The Ontario Securities Commission

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

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Table of Contents

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 CSA Staff Notice 24-315 Update on Enhanced Segregation and Portability Initiatives for Clearing Agencies Serving the Domestic Futures Markets

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 24-315
Update on Enhanced Segregation and Portability Initiatives for Clearing Agencies Serving the Domestic Futures Markets

February 9, 2017

The Canadian Securities Administrators (**CSA**) recently published advanced notice of the adoption of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* and related Companion Policy (collectively, **NI 94-102**). NI 94-102 implements a segregation and portability regime to protect customer collateral and positions in the over-the-counter (**OTC**) derivatives markets.[1] In light of this development, CSA Staff (**Staff** or **we**) are publishing this Notice to provide an update on initiatives to enhance segregation and portability arrangements for the exchange-traded derivatives (**ETD**) markets in Canada, in particular the commodity and financial futures markets.[2]

Background

National Instrument 24-102 *Clearing Agency Requirements* (**Instrument**) and Companion Policy 24-102 *Clearing Agency Requirements* (**Companion Policy**) (collectively, **NI 24-102**) include ongoing requirements for recognized clearing agencies that are based on international standards applicable to financial market infrastructures operating as a central counterparty (**CCP**), central securities depository or securities settlement system. These international standards are described in the April 2012 report *Principles for financial market infrastructures* (the **PFMI Principles**) published by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions.[3]

Part 3 of the Instrument requires a recognized clearing agency to establish, implement and maintain rules, procedures, policies or operations designed to ensure it meets or exceeds the relevant PFMI Principles, including Principle 14 *Segregation and portability* for a clearing agency that operates as a CCP.

Principle 14 states that a CCP should have rules and procedures that enable the segregation and portability of positions of a clearing participant's customers and the collateral provided to the CCP with respect to those positions. The purpose of such segregation and portability arrangements is to protect a clearing participant's customers' positions and related collateral from the default or insolvency of that participant.

Industry engagement

In the notice of approval of NI 24-102 on December 3, 2015,[4] we said that Staff were continuing to review the implications of enhanced CCP-level customer segregation and portability rules and procedures for CCPs serving the ETD markets, particularly on investment dealers, the customer protection regime of the Investment Industry Regulatory Organization of Canada (**IIROC**) and Canadian Investor Protection Fund (**CIPF**), and the pro rata distribution scheme of Part XII of the *Bankruptcy and Insolvency Act* (Canada) (**BIA**).[5]

1 See CSA Notice of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions and Related Companion Policy*, January 19, 2017, (2017), 40 OSCB 672.
2 This Staff Notice does not create any new regulatory requirements or suggest any specific change at this time in any existing legal or regulatory obligations; nor does it provide relief from any existing regulatory obligations.
3 The report is available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).
4 See CSA Notice of Approval of National Instrument 24-102 *Clearing Agency Requirements* and Companion Policy 24-102CP to National Instrument 24-102 *Clearing Agency Requirements*, December 3, 2015 (2015), 38 OSCB (Supp-5) (**2015 Notice**).
5 See 2015 Notice, at p. 7. For a discussion of segregation and portability arrangements for CCPs serving the cash markets, see section 3.3 of the Companion Policy, which includes a description of the "IIROC-CIPF regime".

We have engaged extensively with industry stakeholders since 2015 on the question of what is the appropriate CCP segregation and portability model for domestic futures markets. Among other dialogues, we held a two-day workshop in November 2015 in Toronto with representatives of IIROC, CIPF, certain CCPs, dealer firms, buy-side firms, legal experts, and other key stakeholders.

Stakeholders generally support enhancing segregation and portability arrangements and agree that a gross-customer margin (**GCM**) model offers superior customer protection and is appropriate for the Canadian Derivatives Clearing Corporation (**CDCC**) and ICE Clear Canada Inc. (**ICE Clear**).[6] Collecting margin on a gross basis means that the amount of margin that a clearing member must post to the CCP on behalf of its customers is the sum of the amounts of margin required for each such customer.[7] Generally, under a GCM framework, a CCP collecting gross margin on futures positions held in dealer omnibus customer accounts requires clearing members to submit individual customer level position data daily to the CCP.

GCM model favours customer protection

We agree that the GCM model offers superior customer protection when compared to collecting margin on a net basis. There are compelling reasons to ensure that the collateral posted by a futures customer to a dealer – which in turn is posted (or the value of which is posted) by the dealer to a CCP – receives the strong protections available from a GCM model. It will enhance customer protection, especially by strengthening the ability to port customer positions and collateral in the event of a clearing participant default. It may also reduce systemic risk, by bolstering confidence that losses related to counterparty risk would be manageable. ICE Clear has implemented a GCM segregation and portability framework[8] and CDCC is working to develop and implement such a framework.[9]

However, we recognize that the GCM model has implications on the current IIROC-CIPF regime and may require changes to certain IIROC dealer member rules on segregation, capital and margin, and, potentially, to the coverage scheme provided by CIPF. Since February 2016, staff from the CSA, IIROC, CIPF, CDCC and ICE Clear (collectively, the **SP Working Group**) have been meeting regularly to discuss the GCM model for domestic futures markets, including understanding the details of the CCP porting mechanisms in the context of the IIROC-CIPF regime, and identifying any consequential reforms to the IIROC-CIPF regime and provincial securities, derivatives or commodity futures legislation that may be required.[10]

NI 24-102 approach to implementing segregation and portability

We do not believe that changes to NI 24-102 are necessary at this time to prescribe a CCP GCM model. Part 3 of the Instrument applies a principles-based approach to applying the PFMI Principles, and mandating a particular GCM segregation and portability framework in NI 24-102 would be inconsistent with such approach.[11] At this time, we believe that Principle 14, together with its key considerations and explanatory notes, gives sufficient guidance to CCPs in the Canadian context.[12]

Next steps

The SP Working Group will continue to meet regularly during 2017. Any proposed new or amended IIROC or CDCC rules would be subject to a public comment process and regulatory approval by certain CSA members.

Questions with respect to this Notice may be referred to:

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6 CDCC and ICE Clear are the two CCPs that clear trades in domestic futures products for clearing members and their customers. While Natural Gas Exchange Inc. also services domestic futures markets, it does not operate under a customer clearing model.

7 This is in contrast to a net customer omnibus margining model, where the CCP will net customer positions against each other to determine overall customer collateral required by the CCP from the clearing participant to support the customer positions in the clearing participant's customer omnibus account. A net margining methodology exposes customers to greater "fellow customer risk".

8 See ICE Clear's PFMI Disclosure Framework Document dated November 15, 2016 at: https://www.theice.com/publicdocs/clear_canada/Clear_Canada_Disclosure_Framework.pdf. (see section 1.1 of the Instrument for a definition of "PFMI Disclosure Framework Document").

9 See CDCC's PFMI Disclosure Framework Document (information provided as of December 31, 2016) at: http://www.cdcc.ca/cdcc_qld/CDCC_Qualitative_Disclosure_20161231.pdf.

10 While the SP Working Group has preliminarily identified a number of IIROC rules for reform, it remains unclear at this time whether and how CIPF coverage for futures customers should be modified, or whether any rules under Part XII of the BIA may need to be amended. In addition, with implementation of a GCM framework, the SP Working Group has preliminarily identified the potential need to amend standard written risk disclosure statements that are currently prescribed by provincial securities, derivatives or commodity futures legislation and required to be provided by a dealer to a customer when opening a futures account.

11 This view is similar to the approach adopted by the U.S. Securities and Exchange Commission (**SEC**) in implementing PFMI Principle 14 in connection with the clearing by CCPs of security-based swaps. See the SEC's final adopted Rule 17AD-22(e)(14): *Segregation and Portability*; 17 CFR Part 240 in Release No. 34-78961; File No. S7-03-14, *Standards for Covered Clearing Agencies*, September 28, 2016.

12 However, it is possible that broader regulatory reforms to the ETD markets may be considered in the long term, including taking an approach similar to the customer protection and segregation and portability regime in NI 94-102 for the OTC derivatives markets. Among other considerations, the so-called "futurization" of OTC derivatives may provide policy reasons for eventually harmonizing regulatory approaches to the ETD and OTC markets, particularly to reduce regulatory gaps among the markets.

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1.1.2 Notice of Correction – Mackenzie Financial Corporation et al.

NOTICE OF CORRECTION

IN THE MATTER OF THE COMMODITY FUTURES ACT, R.S.O. 1990, c. C.20, AS AMENDED

AND

IN THE MATTER OF MACKENZIE FINANCIAL CORPORATION, IRISH LIFE INVESTMENT MANAGERS LIMITED AND TOBAM S.A.S.

There was an error in *Re Mackenzie Financial Corporation, Irish Life Investment Managers Limited and TOBAM S.A.S.* (2016), 39 O.S.C.B. 8784, published in the October 20, 2016 issue of the Bulletin.

In representation 9, please delete:

> 9. The Principal Adviser and the Sub-Advisers are not affiliates.

and insert:

> 9. The Principal Adviser and ILIM are affiliates. TOBAM is not an affiliate of the Principal Adviser or ILIM.

1.5 Notices from the Office of the Secretary

1.5.1 William Raymond Malone

FOR IMMEDIATE RELEASE
February 2, 2017

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

AND

IN THE MATTER OF
WILLIAM RAYMOND MALONE

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

A copy of the Reasons and Decision and the Order dated February 1, 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)

1.5.2 Lance Kotton

FOR IMMEDIATE RELEASE
February 6, 2017

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

AND

IN THE MATTER OF
LANCE KOTTON

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

1. the Temporary Order is extended as against Kotton until March 3, 2017; and

2. the hearing of this matter is adjourned until March 1, 2017 at 2:00 p.m., or such other date and time as provided by the Office of the Secretary and agreed to by the parties.

A copy of the Order dated February 6, 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:

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1.5.3 Edward Furtak et al.

FOR IMMEDIATE RELEASE
February 7, 2017

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

AND

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

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

1. Staff will serve and file written submissions with respect to the Temporary Order by February 13, 2017;

2. The Respondents will serve and file written submissions with respect to the Temporary Order by February 15, 2017;

3. In the interim and pending further argument, pursuant to clause 2 of subsection 127(1) of the Act, trading with respect to the Strictrade Offering shall cease, except for the payment of Trading Report Payments (as described in the Merits Decision) by the Respondents to investors, until further order of the Commission;

4. The Sanctions Hearing will continue at the offices of the Commission at 20 Queen Street West, Toronto, Ontario, on Thursday, March 2, 2017, commencing at 1:00 p.m., and continue on Friday, March 3, 2017, commencing at 10:45 a.m.

A copy of the Order dated January 30, 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.caFor investor inquiries:

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

1.5.4. Quadrexx Hedge Capital Management Ltd. et al.

FOR IMMEDIATE RELEASE
February 7, 2017

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

AND

IN THE MATTER OF
QUADREXX HEDGE CAPITAL MANAGEMENT LTD.,
QUADREXX SECURED ASSETS INC.,
MIKLOS NAGY AND TONY SANFELICE

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 February 6, 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)

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Credit Suisse Securities (USA) LLC

Headnote

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

Applicable Legislative Provisions

Statutes Cited

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

Instruments Cited

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

February 1, 2017

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

AND

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

AND

IN THE MATTER OF
CREDIT SUISSE SECURITIES (USA) LLC
(the Filer)

DECISION

Background

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

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

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

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces of Canada (the **Passport Jurisdictions** and together with the Jurisdiction, the **Jurisdictions**).

Interpretation

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

Representations

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

1. The Filer is a limited liability company formed under the laws of the State of Delaware. The head office of the Filer is located in New York, New York, United States of America.

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

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

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

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

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

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

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

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

10. CSA Staff stated in the Staff Notice that they did not believe there was a policy reason to limit the exemption in subsection 8.18(2) of NI 31-103 to trades that occur during the initial period of the securities' distribution or to conclude that an international dealer should be permitted to sell a debt security to a Canadian institutional investor but not be permitted to act for the institutional investor in connection with the resale of the security. CSA Staff further stated that they were prepared to recommend exemptive relief to permit international dealers to deal with institutional investors to facilitate resales of debt securities, subject to conditions the CSA consider appropriate.

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

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

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

14. The Filer is a "market participant" as defined under subsection 1(1) of the *Securities Act* (Ontario) (the **OSA**). As a market participant, among other requirements, the Filer is required to comply with the record keeping and provision of information provisions under section 19 of the OSA, which include the requirement to keep such books,

records and other documents (a) as are necessary for the proper recording of business transactions and financial affairs, and the transactions executed on behalf of others, (b) as may otherwise be required under Ontario securities law, and (c) as may reasonably be required to demonstrate compliance with Ontario securities laws, and to deliver such records to the OSC if required.

Decision

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

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

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

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

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

"Monica Kowal"
Vice Chair
Ontario Securities Commission

"D. Grant Vingoe"
Vice Chair
Ontario Securities Commission

2.1.2 Citigroup Global Markets Inc.

Headnote

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

Applicable Legislative Provisions

Statutes Cited

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

Instruments Cited

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

January 31, 2017

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

AND

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

AND

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

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer (the **Application**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Filer from the dealer registration requirement under the Legislation in respect of trades in debt securities, other than during the distribution

of such securities, with permitted clients, as defined under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), where the debt securities are

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

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

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (the **Passport Jurisdictions** and together with the Jurisdiction, the **Jurisdictions**).

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under the laws of the State of New York with its head office located at 388-390 Greenwich Street, New York, NY, 10013, U.S.A. The Filer is a wholly owned indirect subsidiary of Citigroup Inc.

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

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

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

5. Citigroup Global Markets Canada Inc. (**CGMCI**) is an affiliate of the Filer. CGMCI is registered as an investment dealer in each of the provinces and territories of Canada and is a dealer member of IIROC.

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

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

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

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

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

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

12. CSA Staff stated in the Staff Notice that they did not believe there was a policy reason to limit the exemption in subsection 8.18(2) of NI 31-103 to trades that occur during the initial period of the securities' distribution or to conclude that an international dealer should be permitted to sell a debt security to a Canadian institutional investor but not be permitted to act for the institutional investor in connection with the resale of the security. CSA Staff further stated that they were prepared to recommend exemptive relief to permit international dealers to deal with institutional investors to facilitate resales of debt securities, subject to conditions the CSA consider appropriate.

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

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

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

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

Decision

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

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

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

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

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

"Anne Marie Ryan"
Commissioner
Ontario Securities Commission

"Grant Vingoe"
Vice Chair
Ontario Securities Commission

2.1.3 Helius Medical Technologies, Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from the prospectus requirement for certain marketing activities not expressly permitted by National Instrument 71-101 The Multijurisdictional Disclosure System so that investment dealers acting as underwriters or selling group members of an issuer are permitted to use standard term sheets and marketing materials and conduct road shows (each as defined under National Instrument 41-101 General Prospectus Requirements) in connection with future offerings under an MJDS base shelf prospectus – NI 71-101 does not contain equivalent provisions to Part 9A of National Instrument 44-102 Shelf Distributions – relief granted, provided that the conditions and requirements set out in Part 9A of NI 44-102 for standard term sheets, marketing materials and road shows are complied with.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 74(1).
National Instrument 71-101 The Multijurisdictional Disclosure System, s. 11.3.

January 31, 2017

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

AND

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

AND

IN THE MATTER OF
HELIUS MEDICAL TECHNOLOGIES, INC.
(the Filer)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the prospectus requirement for certain marketing activities not expressly permitted by National Instrument 71-101 *The Multijurisdictional Disclosure System* (NI 71-101) so that investment dealers acting as underwriters (as defined in the Legislation) or selling group members of (a) the Filer, or (b) a selling securityholder of the Filer are permitted to (i) use Standard Term Sheets (as defined below) and Marketing Materials (as defined below), and (ii) conduct Road Shows (as defined below) in connection with future offerings under a Final MJDS Shelf Prospectus (as defined below) together with applicable supplements as filed by the Filer in each of the provinces of Canada (the Exemption Sought).

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

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

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

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

Interpretation

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

Representations

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

1. the Filer is a corporation continued under the laws of Wyoming;

2. the principal executive offices of the Filer are located at 400-41 University Drive, Newtown, Pennsylvania, 18940;

3. as of the date hereof, the Filer is a reporting issuer in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and is an "SEC foreign issuer" as defined under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

4. the Filer is not in default of the requirements of securities legislation in any of the provinces of Canada;

5. the Filer filed a registration statement on Form S-3 with the SEC on December 23, 2016 (the Registration Statement); the Registration Statement contains a preliminary shelf prospectus (the U.S. Shelf Prospectus) and will register for sale in the United States, from time to time, in one or more offerings and pursuant to one or more prospectus supplements, any combination of shares of the Filer's Class A common stock, debt securities and warrants;

6. the Filer has also filed a final MJDS prospectus dated January 26, 2017 in each of the provinces pursuant to NI 71-101 that includes the final U.S. Shelf Prospectus (the final MJDS prospectus is referred to herein as the Final MJDS Shelf Prospectus), which will qualify the distribution in each province, from time to time, in one or more offerings and pursuant to one or more prospectus supplements, any combination of shares of the Filer's Class A common stock, debt securities and warrants;

7. National Instrument 44-102 *Shelf Distributions* (NI 44-102) sets out the requirements for a distribution under a shelf prospectus in Canada, including requirements with respect to advertising and marketing activities; in particular, Part 9A of NI 44-102 entitled *Marketing In Connection with Shelf Distributions* (Part 9A) permits the conduct of "Road Shows" and the use of "Standard Term Sheets" and "Marketing Materials" (as such terms are defined in National Instrument 41-101 *General Prospectus Requirements*) following the issuance of a receipt for a final base shelf prospectus provided that the approval, content, use and other applicable conditions and requirements of Part 9A are complied with; NI 71-101 does not contain provisions equivalent to those of Part 9A;

8. in connection with marketing an offering in Canada under the Final MJDS Shelf Prospectus, investment dealers acting as underwriters or selling group members of the Filer may wish to conduct Road Shows and utilize one or more Standard Term Sheets and Marketing Materials; any such Road Shows, Standard Term Sheets and Marketing Materials will comply with the approval, content, use and other conditions and requirements of Part 9A, as though they were applicable; and

9. Canadian purchasers, if any, of securities offered under the Final MJDS Shelf Prospectus will only be able to purchase those securities through an investment dealer registered in the province of residence of the purchaser.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted in respect of each future distribution under the Final MJDS Shelf Prospectus and applicable supplements provided that in respect of such distribution, the conditions and requirements set out in Part 9A of NI 44-102 for Standard Term Sheets, Marketing Materials and Road Shows are complied with in the manner in which those conditions and requirements would apply if the Final MJDS Shelf Prospectus were a final base shelf prospectus under NI 44-102.

"Peter J. Brady"
Executive Director
British Columbia Securities Commission

2.1.4 Entertainment One Ltd.

Headnote

Subsection 74(1) – Application for exemption from prospectus requirements in connection with first trade of shares of issuer through exchange or market outside of Canada or to person or company outside of Canada – issuer not a reporting issuer in any jurisdiction in Canada – conditions of the exemption in section 2.14 of National Instrument 45-102 Resale of Securities not satisfied as residents of Canada own more than 10% of the total number of shares – relief granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, 74(1).
National Instrument 45-102 Resale of Securities, s. 2.14.
National Instrument 45-106 Prospectus Exemptions, ss. 2.16, 2.24, 2.42.

December 23, 2016

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

AND

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

AND

IN THE MATTER OF
ENTERTAINMENT ONE LTD.
(the "Applicant")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Applicant for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for an exemption from the prospectus requirement in connection with the first trades of common shares of the Applicant to be issued to certain Canadian Residents (the "**Requested Relief**").

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

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

(b) the Applicant has provided notice that section 4.7(1) of Multilateral Instrument 11-202 – *Passport System* ("**MI 11-202**") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

Interpretation

Terms defined in National Instrument 14-101 – *Definitions* and MI 11-202 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Applicant was amalgamated under the *Canada Business Corporations Act* ("**CBCA**") on July 15, 2010 and carries on business in the production and distribution of television, films and music. The Applicant's registered office is 134 Peter Street – Suite 700, Toronto, Ontario M5V 2H2.

2. As of October 31, 2016, the Applicant's issued and outstanding share capital consisted of 429,347,553 common shares ("**Common Shares**").

3. The Applicant's Common Shares are listed on the Premium Listing segment of the London Stock Exchange ("**LSE**"). The Applicant is a constituent member of the FTSE 250 UK Index Series.

4. The Applicant is not a reporting issuer in Ontario or in any other province or territory of Canada, and none of its securities are listed or posted for trading on an exchange in Canada. The Applicant has no present intention of becoming listed in Canada or of becoming a reporting issuer in any province or territory of Canada.

5. On September 22, 2015, Canada Pension Plan Investment Board (the "**CPPIB**") acquired approximately 52.9 million Common Shares of the Applicant from Marwyn Value Investors LP and the CPPIB subsequently acquired an additional approximately 27.0 million Common Shares as part of a rights offering completed by the Applicant in October 2015 and an additional approximately 4.7 million Common Shares in two acquisitions in December 2015 (collectively, the "**CPPIB Acquisitions**"). The CPPIB's shareholdings are approximately 84.6 million Common Shares and represent approximately 19.70% of the issued and outstanding Common Shares of the Applicant.

6. As at October 31, 2016: (i) Canadian resident shareholders other than the CPPIB held, directly or indirectly, 26,927,526 Common Shares (of which, 10,024,008 were held by the Applicant's Chief Executive Officer), representing

approximately 6.3% (3.9%, excluding the Common Shares held by the Applicant's Chief Executive Officer) of the issued and outstanding Common Shares of the Applicant; and (ii) Canadian resident shareholders represented approximately 2.6% of the total number of holders of Common Shares.

7. Share Based Compensation:

(a) The Applicant has three equity-settled share-based payment schemes approved for its and its subsidiaries employees ("**Participants**"), including executives and employees of the Applicant, or its subsidiaries, in Canada. These are the Long-Term Incentive Plan ("**LTIP**"), the Executive Incentive Scheme ("**EIS**") and the SAYE Share Option Scheme ("**SAYE**" and, together with the LTIP and the EIS, the "**Plans**"). As of October 31, 2016 there are 215 Participants in the Plans that are residents of Canada: 23 in British Columbia, 168 in Ontario, 23 in Québec and 1 in Newfoundland.

(b) Under the LTIP, Participants are issued options ("**LTIP Options**") for Common Shares ("**LTIP Shares**"). Common Shares of up to 10% of the Application's issues and outstanding share capital have been approved for issuance under the LTIP. As of the date hereof, there are 43 Canadian residents holding outstanding LTIP Options granted since the CPPIB Acquisitions to acquire an aggregate of 2,165,201 Common Shares.

(c) Under the SAYE, from time to time Participants are invited to apply for options ("**SAYE Options**"). Each application specifies the amount of the monthly savings the Participant will make under a savings contract with a duration of 36 months. In the event the SAYE Options are not exercised, the aggregate monthly savings are retained by the Participant. Common Shares of up to 10% of the Applicant's issued and outstanding share capital (in aggregate with other Plans) have been approved for issuance under the SAYE. As of the date hereof, there are 185 Canadian residents holding outstanding SAYE Options granted since the CPPIB Acquisitions to acquire an aggregate of 1,623,133 Common Shares.

(d) Under the EIS, Participants are invited to subscribe for shares ("**Incentive Shares**") in 7508999 Canada Inc., a wholly-owned subsidiary of the Applicant incorporated under the CBCA. Alternatively, a Participant may be granted the option ("**EIS Options**") to acquire a number of Common Shares determined by reference to a number of Incentive Shares for no payment. Subject to certain conditions, Participants exchange their Incentive Shares or exercise their EIS Options for Common Shares ("**EIS Shares**" and, together with LTIP Shares and SAYE Shares, "**Award Shares**"). Common Shares of up to 3% of the Applicant's issued and outstanding share capital have been approved for issuance under the EIS. As of the date hereof, no grants have been made under the EIS.

(e) The LTIP Options, the SAYE Options, the Incentive Shares and the EIS Options are issued to Canadian employees under the employee, executive officer, director and consultant prospectus exemption in section 2.24 of National Instrument 45-106 – *Prospectus Exemptions* ("**NI 45-106**"). The Common Shares issued upon the exercise of each of the LTIP Options, SAYE Options, the Incentive Shares and the EIS Options are issued under the conversion, exchange, or exercise prospectus exemption in section 2.42 of NI 45-106.

8. Earn-Out Shares:

(a) On March 7, 2016, the Applicant entered into a share purchase agreement ("**Last Gang Purchase Agreement**") with JT Management Inc., The Donald K. Donald Group Of Labels Inc., Slaight Music Inc., Christopher Taylor, and Margaret Jurocko (collectively, the "**Vendors**") and 4384768 Canada Inc. (the "**Purchaser**") whereby the Purchaser, a wholly owned subsidiary of the Applicant, acquired from the Vendors all the issued and outstanding shares of Last Gang Management Inc. and Last Gang Publishing Inc. (together, the "**Last Gang Companies**"). Each Vendor is a resident of Ontario.

