered in the Book by the Participating Organization that entered the tradeable order according to the time of entry of the offsetting order in the Book, provided that neither the tradeable order nor the offsetting order is an unattributed order; then

(b) to offsetting orders in the Book according to the time of entry of the offsetting order in the Book; then

(c) to the Market Maker if the tradeable order is disclosed and is eligible for a Minimum Guaranteed Fill.

(4) A tradeable order that is entered in the Book and is a Bypass Order shall execute against the disclosed portion of offsetting orders in the Book according to the price/time priority established in Rule 4-801.

Amended January 13, ~~2012 and~~2012, November 16, 2015 and ●, 2017

APPENDIX B

CLEAN VERSION OF AMENDMENTS TO TSX RULE BOOK

PART 1 – INTERPRETATION

Rule 1-101 Definitions (Amended)

"Minimum Quantity"

Repealed (●, 2017)

PART 4 – TRADING OF SECURITIES

DIVISION 8 – POST OPENING

Rule 4-801 "Establishing Priority"

(1) A Long Life order at a particular price shall be executed prior to an order that is not a Long Life order at that price ("long-life priority"), except in the case of an Undisclosed Order, in which case no long-life priority is provided.

Added November 16, 2015

(2) Subject to Rule 4-801(1), a disclosed order shall be executed prior to an Undisclosed Order or any undisclosed portion of an order at the same price; and an undisclosed portion of an order shall be executed prior to an Undisclosed Order at the same price.

Amended January 13, 2012, November 16, 2015 and ●, 2017

(3) Subject to Rule 4-801(1), Rule 4-801(2), and Rule 4-802, an order at a particular price shall be executed prior to any orders at that price entered subsequently, and after all orders entered previously ("time priority"), except as may be provided otherwise.

(4) An order shall lose time priority if its disclosed volume is increased and shall rank behind all other disclosed orders at that price.

Amended March 1, 2011 and November 16, 2015

Rule 4-802 Allocation of Trades (Amended)

(1) Subject to Rule 4-801(1) and Rule 4-801(2), an order that is entered for execution on the Exchange may execute without interference from any order in the Book if the order is:

(a) part of an internal cross;

(b) an unattributed order that is part of an intentional cross;

(c) part of an intentional cross entered by a Participating Organization in order to fill a client's Special Trading Session order;

(d) part of an exempt related security cross, provided that the order is exempt from interference only to the extent that there are no offsetting orders entered in the Book, at least one of which is an order entered by the same Participating Organization, which can fill both the client's order for the particular security, in whole or in part, and an equivalent volume of the client's order for the related security. Orders in the Book will only be considered to be offsetting orders if the related security spread on execution of the clients' orders against orders in the Book is equal to or more beneficial than the related security spread offered by the Participating Organization for the contingent cross arrangement;

(e) entered as part of a Specialty Price Cross; or

(f) part of a Designated Trade.

Amended January 13, 2012 and November 16, 2015

(2) Subject to subsection (1), an intentional cross executed on the Exchange will be subject to interference from orders in the Book from the same Participating Organization according to time priority, provided that such orders in the Book are attributed orders.

(3) Subject to Rule 4-801(1), Rule 4-801(2), and any conditions imposed on either the tradeable order or the offsetting order that would otherwise prevent the two orders from executing against each other, a tradeable order that is entered in the Book and is not a Bypass Order shall be executed on allocation in the following sequence:

(a) to offsetting orders entered in the Book by the Participating Organization that entered the tradeable order according to the time of entry of the offsetting order in the Book, provided that neither the tradeable order nor the offsetting order is an unattributed order; then

(b) to offsetting orders in the Book according to the time of entry of the offsetting order in the Book; then

(c) to the Market Maker if the tradeable order is disclosed and is eligible for a Minimum Guaranteed Fill.

(4) A tradeable order that is entered in the Book and is a Bypass Order shall execute against the disclosed portion of offsetting orders in the Book according to the price/time priority established in Rule 4-801.