(b) The consideration for the acquisition of the Last Gang Companies includes an earn-out provision providing for the potential issuance of Common Shares (the "**Earn-Out Shares**") to the Vendors based on the performance of the Last Gang Companies. While the exact number of Earn-Out Shares cannot yet be determined, the Earn-Out Shares are expected to represent less than 0.5% of

the issued and outstanding Common Shares of the Applicant.

(c) The Earn-Out Shares are to be issued under the take-over bid prospectus exemption in section 2.16 of NI 45-106.

9. Consideration Shares:

(a) From time to time the Applicant has acquired companies engaged in the production and distribution of television, films and music from Canadian resident vendors. Acquisitions like these form part of the Applicant's growth strategy. In many of these past acquisitions Common Shares have formed part of the consideration paid to vendors, and it is desirous that the Applicant be able to issue freely tradeable Common Shares ("**Consideration Shares**" and, together with the Award Shares, and the Earn Out Shares, the "**Affected Shares**") to Canadian vendors in future acquisitions. Prior to the CPPIB Acquisitions, and based on the current list shareholders, most Canadian vendors of companies acquired by the Applicant who received Common Shares as consideration have not held those shares as long-term investments and have typically sold their Common Shares within a few months or years following closing.

(b) Consideration Shares, like the Earn Out Shares, are typically issued under the take-over bid prospectus exemption in section 2.16 of NI 45-106.

10. As of the date hereof, there are 784,392 Affected Shares, representing approximately 0.2% of the issued and outstanding Common Shares, held by three residents of Canada in aggregate, representing approximately 0.3% of the total number of holders of Common Shares; however, the exact number of Affected Shares to be issued in the future cannot be determined as the number of Award Shares will be determined by satisfaction of performance targets, the number of Earn-Out Shares (if the Applicant opts to satisfy the earn out with Common Shares) will be determined by the performance of the Last Gang Companies, and the Applicant intends to continue to grant LTIP Options, SAYE Options, Incentive Shares, EIS Options and Consideration Shares on an ongoing basis, consistent with past practice.

11. Notwithstanding the foregoing, based on the shareholdings of the Applicant as at October 31, 2016 and based on the Applicant's past practices for granting LTIP Options, SAYE Options and Incentive Shares and on historic issuances of Award Shares and Consideration Shares and assuming the maximum number of Earn-Out Shares, residents of Canada other than the CPPIB and the Applicant's Chief Executive Officer, including Affected Holders (as defined below), would be expected to hold directly or indirectly no more than approximately 10% of the Common Shares and Canadian resident shareholders would be expected to represent no more than approximately 10% of the total number of holders of Common Shares.

12. Absent an exemption order, the first trade in the Affected Shares by the holders thereof (the "**Affected Holders**") will be deemed to be a distribution pursuant to section 2.6 of National Instrument 45-102 – *Resale of Securities* ("**NI 45-102**") unless, among other things, the Applicant has been a reporting issuer in a jurisdiction of Canada for four months preceding such trade.

13. Section 2.14 of NI 45-102 provides an exemption from the prospectus requirements for the first trade of a security of an issuer distributed under an exemption from the prospectus requirement provided that:

(a) the issuer of the security:

(i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or

(ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;

(b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada

(i) did not own directly or indirectly more than 10 % of the outstanding securities of the class or series, and

(ii) did not represent in number more than 10 % of the total number of owners directly or indirectly of securities of the class or series; and

(c) the trade is made

(i) through an exchange, or a market, outside of Canada, or

(ii) to a person or company outside of Canada.

14. The Applicant meets all the eligibility criteria for the exemption provided in section 2.14 of NI 45-102 except that, due to the CPPIB Acquisitions, residents of Canada own more than 10% of the issued and outstanding shares of the Applicant.

15. The Applicant is subject to disclosure obligations pursuant to the securities laws of the United Kingdom and the rules and regulations of the LSE (collectively, "UK Securities Laws"). Canadian shareholders receive the same information that the Applicant is required to provide its other shareholders under UK Securities Laws. The Affected Holders would also receive such information.

16. There is no market for the Applicant's Common Shares in Canada and no market is expected to develop, such that any resale of the Affected Shares by the Affected Holders is expected to be made through the LSE in accordance with its rules and regulations.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that:

(a) the Applicant is not a reporting issuer in any jurisdiction of Canada at the date of the trade;

(b) the trade is executed through the facilities of the LSE or through any other exchange or market outside Canada or to a person or company outside of Canada; and

(c) representation 11 (relating to the expected Canadian shareholder and shareholdings after the issuance of any Affected Shares) remains true in all material respects at the time any Affected Shares are issued.

DATED at Toronto on this 23rd day of December, 2016.

"Anne Marie Ryan"
Ontario Securities Commission

"Janet Leiper"
Ontario Securities Commission

2.1.5 Instinet Canada Cross Limited

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from the requirement to engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards – relief subject to systems reviews similar in scope to that which would have applied to an independent systems review – National Instrument 21-101 Marketplace Operation.

February 1, 2017

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA,
MANITOBA, QUÉBEC AND ONTARIO
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
INSTINET CANADA CROSS LIMITED
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for relief from the requirements in the Legislation that the Filer annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards (collectively, an "**ISR**") for each year from 2016 to 2017 inclusive (the **Exemptive Relief Sought**).

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

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

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

Interpretation

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

Representations

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

1. Instinet Canada Cross Limited ("**ICX**") is a corporation established under the laws of Canada and its principal business is to operate an alternative trading system ("**ATS**") as defined in National Instrument 21-101 *Marketplace Operation*;

2. The head office of ICX is located in Toronto, Ontario;

3. ICX is a member of the Investment Industry Regulatory Organization of Canada, the Canadian Investor Protection Fund and is registered in each of the Jurisdictions in the category of investment dealer;

4. The ICX System is an ATS offering two order types – VWAP Cross and Continuous Block Cross – that do not affect the National Best Bid and Offer;

5. The ICX System is not connected to any other marketplace, and cannot affect another marketplace or be affected by another marketplace;

6. For each of its systems that supports order entry, order execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, ICX has developed and maintains:

    - reasonable business continuity and disaster recovery plans;
    - an adequate system of internal control over those systems; and
    - adequate information technology general controls, including without limitation, controls relating to information systems operations, information security (including cyber security), change management, problem management, network support and system software support.

7. In accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually, ICX:

    - makes reasonable current and future capacity estimates;
    - conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
    - tests its business continuity and disaster recovery plans; and
    - reviews the vulnerability of the ICX System and data centre operations to internal and external threats including physical hazards, and natural disasters;

8. ICX's current trading and order entry volumes in the ICX System are substantially less than 1% of the current design and peak capacity of the ICX System and ICX has not experienced any failure of the ICX System;

9. ICX's current trade volume is currently substantially less than 1% of total market activity on Canadian equities marketplaces;

10. The estimated cost to ICX of an annual independent systems review by a qualified third party would represent a material impairment to ICX's business on an annual basis;

11. The ICX System is monitored 24 hours a day, 7 days a week to ensure that all components continue to operate and remain secure;

12. ICX shall promptly notify the Commission of any failure to comply with the representations set out herein; and

13. The cost of an ISR is prejudicial to ICX and represents a disproportionate impact on ICX's revenue.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted provided that:

1. ICX shall promptly notify the Commission of any material changes to the representations set out herein, including any material changes to ICX's annual net income or to the market share or daily transaction volume of the ICX System; and

2. ICX shall, in each year from 2016 to 2017 inclusive, cause Instinet Incorporated to complete a review of the ICX System and of its controls, similar in scope to that

which would have applied had ICX undergone an independent systems review, for ensuring it continues to comply with the representations set out herein and prepare written reports, of its reviews which shall be filed with staff of the Commission no later than (i) 30 days after the report is provided to ICX's board of directors or audit committee or (ii) the 60th day after the calendar year end.

DATED this 1st day of February, 2017

"Tracey Stern"
Manager
Ontario Securities Commission

2.1.6 Tobias Lütke

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for prospectus exemption for trades under automatic securities disposition plans on substantially similar terms to the exemption for control distributions under section 2.8 of National Instrument 45-102 Resale of Securities except for the requirements to (i) file a Form 45-102F1 Notice of Intention to Distribute Securities under Section 2.8 of NI 45-102 Resale of Securities every thirty (30) days over the duration of the plan; (ii) wait at least seven days before making the first trade after each successive filing of a Form 45-102F1; and (iii) file an insider report for each trade within three days – Applicant intends to establish automatic securities disposition plans in accordance with the guidance provided under OSC Staff Notice Automatic Securities Disposition Plans and Automatic Securities Purchase Plans with terms of up to 12 months – Applicant cannot rely on section 2.8 of NI 45-102 because notices must be refiled within 30 days – Relief subject to conditions, including meaningful restrictions on Applicant's ability to vary, suspend or terminate plan, Applicant not participating in trading decisions, limitation on annual sales – Relief expires on January 1, 2020.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53(1) and 74(1).
National Instrument 45-102 Resale of Securities, s. 2.8.

November 15, 2016

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

AND

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

AND

IN THE MATTER OF
TOBIAS LÜTKE
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) granting an exemption (the **Exemption Sought**) from the requirement under

subsection 53(1) of the *Securities Act* (Ontario) (the **Act**) that a distribution be qualified under a prospectus in connection with the sale of Class A Shares by the Filer under a Filer ASDP (as defined below) on terms that effectively replicate the exemption under section 2.8 of NI 45-102 with relief from the application of subsection 2.8(3)(b) of NI 45-102 (the **Waiting Period Requirement**), 2.8(3)(c) of NI 45-102 (the **45-102 Reporting Requirements**), and subsections 2.8(4) and 2.8(5) of NI 45-102 (the **45-102 Expiry Provisions**).

Furthermore, the principal regulator in the Jurisdiction has also received a request from the Filer for a decision that the Application and this decision be kept confidential and not be made public until the earlier of (i) the public disclosure by the Filer of the establishment of the first Filer ASDP, and (ii) 60 days from the date of this decision (the **Confidentiality Relief**).

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

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

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

Interpretation

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

Representations

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

1. Shopify Inc. (the **Issuer**) is a corporation incorporated under the *Canada Business Corporations Act*.

2. The Issuer's authorized share capital consists of: (i) an unlimited number of Class A shares (the **Class A Shares**), (ii) an unlimited number of Class B multiple voting shares (the **Class B Shares**, and together with the Class A Shares, the **Shares**), and (iii) an unlimited number of preferred shares, issuable in series (the **Preferred Shares**).

3. Holders of Class A Shares have one vote for every Class A Share. Holders of Class B Shares have ten votes for every Class B Share. The Class B Shares are convertible into Class A Shares on a one-for-one basis at any time at the option of the holders thereof and automatically in certain other circumstances.

4. As of October 12, 2016, 75,997,746 Class A Shares, 12,955,009 Class B Shares and no Preferred Shares were issued and outstanding. The Class A Shares represented 36.97% of the aggregate voting rights attached to all of the Issuer's outstanding Shares and the Class B Shares represented 63.02% of the aggregate voting rights attached to all of the Issuer's outstanding Shares.

5. The Class A Shares are listed on the New York Stock Exchange and on the Toronto Stock Exchange under the symbol "SHOP".

6. The Issuer is a reporting issuer in each of the Jurisdictions and is not in default of the securities legislation in any Jurisdiction.

7. The Filer is the Chief Executive Officer and Chair of the Board of the Issuer.

8. On August 26, 2015, the Filer established an automatic securities disposition plan (the "**Filer's Original ASDP**") which will terminate no later than December 31, 2016. The first sale under the Filer's Original ASDP occurred on November 17, 2015. At the time of establishing the Filer's Original ASDP, the Filer was not a control person of the Issuer, as defined in the Act, as the Filer held 511,000 Class A Shares and 8,489,000 Class B Shares, representing, in the aggregate, approximately 13.58% of the votes attaching to all of the Issuer's then outstanding Shares.

9. As of October 12, 2016, the Filer held an aggregate of 79,000 Class A Shares (the "**Filer Class A Shares**") and 7,989,000 Class B Shares (the "**Filer Class B Shares**"). As a result of conversions of Class B Shares for Class A Shares by other shareholders of the Issuer following the establishment of the Filer's Original ASDP, as of October 12, 2016, the Filer Class A Shares represented approximately 0.1% of the outstanding Class A Shares, the Filer Class B Shares represented approximately 61.67% of the outstanding Class B Shares, and together, the Filer Class A Shares and Filer Class B Shares represented, in the aggregate, approximately 38.9% of the votes attaching to all of the Issuer's outstanding Shares.

10. As of October 12, 2016, all of the Filer Class B Shares and Filer Class A Shares were held in the name of 7910240 Canada Inc. and deemed to be beneficially owned by the Filer.

11. The Filer may currently be deemed to be a control person of the Issuer, as defined in section 1.1 of the Act and the securities legislation of the other

Jurisdictions in which the Issuer is a reporting issuer.

12. The Filer intends to annually establish new automatic securities disposition plans in order to allow the Filer to make orderly sales of Class A Shares from the Filer's holdings over time (each, a **Filer ASDP**) once the Filer's Original ASDP terminates on December 31, 2016, and subsequently once each Filer ASDP is terminated, as is currently intended, on December 31 of each year.

13. A Filer ASDP will be established in accordance with applicable securities legislation and securities regulatory staff guidance, including, *inter alia*, section 175(2) of Regulation 1015 under the Act and OSC Staff Notice 55-701 *Automatic Securities Disposition Plans and Automatic Securities Purchase Plans* (**Staff Notice 55-701**), including that:

    i. a Filer ASDP will include written trading parameters and other instructions in the form of a written plan document;

    ii. a Filer ASDP will include meaningful restrictions on the ability of the Filer to vary, suspend, or terminate such Filer ASDP;

    iii. a Filer ASDP will include provisions restricting a broker from consulting with the Filer regarding any sales under the Filer ASDP and the Filer from disclosing information to the broker concerning the Issuer that might influence the execution of the Filer ASDP;

    iv. at the time the Filer enters into a Filer ASDP, the Filer will not possess any knowledge of a material fact or material change with respect to the Issuer that has not been generally disclosed (**Material Undisclosed Information**); and

    v. a Filer ASDP will be entered into in good faith.

14. It is anticipated that pursuant to the terms of a Filer ASDP, among other things:

    i. all sales of Class A Shares will be conducted by a broker on behalf of the Filer;

    ii. all sales of Class A Shares will be conducted over a period that is specified in the corresponding Form 45-102F1 *Notice of Intention to Distribute Securities under Section 2.8 of NI 45-102 Resale of Securities* (a **Form 45-102F1**) filed when the Filer ASDP is entered into; and

    iii. all sales of Class A Shares will be made by a broker with no participation by or direction or advice from the Filer.

15. It is the intention of the Filer and the Issuer that all sales under any Filer ASDP be exempt from subsection 76(1) of the Act and from liability under section 134 of the Act regarding trades in securities of a reporting issuer with knowledge of a material fact or change not generally disclosed, and corresponding law and regulation in all of the Jurisdictions.

16. Under the Filer ASDP intended to be effective January 1, 2017, it is the intention of the Filer to sell up to 511,000 Class A Shares.

17. If the Filer is deemed to be a control person of the Issuer, any sale of the Filer Class A Shares would be considered a "control distribution" (as such term is defined in NI 45-102).

18. In the absence of the Exemption Sought:

    (a) the implementation of a Filer ASDP in accordance with the principles set out in Staff Notice 55-701 would effectively be rendered impossible for the Filer as the Waiting Period Requirement and the 45-102 Expiry Provisions would prevent continued or successive dispositions under the Filer ASDP by requiring that the Filer refile a Form 45-102F1 respecting the proposed sales of Class A Shares every thirty (30) days over the course of the duration of a Filer ASDP and that the Filer wait at least seven days before making the first trade after each filing of a Form 45-102F1; and

    (b) the 45-102 Reporting Requirements would require that the Filer complete and file an insider report for each and every sale of Filer Class A Shares within three days of the completion of such sale.

19. The grant of the Exemption Sought would allow the Filer to establish a Filer ASDP in accordance with Staff Notice 55-701 and relieve the Filer of the administrative burden of repeated Form 45-102F1 filings, while still providing timely and meaningful public disclosure of the intended and completed sales by the Filer of Class A Shares consistent with the policy rationale underlying section 2.8 of NI 45-102. Furthermore, the Exemption Sought will relieve the Filer of the seven day waiting period contemplated by subsection 2.8(3)(b) of NI 45-102, which may impede the operation of a Filer ASDP.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

(a) each Filer ASDP includes meaningful restrictions on the ability of the Filer to vary, suspend, or terminate the Filer ASDP;

(b) all sales of Class A Shares under a Filer ASDP are conducted by a broker with no participation by or direction or advice from the Filer;

(c) at the time the Filer enters into a Filer ASDP, the Filer does not possess any Material Undisclosed Information;

(d) the total number of the Class A Shares sold in any calendar year in reliance on the Exemption Sought does not exceed 2% of the total number of outstanding Class A Shares outstanding as of the commencement of the Filer ASDP under which Class A Shares are first sold during the calendar year;

(e) the Filer files or causes to be filed one completed and signed notice (a **Notice**) in the form of Form 45-102F1 at least seven days prior to the first trade of Class A Shares under any Filer ASDP that discloses the aggregate number of Class A Shares intended to be sold under the Filer ASDP, and the commencement date and expiry date for the sales of Class A Shares under the Filer ASDP (the period between the commencement date and the expiry date referred to as the **Sales Period**);

(f) the Sales Period under any Filer ASDP does not exceed one calendar year;

(g) the Notice for a Filer ASDP is signed no earlier than one business day before it is filed;

(h) the Filer files, or causes to be filed, insider reports within five days of the completion of each sale under a Filer ASDP in accordance with the primary insider reporting obligation in section 3.3 of National Instrument 55-104 *Insider Reporting Requirements and Exemptions* and subsection 107(2) of the Act;

(i) the Notice filed in connection with trades under any Filer ASDP expires on the earlier of:

i. the end of the applicable Sales Period; and

ii. the date that the Filer files the last of the insider reports reflecting the sale of all Class A Shares referred to in the Notice;

(j) the Filer does not conduct further sales of Class A Shares under a Filer ASDP following the expiry of the Notice for that Filer ASDP;

(k) the Filer does not conduct sales of Class A Shares under a Filer ASDP prior to the expiry of the Notice for any previously commenced Filer ASDP;

(l) the Issuer is and has been a reporting issuer in the jurisdiction of Canada for the four months immediately preceding each trade under any Filer ASDP;

(m) the Filer has held any Class A Shares, or securities that were converted into such Class A Shares, sold under a Filer ASDP for at least four months prior to the trade of such Class A Shares;

(n) no unusual effort is made to prepare the market or to create a demand for the Class A Shares;

(o) no extraordinary commission or consideration is paid to a person or company in respect of the trade;

(p) the Filer has no reasonable grounds to believe that the Issuer is in default of securities legislation; and

(q) the Exemption Sought shall terminate on January 1, 2020.

Furthermore, the decision of the principal regulator in the Jurisdiction is that the Confidentiality Relief is granted.

"Edward P. Kerwin"
Commissioner
Ontario Securities Commission

"Garnet Fenn"
Commissioner
Ontario Securities Commission

2.1.7 Middlefield Limited

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – fund family relief from the requirement to send a printed information circular to registered holders of the securities of an investment fund - relief subject to a number of conditions, including sending an explanatory document in lieu of the printed information circular and giving securityholders the option to request and obtain at no charge a printed information circular – notice-and-access for investment funds – National Instrument 81-106 Investment Fund Continuous Disclosure.

Applicable Legislative Provisions

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

January 19, 2017

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

AND

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

AND

IN THE MATTER OF
MIDDLEFIELD LIMITED
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer, on behalf of existing and future investment funds (each, a **Fund**) that are or will be managed from time to time by the Filer or by an affiliate of it or a successor to either it or an affiliate of it (each, a **Middlefield Entity**), for a decision under the securities legislation of the Jurisdictions (the **Legislation**) granting an exemption from the requirement contained in paragraph 12.2(2)(a) of National Instrument 81-106 Investment Fund Continuous Disclosure (**NI 81-106**) that a person or company that solicits proxies, by or on behalf of management of a Fund, send an information circular to each registered holder of securities of a Fund whose proxy is solicited, to permit use of a notice-and-access process (the **Exemption Sought**).

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

the Alberta Securities Commission is the principal regulator for this application;

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

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

Interpretation

Terms defined in MI 11-102, NI 81-106, National Instrument 14-101 *Definitions*, National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) and National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (**NI 54-101**) have the same meaning in this decision, unless otherwise defined herein.

Representations

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

The Filer and the Funds

1. The head office of the Filer is located in Calgary, Alberta.

2. The Filer is registered as an investment fund manager in Alberta, Ontario, Québec and Newfoundland and Labrador.

3. The Funds are, or will be, managed by a Middlefield Entity.

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

5. No existing Middlefield Entity is in default of any of the requirements of securities legislation in any of the jurisdictions of Canada.

Meetings of Securityholders of the Funds

6. Pursuant to applicable legislation, a Middlefield Entity must call a meeting (**Meeting**) of securityholders of each Fund from time to time to consider and vote on matters requiring securityholder approval.

7. In connection with a Meeting, a Fund is required to comply with the requirements in NI 81-106 regarding the sending of proxies and information circulars, which include a requirement that a person or company that solicits proxies by or on behalf of management of a Fund from registered holders send to each such registered holder, with the notice of Meeting, an information circular prepared in compliance with the requirements of Form 51-102F5 of NI 51-102.

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

Notice-and-Access Procedure – Corporate Finance Issuers

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

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

Reasons supporting the Exemption Sought

11. There is no policy reason to treat a Meeting of investment fund securityholders differently than a meeting of non-investment fund issuer securityholders. The notice-and- access procedure set forth in NI 51-102 and in NI 54-101 can be used by a non-investment fund issuer for a meeting of its securityholders in order to send a notice-and-access document instead of an information circular. It would not be detrimental to the protection of investors to allow an investment fund to also use a notice-and-access procedure and to send a notice-and-access document, instead of the information circular.

12. If the Exemption Sought is granted, securityholders of the Funds will have access to the same disclosure currently available.

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

    The conditions to the Exemption Sought mandate that a notice-and-access document will be sent to each securityholder sufficiently in advance of a Meeting so that if a securityholder wishes to receive a printed copy of the information circular, there will be sufficient time for the Middlefield Entity, directly or through an agent, to send the information circular.

13. In accordance with the standard of care owed by a Middlefield Entity to the relevant Fund pursuant to applicable legislation, the Middlefield Entity will only use the notice-and-access procedure for a Meeting if it has concluded that it is appropriate and consistent to do so, also taking into account the purpose of the Meeting and whether the Fund would obtain a better participation rate by sending the information circular with the other proxy-related materials.

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

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought in respect of each Fund is granted provided that:

1. Each registered holder or beneficial owner, as applicable, of securities of the Fund is sent a document that contains the following information and no other information (the **Notice-and-Access Document**):

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

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

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

    a reminder to review the information circular before voting;

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

a plain-language explanation of the Notice-and-Access Procedure, described in paragraph 2 of this decision, that includes the following information:

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

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

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

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

A Middlefield Entity, on behalf of the Fund, sends the Notice-and-Access Document in compliance with the following procedure (the **Notice-and-Access Procedure**):

the proxy-related materials are sent a minimum of 30 days before the applicable Meeting and a maximum of 50 days before the Meeting;

if proxy-related materials are sent:

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

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

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

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

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

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

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

a toll-free telephone number is provided for use by the registered holders and beneficial owners, as applicable, of securities of the Fund to request a paper copy of the information circular and, if applicable, the financial statements of the

Fund, at any time from the date that the Notice-and-Access Document is sent to the registered holders and the beneficial owners, as applicable, up to and including the date of the meeting, including any adjournment;

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

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

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

a Notice-and-Access Document is only accompanied by:

(i) a form of proxy;

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

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

a Notice-and-Access Document is not combined as a single document with any document other than a form of proxy;

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

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

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

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

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

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

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

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

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

(ii) download and print the documents;

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

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

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

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

the Middlefield Entity pays for delivery of the information circular and, if applicable, the financial statements of the Fund, to each registered holder and beneficial owner, as applicable, of securities of the Fund that requests them following receipt of the Notice-and-Access Document.

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

"Tom Graham"
Director
Corporate Finance

2.2 Orders

2.2.1 Authorization Order – s. 3.5(3)

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

AND

IN THE MATTER OF
AN AUTHORIZATION PURSUANT TO
SUBSECTION 3.5(3) OF THE ACT

AUTHORIZATION ORDER
(Subsection 3.5(3))

WHEREAS a quorum of the Ontario Securities Commission (the "Commission") may, pursuant to subsection 3.5(3) of the Act, in writing authorize any member of the Commission to exercise any of the powers and perform any of the duties of the Commission, including the power to conduct contested hearings on the merits.

AND WHEREAS, by an authorization order made on December 30, 2016, pursuant to subsection 3.5(3) of the Act ("Authorization"), the Commission authorized each of MAUREEN JENSEN, MONICA KOWAL, D. GRANT VINGOE, PHILIP ANISMAN, JANET LEIPER, ALAN J. LENCZNER, and TIMOTHY MOSELEY acting alone, to exercise, subject to subsection 3.5(4) of the Act, the powers of the Commission to grant adjournments and set dates for hearings, to hear and determine procedural matters, and to make and give any orders, directions, appointments, applications and consents under sections 5, 11, 12, 17, 19, 20, 122, 126, 127, 128, 129, 140, 144, 146, and 152 of the Act that the Commission is authorized to make and give, including the power to conduct contested hearings on the merits.

IT IS ORDERED that the Authorization is hereby revoked;

THE COMMISSION HEREBY AUTHORIZES, pursuant to subsection 3.5(3) of the Act, each of MAUREEN JENSEN, MONICA KOWAL, D. GRANT VINGOE, PHILIP ANISMAN, JANET LEIPER, and TIMOTHY MOSELEY acting alone, to exercise, subject to subsection 3.5(4) of the Act, the powers of the Commission to grant adjournments and set dates for hearings, to hear and determine procedural matters, and to make and give any orders, directions, appointments, applications and consents under sections 5, 11, 12, 17, 19, 20, 122, 126, 127, 128, 129, 140, 144, 146, and 152 of the Act that the Commission is authorized to make and give, including the power to conduct contested hearings on the merits; and

THE COMMISSION FURTHER ORDERS that this Authorization Order shall have full force and effect until revoked or such further amendment may be made.

DATED at Toronto, this 1st day of February, 2017.

"Janet Leiper"
Commissioner

"AnneMarie Ryan"
Commissioner

2.2.2 William Raymond Malone – ss. 127(1), 127(10)

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

AND

**IN THE MATTER OF
WILLIAM RAYMOND MALONE**

**ORDER
(Subsections 127(1) and 127(10) of
the Securities Act)**

WHEREAS:

1. On November 8, 2016, Staff ("Staff") of the Ontario Securities Commission (the "Commission") filed a Statement of Allegations, in which Staff seeks an order against William Raymond Malone ("Malone"), pursuant to subsections 127(1) and 127(10) of the *Securities Act*;

2. On November 9, 2016, the Commission issued a Notice of Hearing in respect of that Statement of Allegations, setting December 1, 2016 as the date of the hearing;

3. At the hearing on December 1, 2016, the Commission granted Staff's application to continue the proceeding by way of a written hearing;

4. Malone is subject to an order made by the British Columbia Securities Commission (the "BCSC") dated October 3, 2016 (the "BCSC Order"), that imposes sanctions, conditions, restrictions or requirements upon him within the meaning of paragraph 4 of subsection 127(10) of the Act; and

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

IT IS HEREBY ORDERED that:

i. Malone resign any positions that he holds as a director or officer of any issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

ii. Malone is prohibited from becoming or acting as a director or officer of any issuer, pursuant to paragraph 8 of subsection 127(1) of the Act; and

iii. Malone is prohibited from becoming or acting as a registrant, investment fund manager or promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

iv. The sanctions listed in ii. and iii. shall apply until the later of:

1. the date that Malone successfully completes a course of study satisfactory to the BCSC's Executive Director concerning the duties and responsibilities of directors and officers;

2. the date that Malone pays to the BCSC the administrative penalty ordered in subparagraph 25(2) of the BCSC Order; and

3. October 3, 2023.

DATED at Toronto this 1st day of February, 2017.

"Monica Kowal"
Vice-Chair

2.2.3 DEQ Systems Corp. − s. 1(10)(a)(ii)

Headnote

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

Applicable Legislative Provisions

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

[TRANSLATION]

February 2, 2017

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

AND

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

AND

IN THE MATTER OF
DEQ SYSTEMS CORP.
(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 Autorité des marchés financiers is the principal regulator for this application,

(b) the Filer has provided notice that subsection 4C.5(1) of *Regulation 11-102 respecting Passport System* (Regulation 11-102) is intended to be relied upon in British Columbia and Alberta, 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 *Regulation 14-101 respecting Definitions*, Regulation 11-102 and, in Québec, in *Regulation 14-501Q on definitions* 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 *Regulation 51-105 respecting 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 *Regulation 21-101 respecting 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.

“Martin Latulippe”
Director, Continuous Disclosure
Autorité des marchés financiers

2.2.4 Irish Life Investment Managers Limited – s. 80 of the CFA

Headnote

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

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

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20. as am., ss. 1(1), 22(1)(b) and 80
Securities Act, R.S.O. 1990, c. S.5, as am.
Ontario Securities Commission Rule 13-502 Fees, Part 3 and s. 6.4
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 1.1 and 8.26
National Instrument 33-109 Registration Information, Form 33-109F6

February 3, 2017

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

AND

IN THE MATTER OF
IRISH LIFE INVESTMENT MANAGERS LIMITED

ORDER
(Section 80 of the CFA)

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

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

AND WHEREAS for the purposes of this Order:

"**CFA Adviser Registration Requirement**" means the requirement in paragraph 22(1)(b) of the CFA that prohibits a person or company from acting as an adviser with respect to trading in Contracts unless the person or company is registered in the appropriate category of registration under the CFA;

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

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

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

"**NI 31-103**" means National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

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

"**OSA Adviser Registration Requirement**" means the requirement in the OSA that prohibits a person or company from engaging in or holding himself, herself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities, unless the person or company is registered in the appropriate category of registration under the OSA;

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

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a corporation organized under the laws of Ireland and its principal place of business is located in Ireland.

2. The Applicant is authorized to provide investment services by the Central Bank of Ireland under the European Communities (Markets in Financial Instruments) Regulations 2007, as amended (**MiFID**). As a MiFID investment firm, the Applicant is subject to prudential regulation and on-going supervision by the Central Bank of Ireland.

3. The Applicant is part of the Irish Life Group and the appointed asset manager to Irish Life Assurance plc (**Irish Life**). Irish Life is one of Ireland's leading financial services providers with over one million customers, and provides life insurance, pension and investment products and services. Since July 2013 Irish Life has been part of the Great-West Lifeco group of companies.

4. The Applicant operates as an investment manager and asset management firm and offers investment advice and portfolio management services to institutional clients. The Applicant serves a diversified client base of multinational corporations, insurance undertakings, pension funds, investment companies, domestic companies and charities.

5. The Applicant is authorized under MiFID to advise on, among other things, options, futures, swaps, forward rate agreements and any other derivative contracts relating to any of the following: (a) securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash and (b) commodities (other than commodities that can be physically settled, provided that they are traded on a regulated market or on a multilateral trading facility), and not being for commercial purposes, if the commodities can be physically settled and have the characteristics of other derivative financial instruments, having regard to whether, among other things, they are cleared and settled through recognized clearing houses or are subject to regular margin calls.

6. As of September 30, 2016, the Applicant managed approximately $93.6 billion in assets.

7. The Applicant is not registered under the OSA or CFA in Ontario or under the securities legislation or derivatives legislation, including commodity futures legislation, of any other jurisdiction of Canada.

8. The Applicant is not in default of the securities legislation or derivatives legislation, including commodity futures legislation, of any jurisdiction of Canada. The Applicant is also in compliance in all material respects with securities law, commodity futures law and derivatives laws of Ireland.

9. The Applicant currently relies upon the International Adviser Exemption to provide certain advisory services in respect of securities to residents of Ontario and Manitoba.

10. Certain investors that are Permitted Clients, including separately managed accounts, mutual funds and collective investment trust funds, seek to engage the Applicant as an investment adviser for the purposes of implementing certain investment strategies, including providing advice as to trading in Foreign Contracts and managing trading in Foreign Contracts through discretionary authority.

11. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser in respect of Contracts unless the person or company is registered as an adviser under the CFA, or is registered as a representative or as partner or an officer of a registered adviser and is acting on behalf of a registered adviser.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) the Applicant notifies the Commission of any regulatory action initiated after the date of this Order with respect to the Applicant or any predecessors or the specified affiliates of the Applicant by completing and filing Appendix "B" within 10 days of the commencement of each such action;

(i) if the Applicant is not registered under the OSA and does not rely on the International Adviser Exemption, by December 31st of each year, the Applicant pays a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of Ontario Securities Commission Rule 13-502 *Fees* as if the Applicant relied on the International Adviser Exemption; and

IT IS FURTHER ORDERED that this Order will terminate on the earliest of:

(a) the expiry of any transition period as may be provided by law, after the effective date of the repeal of the CFA;

(b) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the ability of the Applicant to act as an adviser to a Permitted Client; and

(c) five years after the date of this Order.

DATED at Toronto, Ontario, this __3__ day of February, 2017.

"William Furlong"
Commissioner
Ontario Securities Commission

"Janet Leiper"
Commissioner
Ontario Securities Commission

APPENDIX "A"

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

INTERNATIONAL DEALER OR INTERNATIONAL ADVISER EXEMPTED FROM REGISTRATION UNDER THE COMMODITY FUTURES ACT, ONTARIO

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

Name:

E-mail address:

Phone:

Fax:

6. The International Firm is relying on an exemption order under section 38 or section 80 of the Commodity *Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "Relief Order"):

[ ] Section 8.18 [*international dealer*]
[ ] Section 8.26 [*international adviser*]
[ ] Other [specify]:

7. Name of agent for service of process (the "Agent for Service"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator

    a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated;

    b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service; and

    c. a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 30th day after the change.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ [Insert name of International Firm] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of the Agent for Service or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

APPENDIX "B"

NOTICE OF REGULATORY ACTION

1. Has the firm, or any predecessors or specified affiliates[1] of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes _____ No _____

If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

	Yes	**No**
(a) Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?		
(b) Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?		
(c) Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?		
(d) Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?		
(e) Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?		
(f) Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?		
(g) Issued an order (other than an exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g.		

[1] In this Appendix, the term "specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 Registration Information.

cease trade order)?		

If yes, provide the following information for each action:

Name of Entity	
Type of Action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliate is the subject?

Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

2.2.5 Response Biomedical Corp.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

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

February 2, 2017

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
RESPONSE BIOMEDICAL CORP.
(the Filer)

ORDER

Background

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

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

(a) the 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, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, North West Territories, Yukon, and Nunavut; and

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

Peter J. Brady
Executive Director
British Columbia Securities Commission

2.2.6 Lance Kotton – s. 127(7) and (8)

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

AND

**IN THE MATTER OF
LANCE KOTTON**

**TEMPORARY ORDER
(Subsections 127(7) and (8))**

WHEREAS:

1. on November 6, 2015, the Ontario Securities Commission (the "Commission") ordered pursuant to subsections 127(1) and (5) of the *Securities Act*, RSO 1990, c S.5 (the "Act"), that:

   (a) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Lance Kotton ("Kotton") shall cease; and

   (b) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Kotton;

   (the "Temporary Order");

2. the Commission further ordered that the Temporary Order shall take effect immediately and shall expire on the 15th day after its making unless extended by order of the Commission;

3. on November 9, 2015, the Commission issued a Notice of Hearing providing notice that it would hold a hearing on November 19, 2015, to consider whether, pursuant to subsections 127(7) and 127(8) of the Act, it is in the public interest for the Commission to extend the Temporary Order until the conclusion of the hearing or until such further time as considered necessary by the Commission, and to make such further orders as the Commission considers appropriate;

4. Kotton consented to an extension of the Temporary Order until December 17, 2015, which order was further extended until February 7, 2017;

5. on February 6, 2017, Staff of the Commission appeared before the Commission requesting that the Temporary Order be extended as against Kotton until March 3, 2017 and made submissions, with no one appearing for Kotton; and

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

IT IS ORDERED that:

1. the Temporary Order is extended as against Kotton until March 3, 2017; and

2. the hearing of this matter is adjourned until March 1, 2017 at 2:00 p.m., or such other date and time as provided by the Office of the Secretary and agreed to by the parties.

DATED at Toronto, Ontario this 6th day of February, 2017.

"Timothy Moseley"

2.2.7 Counsel Portfolio Services Inc. and Irish Life Investment Managers Limited – s. 80 of the CFA

Headnote

Section 80 of the Commodity Futures Act (Ontario) – Relief from the adviser registration requirement of paragraph 22(1)(b) of the CFA granted to sub-adviser headquartered in a foreign jurisdiction in respect of advice regarding trades in commodity futures contracts and commodity futures options, subject to certain terms and conditions – Relief mirrors exemption available in section 8.26.1 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations made under the Securities Act (Ontario).

Applicable Legislative Provisions

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 1(1), 22(1)(b) and 80
Securities Act, R.S.O. 1990, c. S.5, as am., s. 25(3)
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.26.1
Ontario Securities Commission Rule 35-502 Non-Resident Advisers, s. 7.11

February 3, 2017

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

AND

IN THE MATTER OF
COUNSEL PORTFOLIO SERVICES INC.

AND

IRISH LIFE INVESTMENT MANAGERS LIMITED

ORDER
(Section 80 of the CFA)

UPON the application (the **Application**) of Irish Life Investment Managers Limited (**ILIM**) and Counsel Portfolio Services Inc. (the **Principal Adviser**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to section 80 of the CFA, that ILIM (and individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of ILIM in respect of the Sub-Advisory Services (as defined below) (the **Representatives**)) be exempt, for a specified period of time, from the adviser registration requirements of paragraph 22(1)(b) of the CFA when acting as a sub-adviser to the Principal Adviser for the benefit of the Clients (as defined below) regarding commodity futures contracts and commodity futures options traded on commodity futures exchanges (collectively, the **Contracts**) and cleared through clearing corporations;

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

AND UPON the Principal Adviser and ILIM having represented to the Commission that:

1. The Principal Adviser is a corporation governed by the laws of the Province of Ontario, with its head office located in Mississauga, Ontario. The Principal Adviser is registered (i) as an adviser in the category of portfolio manager under the *Securities Act* (Ontario) (the **OSA**); (ii) as an investment fund manager in each of Ontario, Québec and Newfoundland and Labrador and (iii) as an adviser in the category of commodity trading manager under the CFA.

2. ILIM is a corporation organized under the laws of Ireland and its principal place of business is located in Dublin, Ireland. ILIM is authorized to provide investment services by the Central Bank of Ireland under the European Communities (Markets in Financial Instruments) Regulations 2007 (**MiFID**). As a MiFID authorized investment firm, ILIM is subject to prudential regulation and on-going supervision by the Central Bank of Ireland. ILIM is authorized under MiFID to advise on, among other things, options, futures, swaps, forward rate agreements and any other derivative contracts relating to any of the following: (a) securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash and (b) commodities (other than commodities that can be physically settled, provided that they are traded on a regulated market or on a multilateral trading facility), and not being for commercial purposes, if the commodities can be physically settled and have the characteristics of other derivative financial instruments, having regard to whether, among other things, they are cleared and settled through recognized clearing houses or are subject to regular margin calls. ILIM is also registered as an investment adviser with the Securities and Exchange Commission of the United States of America (the **SEC**).

3. ILIM is not registered in any capacity under the securities legislation of Ontario or any other jurisdiction of Canada or under the CFA. However, ILIM is relying on the international adviser exemption in section 8.26 of National Instrument 31-103 *Registration Requirements,*

Exemptions and Ongoing Registrant Obligations (**NI 31-103**) in each of Ontario and Manitoba.

4. ILIM is registered in a category of registration under the commodity futures or other applicable legislation of Ireland that permits it to carry on the activities in Ireland that registration as an adviser under the CFA would permit it to carry on in Ontario. As such, ILIM is authorized and permitted to carry on the Sub-Advisory Services (as defined below) in Ireland.

5. ILIM engages in the business of an adviser in respect of Contracts in Ireland. Among other activities, ILIM engages in the business of advising others as to trading in commodity futures contracts, commodity futures options and options on commodity futures in Ireland.

6. The Principal Adviser and ILIM are affiliates.

7. Neither the Principal Adviser nor ILIM is in default of securities legislation, commodity futures legislation or derivatives legislation in any jurisdiction of Canada. ILIM is in compliance in all material respects with securities laws, commodity futures laws and derivatives laws in Ireland.

8. The Principal Adviser provides, or may in the future provide, investment advice and/or discretionary portfolio management services in Ontario to: (i) investment funds, the securities of which are either qualified by prospectus for distribution to investors in Ontario and the other provinces, excluding Québec, and territories of Canada, or are available for purchase on a private placement basis in Ontario and the other provinces and territories of Canada pursuant to prospectus exemptions contained in National Instrument 45-106 *Prospectus Exemptions* (the **Investment Funds**); (ii) clients who have entered into investment management agreements with the Principal Adviser to establish managed accounts (the **Managed Account Clients**); and (iii) other Investment Funds and Managed Account Clients that may be established or retained in the future and in respect of which the Principal Adviser will engage ILIM to provide portfolio advisory services (the **Future Clients**) (each of the Investment Funds, Managed Account Clients and Future Clients being referred to individually as a **Client** and collectively as the **Clients**).

9. Certain of the Clients may, as part of their investment program, invest in Contracts. The Principal Adviser acts, or will act, as a commodity trading manager in respect of such Clients.

10. In connection with the Principal Adviser acting as an adviser to Clients in respect of the purchase or sale of Contracts, the Principal Adviser, pursuant to a written agreement made between the Principal Adviser and ILIM, will retain ILIM to act as a sub-adviser to the Principal Adviser in respect of Contracts in which ILIM has experience and expertise by exercising discretionary authority on behalf of the Principal Adviser, in respect of all or a portion of the assets of the investment portfolio of the respective Client, including discretionary authority to buy or sell Contracts for the Client (the Sub-Advisory Services), provided that:

    (a) in each case, the Contracts must be cleared through an "acceptable clearing corporation" (as defined in National Instrument 81-102 Investment Funds, or any successor thereto (**NI 81-102**)) or a clearing corporation that clears and settles transactions made on a futures exchange listed in Appendix A of NI 81-102; and

    (b) such investments are consistent with the investment objectives and strategies of the applicable Client.

11. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a representative or as a partner or an officer of a registered adviser and is acting on behalf of such registered adviser.

12. By providing the Sub-Advisory Services, ILIM will be engaging in, or holding itself out as engaging in, the business of advising others in respect of Contracts and, in the absence of being granted the requested relief, would be required to register as an adviser under the CFA.

13. There is presently no rule or regulation under the CFA that provides an

exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA that is similar to the exemption from the adviser registration requirement in subsection 25(3) of the OSA, which is provided under section 8.26.1 of NI 31-103.

14. ILIM will only provide the Sub-Advisory Services as long as the Principal Adviser is, and remains, registered under the CFA as an adviser in the category of commodity trading manager.

15. The relationship among the Principal Adviser, ILIM and any Client will be consistent with the requirements of section 8.26.1 of NI 31-103.

16. As would be required under section 8.26.1 of NI 31-103:

    (a) the obligations and duties of ILIM will be set out in a written agreement with the Principal Adviser; and

    (b) the Principal Adviser will enter into a written contract with each Client, agreeing to be responsible for any loss that arises out of the failure of ILIM:

        (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Principal Adviser and each Client; or

        (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances

        (together with (i), the Assumed Obligations).

17. The written agreement between the Principal Adviser and ILIM will set out the obligations and duties of each party in connection with the Sub-Advisory Services and permit the Principal Adviser to exercise the degree of supervision and control it is required to exercise over ILIM in respect of the Sub-Advisory Services.

18. The Principal Adviser will deliver to the Clients all required reports and statements under applicable securities, commodity futures and derivatives legislation.

19. The offering document (the Offering Document) for each Client that is an Investment Fund and for which the Principal Adviser engages ILIM to provide the Sub-Advisory Services will include the following disclosure (the Required Disclosure):

    (a) a statement that the Principal Adviser is responsible for any loss that arises out of the failure of ILIM to meet the Assumed Obligations; and

    (b) a statement that there may be difficulty in enforcing any legal rights against ILIM (or any of its Representatives) because ILIM is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

20. Prior to purchasing any securities of one or more of the Clients that are Investment Funds directly from the Principal Adviser, all investors in these Investment Funds who are Ontario residents will receive, or have received, the Required Disclosure in writing (which may be in the form of an Offering Document).

21. Each Client that is a Managed Account Client for which the Principal Adviser engages ILIM to provide the Sub-Advisory Services will receive, or has received, the Required Disclosure in writing prior to the purchasing of any Contracts for such Client.

AND UPON being satisfied that it would not be prejudicial to the public interest for the Commission to grant the exemption requested;

IT IS ORDERED, pursuant to section 80 of the CFA, that ILIM and its Representatives are exempt from the adviser registration requirement in paragraph 22(1)(b) of the CFA when acting as a sub-adviser to the Principal Adviser in respect of the Sub-Advisory Services provided that at the relevant time that such activities are engaged in:

(a) the Principal Adviser is registered under the CFA as an adviser in the category of commodity trading manager;

(b) ILIM's head office or principal place of business is in a foreign jurisdiction;

(c) ILIM is registered in a category of registration, or operates under an

exemption from registration, under the commodity futures or other applicable legislation of the foreign jurisdiction in which its head office or principal place of business is located, that permits it to carry on the activities in that jurisdiction that registration as an adviser under the CFA would permit it to carry on in Ontario;

(d) ILIM engages in the business of an adviser in respect of Contracts in the foreign jurisdiction in which its head office or principal place of business is located;

(e) the obligations and duties of ILIM are set out in a written agreement with the Principal Adviser;

(f) the Principal Adviser has entered into a written agreement with the Clients, agreeing to be responsible for any loss that arises out of any failure of ILIM to meet the Assumed Obligations;

(g) the Offering Document of each Client that is an Investment Fund and for which the Principal Adviser engages ILIM to provide the Sub-Advisory Services will include the Required Disclosure;

(h) prior to purchasing any securities of one or more of the Clients that are Investment Funds directly from the Principal Adviser, all investors in these Investment Funds who are Ontario residents will receive, or have received, the Required Disclosure in writing (which may be in the form of an Offering Document); and

(i) each Client that is a Managed Account Client for which the Principal Adviser engages ILIM to provide the Sub-Advisory Services will receive, or has received, the Required Disclosure in writing prior to the purchasing of any Contracts for such Client; and

IT IS FURTHER ORDERED that this Order will terminate on the earliest of:

(a) the expiry of any transition period as may be provided by law, after the effective date of the repeal of the CFA;

(b) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the ability of a Sub-Adviser to act as a sub-adviser to the Principal Adviser in respect of the Sub-Advisory Services; and

(c) five years after the date of this Order.

DATED at Toronto, Ontario, this 3 day of February, 2017.

"William Furlong"
Commissioner
Ontario Securities Commission

"Janet Leiper"
Commissioner
Ontario Securities Commission

2.2.8 Edward Furtak et al.

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

AND

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

ORDER

WHEREAS:

1. On March 30, 2015 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, as amended (the "Act") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on March 30, 2015 with respect to Edward Furtak, Axton 2010 Finance Corp., Strict Trading Limited, Ronald Oslthoorn, Trafalgar Associates Limited, Lorne Allen and Strictrade Marketing Inc. (collectively, the "Respondents");

2. The Commission held the hearing on the merits, and after which issued its Reasons and Decision on the merits on November 24, 2016 (the "Merits Decision"), wherein the Panel concluded there had been contraventions of the Act by the Respondents;

3. On December 7, 2016, the Commission ordered that the hearing to determine sanctions and costs (the "Sanctions Hearing") would be held on January 30, 2017

4. The Sanctions Hearing commenced on January 30, 2017 at 10:00 a.m., at which Staff and counsel for the Respondents attended, tendered evidence and made submissions;

5. Staff requests a temporary cease trade order in respect of the Strictrade Offering (the "Temporary Order"), pending the completion of the Sanctions Hearing;

6. Staff and counsel for the Respondents made oral submissions with respect to the Temporary Order and the Panel requested written submissions;

7. Staff will send a letter notifying the three investors who have remained invested in the Strictrade Offering that: (i) Staff has sought the Temporary Order; (ii) the parties will be making written submissions with respect to the Temporary Order; and (iii) the Sanctions Hearing will continue on March 2 and 3, 2017; and

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

IT IS HEREBY ORDERED that:

1. Staff will serve and file written submissions with respect to the Temporary Order by February 13, 2017;

2. The Respondents will serve and file written submissions with respect to the Temporary Order by February 15, 2017;

3. In the interim and pending further argument, pursuant to clause 2 of subsection 127(1) of the Act, trading with respect to the Strictrade Offering shall cease, except for the payment of Trading Report Payments (as described in the Merits Decision) by the Respondents to investors, until further order of the Commission;

4. The Sanctions Hearing will continue at the offices of the Commission at 20 Queen Street West, Toronto, Ontario, on Thursday, March 2, 2017, commencing at 1:00 p.m., and continue on Friday, March 3, 2017, commencing at 10:45 a.m.

DATED at Toronto this 30th day of January, 2017.

"Janet Leiper"

"D. Grant Vingoe"

"AnneMarie Ryan"

2.4 Rulings

2.4.1 Goldman, Sachs & Co. – s. 38 of the CFA

Headnote

Application for a ruling pursuant to section 38 of the Commodity Futures Act granting relief from the dealer registration requirement set out in section 22 of the CFA in connection with acting as a clearing broker in Give-Up Transactions involving commodity futures contracts and options on commodity futures contracts on exchanges located in Canada (Canadian Futures) to, from or on behalf of Canadian institutional permitted clients (institutional investors) – relief limited to trades in Canadian futures for institutional permitted clients – relief subject to sunset clause.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20. as am., ss. 22, 38.