Amended January 13, 2012, November 16, 2015 and ●, 2017

13.3 Clearing Agencies

13.3.1 Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc. – Material Amendments to CDS Procedures Relating to Cessation of Eligibility of Physical Certificates for Deposit at CDS – Notice of Approval

THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED AND
CDS CLEARING AND DEPOSITORY SERVICES INC.

NOTICE OF APPROVAL

MATERIAL AMENDMENTS TO CDS PROCEDURES RELATING TO
CESSATION OF ELIGIBILITY OF PHYSICAL CERTIFICATES FOR DEPOSIT AT CDS

Introduction

Pursuant to Appendix "A" of Schedule "B" of the CDS Recognition Order (RO) the Commission approved on March 24, 2017, amendments to the CDS Procedures related to the cessation of eligibility of physical certificates for deposit. The Amendments were published for public comment in a Notice and Request for Comments on December 15, 2016. A copy of the CDS notice and comment letter can found at http://www.osc.gov.on.ca/en/20138.htm

Summary of Comments

CDS received one comment letter in response to the proposed procedure changes. A summary of the comments submitted, together with CDS's response, is attached at **Appendix A**.

No changes have been made with respect to the Amendments outlined in the Notice and Request for Comments.

Effective Date

CDS has stated the changes are planned to be implemented August 31, 2017.

APPENDIX A

SUMMARY OF COMMENTS AND RESPONSES

List of Commenters:

1. Computershare

Capitalized terms used and not otherwise defined shall have the meaning given in the Request for Comments published on the OSC website on December 15, 2016.

Notice and Request for Comment - Cessation of Eligibility of Physical Certificates for Deposit

Comment	CDS Response
Commenters requested further details regarding proposals or timelines that are under consideration in regard to the elimination of the Book Entry Only (BEO) eligibility category, whereby a global certificate is held by CDS. They indicated that many of these issues are governed by indentures that would require amendment in order to eliminate the certificate, which is expected to be a lengthy process for issuers and their advisors.	A timeline for that subsequent phase is not within the scope of the present initiative. CDS will as a next step after August 31, 2017 explore proposals and timelines for the conversion of the Book Entry Only (BEO) documents that represent the entire issued and outstanding securities positions held by CDS. CDS does recognize our issuers, the Canadian legal community, and the transfer agent community as critical stakeholders in this process, and we will consult with these groups during further phases of the initiative.
Commenters requested clarification on updates to section 3.2.5 “CDSX Procedures and User Guides” that include the following criteria for a non-certificate issue to be considered for eligibility: “The security must be available in physical form”?	In the event that a security is in physical form at the registrar/transfer agent level, this eligibility criterion refers only to the requirement that transfer maintain available inventory in the event that a CDS participant requires a withdrawal of a non-certificated inventory position, in the form of a physical certificate.

Chapter 25

Other Information

25.1 Consents

25.1.1 Trident Gold Corp. – s. 4(b) of Ont. Reg. 289/00 under the OBCA

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the British Columbia Business Corporations Act.

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, as am., s. 4(b).

IN THE MATTER OF
R.R.O. 1990, REGULATION 289/00, AS AMENDED (THE "REGULATION")
MADE UNDER THE BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990, c. B.16, AS AMENDED (THE "OBCA")

AND

IN THE MATTER OF
TRIDENT GOLD CORP.

CONSENT
(Subsection 4(b) of the Regulation)

UPON the application of Trident Gold Corp. (the "**Applicant**") to the Ontario Securities Commission (the "**Commission**") requesting the consent of the Commission, as required under subsection 4(b) of the Regulation, for the Applicant to continue in another jurisdiction pursuant to section 181 of the OBCA;

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant (formerly, Andor Mining Inc.) was incorporated under the OBCA on January 4, 2011. The Applicant is the continuing company resulting from an amalgamation and reverse takeover involving the Applicant, the Applicant's wholly owned subsidiary, 2302557 Ontario Inc. and Trident Gold Corp. which was completed on February 13, 2013. The Applicant changed its name from "Andor Mining Inc". to "Trident Gold Corp." on February 13, 2013.