January 30, 2017

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

AND

IN THE MATTER OF
GOLDMAN, SACHS & CO. (the Filer)

RULING
(Section 38 of the CFA)

UPON the application (the **Application**) of the Filer to the Ontario Securities Commission (the **Commission**) for a ruling of the Commission, pursuant to section 38 of the CFA, that:

(a) the Filer is not subject to the dealer registration requirement set out in section 22 of the CFA in connection with providing Clearing Broker Services (as defined below) in Give-Up Transactions (as defined below) involving exchange-traded futures on exchanges located in Canada (**Canadian Futures**) to, from or on behalf of Institutional Permitted Clients (defined below) (the **Ruling**); and

(b) an Institutional Permitted Client is not subject to the dealer registration requirement in the CFA in connection with receiving Clearing Broker Services (as defined below) in Give-Up Transactions (as defined below) in Canadian Futures from the Filer pursuant to the Ruling;

AND WHEREAS for the purposes of the Ruling "**Institutional Permitted Client**" shall mean a "permitted client" as defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions, and Ongoing Registrant Obligations* (**NI 31-103**), except for:

(a) an individual,

(b) a person or company acting on behalf of a managed account of an individual,

(c) a person or company referred to in paragraph (p) of that definition, unless the person or company qualifies as an Institutional Permitted Client under another paragraph of that definition, or

(d) a person or company referred to in paragraph (q) of that definition unless that person or company has net assets of at least $100 million as shown on its most recently prepared financial statements or qualifies as an Institutional Permitted Client under another paragraph of that definition;

and provided further that, for the purposes of the definition of "Institutional Permitted Client", a reference in the definition of "permitted client" in section 1.1. of NI 31-103 to "securities legislation" shall be read as "securities legislation or Ontario commodity futures law, as applicable".

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

AND UPON the Filer having represented to the Commission as follows:

1. The Filer is a limited partnership formed under the laws of the State of New York. The Filer's head offices are located at 200 West Street, New York, NY 10282, United States of America (**U.S.**). The Filer is an indirect wholly-owned subsidiary of The Goldman Sachs Group, Inc. (**GS Group**). GS Group is a bank holding company under the United States Bank Holding Company Act of 1956 (**BHC Act**) and financial holding company under amendments to the BHC Act.

2. The Filer is registered as a broker-dealer with the U.S. Securities and Exchange Commission (**SEC**), a member of the U.S. Financial Industry Regulatory Authority (**FINRA**), a registered futures commission merchant (**FCM**) with the U.S. Commodity Futures Trading Commission (**CFTC**), and a member of the U.S. National Futures Association (**NFA**).

3. The Filer is a direct member of all major U.S. commodity futures exchanges and is a foreign approved participant of the Montreal Exchange.

4. In connection with its securities trading and advising activities, the Filer relies on the "international dealer exemption" under section 8.18 and the "international adviser exemption" under section 8.26 of NI 31-103 in the ten Canadian provinces and Yukon.

5. The Filer is not in default of securities legislation in any jurisdiction in Canada or under the CFA. The Filer is in compliance in all material respects with U.S. securities and commodity futures laws.

6. Goldman Sachs Canada Inc. (**GS Canada**) is an affiliate of the Filer. GS Canada is registered as an investment dealer in each of the provinces of Canada, as a derivatives dealer in Quebec, and is a dealer member of the Investment Industry Regulatory Organization of Canada (**IIROC**). GS Canada is not currently, but may in the future become, registered as an FCM under the CFA. GS Canada does not currently act as a broker with respect to futures trades.

7. The Filer currently relies on an order dated March 8, 2016 under the CFA, *Re Goldman, Sachs & Co.*, granting an exemption from the dealer registration requirement in connection with certain execution and clearing activities in commodity futures contracts and options on commodity futures contracts that trade on exchanges located outside of Canada.

8. The Filer wishes to act as a clearing broker with respect to Canadian Futures in the context of Give-Up Transactions (defined below) with Institutional Permitted Clients.

9. A **Give-Up Transaction** is a purchase or sale of futures contracts by a client that has an existing relationship with a clearing broker, but wishes to use the trade execution services of one or more other executing brokers for the purpose of executing such purchases or sales (**Subject Transactions**) on one or more markets. Under these circumstances, the executing broker executes the Subject Transactions as directed by the client and "gives up" such trades to the clearing broker for clearing, settlement, record-keeping, bookkeeping, custody and other administrative functions (**Clearing Broker Services**). The service provided by the executing broker is limited to trade execution only.

10. In a Give-Up Transaction, the clearing broker will maintain an account for the client that is administered in accordance with the terms and conditions of the account documentation of the clearing broker that has been signed by the client. The clearing broker will handle record keeping and collateral for the client. The client will not sign clearing account documentation with the executing broker, nor will the executing broker typically receive monies, margin or collateral directly from the client. Although the executing broker is responsible for its own record-keeping, bookkeeping, custody and other administrative functions (**Account Services**) in respect of its own clients, it does not, subject to any applicable regulatory requirements that may otherwise apply, provide Account Services for execution-only clients. Such Account Services remain the responsibility of the clearing broker. The clearing broker will have the primary relationship with the client and is contractually responsible for trade and risk monitoring as well as reporting trade confirmations and sending out monthly statements.

11. In order to enter into a Give-Up Transaction, a client will enter into a tri-party agreement, known as a "give-up agreement" (**Give-Up Agreement**), between an executing broker, a clearing broker, and the client. The Filer, as clearing broker, will generally use the *International Uniform Brokerage Execution Services ("Give-Up") Agreement: Version 2008* (© Futures Industry Association, 2008), as may be revised from time to time, as the Give-Up Agreement entered into with Institutional Permitted Clients.

12. Each party to the Give-Up Agreement, including the Filer as clearing broker, will represent in the Give-Up Agreement that it will perform its obligations under the Give-Up Agreement in accordance with applicable laws, governmental, regulatory, self-regulatory, exchange or clearing house rules, regulations, interpretations, protocols and the customs

and usages of the exchange or clearing house on which the transactions governed by the Give-Up Agreement are executed and cleared, as in force from time to time.

13. In Ontario, an Institutional Permitted Client would place orders for Canadian Futures for execution on Canadian futures exchanges with an Ontario-registered FCM, which would then be cleared locally on the applicable Canadian futures exchange by that Ontario-registered FCM (if qualified to do so) or another clearing member of the applicable Canadian futures exchange. The executed trades would be placed into a client omnibus account maintained by the Filer with the clearing member of the applicable Canadian futures exchange that locally clears the trades, and the executed trades would be booked by the Filer to the futures account of the Ontario client maintained with the Filer for trading on exchanges globally. In this arrangement, the Ontario-registered FCM would be responsible for all client-facing interactions relating to the execution of the Canadian Futures.

14. In the case of a Montréal Exchange-listed futures contract, a member of the Canadian Derivatives Clearing Corporation (**CDCC**) would clear the trade on the Filer's behalf. Therefore, trade execution would be done by an Ontario-registered FCM, the positions would be held at CDCC by a CDCC member (which could be, but would not necessarily have to be, the executing broker) and given up to the Filer at which the Ontario Institutional Permitted Client maintains a clearing account. The Filer would then carry the resulting positions in an account maintained on its books by the Institutional Permitted Client, and the Filer would call for and collect applicable margin from the Institutional Permitted Client. The Filer, in turn, would remit the required margin to the CDCC member that cleared the trades. That CDCC member would then make the required margin payment(s) to CDCC.

15. In respect of holding client assets, in order to protect customers in the event of the insolvency or financial instability of the Filer, the Filer is required under U.S. law to ensure that customer securities and monies be separately accounted for, segregated at all times from the securities and monies of the Filer and custodied exclusively with such banks, trust companies, clearing organizations or other licensed futures brokers and intermediaries as may be approved for such purposes under the U.S. *Commodity Exchange Act* (**CEA**) and the rules promulgated by the CFTC thereunder (collectively, the **Approved Depositories**). The Filer is further required to obtain acknowledgements from any Approved Depository holding customer funds or securities related to U.S.-based transactions or accounts that such funds and securities are to be separately held on behalf of such customers, with no right of set-off against the Filer's obligations or debts.

16. As a U.S. registered broker-dealer and FCM, the Filer is subject to regulatory capital requirements under the CEA and *Securities Exchange Act of 1934* (the **1934 Act**), specifically CFTC Regulation 1.17 *Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers* (**CFTC Regulation 1.17**), SEC Rule 15c3-1 *Net Capital Requirements for Brokers or Dealers* (**SEC Rule 15c3-1**) and SEC Rule 17a-5 *Reports to be Made by Certain Brokers and Dealers* (**SEC Rule 17a-5**). The Filer has elected to compute the minimum capital requirement in accordance with the alternative net capital requirement as permitted by SEC Rule 15c3-1 and CFTC Regulation 1.17. The Alternative Net Capital (**ANC**) method provides large broker-dealer / FCMs meeting specified criteria with an alternative to use mathematical models such as the value at risk model to calculate capital requirements for market and derivatives related credit risk. Under the ANC method, the Filer must document and implement a comprehensive internal risk management system which addresses market, credit, liquidity, legal and operational risk at the firm.

17. SEC Rule 15c3-1 requires that the Filer account for any guarantee of debt of a third party in calculating its excess net capital when a loss is probable and the amount can be reasonably estimated. Accordingly, the Filer will, in the event that it provides a guarantee of any debt of a third party, take a deduction from net capital when both of the preceding conditions exist.

18. SEC Rule 15c3-1 and CFTC Regulation 1.17 are designed to provide protections that are substantially similar to the protections provided by the capital formula requirements and specifically risk adjusted capital to which dealer members of IIROC are subject. The Filer is in compliance with SEC Rule 15c3-1 and in compliance in all material respects with SEC Rule 17a-5. If the Filer's net capital declines below the minimum amount required, the Filer is required to notify the SEC and FINRA pursuant to SEC Rule 17a-11 *Notification Provisions for Brokers and Dealers* (**SEC Rule 17a-11**). The SEC and FINRA have the responsibility to provide oversight over the Filer's compliance with SEC Rule 15c3-1 and SEC Rule 17a-5.

19. The Filer is required to prepare and file a financial report, which includes Form X-17a-5 Financial and Operational Combined Uniform Single Report (the **FOCUS Report**), monthly with the CFTC, NFA, SEC and FINRA. The FOCUS Report provides a more comprehensive description of the business activities of the Filer, and more accurately reflects those activities including client lending activity, than would be provided by Form 31-103F1 *Calculation of Excess Working Capital* (**Form 31-103F1**). The FOCUS Report provides a net capital calculation and a comprehensive description of the business activities of the Filer. The net capital requirements computed using methods prescribed by SEC Rule 15c3-1 are based on all assets and liabilities on the books and records of a broker-dealer whereas Form 31-103F1 is a calculation of excess working capital, which is a computation based primarily on the current assets and

current liabilities on the books and records of the dealer. The Filer is up-to-date in its submission of annual reports under SEC Rule 17a-5(d), including the FOCUS Report.

20. The Filer is a member of the Securities Investors Protection Corporation (**SIPC**). Subject to the eligibility criteria of SIPC, client assets held by the Filer in connection with its activities as a broker-dealer are insured by SIPC against loss due to insolvency in accordance with the Securities Investor Protection Act of 1970. There is no SIPC or similar insurance protection in connection with activities undertaken as a U.S. registered FCM.

21. The Filer is subject to CFTC Regulation 30.7 regarding cash, securities and other collateral that are deposited with a FCM or are otherwise required to be held for the benefit of its customers to margin futures and options on futures contracts traded on non-U.S. boards of trade, including Canadian Futures (**30.7 Customer Funds**). Accounts used to hold 30.7 Customer Funds must be properly titled to make clear that the funds belong to, and are being held for the benefit of, the FCM's customers who are trading foreign (i.e. non-U.S.) futures and futures options.

22. 30.7 Customer Funds may not be commingled with the funds of any other person, including the carrying FCM, except that the carrying FCM may deposit its own funds into the account containing 30.7 Customer Funds in order to prevent the accounts of the customers from becoming under-margined. Each Approved Depository (except for a derivatives clearing organization with specified rules) is required to provide the depositing FCM with a written acknowledgment that the depository was informed that such funds held in the customer account belong to customers and are being held in accordance with the CEA and CFTC Regulations. Among other representations, the depository must acknowledge that it cannot use any portion of 30.7 Customer Funds to satisfy any obligations that the FCM may owe the depository. The types of investments permitted for 30.7 Funds are restricted by CFTC Regulation 30.7(h), which refers to the list of permitted investments set forth in CFTC Regulation 1.25. The FCM is required, on a daily basis, to compute and submit to regulatory authorities a statement of the amounts of 30.7 Customer Funds held by the FCM.

23. In the event of a FCM's bankruptcy, funds allocated to each account class (i.e., the customer segregated, 30.7 secured amount and cleared swaps customer account classes established pursuant to CFTC Regulations 1.20, 30.7 and 22.2, respectively) or readily traceable to an account class must be allocated solely to that customer account class. The U.S. Bankruptcy Code also provides that non-defaulting customers in an account class that has incurred a loss will share in any shortfall, pro rata. However, customers whose funds are held in another account class that has not incurred a loss will not be required to share in such shortfall.

24. The Filer holds customer assets in accordance with Rule 15c3-3 of the 1934 Act, as amended (**SEC Rule 15c3-3**). SEC Rule 15c3-3 requires the Filer to segregate and keep segregated all "fully-paid securities" and "excess margin securities" (as such terms are defined in SEC Rule 15c3-3) of its customers from its proprietary assets. In addition to the segregation of customers' securities, SEC Rule 15c3-3 requires the Filer to deposit an amount of cash or qualified government securities determined in accordance with a reserve formula set forth in SEC Rule 15c3-3 in an account entitled "Special Reserve Account for the Exclusive Benefit of Customers" of such Filer at separate banks and/or custodians. The combination of segregated securities and cash reserve are designed to ensure that the Filer has sufficient assets to cover all net equity claims of its customers and provide protections that are substantially similar to the protections provided by the requirements dealer members of IIROC are subject. If the Filer fails to make an appropriate deposit, the Filer is required to notify the SEC and FINRA pursuant to SEC Rule 15c3-3(i). The Filer is in material compliance with the possession and control requirements of SEC Rule 15c3-3.

25. The Filer is subject to regulations of the Board of Governors of the U.S.A. Federal Reserve Board (**FRB**), the SEC, and FINRA regarding the lending of money, extension of credit and provision of margin to clients (the **U.S. Margin Regulations**) that provide protections that are substantially similar to the protections provided by the requirements regarding the lending of money, extension of credit and provision of margin to clients to which dealer members of IIROC are subject. In particular, the Filer is subject to the margin requirements imposed by the FRB, including Regulation T, and under applicable SEC rules and under FINRA Rule 4210. The Filer is in material compliance with all applicable U.S. Margin Regulations.

26. Section 22 of the CFA provides that no person may trade in a commodity futures contract or a commodity futures option unless the person is registered as a dealer [*Futures Commission Merchant*], or as a representative of the dealer, or an exemption from the registration requirement is available. The Filer's activities in providing Clearing Broker Services in Give-Up Transactions involving Canadian Futures to, from or on behalf of Institutional Permitted Clients may constitute trading in Canadian Futures.

27. The Filer's activities in providing Clearing Broker Services in Give-Up Transactions involving Canadian Futures to, from or on behalf of Institutional Permitted Clients may also constitute trading in Canadian Futures by Institutional Permitted Clients. Institutional Permitted Clients may be unable to rely on the exemptions from the dealer registration requirement in the CFA because the Filer is not a registered dealer. Accordingly, the Filer is also seeking exemptive relief pursuant to the Ruling for Institutional Permitted Clients that receive Clearing Broker Services from the Filer.

28. The Filer believes that it would be beneficial to Institutional Permitted Clients in Ontario that trade in the international futures markets for the Filer to act as a clearing broker for both Canadian and non-Canadian futures for the Institutional Permitted Client because such an arrangement would enable the Institutional Permitted Client to benefit from significant efficiencies in collateral usage and consolidated reporting. Benefits would include single margin calls/payments, single wire transfer, ease of reconciliation, netting and cross product margining.

29. Clients may seek clearing services from the Filer in order to separate the execution of a trade from the clearing and settlement of a trade. This allows clients to use many executing brokers, without maintaining an active, ongoing clearing account with each executing broker. It also allows the client to consolidate the clearing and settlement of Canadian Futures in an account with the Filer

30. The Filer does not dictate to its clients the executing brokers through which clients may execute trades. Clients are free to directly select their executing broker. Clients send orders to the executing broker who carries out the trade. The executing broker will be an appropriately registered dealer or a person or company relying on an exemption from dealer registration that permits it to execute the trade for clients.

31. The Filer is a “market participant” as defined under subsection 1(1) of the CFA. As a market participant, among other requirements, the Filer is required to comply with the record keeping and provision of information provisions under section 14 of the CFA, which include the requirement to keep such books, records and other documents (a) as are necessary for the proper recording of business transactions and financial affairs, and the transactions executed on behalf of others, (b) as may otherwise be required under Ontario commodity futures law, and (c) as may reasonably be required to demonstrate compliance with Ontario commodity futures laws, and to deliver such records to the Commission if required.

AND UPON the Commission being satisfied that it would not be prejudicial to the public interest to do so;

IT IS RULED, pursuant to section 38 of the CFA, that the Filer is not subject to the dealer registration requirement set out in the CFA in connection with providing Clearing Broker Services in Give-Up Transactions involving Canadian Futures to, from or on behalf of Institutional Permitted Clients so long as the Filer:

(a) has its head office or principal place of business in the U.S.;

(b) is registered as a FCM with the CFTC and engages in the business of an FCM in the U.S., and is registered as a broker-dealer under the securities legislation of the U.S. and engages in the business of a broker-dealer in the U.S.;

(c) is a member firm of the NFA and FINRA;

(d) is a member of SIPC;

(e) is subject to requirements over regulatory capital, lending of money, extension of credit and provision of margin, financial reporting to the SEC and FINRA, and/or the CFTC and NFA, and segregation and custody of assets which provide protections that are substantially similar to the protections provided by the rules to which dealer members of IIROC are subject;

(f) limits its provision of Clearing Broker Services in respect of Give-Up Transactions involving Canadian Futures to Institutional Permitted Clients in Ontario;

(g) does not execute trades in Canadian Futures with or for Institutional Permitted Clients in Ontario, except as permitted under applicable Ontario securities or commodities futures laws;

(h) does not require its clients to use specific executing brokers through which clients may execute trades;

(i) notifies the OSC of any regulatory action initiated after the date of this decision in respect of the Filer, or any predecessors or specified affiliates of the Filer, by completing and filing with the OSC Appendix "B" hereto within ten days of the commencement of any such action; provided that the Filer may also satisfy this condition by filing with the OSC within ten days of the date of this decision a notice making reference to and incorporating by reference the disclosure made by the Filer pursuant to U.S. federal securities laws that is identified in the FINRA BrokerCheck system, and any updates to such disclosure that may be made from time to time, and by providing notification, in a manner reasonably acceptable to the Director, of any filing of a Form BD 'Regulatory Action Disclosure Reporting Page';

(j) submits the financial report and compliance report as described in SEC Rule 17a-5(d) to the OSC on an annual basis, at the same time such reports are filed with the SEC and FINRA;

(k) submits audited financial statements to the OSC on an annual basis, within 90 days of the Filer's financial year end;

(l) submits to the OSC immediately a copy of any notice filed under SEC Rule 17a-11 or under SEC Rule 15c3-3(i) with the SEC and FINRA;

(m) complies with the filing and fee payment requirements applicable to a registrant under OSC Rule 13-502 *Fees*; provided that, if the Filer does not rely on the international dealer exemption in section 8.18 of NI 31-103 (the **IDE**), by December 31st of each year, the Filer pays a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of OSC Rule 13-502 *Fees* as if the Filer relied on the IDE;

(n) files in an electronic and searchable format with the OSC such reports as to any or all of its trading activities in Canada as the OSC may, upon notice, require from time to time;

(o) pays the increased compliance and case assessment costs of the OSC due to the Filer's location outside Ontario, including, as required, the reasonable cost of hiring a third party to perform a compliance review on behalf of the OSC;

(p) has provided to each Institutional Permitted Client the following disclosure in writing:

(i) a statement that the Filer is not registered in Ontario to trade in Canadian Futures as principal or agent;

(ii) a statement that the Filer's head office or principal place of business is located in New York, New York, U.S.;

(iii) a statement that all or substantially all of the Filer's assets may be situated outside of Canada;

(iv) a statement that there may be difficulty enforcing legal rights against the Filer because of the above; and

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

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

This Decision will terminate on the earliest of:

(i) the expiry of any transition period as may be provided by law, after the effective date of the repeal of the CFA;

(ii) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the dealer registration requirements in the CFA or the trading restrictions in the CFA; and

(iii) five years after the date of this Decision.

AND IT IS FURTHER RULED, pursuant to section 38 of the CFA, that an Institutional Permitted Client is not subject to the dealer registration requirement in the CFA in connection with trades in Canadian Futures when receiving Clearing Broker Services in Give-Up Transactions where the Filer acts in connection with trades in Canadian Futures on behalf of the Institutional Permitted Client from the Filer pursuant to the above ruling.

"Grant Vingoe"
Vice-Chair
Ontario Securities Commission

"Monica Kowal"
Vice-Chair
Ontario Securities Commission

APPENDIX "A"

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

INTERNATIONAL DEALER OR INTERNATIONAL ADVISER EXEMPTED FROM REGISTRATION UNDER THE COMMODITY FUTURES ACT, ONTARIO

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

   Name:
   E-mail address:
   Phone:
   Fax:

6. The International Firm is relying on an exemption order under section 38 or section 80 of the *Commodity Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "Relief Order"):

   ☐ Section 8.18 [*international dealer*]

   ☐ Section 8.26 [*international adviser*]

   ☐ Other

7. Name of agent for service of process (the "Agent for Service"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator

    a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated;

    b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service;

    c. a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 30th day after the change.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ [Insert name of International Firm] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of the Agent for Service or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

APPENDIX "B"

NOTICE OF REGULATORY ACTION

1. Has the firm, or any predecessors or specified affiliates[1] of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

   Yes _____ No _____

   If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

		Yes	No
a)	Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?	___	___
(b)	Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?	___	___
(c)	Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?	___	___
(d)	Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?	___	___
(e)	Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?	___	___
(f)	Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?	___	___
(g)	Issued an order (other than an exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?	___	___

   If yes, provide the following information for each action:

Name of entity	
Type of action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

[1] In this Appendix, the term "specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*.

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliates is the subject?

Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm:
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

2.4.2 HSBC Securities (USA) Inc. – s. 38 of the CFA

Headnote

Application for a ruling pursuant to section 38 of the Commodity Futures Act granting relief from the dealer registration requirement set out in section 22 of the CFA in connection with acting as a clearing broker in Give-Up Transactions involving commodity futures contracts and options on commodity futures contracts on exchanges located in Canada (Canadian Futures) to, from or on behalf of Canadian institutional permitted clients (institutional investors) – relief limited to trades in Canadian futures for institutional permitted clients – relief subject to sunset clause.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20. as am., ss. 22, 38.

January 30, 2017

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

AND

IN THE MATTER OF
HSBC SECURITIES (USA) INC.
(the Filer)

RULING
(Section 38 of the CFA)

UPON the application (the **Application**) of the Filer to the Ontario Securities Commission (the **Commission**) for a ruling of the Commission, pursuant to section 38 of the CFA, that:

(a) the Filer is not subject to the dealer registration requirement set out in section 22 of the CFA in connection with providing Clearing Broker Services (as defined below) in Give-Up Transactions (as defined below) involving exchange-traded futures on exchanges located in Canada (**Canadian Futures**) to, from or on behalf of Institutional Permitted Clients (defined below) (the **Ruling**); and

(b) an Institutional Permitted Client is not subject to the dealer registration requirement in the CFA in connection with receiving Clearing Broker Services (as defined below) in Give-Up Transactions (as defined below) in Canadian Futures from the Filer pursuant to the Ruling;

AND WHEREAS for the purposes of the Ruling "**Institutional Permitted Client**" shall mean a "permitted client" as defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions, and Ongoing Registrant Obligations* (**NI 31-103**), except for:

(a) an individual,

(b) a person or company acting on behalf of a managed account of an individual,

(c) a person or company referred to in paragraph (p) of that definition, unless the person or company qualifies as an Institutional Permitted Client under another paragraph of that definition, or

(d) a person or company referred to in paragraph (q) of that definition unless that person or company has net assets of at least $100 million as shown on its most recently prepared financial statements or qualifies as an Institutional Permitted Client under another paragraph of that definition;

and provided further that, for the purposes of the definition of "Institutional Permitted Client", a reference in the definition of "permitted client" in section 1.1. of NI 31-103 to "securities legislation" shall be read as "securities legislation or Ontario commodity futures law, as applicable".

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

AND UPON the Filer having represented to the Commission as follows:

1. The Filer is a corporation formed under the laws of the State of Delaware. The Filer's head offices are located at 452 5th Avenue, New York, NY 10018, United States of America (**U.S.**). The Filer is an indirect wholly-owned subsidiary of HSBC Markets (USA) Inc., which in turn is indirectly wholly owned by HSBC Holdings plc.

2. Filer is registered as a broker-dealer with the U.S. Securities and Exchange Commission (**SEC**), a member of the U.S. Financial Industry Regulatory Authority (**FINRA**), a registered futures commission merchant (**FCM**) with the U.S. Commodity Futures Trading Commission (**CFTC**), and a member of the U.S. National Futures Association (**NFA**).

3. The Filer is a direct member of all major U.S. commodity futures exchanges and is a foreign approved participant of the Montreal Exchange.

4. In connection with its securities trading activities, the Filer relies on the "international dealer exemption" under section 8.18 of NI 31-103 in the Alberta, British Columbia, Ontario and Quebec.

5. The Filer is not in default of securities legislation in any jurisdiction in Canada or under the CFA. The Filer is in compliance in all material respects with U.S. securities and commodity futures laws.

6. HSBC Securities (Canada) Inc. (**HSBC Securities Canada**), an affiliate of the Filer, is registered as a dealer in the category of investment dealer in each of the provinces and territories of Canada, and in the category of derivatives dealer in Quebec. HSBC Securities Canada is also a dealer member of the Investment Industry Regulatory Organization of Canada (**IIROC**) and has its head office in Ontario. HSBC Securities Canada is an indirect wholly-owned subsidiary of HSBC Bank Canada, a Canadian chartered bank validly existing under the laws of Canada.

7. The Filer currently relies on an order dated November 21, 2016 under the CFA, *Re HSBC Securities (USA) Inc.*, granting an exemption from the dealer registration requirement in connection with certain execution and clearing activities in commodity futures contracts and options on commodity futures contracts that trade on exchanges located outside of Canada.

8. The Filer wishes to act as a clearing broker with respect to Canadian Futures in the context of Give-Up Transactions (defined below) with Institutional Permitted Clients.

9. A **Give-Up Transaction** is a purchase or sale of futures contracts by a client that has an existing relationship with a clearing broker, but wishes to use the trade execution services of one or more other executing brokers for the purpose of executing such purchases or sales (**Subject Transactions**) on one or more markets. Under these circumstances, the executing broker executes the Subject Transactions as directed by the client and "gives up" such trades to the clearing broker for clearing, settlement, record-keeping, bookkeeping, custody and other administrative functions (**Clearing Broker Services**). The service provided by the executing broker is limited to trade execution only.

10. In a Give-Up Transaction, the clearing broker will maintain an account for the client that is administered in accordance with the terms and conditions of the account documentation of the clearing broker that has been signed by the client. The clearing broker will handle record keeping and collateral for the client. The client will not sign clearing account documentation with the executing broker, nor will the executing broker typically receive monies, margin or collateral directly from the client. Although the executing broker is responsible for its own record-keeping, bookkeeping, custody and other administrative functions (**Account Services**) in respect of its own clients, it does not, subject to any applicable regulatory requirements that may otherwise apply, provide Account Services for execution-only clients. Such Account Services remain the responsibility of the clearing broker. The clearing broker will have the primary relationship with the client and is contractually responsible for trade and risk monitoring as well as reporting trade confirmations and sending out monthly statements.

11. In order to enter into a Give-Up Transaction, a client will enter into a tri-party agreement, known as a "give-up agreement" (**Give-Up Agreement**), between an executing broker, a clearing broker, and the client. The Filer, as clearing broker, will generally use the *International Uniform Brokerage Execution Services ("Give-Up") Agreement: Version 2008* (© Futures Industry Association, 2008), as may be revised from time to time, as the Give-Up Agreement entered into with Institutional Permitted Clients.

12. Each party to the Give-Up Agreement, including the Filer as clearing broker, will represent in the Give-Up Agreement that it will perform its obligations under the Give-Up Agreement in accordance with applicable laws, governmental, regulatory, self-regulatory, exchange or clearing house rules, regulations, interpretations, protocols and the customs and usages of the exchange or clearing house on which the transactions governed by the Give-Up Agreement are executed and cleared, as in force from time to time.

13. In Ontario, an Institutional Permitted Client would place orders for Canadian Futures for execution on Canadian futures exchanges with an Ontario-registered FCM, which would then be cleared locally on the applicable Canadian futures exchange by that Ontario-registered FCM (if qualified to do so) or another clearing member of the applicable Canadian futures exchange. The executed trades would be placed into a client omnibus account maintained by the Filer with the clearing member of the applicable Canadian futures exchange that locally clears the trades, and the executed trades would be booked by the Filer to the futures account of the Ontario client maintained with the Filer for trading on exchanges globally. In this arrangement, the Ontario-registered FCM would be responsible for all client-facing interactions relating to the execution of the Canadian Futures.

14. In the case of a Montréal Exchange-listed futures contract, a member of the Canadian Derivatives Clearing Corporation (**CDCC**) would clear the trade on the Filer's behalf. Therefore, trade execution would be done by an Ontario-registered FCM, the positions would be held at CDCC by a CDCC member (which could be, but would not necessarily have to be, the executing broker) and given up to the Filer at which the Ontario Institutional Permitted Client maintains a clearing account. The Filer would then carry the resulting positions in an account maintained on its books by the Institutional Permitted Client, and the Filer would call for and collect applicable margin from the Institutional Permitted Client. The Filer, in turn, would remit the required margin to the CDCC member that cleared the trades. That CDCC member would then make the required margin payment(s) to CDCC.

15. In respect of holding client assets, in order to protect customers in the event of the insolvency or financial instability of the Filer, the Filer is required under U.S. law to ensure that customer securities and monies be separately accounted for, segregated at all times from the securities and monies of the Filer and custodied exclusively with such banks, trust companies, clearing organizations or other licensed futures brokers and intermediaries as may be approved for such purposes under the U.S. *Commodity Exchange Act* (**CEA**) and the rules promulgated by the CFTC thereunder (collectively, the **Approved Depositories**). The Filer is further required to obtain acknowledgements from any Approved Depository holding customer funds or securities related to U.S.-based transactions or accounts that such funds and securities are to be separately held on behalf of such customers, with no right of set-off against the Filer's obligations or debts.

16. As a U.S. registered broker-dealer and FCM, the Filer is subject to regulatory capital requirements under the CEA and *Securities Exchange Act of 1934* (the **1934 Act**), specifically CFTC Regulation 1.17 *Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers* (**CFTC Regulation 1.17**), SEC Rule 15c3-1 *Net Capital Requirements for Brokers or Dealers* (**SEC Rule 15c3-1**) and SEC Rule 17a-5 *Reports to be Made by Certain Brokers and Dealers* (**SEC Rule 17a-5**).

17. SEC Rule 15c3-1 requires that the Filer account for any guarantee of debt of a third party in calculating its excess net capital when a loss is probable and the amount can be reasonably estimated. Accordingly, the Filer will, in the event that it provides a guarantee of any debt of a third party, take a deduction from net capital when both of the preceding conditions exist.

18. SEC Rule 15c3-1 and CFTC Regulation 1.17 are designed to provide protections that are substantially similar to the protections provided by the capital formula requirements and specifically risk adjusted capital to which dealer members of IIROC are subject. The Filer is in compliance with SEC Rule 15c3-1 and in compliance in all material respects with SEC Rule 17a-5. If the Filer's net capital declines below the minimum amount required, the Filer is required to notify the SEC and FINRA pursuant to SEC Rule 17a-11 *Notification Provisions for Brokers and Dealers* (**SEC Rule 17a-11**). The SEC and FINRA have the responsibility to provide oversight over the Filer's compliance with SEC Rule 15c3-1 and SEC Rule 17a-5.

19. The Filer is required to prepare and file a financial report, which includes Form X-17a-5 Financial and Operational Combined Uniform Single Report (the **FOCUS Report**), monthly with the CFTC, NFA, SEC and FINRA. The FOCUS Report provides a more comprehensive description of the business activities of the Filer, and more accurately reflects those activities including client lending activity, than would be provided by Form 31-103F1 *Calculation of Excess Working Capital* (**Form 31-103F1**). The FOCUS Report provides a net capital calculation and a comprehensive description of the business activities of the Filer. The net capital requirements computed using methods prescribed by SEC Rule 15c3-1 are based on all assets and liabilities on the books and records of a broker-dealer whereas Form 31-103F1 is a calculation of excess working capital, which is a computation based primarily on the current assets and current liabilities on the books and records of the dealer. The Filer is up-to-date in its submission of annual reports under SEC Rule 17a-5(d), including the FOCUS Report.

20. The Filer is a member of the Securities Investors Protection Corporation (**SIPC**). Subject to the eligibility criteria of SIPC, client assets held by the Filer in connection with its activities as a broker-dealer are insured by SIPC against loss due to insolvency in accordance with the Securities Investor Protection Act of 1970. There is no SIPC or similar insurance protection in connection with activities undertaken as a U.S. registered FCM.

21. The Filer is subject to CFTC Regulation 30.7 regarding cash, securities and other collateral that are deposited with a FCM or are otherwise required to be held for the benefit of its customers to margin futures and options on futures contracts traded on non-U.S. boards of trade, including Canadian Futures, (**30.7 Customer Funds**). Accounts used to hold 30.7 Customer Funds must be properly titled to make clear that the funds belong to, and are being held for the benefit of, the FCM's customers who are trading foreign (i.e. non-U.S.) futures and futures options.

22. 30.7 Customer Funds may not be commingled with the funds of any other person, including the carrying FCM, except that the carrying FCM may deposit its own funds into the account containing 30.7 Customer Funds in order to prevent the accounts of the customers from becoming under-margined. Each Approved Depository (except for a derivatives clearing organization with specified rules) is required to provide the depositing FCM with a written acknowledgment that the depository was informed that such funds held in the customer account belong to customers and are being held in accordance with the CEA and CFTC Regulations. Among other representations, the depository must acknowledge that it cannot use any portion of 30.7 Customer Funds to satisfy any obligations that the FCM may owe the depository. The types of investments permitted for 30.7 Funds are restricted by CFTC Regulation 30.7(h), which refers to the list of permitted investments set forth in CFTC Regulation 1.25. The FCM is required, on a daily basis, to compute and submit to regulatory authorities a statement of the amounts of 30.7 Customer Funds held by the FCM.

23. In the event of a FCM's bankruptcy, funds allocated to each account class (i.e., the customer segregated, 30.7 secured amount and cleared swaps customer account classes established pursuant to CFTC Regulations 1.20, 30.7 and 22.2, respectively) or readily traceable to an account class must be allocated solely to that customer account class. The U.S. Bankruptcy Code also provides that non-defaulting customers in an account class that has incurred a loss will share in any shortfall, pro rata. However, customers whose funds are held in another account class that has not incurred a loss will not be required to share in such shortfall.

24. The Filer holds customer assets in accordance with Rule 15c3-3 of the 1934 Act, as amended (**SEC Rule 15c3-3**). SEC Rule 15c3-3 requires the Filer to segregate and keep segregated all "fully-paid securities" and "excess margin securities" (as such terms are defined in SEC Rule 15c3-3) of its customers from its proprietary assets. In addition to the segregation of customers' securities, SEC Rule 15c3-3 requires the Filer to deposit an amount of cash or qualified government securities determined in accordance with a reserve formula set forth in SEC Rule 15c3-3 in an account entitled "Special Reserve Account for the Exclusive Benefit of Customers" of such Filer at separate banks and/or custodians. The combination of segregated securities and cash reserve are designed to ensure that the Filer has sufficient assets to cover all net equity claims of its customers and provide protections that are substantially similar to the protections provided by the requirements dealer members of IIROC are subject. If the Filer fails to make an appropriate deposit, the Filer is required to notify the SEC and FINRA pursuant to SEC Rule 15c3-3(i). The Filer is in material compliance with the possession and control requirements of SEC Rule 15c3-3.

25. The Filer is subject to regulations of the Board of Governors of the U.S.A. Federal Reserve Board (**FRB**), the SEC, and FINRA regarding the lending of money, extension of credit and provision of margin to clients (the **U.S. Margin Regulations**) that provide protections that are substantially similar to the protections provided by the requirements regarding the lending of money, extension of credit and provision of margin to clients to which dealer members of IIROC are subject. In particular, the Filer is subject to the margin requirements imposed by the FRB, including Regulation T, and under applicable SEC rules and under FINRA Rule 4210. The Filer is in material compliance with all applicable U.S. Margin Regulations.

26. Section 22 of the CFA provides that no person may trade in a commodity futures contract or a commodity futures option unless the person is registered as a dealer [*Futures Commission Merchant*], or as a representative of the dealer, or an exemption from the registration requirement is available. The Filer's activities in providing Clearing Broker Services in Give-Up Transactions involving Canadian Futures to, from or on behalf of Institutional Permitted Clients may constitute trading in Canadian Futures.

27. The Filer's activities in providing Clearing Broker Services in Give-Up Transactions involving Canadian Futures to, from or on behalf of Institutional Permitted Clients may also constitute trading in Canadian Futures by Institutional Permitted Clients. Institutional Permitted Clients may be unable to rely on the exemptions from the dealer registration requirement in the CFA because the Filer is not a registered dealer. Accordingly, the Filer is also seeking exemptive relief pursuant to the Ruling for Institutional Permitted Clients that receive Clearing Broker Services from the Filer.

28. The Filer believes that it would be beneficial to Institutional Permitted Clients in Ontario that trade in the international futures markets for the Filer to act as a clearing broker for both Canadian and non-Canadian futures for the Institutional Permitted Client because such an arrangement would enable the Institutional Permitted Client to benefit from significant efficiencies in collateral usage and consolidated reporting. Benefits would include single margin calls/payments, single wire transfer, ease of reconciliation, netting and cross product margining.

29. Clients may seek clearing services from the Filer in order to separate the execution of a trade from the clearing and settlement of a trade. This allows clients to use many executing brokers, without maintaining an active, ongoing clearing account with each executing broker. It also allows the client to consolidate the clearing and settlement of Canadian Futures in an account with the Filer.

30. The Filer does not dictate to its clients the executing brokers through which clients may execute trades. Clients are free to directly select their executing broker. Clients send orders to the executing broker who carries out the trade. The executing broker will be an appropriately registered dealer or a person or company relying on an exemption from dealer registration that permits it to execute the trade for clients.

31. The Filer is a "market participant" as defined under subsection 1(1) of the CFA. As a market participant, among other requirements, the Filer is required to comply with the record keeping and provision of information provisions under section 14 of the CFA, which include the requirement to keep such books, records and other documents: (a) as are necessary for the proper recording of business transactions and financial affairs, and the transactions executed on behalf of others, (b) as may otherwise be required under Ontario commodity futures law, and (c) as may reasonably be required to demonstrate compliance with Ontario commodity futures laws, and to deliver such records to the Commission if required.

AND UPON the Commission being satisfied that it would not be prejudicial to the public interest to do so;

IT IS RULED, pursuant to section 38 of the CFA, that the Filer is not subject to the dealer registration requirement set out in the CFA in connection with providing Clearing Broker Services in Give-Up Transactions involving Canadian Futures to, from or on behalf of Institutional Permitted Clients so long as the Filer:

(a) has its head office or principal place of business in the U.S.;

(b) is registered as a FCM with the CFTC and engages in the business of an FCM in the U.S., and is registered as a broker-dealer under the securities legislation of the U.S. and engages in the business of a broker-dealer in the U.S.;

(c) is a member firm of the NFA and FINRA;

(d) is a member of SIPC;

(e) is subject to requirements over regulatory capital, lending of money, extension of credit and provision of margin, financial reporting to the SEC and FINRA, and/or the CFTC and NFA, and segregation and custody of assets which provide protections that are substantially similar to the protections provided by the rules to which dealer members of IIROC are subject;

(f) limits its provision of Clearing Broker Services in respect of Give-Up Transactions involving Canadian Futures to Institutional Permitted Clients in Ontario;

(g) does not execute trades in Canadian Futures with or for Institutional Permitted Clients in Ontario, except as permitted under applicable Ontario securities or commodities futures laws;

(h) does not require its clients to use specific executing brokers through which clients may execute trades;

(i) notifies the OSC of any regulatory action initiated after the date of this decision in respect of the Filer, or any predecessors or specified affiliates of the Filer, by completing and filing with the OSC Appendix "B" hereto within ten days of the commencement of any such action; provided that the Filer may also satisfy this condition by filing with the OSC within ten days of the date of this decision a notice making reference to and incorporating by reference the disclosure made by the Filer pursuant to U.S. federal securities laws that is identified in the FINRA BrokerCheck system, and any updates to such disclosure that may be made from time to time, and by providing notification, in a manner reasonably acceptable to the Director, of any filing of a Form BD 'Regulatory Action Disclosure Reporting Page;

(j) submits the financial report and compliance report as described in SEC Rule 17a-5(d) to the OSC on an annual basis, at the same time such reports are filed with the SEC and FINRA;

(k) submits audited financial statements to the OSC on an annual basis, within 90 days of the Filer's financial year end;

(l) submits to the OSC immediately a copy of any notice filed under SEC Rule 17a-11 or under SEC Rule 15c3-3(i) with the SEC and FINRA;

(m) complies with the filing and fee payment requirements applicable to a registrant under OSC Rule 13-502 *Fees*; provided that, if the Filer does not rely on the international dealer exemption in section 8.18 of NI 31-103 (the **IDE**), by December 31st of each year, the Filer pays a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of OSC Rule 13-502 *Fees* as if the Filer relied on the IDE;

(n) files in an electronic and searchable format with the OSC such reports as to any or all of its trading activities in Canada as the OSC may, upon notice, require from time to time;

(o) pays the increased compliance and case assessment costs of the OSC due to the Filer's location outside Ontario, including, as required, the reasonable cost of hiring a third party to perform a compliance review on behalf of the OSC;

(p) has provided to each Institutional Permitted Client the following disclosure in writing:

(i) a statement that the Filer is not registered in Ontario to trade in Canadian Futures as principal or agent;

(ii) a statement that the Filer's head office or principal place of business is located in New York, New York, U.S.;

(iii) a statement that all or substantially all of the Filer's assets may be situated outside of Canada;

(iv) a statement that there may be difficulty enforcing legal rights against the Filer because of the above; and

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

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

This Decision will terminate on the earliest of:

(i) the expiry of any transition period as may be provided by law, after the effective date of the repeal of the CFA;

(ii) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the dealer registration requirements in the CFA or the trading restrictions in the CFA; and

(iii) five years after the date of this Decision.

AND IT IS FURTHER RULED, pursuant to section 38 of the CFA, that an Institutional Permitted Client is not subject to the dealer registration requirement in the CFA in connection with trades in Canadian Futures when receiving Clearing Broker Services in Give-Up Transactions where the Filer acts in connection with trades in Canadian Futures on behalf of the Institutional Permitted Client from the Filer pursuant to the above ruling.

"Grant Vingoe"
Vice-Chair
Ontario Securities Commission

"Monica Kowal"
Vice-Chair
Ontario Securities Commission

APPENDIX "A"

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

INTERNATIONAL DEALER OR INTERNATIONAL ADVISER EXEMPTED FROM REGISTRATION UNDER THE COMMODITY FUTURES ACT, ONTARIO

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

   Name:
   E-mail address:
   Phone:
   Fax:

6. The International Firm is relying on an exemption order under section 38 or section 80 of the *Commodity Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "Relief Order"):

   ☐ Section 8.18 [*international dealer*]

   ☐ Section 8.26 [*international adviser*]

   ☐ Other

7. Name of agent for service of process (the "Agent for Service"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator

    a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated;

    b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service;

    c. a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 30th day after the change.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ [Insert name of International Firm] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of the Agent for Service or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

APPENDIX "B"

NOTICE OF REGULATORY ACTION

1. Has the firm, or any predecessors or specified affiliates[2] of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

   Yes _____ No _____

   If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

		Yes	No
a)	Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?	___	___
(b)	Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?	___	___
(c)	Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?	___	___
(d)	Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?	___	___
(e)	Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?	___	___
(f)	Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?	___	___
(g)	Issued an order (other than an exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?	___	___

If yes, provide the following information for each action:

Name of entity	
Type of action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliates is the subject?

[2] In this Appendix, the term "specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*.

Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm:
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 William Raymond Malone – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
WILLIAM RAYMOND MALONE

REASONS AND DECISION
(Subsections 127(1) and (10) of the Act)

Hearing:	In writing		
Decision:	February 1, 2017		
Panel:	Monica Kowal	–	Vice-Chair
Appearances:	Malinda Alvaro	–	For Staff of the Commission
	No submissions were received on behalf of William Raymond Malone		

TABLE OF CONTENTS

REASONS AND DECISION

I. STAFF'S REQUEST

[1] Staff ("**Staff**") of the Ontario Securities Commission (the "**Commission**") has requested me to consider whether William Raymond Malone ("**Malone**"), who is subject to an order made by the British Columbia Securities Commission (the "**BCSC**"), should be made subject to sanctions, conditions, restrictions or requirements in Ontario pursuant to paragraph 4 of subsection 127(10) and subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**").

[2] I conducted a written hearing to consider Staff's request, and these are my reasons for granting Staff's requested order.

II. PRELIMINARY MATTERS

[3] Malone was served with the Notice of Hearing issued on November 9, 2016, a Statement of Allegations dated November 8, 2016 and Staff's disclosure.[1] Malone communicated with Staff of the Commission by e-mail on November 30, 2016, informing Staff that he disputed the validity of certain documents before the BCSC as they were not originals

[1] Affidavit of Lee Cran, sworn November 25, 2016, marked as Exhibit #1 during the December 1, 2016 hearing.

and that he is "in no position to hire a lawyer or function in a hearing to defend [himself]".[2] Staff responded by e-mail on November 30, 2016 informing Malone that at the hearing on December 1, 2016 Staff would be requesting to convert the matter to a written hearing and that Malone could contact the registrar for information to participate via teleconference and make submissions.[3]

[4] Malone did not appear or otherwise participate at the hearing on December 1, 2016. On December 1, 2016, Staff of the Commission brought an application to convert the matter to a written hearing, as permitted by Rule 11 of the Commission's *Rules of Procedure* (2014), 37 OSCB 4168. The application was granted and a timeline was set for the exchange of materials between Staff and Malone. Malone was required to serve and file his materials by January 23, 2017.

[5] Malone did not file evidence or make submissions in accordance with the timelines set on December 1, 2016. As set out in the Affidavit of Service of Lee Crann sworn December 12, 2016,[4] Malone was served by courier and e-mail (which e-mail address had previously been used by Malone to correspond with Staff) with: (1) the Commission's Order dated December 1, 2016 which set out the timeline for the exchange of materials, and (2) Staff's written materials, including Staff's written Submissions, Brief of Authorities and Hearing Brief.[5]

[6] A tribunal may proceed in the absence of a party where that party has been given notice of the hearing (Subsection 7(2), *Statutory Powers Procedure Act*, RSO 1990, c S.22 (the "**SPPA**")). Based on the evidence of service from Staff and Malone's communications, I am satisfied that Malone was properly served and had notice of the written hearing and that the matter may proceed in the absence of Malone's participation in accordance with the SPPA.

III. THE BCSC FINDINGS AND ORDER

[7] In its findings decision dated August 3, 2016 (*Re Malone*, 2016 BCSECOM 257 (the "**Findings**")), the BCSC Panel found that between 2010 and 2013 (the "**Material Time**") Malone breached the terms of a previous settlement agreement between Malone and the BCSC, which prohibited Malone from acting as a director or officer of any issuer and engaging in investor relations activities.

[8] Specifically, the BCSC found that:

- On January 29, 2009 Malone entered into a settlement agreement with the BCSC relating to a different matter. The resulting order (the "**January 2009 Order**") prohibited Malone from acting as a director or officer of any issuer and from engaging in investor relations activities before the later of January 29, 2012, or the date Malone successfully completed a course of study satisfactory to the BCSC's Executive Director concerning the duties and responsibilities of directors and officers. (Findings, at para 9)

- As of January 26, 2015, Malone confirmed to the BCSC that he had not completed a course of study as required by the terms of the January 2009 Order. Therefore, the terms of the January 2009 Order still remained in effect. (Findings, at para 10)

- While the terms of the January 2009 Order were still in effect, in March 2010, Malone incorporated a British Columbia company named Lion King Resources Inc. ("**Lion King**"). As of the date of the Findings, Lion King was not a reporting issuer in British Columbia. Lion King's business was to promote and develop an iron ore property in the Atacama region in Chile. (Findings, at paras 11 to 14)

- During the Material Time, Lion King had several directors, including Malone's son. However, the BCSC Panel found that Malone made most, if not all, operational decisions on behalf of the company. While the terms of the January 2009 Order were still in effect, Malone was responsible for various aspects of the Lion King's operations, including, among other things, having signing authority over Lion King's bank accounts, and negotiating contracts with respect to Lion King's acquisition of interests in mining properties in Chile. Malone also participated in the only formal meeting of the board of Lion King held in March 2013. (Findings, at paras 12, 13, 19 and 20)

- In early 2013, Lion King engaged in negotiations with a third party with respect to a joint venture. The BCSC Panel found that correspondence between Lion King board members suggested they viewed Malone as a key member of the mind and management of Lion King and its business activities. (Findings, at paras 22 and 23)

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2 Email from Malone dated November 30, 2016, marked as Exhibit #2 during the December 1, 2016 hearing.