2. The Applicant's head office is located at 1600 - 609 Granville Street, Pacific Centre, Vancouver, British Columbia, V7Y 1C3.

3. The Applicant is authorized to issue an unlimited number of common shares (the "**Common Shares**"), of which 33,595,183 were issued and outstanding at the close of business on April 3, 2017.

4. The Applicant's Common Shares are listed for trading on the NEX board of the TSX Venture Exchange under the symbol "TTG.H". The Applicant does not have any of its securities listed on any other stock exchange.

5. The Applicant intends to apply (the "**Application for Continuance**") to the Director of the OBCA for authorization to continue under the *Business Corporations Act* (British Columbia), S.B.C. 2002, c. 57 (the "**BCABC**") pursuant to section 181 of the OBCA (the "**Continuance**").

6. Pursuant to subsection 4(b) of the Regulation 289/00 under the OBCA, where an applicant corporation is an "offering corporation" (as defined in the OBCA), the Application for Continuance must be accompanied by a consent from the Commission.

7. The Applicant is an offering corporation under the OBCA and is a reporting issuer under the *Securities Act* (Ontario) (the "**Act**") and the securities legislation of British Columbia and Alberta.

8. The Applicant is not in default under any provision of the OBCA, the Act or the securities legislation of British Columbia or Alberta.

9. The Applicant is not a party to any proceeding or, to the best of its knowledge, information and belief, pending proceeding under the OBCA, the Act or the securities legislation of British Columbia or Alberta.

10. The principal regulator of the Applicant is currently the Ontario Securities Commission. Following the completion of the Continuance, the Applicant's principal regulator will be the British Columbia Securities Commission.

11. An annual and special meeting of the shareholders of the Applicant was held on March 22, 2017 (the "**Meeting**") to consider a special resolution in connection with the Continuance (the "**Continuance Resolution**"). The Continuance Resolution required the approval of not less than two-thirds of the aggregate votes cast by the shareholders present in person or by proxy at the Meeting and was approved by 83.13% of the shareholders present in person or by proxy at the Meeting. None of the Applicant's shareholders exercised their dissent rights.

12. The management information circular of the Applicant dated February 8, 2017 (the "**Circular**"), was provided to all shareholders of the Applicant in connection with the Meeting and advised its shareholders of their dissent rights in connection with the Continuance Resolution pursuant to section 185 of the OBCA, and included a summary comparison of the differences between the OBCA and the BCABC. The proposed articles of the continued corporation was also provided to the Applicant's shareholders in the Circular. The Circular was mailed to shareholders of record on March 1, 2017 and was filed on SEDAR on February 23, 2017.

13. The Continuance was proposed in connection with, among other things: (i) the consolidation of the Common Shares of the Applicant on the basis of four and three-quarters (4.75) old shares for every one (1) new share (the "**Consolidation**"); and (ii) the name change of the Applicant from "Trident Gold Corp." to "Sebastiani Ventures Corp." (the "**Name Change**").

14. The Continuance is required in order to give effect to the Consolidation and Name Change.

15. The Continuance is being proposed because the Applicant recently elected new directors and officers, all of whom are residents of British Columbia. The Applicant's head office has also been relocated to British Columbia.

16. Following the completion of the Continuation, the Applicant's registered office, which is currently located in Ontario, will be relocated to British Columbia. The Applicant will remain as a reporting issuer in the provinces of Ontario, British Columbia and Alberta.

17. The material rights, duties and obligations of a corporation governed by the BCABC are substantially similar to those governed by the OBCA.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

THE COMMISSION HEREBY CONSENTS to the continuance of the Applicant as a corporation under the BCABC.

DATED at Toronto, Ontario this 18th day of April, 2017.

"Janet Leiper"
Commissioner
Ontario Securities Commission

"Garnet W. Fenn"
Commissioner
Ontario Securities Commission

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