3 Email from Staff dated November 30, 2016, marked as Exhibit #3 during the December 1, 2016 hearing.

4 Marked as Exhibit #4.

5 Staff's Hearing Brief is marked as Exhibit #5.

- The BCSC Panel found that Malone breached the January 2009 Order by soliciting a British Columbia resident to purchase securities in Lion King during the Material Time. Malone introduced the investor to the opportunity to purchase securities of Lion King, and provided him with samples of sand containing iron ore taken from Lion King's Chilean property. In July 2010, the investor purchased 33,333 shares of Lion King for $5,000. (Findings, at paras 24 and 25)

[9] Based on this misconduct, the BCSC Panel concluded that:

(a) Malone breached the January 2009 Order while it was in effect by conducting investor relations activities in British Columbia with respect to the sale of Lion King shares (Findings, at para 35); and

(b) Malone breached the January 2009 Order by acting as a de facto director and/or officer of Lion King. (Findings, at para 45)

[10] Subsequently, a sanctions hearing was held and the BCSC Panel ordered on October 3, 2016 (*Re Malone*, 2016 BCSECOM 334 ("**BCSC Order**") at para 25) that:

1. under sections 161(1)(d)(i) through (v) [of the British Columbia *Securities Act*, RSBC 1996, c 418 (the "**BC Act**")], Malone:

   a) resign any positions he holds as, and is prohibited from becoming or acting as, a director or officer of any issuer;

   b) is prohibited from becoming or acting as a registrant or promoter;

   c) is prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and

   d) is prohibited from engaging in investor relations activities;

   until the later of:

   a) the date that Malone successfully completes a course of study satisfactory to the [BCSC's] executive director concerning the duties and responsibilities of directors and officers;

   b) the date that Malone pays to the [BCSC] the amount in subparagraph 25(2) [of the BCSC Order]; and

   c) October 3, 2023;

2. under section 162 of the [BC] Act, that Malone pay to the [BCSC] an administrative penalty of $60,000.

IV. MALONE'S POSITION

[11] Malone did not provide the Commission with any evidence or submissions that would persuade the Commission that Staff's requested order is not appropriate in the circumstances.

V. DECISION

[12] In my view, it is in the public interest to grant the order requested by Staff.

[13] The threshold under paragraph 4 of subsection 127(10) is met. Malone is subject to an order made by the BCSC that imposes sanctions, conditions, restrictions or requirements upon him (see paragraph 25 of the BCSC Order).

[14] Having found that the threshold has been met under paragraph 4 of subsection 127(10) of the Act, I must now determine what sanctions, if any, should be ordered against Malone.

[15] Subsection 127(10) of the Act does not itself empower the Commission to make an order; rather, it provides a basis for an order under subsection 127(1). The Commission must still consider whether it is in the public interest to make an order under subsection 127(1), and if so, what the order ought to be.

[16] The purpose of section 127 of the Act, and the principles that should "animate" its application, were reviewed by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 SCR 132 ("***Asbestos***"). The Supreme Court found that when considering whether to make a

public interest order, the Commission shall have regard to the purposes of the Act set out in section 1.1 to provide protection to investors from unfair, improper or fraudulent practices; and to foster fair and efficient capital markets and confidence in capital markets (*Asbestos*, at para 41). Further, the Supreme Court stated that the purpose of section 127 is "neither remedial nor punitive; it is protective and preventive, intended to be exercised to prevent likely future harm to Ontario's capital markets" (*Asbestos*, at para 42).

[17] While the Commission must make its own determination of what is in the public interest, it is also important that the Commission be aware of and responsive to an interconnected, inter-provincial securities industry. Comity requires that there not be barriers to recognizing and reciprocating the order of other regulatory authorities when the findings of the other jurisdiction qualify under subsection 127(10) of the Act. For comity to be effective and the public interest to be protected, the threshold for reciprocity must be low (*Re JV Raleigh Superior Holdings Inc.* (2013), 36 OSCB 4639 at paras 21-26; *New Futures Trading International Corp.* (2013), 36 OSCB 5713 at paras 22-27; and *McLean v British Columbia (Securities Commission)*, [2013] 3 SCR 895 at paras 54 and 69).

[18] In my view, Staff's requested order is appropriate for the following reasons:

- Malone was found by the BCSC Panel to have intentionally breached the January 2009 Order. Specifically, the BCSC Panel found this to be serious misconduct and stated at paragraphs 7 and 8 of the BCSC Order:

  > Orders made following enforcement proceedings are an integral part of the Commission's regulatory function. If those who are subject to these orders can simply ignore them with impunity then the enforcement role of the Commission would be greatly impaired.
  >
  > The respondent incorporated Lion King but made his son, who had no previous experience being an officer or director of a company or in the mineral exploration business, the sole director of the company. The respondent participated in the only formal meeting of the board of Lion King. His son did not. The respondent knew that he was prohibited from acting in the capacity of a director or officer of an issuer so he structured his affairs to appear to be in compliance with the [January 2009 Order] by not being formally appointed as a director or officer of Lion King. At the same time, however, he was performing the functions of a *de facto* officer and/or *de facto* director of Lion King, ultimately engaging in the very conduct prohibited by the [January 2009 Order]. It is clear that the respondent's breach of the [January 2009 Order] was intentional. Therefore, the respondent's breach of the [January 2009 Order] is serious misconduct.

- The terms of Staff's requested order are consistent with the fundamental principle that the Commission maintain high standards of fitness and business conduct to ensure honest and responsible conduct by market participants. I note that the BCSC Panel found at paragraphs 13 and 14 of the BCSC Order that:

  > The respondent represents a significant risk to our capital markets. He was previously sanctioned for misconduct in our capital markets and, despite the [January 2009 Order], simply carried on conduct in breach of the regulatory restrictions imposed on him. This raises questions about whether Malone will allow himself to be regulated.
  >
  > Malone's misconduct has arisen in the context of his acting as an officer and/or director, or a de facto officer and/or de facto director of an issuer. This raises significant concern about his fitness to be an officer or director of an issuer. The proper functioning of our capital markets requires that those who are officers or directors of issuers need to act honestly and with integrity. Those that circumvent the orders of the Commission and attempt to disguise their actions are not individuals who should be in management roles.

- The terms of Staff's requested order align with the sanctions for trading and market prohibitions imposed by the BCSC Panel to the extent possible under the Act.

- The sanctions proposed by Staff are prospective in nature, and would impact the Respondent only if he attempted to participate in the capital markets of Ontario.

[19] Taking into consideration the nature of the misconduct engaged in, the importance of inter-jurisdictional cooperation among securities regulatory authorities in Canada, and the need to deter Malone from engaging in similar misconduct in Ontario, I conclude that an order ought to be made in the public interest pursuant to the authority provided in subsection 127(1) of the Act. I therefore order that:

i. Malone resign any positions that he holds as a director or officer of any issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

ii. Malone is prohibited from becoming or acting as a director or officer of any issuer, pursuant to paragraph 8 of subsection 127(1) of the Act; and

iii. Malone is prohibited from becoming or acting as a registrant, investment fund manager or promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

iv. The sanctions listed in ii. and iii. shall apply until the later of:

1. the date that Malone successfully completes a course of study satisfactory to the BCSC's Executive Director concerning the duties and responsibilities of directors and officers;

2. the date that Malone pays to the BCSC the administrative penalty ordered in subparagraph 25(2) of the BCSC Order; and

3. October 3, 2023.

Dated at Toronto this 1st day of February 2017.

"Monica Kowal"

3.1.2 Quadrexx Hedge Capital Management Ltd. et al. – s. 126(1)(b)

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

AND

IN THE MATTER OF
QUADREXX HEDGE CAPITAL MANAGEMENT LTD.,
QUADREXX SECURED ASSETS INC.,
MIKLOS NAGY AND
TONY SANFELICE

REASONS AND DECISION
(Subsection 126.1(1)(b) of the Securities Act)

Hearing:	April 22-24, 27-30, May 1, 4, 6-8, 11-15, September 21, 24, 25, 28-30, October 1, 2, 5, 9, November 16, 18-20, December 7-10, 14, 16-18, 2015, January 18-20 and May 26 and 27, 2016		
Decision:	February 6, 2017		
Panel:	Christopher Portner	-	Commissioner
Appearances:	Derek Ferris Michelle Vaillancourt	-	For Staff of the Commission
	Jay Naster	-	For Tony Sanfelice
	Miklos Nagy	-	Representing himself, Quadrexx Hedge Capital Management Ltd. and Quadrexx Secured Assets Inc.

TABLE OF CONTENTS

XI. FINDINGS AND CONCLUSIONS

REASONS AND DECISION

I. INTRODUCTION

A. Overview

[1] This proceeding involves allegations of fraud against two individuals, Miklos Nagy ("**Nagy**") and Tony Sanfelice ("**Sanfelice**"), and two corporations of which they were, among other things, the directing minds, Quadrexx Hedge Capital Management Inc. ("**QHCM**") and Quadrexx Secured Assets Inc. ("**QSA**" and, collectively with Nagy, Sanfelice and QHCM, the "Respondents").[1] The allegations of fraud arise from three separate distributions of securities in reliance on exemptions from the prospectus requirements of the *Securities Act*, RSO 1990, c S.5 (the "**Act**"). The Respondents are also alleged to have breached other provisions of the Act as summarized in paragraph [9] below.

B. Quadrexx

[2] Quadrexx Asset Management Inc. ("**Quadrexx**") was incorporated in Canada on March 12, 2003. With the coming into force of National Instrument 31-103 - *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**") in September 2009, Quadrexx's previous registration as a limited market dealer automatically became registration as an exempt market dealer ("**EMD**"). Quadrexx was also registered as an investment counsel and portfolio manager, which designations changed to portfolio manager in September 2009. In January 2011, Quadrexx also became registered as an investment fund manager.

[3] During the period from July 2008 to and including January 2013 (the "**Material Time**") Quadrexx traded in its own securities and in the securities of QHCM, QSA and the limited partnerships of which QHCM was the general partner, in reliance on exemptions from the prospectus requirements of the Act. On June 18, 2013, Quadrexx filed an assignment in bankruptcy under section 49 of the Bankruptcy and Insolvency Act and is not a party to this proceeding.

C. The Respondents

[4] Nagy is a Chartered Financial Analyst and held the following positions with Quadrexx, QHCM and QSA:

Quadrexx: Nagy was a director and officer of Quadrexx from March 12, 2003 (the date of its incorporation) until January 2013. Nagy was the Ultimate Responsible Person ("**URP**") for Quadrexx from November 25, 2004 to September 28, 2009 and the designated compliance officer for Quadrexx from May 16, 2005 to September 28, 2009. Nagy was a directing mind of Quadrexx during the Material Time and was also registered as the ultimate designated person ("**UDP**") of Quadrexx from December 18, 2009 to May 15, 2013.

QHCM: Nagy has been a director and the President of QHCM since May 22, 2007 (the date of its incorporation). Nagy was a directing mind of QHCM during the Material Time.

QSA: Nagy was a director and officer of QSA from June 15, 2011 (the date of its incorporation) to March 25, 2013. Nagy was a directing mind of QSA during the Material Time.

[5] Sanfelice is a Certified Management Accountant and a Certified General Accountant and held the following positions with Quadrexx, QHCM and QSA:

(a) Quadrexx: Sanfelice was a director and officer of Quadrexx from March 12, 2003 (the date of its incorporation), but resigned one day later. He again became an officer of Quadrexx on December 6, 2004, with primary responsibility for Quadrexx's finances, and a director on October 10, 2007. Sanfelice resigned as a director of Quadrexx on April 1, 2013. He was a directing mind of Quadrexx during the Material Time and was registered as the Chief Compliance Officer of Quadrexx for each of its registration categories from December 3, 2007 to May 15, 2013.

(b) QHCM: Sanfelice was a director, the Secretary and a directing mind of QHCM from May 22, 2007 (the date of its incorporation) to November 24, 2009.

(c) QSA: Sanfelice was an officer of QSA from June 15, 2011 (the date of its incorporation) to March 25, 2013. Sanfelice was a directing mind of QSA during the Material Time.

[1] As used in these Reasons, the term "Respondents" means, as the context requires (i) Nagy and Sanfelice; (ii) Nagy, Sanfelice and QHCM; (iii) Nagy, Sanfelice and QSA; or (iv) all of the Respondents.

[6] QHCM was incorporated in Ontario on May 22, 2007 and acted as the general partner of a number of limited partnerships including Diversified Assets LP ("**DALP**").

[7] QSA was incorporated in Canada on June 15, 2011 as a wholly-owned subsidiary of Quadrexx. QSA was established to provide investors with a return derived from an investment in a portfolio of U.S. residential mortgage-backed securities.

D. The Allegations

[8] In its Statement of Allegations dated January 30, 2014, Staff alleges that Nagy, Sanfelice and QHCM (in the case of paragraph (a) below), Quadrexx (in the case of paragraphs (b) and (c) below) and QSA (in the case of paragraph (c) below) engaged or participated in an act, practice or course of conduct that they knew or reasonably ought to have known perpetrated a fraud contrary to subsection 126.1(1)(b) of the Act and contrary to the public interest, namely:

(a) The valuation of Canadian Hedge Watch Inc. in connection with the purchase of its shares by DALP;

(b) The use by Quadrexx of investor funds raised from the sale of its QAM II Shares[2] to pay dividends to other investors; and

(c) The misappropriation of QSA investor funds.

The allegations, evidence and submissions with respect to each of the foregoing alleged frauds is discussed in detail below.

[9] In addition, Staff alleges that:

(a) Quadrexx failed to notify the Ontario Securities Commission (the "**Commission**") as soon as possible when its excess working capital was less than zero and Quadrexx allowed its excess working capital to continue to be below zero, in breach of NI 31-103;

(b) At the time that Quadrexx was the portfolio manager for DALP, Quadrexx knowingly caused DALP to loan Quadrexx $170,000 in breach of subsection 118(2)(c) of the Act;

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

(d) As officers and/or directors of Quadrexx, QHCM and QSA, Sanfelice and Nagy authorized, permitted or acquiesced in the breaches of Ontario securities law that are alleged against Quadrexx, QHCM and QSA and, pursuant to section 129.2 of the Act, are deemed to have also not complied with Ontario securities law;

(e) Sanfelice breached his obligations as the Chief Compliance Officer (the "**CCO**") of Quadrexx pursuant to subsection 1.3(1) of Rule 31-505 during the period from July 2008 to September 27, 2009 and pursuant to section 5.2 of NI 31-103 during the period from September 28, 2009 to January 14, 2013, and also acted contrary to the public interest; and

(f) Nagy breached his obligations as UDP of Quadrexx pursuant to section 5.1 of NI 31-103 during the period from December 18, 2009 to January 14, 2013, and also acted contrary to the public interest.

E. Merits Hearing

[10] The merits hearing in this proceeding (the "**Hearing**") included 40 days of testimony by witnesses commencing on April 22, 2015 and concluding on January 20, 2016. Following the delivery of lengthy written closing submissions by the parties, oral closing submissions were heard on May 26 and 27, 2016.

[11] Sanfelice was represented by counsel. Nagy represented himself and the corporate Respondents.

F. Witnesses Called

[12] Staff of the Commission called the following 16 witnesses:

(a) Employees of the Commission:

[2] The term "QAM II Shares" is defined in paragraph [165] below.

(i) Susan Pawelek, an accountant in the Commission's Compliance and Registrant Registration Branch ("**Pawelek**" and the "**CRR Branch**", respectively);

(ii) Yvonne Lo, a senior forensic accountant in the Commission's Enforcement Branch ("**Lo**" and the "**Enforcement Branch**", respectively);

(iii) Michael Ho, a senior forensic accountant in the Enforcement Branch ("**Ho**"); and

(iv) Chris Caruso, an accountant in the CRR Branch ("**Caruso**").

(b) Business valuators:

(i) Farouk Mohamed, a Certified Business Valuator who, at the relevant time was a Manager in the business valuation group of Deloitte & Touche LLP ("**Mohamed**" and "**Deloitte**", respectively);

(ii) Steven Polisuk, a Certified Business Valuator who, at the relevant time, was a Senior Manager in the business valuation group of Deloitte ("**Polisuk**"); and

(iii) Harry Figov, a Certified Business Valuator who, at the relevant time was the principal of HJF Financial Inc. ("**Figov**" and **HJF**", respectively).

(c) Former employees or agents of Quadrexx:

(i) Alan Doody, a former Controller of Quadrexx ("**Doody**"); and

(ii) Tamara Orlova, a former Accounting Manager and, subsequently, Controller of Quadrexx ("**Orlova**").

(d) Investors:

(i) DW, a self-employed Ontario resident who invested in QAM II Shares;

(ii) AC, a retired Alberta resident who invested in QAM II Shares;

(iii) LM, a retired Saskatchewan resident who invested in QAM II Shares;

(iv) JS, a self-employed Alberta resident who invested in QSA;

(v) RL, a field service representative and a resident of Alberta who invested in QSA; and

(vi) MS, a dealing representative of Quadrexx and a resident of Alberta who also invested in QSA.

[13] A seventh investor witness, JM, a self-employed farmer and resident of Alberta who invested in QSA, declined to complete his testimony. With the agreement of the parties, the evidence which JM did provide will be disregarded in its entirety.

[14] In addition to testifying themselves, Nagy and Sanfelice called the following four witnesses:

(a) Richard McLean, who provided due diligence services for Quadrexx and was a potential joint-venture partner with Quadrexx;

(b) Mark Skuce, Legal Counsel in the CRR Branch ("**Skuce**");

(c) Jeffrey Shaul, a Certified Financial Analyst and the founder of Robson Capital Management Inc., who was appointed as the new portfolio manager and investment fund manager for DALP after the Material Time, effective April 1, 2013; and

(d) David Gilkes, a former consultant to Quadrexx ("**Gilkes**").

II. PRELIMINARY ISSUES

A. Agreed Statement of Facts

[15] Staff filed an Agreed Statement of Facts dated April 29, 2015, which was signed by or on behalf of each of the Respondents. The Respondents make factual admissions in the Agreed Statement of Facts relating to the securities of Quadrexx, QSA and the limited partnerships of which QHCM was the general partner.

[16] Most of the agreed facts are non-controversial background details and dates. The Respondents also made certain factual admissions relating to the representations that were made to investors to which reference will be made elsewhere in these Reasons.

B. Law of Fraud

[17] Fraud is prohibited under subsection 126.1(1)(b) of the Act, which provides that:

> 126.1 (1) A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities, derivatives or the underlying interest of a derivative that the person or company knows or reasonably ought to know,
>
> …
>
> (b) perpetrates a fraud on any person or company.

[18] The Commission has considered the foregoing provision in a number of decisions and it is now settled that establishing a breach of subsection 126.1(1)(b) of the Act requires proof of the same elements of fraud as in a prosecution under the *Criminal Code*, RSC 1985, c C-46.

[19] In the leading case of *R v Théroux*, [1993] 2 SCR 5 ("***Théroux***"), the Supreme Court of Canada confirmed that fraud consists of two main elements, namely, the prohibited act (*actus reus*) and the required state of mind (*mens rea*) and summarized both as follows:[3]

> . . . the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
>
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

[20] Accordingly, the act of fraud is established by a dishonest act and deprivation. The dishonest act is established by proof of deceit, falsehood or some "other fraudulent means."[4] Other fraudulent means encompasses all other means, other than deceit or falsehood, which can be properly characterized as dishonest and is "determined objectively, by reference to what a reasonable person would consider to be a dishonest act."[5] The courts have included within the meaning of "other fraudulent means" the use of investors' funds in an unauthorized manner,[6] the use of corporate funds for personal purposes, non-disclosure of important facts, exploiting the weakness of another, unauthorized diversion of funds and the unauthorized appropriation of funds or property.[7]

[21] Deprivation is established by proof of detriment, prejudice or risk of prejudice to the economic interests of the victim caused by the dishonest act. Actual economic risk may establish deprivation, but it is not required; prejudice or risk of prejudice to an economic interest is sufficient.[8] The mere creation of a financial risk to another by dishonesty constitutes deprivation. Risk of prejudice consists of inducing an alleged victim through the accused's dishonesty, to take some form of economic action (such as the making of an investment or a loan), even if that action does not cause an actual economic loss.[9]

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3 *Théroux* at para 24.
4 *Théroux* at para 24.
5 *Théroux* at para 17.
6 *R v Currie*, [1984] OJ No 147 (CA) pp 3-4.
7 *Théroux* at para 15; *R v Zlatic* (1993), 100 DLR (4th) 642 (SCC) at paras 18-22.
8 *Théroux* at paras 16-17; *R v Olan*, [1978] 2 SCR 1175 at p 6.
9 *Re Maple Leaf Investment Fund Corp.* (2011), 34 OSCB 11551 at para 315.

[22] The requisite intent for fraud requires proof of subjective knowledge of the prohibited act of dishonesty and subjective knowledge that the dishonest conduct could result in deprivation to another.[10] The test is not whether a reasonable person would have foreseen the consequences of the dishonest act, but whether a respondent subjectively appreciated those consequences, at least as a possibility.[11] To establish the *mens rea* of fraud, Staff must prove that the Respondents knowingly undertook the acts which constituted the falsehood, deceit or other fraudulent means and that the Respondents knew that deprivation could result from such conduct.

[23] Where the required conduct and knowledge is established, there is fraud whether respondents actually intended or were reckless to the consequence of their conduct.[12] It is no defence that a respondent may have hoped that deprivation would not take place or held a sincere belief that no deprivation would ultimately materialize. Many frauds are perpetrated by people who sincerely believe that their acts will not ultimately result in actual losses to others.[13]

[24] Staff need not prove precisely what was in the mind of a respondent at the time of the dishonest act. A subjective awareness of the consequences can be inferred from the dishonest act itself.[14] The inference of subjective knowledge of the risk may be drawn from the facts as a respondent believed them to be. Respondents may introduce evidence negating that inference, such as evidence of circumstances leading them to believe that no one would act on the dishonest act.[15]

[25] To establish the requisite intent of a corporation, it is sufficient to show that its directing minds knew or reasonably ought to have known that the acts of the corporation perpetrated a fraud.[16]

C. Standard of Proof

[26] It is well settled that the standard of proof that must be met in an administrative proceeding such as this matter is the civil standard of the balance of probabilities.[17]

[27] In *F.H. v McDougall*, [2008] 3 SCR 41 ("***McDougall***"), the Supreme Court of Canada noted the different approaches taken by courts and administrative tribunals in evaluating evidence on this standard of proof, and noted that heightened standards were often applied when allegations against a defendant were particularly serious, including in cases of fraud.[18] The Court went on to clarify that there is only one civil standard of proof for all allegations, the balance of probabilities.

[28] The Court noted in *McDougall* that the "evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test." However, the requirement for clear, convincing and cogent evidence does not elevate the civil standard of proof above a balance of probabilities.[19]

[29] The balance of probabilities standard requires the trier of fact to decide "whether it is more likely than not that the event occurred".[20]

D. Admission of Hearsay Evidence

[30] Hearsay evidence is admissible in administrative hearings before the Commission pursuant to subsection 15(1) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22. Hearing panels have broad discretion to admit as evidence at a hearing, whether or not the evidence is given or proven under oath or affirmation or admissible as evidence in a court, any oral testimony and any document or other thing relevant to the subject matter of the proceeding.

[31] Hearing panels must determine the weight to be accorded to admissible hearsay evidence while taking into account the rules of procedural fairness. In making determinations on weight, care must be taken to avoid placing undue reliance on uncorroborated evidence and hearsay evidence that lacks sufficient indicia of reliability.[21]

[32] During the Hearing, I permitted the admission of certain hearsay evidence to which the Respondents objected on the basis that I would determine the weight to be accorded to such evidence when considering all of the evidence in this matter. Counsel for Sanfelice again raised the issue of hearsay evidence in his closing submissions, particularly as it related to

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10 *Théroux* at para 24; *R v Zlatic* (1993), 100 DLR (4th) (SCC) at para 26.
11 *Théroux* at para 18.
12 *Théroux* at paras 23 and 25.
13 *Théroux* at paras 21 and 33; *Re Phillips* (2015), 38 OSCB 617 at para 187.
14 *Théroux* at para 20.
15 *Théroux* at para 26.
16 *Re Al-tar Energy Corp* (2010), 33 OSCB 5535 at para 221.
17 *Re ATI Technologies* (2005), 28 OSCB 8558 at paras 13-14; *Re Sunwide Finance Inc.* (2009), 32 OSCB 4671 at para 28; *Re Al-Tar Energy Corp.* (2010), 33 OSCB 5535 at paras 32-34.
18 *McDougall* at paras 26-39.
19 *McDougall* at para 46.
20 *McDougall* at para 44.
21 *Re Sunwide Finance Inc.* (2009), 32 OSCB 4671 at para 22, citing *Starson v Swayze*, [2003] 1 SCR 722 at para 115.

comments attributed by Polisuk, at the relevant time a Certified Business Valuator employed by Deloitte, to Iseo Pasquali of Deloitte in relation to the valuation of Canadian Hedge Watch Inc. I have addressed this issue in paragraph [67] below.

E. Assessment of Credibility

[33] Credibility is a crucial issue in this proceeding. Staff alleges that the evidence of Nagy and Sanfelice is not credible in certain instances and some of their testimony clearly conflicts in material respects with the testimony of investor witnesses or is inconsistent with documentary evidence.

[34] In making assessments of credibility and reliability, the British Columbia Court of Appeal stated that:

> Justice does not descend automatically upon the best actor in the witness box. 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 the particular case.
>
> (*R v Pressley* (1948), 94 CCC 29 (BCCA) at para 12; *Springer v Aird & Berlis LLP* (2009), 96 OR (3d) 325 (SCJ) ("Springer") at para 14; *Re Suman* (2012), 35 OSCB 2809 at paras 315-316)

[35] The following comments by Farley J. were also cited by Newbould J. with approval in Springer:

> The evidence and the way it is given should be taken in context and in a balanced way. No one should expect perfection in testimony and it is often said that evidence which is too consistent may be a sign on it being artificially constructed. I also recognize that there can be inadvertent rationalization of memory to fit what is afterwards said that must have happened as opposed to actually remembering what did happen.

(*Olympic Wholesale Co. v 1084715 Ontario Ltd. (cob Lady Lin Foods),* [1997] OJ No 5482 (Gen Div) at para 3)

[36] In civil cases in which there is conflicting testimony and 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.[22]

[37] Disbelief of a witness's evidence on one issue may well taint the witness's 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.[23]

[38] In assessing the credibility of Nagy and Sanfelice, I have carefully considered whether their evidence is in harmony with the preponderance of probabilities disclosed by the facts of this matter and have concluded that it is not in all instances. As I note below, there are instances in which I have not accepted the testimony of Nagy and Sanfelice or found it evasive, not consistent with the weight of the evidence or not credible.

III. VALUATION OF CANADIAN HEDGE WATCH INC.

A. Staff's Allegations

[39] QHCM established DALP, the limited partnership of which it was the general partner, on June 13, 2008 to raise funds for the purpose of investing in at least one, but no more than three, private equity businesses. The first such investment by DALP was the acquisition of all of the issued and outstanding shares of Canadian Hedge Watch Inc. ("**CHW**"), approximately 75% of which were owned by Nagy and Sanfelice.

[40] In connection with the acquisition of CHW's shares, the Respondents engaged Deloitte to conduct an estimate of the fair market value of CHW as required by the terms of the two offering memoranda that QHCM issued on behalf of DALP to finance the acquisition of CHW. Staff alleges that the Respondents terminated the engagement when Deloitte communicated to Sanfelice that its estimate of value would be well below the $2.65 million purchase price for CHW's shares that was contemplated by the initial offering memorandum.

[41] Staff further alleges that QHCM immediately retained a second firm, HJF, to conduct the estimate of CHW's fair market value but on the basis of forecasts that were revised, when compared to the forecasts provided to Deloitte, to reflect higher revenue and earnings before interest, taxes, depreciation and amortization ("**EBITDA**") for each of the forecasted years. HJF's valuation report estimated that the fair market value of CHW was between $2,099,397 and $2,971,978 with a mid-point of $2,535,688, which was employed as the price paid by DALP for the shares of CHW.

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22 *McDougall* at para 86.
23 *McDougall* at para 95.

[42] Finally, Staff alleges that none of the foregoing information was communicated to DALP investors and that the Respondents, directly or indirectly, participated in an act, practice or course of conduct that they knew or reasonably ought to have known perpetrated a fraud on DALP investors in breach of section 126.1(1)(b) of the Act and was contrary to the public interest.

B. Canadian Hedge Watch Inc.

[43] CHW was incorporated in Ontario as a private company on January 23, 2002. Nagy, Sanfelice and three other persons were the initial shareholders of CHW. Sanfelice was also the President and Chief Executive Officer of CHW.

[44] By 2008, CHW was primarily engaged in providing hedge fund data, information, reports and news to the Canadian marketplace. A bi-monthly newsletter and access to a website was provided to subscribers, which included hedge fund companies, banks, advisors and investors.

[45] In 2008, Nagy and Sanfelice decided to divest their respective interests in CHW and focus on Quadrexx. At the time, Nagy owned 50.3% of CHW's common shares and Sanfelice owned 32% of CHW's common shares and 39% of its preferred shares. Nagy and Sanfelice also decided, in collaboration with their business associates, Mark Wainberg ("**Wainberg**") and Jeff Parent (**"Parent**"), to effect the divestiture by means of an offering of securities in reliance on exemptions from the prospectus and, in certain provinces, the dealer registration requirements pursuant to National Instrument 45-106 – *Prospectus and Registration Exemptions* ("NI 45-106"). They also retained Michael Sharp ("**Sharp**"), a partner of a major Toronto-based law firm, to represent them in this regard.

[46] On April 27, 2008, while in the process of preparing a draft offering memorandum, Sharp advised Nagy and Wainberg by an e-mail message dated April 27, 2008 that they would need to include the audited financial statements of CHW, as they would be selling securities "not just to accredited investors, but to the significantly less sophisticated class of 'eligible investors' using Form 45-106F2", a reference by Sharp to National Instrument Form 45-106F2 - *Offering Memorandum for Non-Qualifying Issuers* ("**Form 45-106F2**").[24] Sanfelice testified at the Hearing that Quadrexx had received legal advice that it did not need to include a valuation of CHW but, after consulting with some of his accounting colleagues, he and Nagy decided to include a valuation as they were proposing to sell their interests in CHW. (Exhibit 251 at p 6)

[47] In an e-mail message to Sharp on April 12, 2008, Nagy indicated that he wanted the offering memorandum to provide for interim closing at the end of each month, regardless of the money raised to date, so that commissions could be paid to agents as "[w]e are positive that at the very least we will attain the minimum." By an e-mail message dated April 14, 2008, Sharp advised Nagy that "[y]ou can of course pay commissions to agents out of your own pocket; what you can't do if there is a minimum offering is use the investor's funds for this purpose." (Exhibit 251 at pp 1-2)

[48] On May 19, 2008, Nagy sent an e-mail message to Sharp expressing his concern that a third party business evaluation would take about three to four months to complete. Sharp advised Nagy that the limited partnership which would be established to sell securities (see paragraph [49] below) could enter into an agreement to acquire CHW at a price to be determined based on the third party valuation and that the marketing of the limited partnership could commence while the valuation was undertaken.

C. Formation of DALP

[49] DALP was established as a limited partnership under the laws of Ontario on June 13, 2008 for the purpose of investing in at least one, but no more than three, private equity businesses. QHCM was the general partner of DALP and Sanfelice was the initial limited partner. Nagy was a director and the President of QHCM and Sanfelice was a director and the Secretary.

[50] In its capacity as the general partner of DALP, QHCM retained Quadrexx to act as DALP's investment advisor.

[51] During the period from July 22, 2008 to May 30, 2009, Quadrexx sold 1,130 limited partnership units of DALP ("**DALP Securities**") to 37 investors pursuant to two offering memoranda, namely, an Offering Memorandum dated June 16, 2008 (the "**First DALP OM**") and a further Offering Memorandum dated February 28, 2009 (the "**Second DALP OM**"). The total amount realized from the sale of DALP Securities was $5.65 million.

[52] The First DALP OM stated that the acquisition of some or all of the issued and outstanding shares of CHW would be the initial equity investment made by DALP and, more particularly, that:

> [DALP] intends to purchase CHW shares from its existing shareholders for a total price not to exceed $2.65 million in total. Prior to June 30, 2009, the General Partner will engage a third party "business valuator" firm to valuate the fair market value of CHW. The price [DALP] pays for acquiring CHW (either fully or partially) may be adjusted downward

[24] Exhibit 251 at p 12.

> should the valuation of CHW be less than $2.65 million. The costs of the valuation will be paid by the General Partner. Such valuation will be based on a “dividend discount” valuation or pricing model. [Emphasis added.]
>
> (Exhibit 95 at p 17)

[53] The comparable provision of the Second DALP OM stated that:

> [DALP] is purchasing these CHW shares from its prior shareholders for a total price of $2,535,688 in total [*sic*]. The General Partner has engaged a third party "business valuator" firm, to valuate the fair market value of CHW. The price [DALP] will pay for acquiring all of the issued and outstanding shares of CHW [*sic*] $2,535,688 for a full purchase which is at the midpoint of the valuation determined by the valuator. The costs of the valuation will be paid by the Partnership. [Emphasis added.]
>
> (Exhibit 549 at p 19)

[54] Of the proceeds derived from the sale of DALP Securities, $5.0 million was received prior to, and $650,000 was received after, February 28, 2009, the date of the Second DALP OM.

D. Deloitte & Touche LLP Valuation

[55] On November 25, 2008, Sanfelice had a telephone conversation with Polisuk to discuss the valuation that would be required in connection with the sale of CHW. Sanfelice had been introduced to Polisuk by Polisuk’s brother, who was an acquaintance of Sanfelice.

[56] During their initial telephone conversation, Sanfelice and Polisuk agreed that Deloitte would prepare an estimate valuation report, which Polisuk testified is the second or midlevel of three levels of assurance that can be provided by a valuation, a comprehensive valuation being the highest level of assurance.

[57] On November 27, 2008, Polisuk sent an engagement letter dated December 11, 2008 to Sanfelice by e-mail which set out the terms and conditions on which Deloitte would conduct an estimate of the fair value of all of the issued and outstanding shares of CHW. Sanfelice forwarded the e-mail message and engagement letter to Nagy, noting that he was concerned about retaining Deloitte to conduct the valuation given that their fees were expensive and open-ended. He also suggested to Nagy that they should have a further meeting with Figov, another business valuator who was known to Nagy, with whom they met earlier in 2008.

[58] Notwithstanding Sanfelice’s concerns, CHW accepted the terms of the engagement letter on the day on which it was sent by Polisuk.

[59] In addition to its customary terms and conditions of engagement, Deloitte’s engagement letter set out the valuation methodology that would be employed by Deloitte and its estimated fees of $25,000 to $35,000. The engagement letter confirmed that Tom Strezos (“**Strezos**”) and Polisuk, a partner and senior manager, respectively, in Deloitte’s Financial Advisory group, would have overall responsibility for the engagement. Strezos and Polisuk were joined in the CHW valuation project by Mohamed, at the time a Manager in Deloitte’s Financial Advisory group.

[60] On December 12, 2008, Polisuk sent a letter to Sanfelice setting out in detail the documents and information that Deloitte required for their valuation analysis. On December 22, 2008, Sanfelice met with Polisuk to provide him with a document entitled “CHW’s Business Plan (updated Nov 2008)” which included CHW’s audited revenues and expenses for 2007 and 2008 and five year forecasts of revenues, expenses, EBITDA and income before taxes for the years 2009 to 2013 which had been prepared by Sanfelice (the “**Initial CHW Business Plan**”). Sanfelice further responded to Polisuk’s detailed request for information on December 29, 2008.

[61] On January 5, 2009, and in response to Sanfelice’s indication by e-mail that he would like the valuation to be completed prior to his absence for holidays during the week of January 26, 2015, Mohamed advised Sanfelice that he should be able to provide a copy of the valuation report to Sanfelice by the end of January, at the latest. During the ensuing period, Deloitte continued to request and Sanfelice continued to provide information relating to the valuation.

[62] On January 9, 2009, Sanfelice, Polisuk and Mohamed participated in a scheduled conference call for the purpose of discussing, among other things, CHW’s revenue forecasts which Deloitte, according to Mohamed’s testimony at the Hearing, had found “too high, too aggressive”. In anticipation of the call, Mohamed prepared a list of questions to ask Sanfelice relating to the main revenue streams on which CHW relied, namely, the revenues derived from conferences, education programs, licensing, reports and data and advertising.

[63] Mohamed, with the assistance of Polisuk, prepared an initial draft of the valuation report which estimated that the fair market value of all of the issued and outstanding shares of CHW, considered together, as at October 31, 2008 was in the range of $3.2 million to $3.8 million. The draft valuation report noted that, if a specific value was required, Deloitte would suggest $3.5 million as the mid-point of the range.

[64] Polisuk sent the initial draft of the valuation report to Strezos for his review. Strezos provided Polisuk and Mohamed with numerous hand-written comments on the draft report, including a recommendation that the industry and specific risk premium be increased from a range of 7% to 9% to a range of 9% to 11%. This resulted in an increase in the weighted average cost of capital which, in turn, increased the discount factor being used in the valuation from a range of 23.9% (high) to 26.9% (low) to a range of 25.7% (high) to 28.8% (low). The increase in the discount factor resulted in a reduction in the range of the estimated fair market value from $2.8 million to $3.4 million with a mid-point of the range of $3.1 million.

[65] On January 12, 2009, Polisuk sent a revised draft of the valuation report dated January 15, 2009, which reflected the comments provided by Strezos, to Iseo Pasquali, the partner responsible for Deloitte's valuation practice in the Toronto area ("**Pasquali**"). In his covering e-mail message, Polisuk advised Pasquali that he was sending the report to him as it was "a greater than normal risk" and would therefore require the approval of a second partner.

[66] During a conference call with Polisuk and Mohamed on January 16, 2009, Pasquali raised a number of concerns with respect to the revised draft valuation report, which concerns were summarized in an e-mail message that Mohamed sent to Polisuk on the same day. In essence, Pasquali thought that (i) the revenue forecasts were very aggressive; (ii) the proposed valuation in the draft valuation report ranging from $2.6 million to $3.2 million with a mid-point of $2.9 million was "really high"; and (iii) a value of $500,000 to $1.0 million was "about right". Pasquali also expressed concern about the frequency of the prior redemptions of shares, the prices at which the redemptions were effected and the state of the hedge fund industry, as there were a number of hedge funds in trouble.

[67] As Pasquali did not testify at the Hearing, I rely on Polisuk's evidence with respect to Pasquali's comments on the draft valuation report as the hearsay evidence is corroborated by both Mohamed's testimony, which I found to be credible, and by a contemporaneous e-mail message sent by Mohamed to Polisuk following the conversation. Accordingly, the hearsay evidence relating to Pasquali's comments has sufficient indicia of reliability.

[68] As a result of Pasquali's comments, the schedules to the draft valuation report were amended to reflect an increase in the discount factor to a range of 35.6% (high) to 42.1% (low), which had the effect of reducing the mid-point of the valuation to $1.535 million. The schedules resulting in a mid-point valuation of $1.535 million were one of several similar schedules based on different assumptions that were prepared by Mohamed, including the schedules which resulted in the mid-point valuation of $2.9 million which formed part of the draft valuation report to which reference is made in paragraph [66] above.

[69] On January 19, 2009, following a telephone conversation with Sanfelice, Polisuk sent Sanfelice an e-mail message at 1:20 p.m. requesting support for CHW's $2.6 million valuation, documentation relating to the share redemptions and support for the education revenues in CHW's financial projections. Sanfelice sent two replies to Polisuk, the first of which was sent at 6:48 p.m. on the same day with submissions relating to the valuation and details of a recent sale of shares and the education projections raised by Polisuk. With respect to CHW's $2.6 million valuation, Sanfelice attached three separate valuations using the discounted cash flow method. The valuations, which were based on discount rates of 24%, 22% and 20%, resulted in valuations of $3.3 million, $3.67 million and $4.08 million, respectively. With respect to the education projections, Sanfelice referred only to the projected increase in the number of students.

[70] Sanfelice's second e-mail message to Polisuk, which was sent at 6:54 p.m. on the same day, responded to Polisuk's request for documentation relating to share redemptions by attaching a summary of share redemptions by Nagy and Sanfelice in 2008. The summary reflects the redemption of a total of 11,268 common shares by Nagy and Sanfelice which Sanfelice indicated in his message had been redeemed at what he described as the "conservative value" of $15.00 per share. (Exhibit 259)

[71] The CHW valuations to which reference is made in paragraph [69] above were prepared by Nagy using a template that he obtained from the website of Valtech Technologies, Inc. The overview on each of the valuations states that:

> A standard way to value a company, or any investment, is **the Dividend Discount** approach (DD). Other closely related approaches are: **Discounted Cash Flow, Free Cash Flow, and Economic Value Added (EVA)**, a trademark of *Stern & Stewart*.
>
> …
>
> Future cash flows are discounted by the rate commensurate with the risk level of the investment. [Emphasis in original.]
>
> (Exhibit 96 at p 1)

[72] Sanfelice and Polisuk spoke again on the morning of January 20, 2009, following which Sanfelice sent Polisuk details of CHW's payroll. Polisuk did not have an independent recollection of his discussion with Sanfelice on January 20, 2008. He did, however, confirm that he had prepared the undated handwritten notes which were produced in evidence by Staff as Exhibit 254 following his and Mohamed's telephone conversation with Pasquali to obtain Pasquali's comments on the draft valuation report (see paragraph [69] above). The following is an abridged summary of some of Polisuk's notes on the Exhibit:

1. We are coming up to a value well below the $2.65 million in the offering memorandum – can't bridge gap.

2. CHW has no actual normalized income in 2008.

3. Company has no tangible value.

4. Projections are very aggressive. Appear to have missed boat on hedge fund growth.

[73] Attached as the second page of Exhibit 254 is Schedule 1 to a further version of CHW's discounted cash flow as at October 31, 2008, as prepared by Deloitte. The Schedule sets out the valuation calculation based on discount rates ranging from 35.6% (high) to 42.1% (low), resulting in a range of values from $1,280,000 to $1,791,000 with a mid-point of $1,535,000.

[74] Attached as the third page of Exhibit 254 is a discounted cash flow calculation of CHW as at October 31, 2008 on which Polisuk made a number of handwritten notes under the heading "Tony", which Polisuk assumed in his testimony was a reference to Sanfelice. One of the notes stated that "Everything else sub 1 million. I don't see us bridging the gap b/w that and 2.6 million." Polisuk testified that it was information that he passed on to Sanfelice. Adjacent to the foregoing notes is the notation "1.53" with an arrow pointing to "2.65". When asked to indicate what the numbers represented, Polisuk said that he guessed that they referred to the difference between the $1.53 million to which reference is made in paragraph [68] above and the Respondents' targeted amount of $2.65 million. When cross-examined on what he recalled telling Sanfelice, Polisuk replied that: "I can definitely tell you I indicated we weren't coming close to the 2.65 million, and I can't tell you for sure what this note means sitting here in 2015." (Hearing Transcript, May 1, 2015 at p 89 and May 13, 2015 at p 64)

[75] Polisuk also made the following notations on the third page of Exhibit 254: (i) "Re-do forecast normalized cash flow"; (ii) "Salary costs normalized basis"; and (iii) "Tony give a less aggressive scenario, moderate pace". When asked if he recalled having a discussion with Sanfelice about making the forecast less aggressive, Polisuk testified:

> I am assuming I did. I think what these notes are is [*sic*], now I can't say for certain, but my feeling is that these are notes I made when I was talking to [Sanfelice] after this whole Iseo [Pasquali] thing came up.
>
> (Hearing Transcript, May 1, 2015 at p 90)

E. Termination of Deloitte & Touche LLP

[76] In the evening of January 20, 2009, following the conversation between Sanfelice and Polisuk earlier on the same day, Sanfelice left a voice message for Polisuk terminating Deloitte's engagement.

[77] At the Hearing, Nagy testified that:

> As time progressed into January 2009, Mr. Sanfelice became more and more dissatisfied with the time it was taking for Deloitte to complete their valuation. We both became concerned that these further delays in obtaining the report, that costs were escalating with no end in sight. We had expected the valuation to have been complete by mid-January, but by January 20th we still had not received Deloitte's report, neither the draft nor the final report. They were continuing to ask Mr. Sanfelice for additional information, and we had no idea when they might ultimately render an opinion of the value of CHW. In short, we both lost confidence in Mr. Polisuk.
>
> (Hearing Transcript, October 2, 2015 at pp 31-32)

[78] Sanfelice's evidence with respect to the reasons for terminating Deloitte's engagement is essentially the same as Nagy's evidence.

[79] When questioned at the Hearing about the reasons for the termination of Deloitte's engagement, Mohamed testified that:

> [The Deloitte engagement] ended because we couldn't support the 2.65 million value that was being referred to in the confidential offering memorandum.
>
> …

> Based on our analysis and our understanding of the forecast, and we thought the forecast could not be obtained, which ultimately would reduce -- which reduced the overall value we were coming up with. So we were getting a value lower than the 2.65 million, based on our calculations.
>
> (Hearing Transcript, April 24, 2015 at p 93)

[80] On January 21, 2009, Polisuk sent an e-mail message to Sanfelice confirming his receipt of Sanfelice's voice message terminating the Deloitte engagement and enclosing Deloitte's statement of account. The statement reflected Deloitte's services to January 21, 2009, including the preparation of their financial model and their "draft report not issued", and their total fees of $18,800. As a courtesy, Deloitte wrote-off the fees and GST which exceeded the $15,000 retainer which they had received.

F. HJF Financial Inc. Valuation

[81] On or about January 23, 2009, Nagy and Sanfelice met with Figov for the purpose of retaining his firm, HJF, to value CHW. This was the second time that Nagy and Sanfelice had approached Figov with respect to the preparation of a valuation. Figov testified that he had declined to conduct the valuation when first approached as he felt that the forecasts were "too aggressive relative to [CHW's] historical financial statements…which did not include 2008 financials." (Hearing Transcript, September 21, 2015 at p 185)

[82] Figov also testified that he agreed to undertake the valuation as Nagy and Sanfelice were able to provide him with CHW's 2008 audited financial statements, which reflected substantially higher revenues and profitability than the 2007 statements he had seen earlier in 2008. Figov also noted that, as the 2008 statements were audited, they provided a higher level of assurance than the 2007 statements he had previously reviewed, which had only been subjected to review engagements.

[83] HJF was formally retained to provide an estimate of the fair value of the equity of CHW by letter of engagement dated February 10, 2009. The letter states, among other things, that the engagement was undertaken in connection with a potential acquisition of CHW by DALP and that the proceeds of the purchase would be used to buy out the existing shareholders of CHW (see paragraph [39] above).

[84] At his first meeting with Nagy and Sanfelice, Figov received the CHW forecasts that formed part of the Initial CHW Business Plan. On February 2, 2009, Figov received from Sanfelice a summary of the audited revenue details for 2008 together with revised forecasts on a line-by-line basis for the five years from 2009 to 2013 (the "**Revised Forecasts**") and a Statement of Income and Deficit. Although is unclear from the record on what date the Respondents prepared the Revised Forecasts, it would appear that they did so on or about January 19, 2009, the date on which Sanfelice sent the three valuations to Polisuk.

[85] On February 10, 2009, Sanfelice sent Figov CHW's balance sheet as at October 31, 2008 which included balance sheet forecasts for the five years from 2009 to 2013. On or about February 17, 2009, Sanfelice sent Figov a copy of a CHW business plan which included the Revised Forecasts which Figov had already received (the "**Second CHW Business Plan**").

[86] On March 1, 2009, Figov provided Sanfelice and Nagy with a draft valuation report for their review. Sanfelice testified that, having corrected some typographical errors in the narrative, he returned the draft to Figov on the same day. Figov sent his final valuation report, which was dated February 27, 2009, to the Respondents in which he estimated that the fair market value of all of the issued and outstanding shares of CHW as at October 31, 2008 ranged from a low of $2,099,397 to a high of $2,971,978 with a mid-point of $2,535,688. The mid-point value of $2,535,688 was the amount used in the Second DALP OM as the price of the shares of CHW as noted in paragraph [41] above.

[87] Ho, one of the Commission's Senior Forensic Accountants, testified at the Hearing that, when compared to the Initial CHW Business Plan provided to Deloitte, the Second CHW Business Plan provided to Figov reflected increases in CHW's EBITDA in each year of the five year forecast. The aggregate amount of the increase in EBITDA over the five years was $1,656,450 which resulted from an increase in revenues totalling $627,250 and a decrease in expenses totalling $1,029,200. Ho concluded that the increases in the forecasted revenues resulted from increases in projected subscription revenue, mainly attributable to increases in new subscribers and three bulk deals, and increases in licensing revenue attributable to two matters identified in the Second CHW Business Plan as "Second deal – Quadrexx, S&P or other" and "Third deal – Quadrexx, S&P or other".

[88] It is Sanfelice's evidence that the changes reflected in the Revised Forecasts resulted from: (i) the Software License and Service Agreement entered into by Henton Information Systems Ltd. ("**Henton**") and CHW dated January 1, 2009 (the "**Henton Agreement**"); and (ii) CHW's 2008 audited statements which were received in January 2009 and which resulted in further adjustments to the overall forecast. The Henton Agreement provided CHW with a perpetual E-Learning Software License on the terms set out in the Henton Agreement.

[89] Sanfelice also testified that he had made it clear to Figov when they met on February 17, 2009 that the Second CHW Business Plan included the effect of the Henton Agreement on CHW. However, when cross-examined, Sanfelice acknowledged that, when describing CHW's expansion of its education initiatives, the Second CHW Business Plan made no reference to the Henton Agreement or its effects on the financial performance of CHW. Sanfelice testified that only the numbers were updated and there was no reference to e-learning in the text of the Second CHW Business Plan.

[90] It should be noted that, although dated on and made effective as of January 1, 2009, the Henton Agreement was only finalized on March 5, 2009. It is Sanfelice's evidence through his counsel, however, that "as of February 2, 2009 (the date when the forecast was provided to HJF) there was a high degree of certainty the deal would close in order to permit including the impact of the deal in the forecasts." (Exhibit 400 at pp 1-2)

[91] Nagy testified that:

> We were in negotiation prior to October 31st, 2008 in respect to an acquisition of Henton, an e-learning business, and believed that it was appropriate to update our forecast after this deal became very likely in January 2009. The fact that Mr. Figov asked for Quadrexx's Q1 financial results was consistent with our belief that it was reasonable to use an updated forecast.
>
> (Hearing Transcript, October 2, 2015 at p 34)

[92] During Figov's cross-examination, counsel to Sanfelice suggested that Sanfelice told Figov about the e-learning platform when they met on February 17, 2009 and that CHW was relying on the estimates that had been provided to Figov. Figov replied that he was more inclined to say that he did not believe that he was so informed but, given the passage of time, he could not be 100% certain.

[93] Ho testified at length with respect to the implications of the Henton Agreement, both in chief and on cross-examination. When cross-examined by counsel to Sanfelice, Ho was asked if, in his consideration of the reasonableness or adequacy of the explanations that had been provided to Staff prior to the Hearing with respect to the differences between the forecasts provided to Deloitte and HJF, Ho gave any consideration to the actual impact the Henton Agreement had on CHW's business. Ho replied that, while he saw the changes in the forecasts, they did not "match what [he] would expect to see happening if the Henton deal was the reason for the changes to the forecast." (Hearing Transcript, May 15, 2015 at p 139)

[94] It should be noted that, during Ho's examination-in-chief, he did agree that an increase in the education fees of $30,000 shown in the forecast for 2010 and a smaller amount of $25,000 for 2011 were plausibly attributable to increased revenue derived from the Henton Agreement. When cross-examined by Nagy, Ho also acknowledged that (i) the Henton Agreement could potentially reduce CHW's education costs as well as its research, data and information technology expenses; (ii) CHW did not have an e-learning platform prior to the Henton Agreement; and (iii) if the Henton Agreement had come into effect, it would have had an effect both on revenue and expenses and one cannot necessarily predict what the interaction of the two factors would be.

[95] When cross-examined by counsel to Sanfelice, Ho acknowledged that he was a forensic accountant and had no particular expertise in the area of opining on whether the forecasts relating to CHW's business were fair or not.

G. Disclosure

[96] The First DALP OM stated, among other things, that (i) QHCM, the general partner of DALP, would engage a third party business valuator to valuate the fair market value of CHW; (ii) the price that DALP would pay for acquiring the shares might be adjusted downward, should the valuation be less than $2.65 million; and (iii) the costs of the valuation would be paid by QHCM. The comparable provisions of the Second DALP OM were modified to provide that DALP would pay $2,535,688 for the shares of CHW, which was the mid-point of the valuation, and that the costs of the valuation would be paid by DALP.

[97] By February 28, 2009, the date of the Second DALP OM, CHW, rather than QHCM, had already retained and paid the fees of both Deloitte and HJF for conducting a valuation of DALP. Although the fees for both valuations were originally paid by CHW, Sanfelice, Nagy and Terry Krotowski, a co-founder, shareholder and Vice-President of CHW, reimbursed CHW for such fees.

[98] On April 9, 2009, a special meeting of the limited partners of DALP was held in Calgary. By means of proxies filed prior to the meeting, the limited partners approved a special resolution which extended the final closing date for the offering of the DALP Securities and amended the DALP Partnership Agreement to provide, among other things, that DALP would pay for the costs of any business valuation undertaken in respect of DALP's investment in CHW.

[99] None of the following was disclosed to DALP investors: (i) the retention of two different third party valuators, Deloitte and HJF, to conduct valuations of CHW; (ii) the circumstances relating to such retention and the subsequent termination of the

engagement of Deloitte; (iii) the methodology employed in the valuations, other than a reference in the First DALP OM that the valuation would be based on a "dividend discount" valuation or pricing model; or (iv) the fees paid to each of Deloitte and HJF by CHW or the reimbursement of such fees. Similarly, none of the foregoing information was provided to DALP investors in either the special resolution to which reference is made in paragraph [98] above or the accompanying explanatory letter to unitholders.

H. Acquisition of CHW by DALP

[100] As contemplated by the terms of the First DALP OM, QHCM, as the general partner of DALP, commenced purchasing the shares of CHW prior to the completion of the valuation and prior to the completion of the offering of DALP Securities. More specifically, QHCM purchased the shares in a series of transactions which commenced on August 25, 2008 with the purchase from the Respondents of 16,123 common shares and 17,210.33 preferred shares at an average price of $15.00 per share. The final purchase of CHW shares took place on March 2, 2009 with the purchase from the Respondents and Terry Krotowski of 46,927 common shares and 38,284 preferred shares at an average price of $14.61 per share.

[101] The Second DALP OM, which was dated one day after the date of the HJF valuation, reflected the fact that DALP had acquired all of the issued and outstanding shares of CHW for a total price of $2,535,688. It also stated that the price paid by DALP was the lesser of $2.65 million and the mid-point of the valuation range determined by the valuator.

[102] Nagy and Sanfelice received a total of $1,223,035.43 and $819,432.80, respectively, from the proceeds of the sale of their respective shares of CHW.

I. Submissions of the Parties

1. Termination of Deloitte

[103] Staff submits that the Respondents terminated the Deloitte engagement before Deloitte issued its valuation report because the Respondents knew that Deloitte would not provide a valuation that was close to the $2.65 million amount contemplated by the First DALP OM. Such a lower valuation would mean a reduction in the amount received by the Respondents as shareholders of CHW on the sale of their shares to DALP.

[104] Staff submits that, as Deloitte was conducting their review and analysis for the purpose of their valuation report, they made it increasingly clear to Nagy and Sanfelice that they viewed the CHW forecasts as aggressive and asked Sanfelice for additional information to justify a number of the assumptions employed by Sanfelice in preparing the forecasts. Staff also submits that the evidence discloses that, consistent with their concerns relating to the forecasts, Deloitte gradually increased the discount rate that they were using in versions of the schedules to their draft valuation report to reflect what they perceived as the increased level of risk (see paragraphs [64], [68] and [73] above).

[105] The Respondents submit that (i) there is no evidence that a valuation report, draft or otherwise, was ever provided by Deloitte to CHW; (ii) there is no documented communication from Deloitte to CHW confirming that CHW was advised orally of a conclusion with respect to the valuation; and (iii) the testimony of Mohamed respecting Pasquali's requests for additional information makes it clear that Deloitte had not reached any conclusion with respect to the valuation.

[106] Sanfelice testified that the Respondents decided to terminate Deloitte on or about January 20, 2009 because (i) Deloitte still had work to do; (ii) there was no indication as to when Deloitte was going to finish its work or when Deloitte would provide CHW with an opinion; and (iii) the Respondents were losing confidence in Polisuk. For the foregoing reasons, the Respondents decided to terminate Deloitte and proceed with Figov as they had received audited financial statements for CHW and a fixed price and timeline from Figov.

[107] Staff submits that the Respondents' assertions that they were unaware of Deloitte's likely valuation are not credible and points, in particular, to the testimony of Polisuk who testified as follows when cross-examined about what he had said to Sanfelice with respect to value:

> And as I said previously, I can't tell you for sure what was said, what I said to him and when I said to him and whether I gave him a number or I didn't give him a number.
>
> I can definitely tell you I indicated we weren't coming close to the 2.65 million, and I can't tell you for sure what this note means sitting here in 2015.[25]
>
> (Hearing Transcript, May 13, 2015 at p 64)

[25] See also paragraph [74] above.

[108] Polisuk's evidence with respect to the reason for the termination of Deloitte's engagement was confirmed by Mohamed who testified that the engagement was terminated because Deloitte "couldn't support the 2.65 million value that was being referred to in the confidential offering memorandum." (See paragraph [79] above.)

[109] Staff submits that:

(a) The reason for the termination of Deloitte's engagement was its inability to provide a valuation close to $2.65 million;

(b) There was no undue delay on the part of Deloitte in preparing their valuation, given the fact that its engagement was terminated within two weeks after receiving payment of the $15,000 retainer which Deloitte had requested;

(c) Deloitte had already completed a third draft of their valuation report at the time its engagement was terminated;

(d) Mohamed indicated in an e-mail message to Sanfelice on January 5, 2009 that Deloitte should be able to provide its valuation report in a couple of weeks or by the end of the month, at the latest and there was no suggestion that Deloitte would not meet that deadline; and

(e) Although Sanfelice testified that HJF had agreed to a fixed time frame for the delivery of its valuation report and a fixed fee, there is no mention of either in the HJF letter of engagement in which HJF's fees are stated to be based on an hourly rate.

2. Revised Forecasts

[110] The essence of Staff's submissions relating to the Revised Forecasts is that, having become aware of the probable outcome of the Deloitte valuation, the Respondents prepared a second set of forecasts that both increased revenues and decreased expenses. The Revised Forecasts were then provided to a second valuator, HJF, which Staff suggests was done in the hope or expectation of obtaining a more favourable valuation that would support the Respondents' desired valuation of the CHW shares.

[111] Staff relies on the forensic analysis undertaken by Ho and summarized at a high level in paragraph [87] above. Of particular importance, Ho also testified that, of the total increase in revenues of $627,250, the Revised Forecasts projected an increase in education revenue for the five year forecast period of only $41,250.

[112] Ho also testified that the decreases in forecasted expenses were entirely attributable to decreases in projected personnel expenses. This projected decrease is inconsistent with the use of proceeds description in the First DALP OM which was drafted by Sanfelice and stated that CHW intended "to use the proceeds of the offering as working capital and to hire senior management, sales, research, media and administration personnel to allow it to capitalize on its expansion plans over the next five years." (Exhibit 95 at p 16)

[113] Sanfelice responded through his counsel to Staff's enforcement notice dated October 23, 2013, in which Staff raised issues with respect to the Revised Forecasts, by stating that:

> The fact is the forecasts provided to HJF were revised as a consequence of a deal entered into between Henton Information Systems Ltd. and CHW dated January 1, 2009, the impact of which was not incorporated into the previous forecasts provided to Deloitte prior to the Henton agreement. The Henton agreement reasonably resulted in a material change in the forecasts.
>
> (Exhibit 375 at p 6)

[114] In a subsequent letter responding to written enquiries from Ho, Sanfelice, through his counsel, stated that:

> It should be noted that in addition to the impact of the "Henton" deal on the forecasts, other factors which also impacted the forecast provide to HJF (in contrast to the November 2008 forecast provided to Deloitte) were that CHW had received its audited statements in January 2009 which resulted in further adjustments to the overall forecast.
>
> It should also be noted that although the "Henton" deal was struck effective January 1, 2009 as per the agreement, the transaction agreement was not finalized until March 5, 2009. However, as of February 2, 2009 (the date when the forecast was provided to HJF) there was a high degree of certainty the deal would close in order to permit including the impact of the deal in the forecasts.

> Finally, corroborative of the honest and reasonable belief that the Henton deal materially impacted the value of CHW is the fact that since its acquisition, Henton has exceeded the revenues forecasted in January 2009. [Emphasis added.]
>
> (Exhibit 400 at p 2)

[115] Staff disputes Sanfelice's assertion that, by February 2, 2009, there was a high degree of certainty that the transaction contemplated by the Henton Agreement (the "**Henton Transaction**") would close. Staff points to the exchange of e-mail messages between Sanfelice and Michael Gallimore, a consultant who was being paid by Quadrexx to assist CHW in its negotiations with Henton, and between Sanfelice and Sharp during the period from December 8, 2008 until the Henton Agreement was signed on March 5, 2009. In Staff's submission, the foregoing correspondence establishes that, by February 11, 2009, Sanfelice had still not received legal advice with respect to the draft Henton Agreement from Sharp. Staff also points to the fact that, even though there was no change to the draft Henton Agreement between the dates of the forecasts provided to Deloitte and Figov, the Respondents allege that the changes between the two sets of forecasts were attributable to the Henton Agreement.

[116] Staff cross-examined Sanfelice with respect to his assertion that the Revised Forecasts included "the impact of the [Henton] deal" by raising the absence of any details relating to Henton in the Second CHW Business Plan provided to Figov. Sanfelice acknowledged that only the numbers were updated and that there was no mention of Henton, the expansion of the education initiatives or e-learning in the text of the Second CHW Business Plan. Sanfelice also acknowledged that the balance sheet that he provided to Figov on February 10, 2009 made no provision for acquisitions.

[117] The absence of any reference to the Henton Agreement in the Second CHW Business Plan and the Revised Forecasts is consistent with the following representations made by Nagy in his representation letter to Figov dated March 2, 2009:

> 3. You [Figov] have been informed of all significant factors, contracts or agreements, in effect at the Valuation Date, that bear on the value of [CHW], and they are reflected in the Valuation Report;
>
> 4. At the Valuation Date, no contracts or agreements were in effect or being negotiated, that would have a material effect on the future operations of [CHW] or on the value of the Assets, that have not been referred to in your Valuation Report;
>
> (Exhibit 489 at p 1)

There is no reference to the Henton Transaction in HJF's valuation report.

[118] The Respondents' extensive submissions with respect to the Revised Forecasts are substantially based on the Henton Transaction, the receipt of CHW's 2008 audited financial statements and improvements in CHW's financial performance. In addition, the Respondents repeatedly assert that Staff failed to accept, or recognize as reasonable, Sanfelice's explanations with respect to the projected increases in revenue and decreases in expenses reflected in the Revised Forecasts.

[119] Sanfelice testified that, in response to Figov's request to see the results for CHW's first quarter (which ended on January 31, 2009), he provided Figov with an excerpt from CHW's general ledger which reflected the profit and loss details for the quarter. Sanfelice testified that the "numbers were coming in stronger for Q1 than…the forecast we gave [Figov]." Sanfelice also testified that he had expressly informed Figov that the Revised Forecasts included the forecasted effects of the acquisition by CHW of an e-learning platform but acknowledged that he had not provided Figov with a copy of the Henton Agreement, as the parties had not completed the agreement at that time. (Hearing Transcript, December 9, 2015 at pp 143-144)

[120] In response to inquiries from Staff prior to the Hearing, Sanfelice submitted through his counsel that the primary reason for the decrease in the forecasted expenses from the forecast provided to Deloitte was the decrease in personnel costs. The projected decrease was attributed to the Henton Transaction and the fact that the Respondents felt that certain personnel costs were too high having regard to the future plans for the business. Management personnel costs were similarly reduced given the anticipated reduction in the amount of time that each of Nagy and Sanfelice would spend on CHW's daily operations.

[121] Sanfelice testified that the Henton Agreement had a positive impact on CHW's business and introduced into evidence two schedules which, in his view, supported his assertion that Staff had not considered the actual impact of the Henton Transaction on CHW's business. The first schedule is a comparison prepared by Ho of the forecasted revenues provided to each of Deloitte and Figov to which Sanfelice, who testified that he did not dispute Ho's numbers, appended his comments.[26] Of the total amount by which forecasted revenues increased from 2009 to 2013, only $41,250 was attributable to education. The second schedule, also prepared by Ho, compared the benefits derived from the Henton Transaction to the forecasted benefits.[27] Of the total net forecasted benefits of $425,000 over the same five year period, only $35,000 was attributable to education.

[26] Exhibit 694.
[27] Exhibit 695.

[122] Sanfelice submits that the Revised Forecasts were largely predicated on Henton and that he had "demonstrated that there was actual benefit consistent with and even better than what had been forecasted". (Hearing Transcript, December 10, 2015 at p 14)

[123] Finally, Sanfelice submits that (i) the HJF valuation was the only valuation obtained by the Respondents as Deloitte never provided a valuation; (ii) the Revised Forecasts, which were provided to Figov by the Respondents, were based on their good faith expectations, including the effect of the proposed Henton Transaction; (iii) there was no falsehood, deceit or other fraudulent means engaged in by the Respondents; and (iv) there is no evidence that DALP, which was purchased by CHW, was not worth what the DALP investors paid to acquire it.

[124] In response to Staff's submissions that there did not appear to be any movement in the Henton Transaction (see paragraph [115] above), the Respondents point to Michael Gallimore's e-mail message to Sanfelice dated January 22, 2009 advising of the need to "kick off work on closing Henton" which the Respondents submit is evidence that progress was being made. (Exhibit 428 at p 81)

[125] In their submissions, the Respondents point to a number of acknowledgements by Ho during his testimony, including that:

(a) The Henton Transaction could potentially have reduced CHW's education, research, data, information technology and sales expenses;

(b) Prior to the Henton Transaction, CHW did not have an e-learning platform;

(c) The revenues of CHW would be "impacted" as the result of the Henton Transaction;

(d) Ho did not testify that the Henton Transaction was not a significant event; and

(e) Ho is a forensic accountant and "had no particular expertise" that would allow him to offer an opinion on whether the Revised Forecasts were fair or not.

[126] In reply to the Respondents' submissions, Staff refutes the assertions of the Respondents that the reasons for Staff's fraud allegation relating to DALP resulted from: (i) Staff's disbelief that the Henton Transaction would have the economic benefits forecasted by Sanfelice; and (ii) Ho's lack of certainty that the Henton Transaction was as significant as made out by the Respondents in the Revised Forecasts provided to Figov.

[127] Staff submits that, following his investigation, Ho was unable to conclude that the revisions reflected in the Revised Forecasts could be attributed to the Henton Transaction. Staff also submits that the comparative document produced in evidence as Exhibit 695 (see paragraph [121] above), which was provided to Staff for the first time immediately prior to Sanfelice's examination-in-chief, was an attempt by the Respondents to justify the Revised Forecasts on the basis of actual performance. Staff submits that the Respondents appear to be relying on hindsight and an ever-expanding list of reasons to justify the revisions reflected in the Revised Forecasts, well after the fact and that the Revised Forecasts do not correspond to the actual costs and revenues associated with the Henton Transaction.

[128] The Respondents submit that Staff called no evidence to dispute the valuation of CHW and has, therefore, no basis to allege fraud with respect to DALP. Staff refutes the Respondents' submission and submits that fraud consists of dishonest conduct that results in at least a risk of deprivation to the victim and that the Respondents' conduct, which was not disclosed to DALP investors, put the financial interests of DALP investors at risk. As a result, there is no need to call expert evidence relating to the value of CHW in February 2009 to establish the fraudulent conduct.

[129] Finally, Staff submits that the Respondents made no mention of the Henton Agreement or e-learning when responding to Deloitte's request for support for the Respondents' forecasts relating to education.

3. Allegation of Fraud

[130] Staff alleges that the Respondents, directly or indirectly, engaged or participated in an act, practice or course of conduct relating to the DALP Securities that they knew or reasonably ought to have known perpetrated a fraud on DALP investors, thereby breaching subsection 126.1(1)(b) of the Act and acting contrary to the public interest.

[131] The basis for Staff's allegation of fraud relating to the DALP Securities can be summarized as follows:

(a) As soon as it became evident to Nagy and Sanfelice that Deloitte would not provide a valuation that would support the maximum purchase price for CHW's shares of $2.65 million reflected in the First DALP OM, the Respondents terminated Deloitte's engagement before they received a formal valuation.

(b) At essentially the same time as Deloitte was terminated, the Respondents prepared the Revised Forecasts and retained a second business valuator, Figov, to whom they provided the Revised Forecasts in the hope or expectation that the Revised Forecasts would provide the basis for a valuation that would come close to the $2.65 million amount.

(c) The increased revenues and decreased expenses reflected in the Revised Forecasts were not based on the Henton Transaction, as alleged by the Respondents, and most of the Respondents' evidence in this regard was prepared with the benefit of hindsight.

(d) Nagy and Sanfelice were in a conflict of interest as (i) the directing minds of QHCM, the general partner of DALP; (ii) the majority shareholders of CHW; and (iii) the shareholders, directors and officers of Quadrexx. As shareholders of CHW, Nagy and Sanfelice received more for their CHW shares than they would have received if the sale had been based on the likely lower valuation that would have been provided by Deloitte. As a result of their actions, Nagy and Sanfelice prejudiced the economic interests of, and caused actual economic harm to, the DALP investors.

(e) The Respondents failed to disclose to investors any of the circumstances surrounding the retention and termination of Deloitte, the subsequent retention of HJF, the Revised Forecasts provided to HJF, or the payment of fees to the two firms and, therefore, represented that a situation was of a certain character when, in reality, it was not.

[132] Staff submits that, having considered all of the evidence, the Commission should conclude on the balance of probabilities that the explanations provided by the Respondents are not consistent with the testimony of other witnesses and the exhibits filed at the Hearing. Staff further submits that, on the basis of clear, convincing and cogent evidence, including that of the Respondents, the *actus reus* and *mens rea* elements of fraud have been established on a balance of probabilities against Nagy, Sanfelice and QHCM.

[133] In their Closing Written Submissions dated April 25, 2016 ("**Respondents' Written Submissions**"), the Respondents submit that Staff's allegation that the investors of DALP were defrauded is unfounded on the basis that:

(a) The Respondents did what they disclosed to the investors they intended to do;

(b) The HJF valuation report obtained and relied on by Nagy and Sanfelice, and reported to investors, was prepared in accordance with the appropriate standards and was the only valuation obtained;

(c) The Revised Forecasts were based on Nagy's and Sanfelice's good faith expectations, including the effect of the Henton Transaction;

(d) The Respondents did not engage in deceit, falsehood or other fraudulent means; and

(e) There is no evidence that the CHW asset purchased by DALP was not worth what was paid for it.

J. Analysis and Finding

[134] As noted in paragraph [19] above, fraud has two components, the first of which is the *actus reus*, or prohibited act, which is established by proof of an act of deceit, a falsehood or some other fraudulent means, and deprivation caused by the prohibited act. The deprivation may be actual loss or the placing of the victim's pecuniary interests at risk. The second element is the *mens rea*, or criminal intent, which is established by subjective knowledge of the prohibited act and subjective knowledge that the prohibited act could have as a consequence the deprivation of another, which may include the knowledge that the victim's pecuniary interests are placed at risk.

[135] For the purpose of assessing the evidence and the submissions of the parties, I will address the issues in the same order as the submissions of the parties above.

1. Termination of Deloitte

[136] During his cross-examination by Staff, Nagy was asked about the state of his knowledge of Deloitte's views relating to the valuation of CHW at the time he prepared the three CHW valuations that Sanfelice sent to Deloitte on January 19, 2009 (see paragraph [69] above). Nagy denied that he knew that Deloitte could not get to a valuation as high as $2.65 million and, when asked by Staff if he wanted to have a valuation of $2.6 million, Nagy replied "No, we want to have a valuation, period." (Hearing Transcript, October 5, 2015 at p 124)

[137] I find that the facts do not support Nagy's foregoing assertion. The evidence establishes that, at the time that Sanfelice terminated Deloitte's engagement on December 19, 2009, Deloitte had already prepared a draft valuation report which was

undergoing an internal quality assurance review. Polisuk, on behalf of Deloitte, requested additional support for the $2.65 million purchase price reflected in the First DALP OM as Deloitte's internal reviews had disclosed a number of significant concerns with the Respondents' assessment of value including (i) the aggressive nature of the revenue forecasts set out in the First CHW Business Plan; (ii) the frequency of prior redemptions of CHW shares and the prices at which the redemptions had been effected; (iii) the absence of normalized income; and (iii) the state of the hedge fund industry.

[138] Some of the foregoing concerns were communicated to Sanfelice by Polisuk and Mohamed on January 9, 2009 and again by Polisuk during telephone conversations with Sanfelice on January 19 and 20, 2009. The latter conversations were quite clearly focused on the fact that Deloitte could not bridge the gap between its then current assessment of value and $2.65 million. As a result, Polisuk requested additional evidence that would support Nagy's and Sanfelice's views with respect to the value of CHW's shares.

[139] Nagy testified about his and Sanfelice's loss of confidence in Polisuk and their concerns relating to the timing of the delivery and the costs of Deloitte's valuation report given the additional information being requested by Deloitte (see paragraph [77] above). There is, however, no evidence that either Nagy or Sanfelice raised concerns with Deloitte about the timing or the costs of Deloitte's valuation. In fact, by the date of the termination of Deloitte's engagement, Deloitte had incurred fees of $18,800 for the preparation of its financial model and draft report, far less than its original estimate of $25,000 to $35,000 for the entire project.

[140] With respect to timing, Mohamed advised Sanfelice by e-mail on January 5, 2009 that Deloitte should be able to provide him with a copy of its report "in a couple of weeks (end of this month latest)." As there is no evidence of any other communication between Deloitte and the Respondents with respect to timing, there is no reason to conclude that the Deloitte valuation report would not have been delivered to the Respondents by January 31, 2009. It should also be noted that the HJF engagement letter did not include any commitments with respect to costs or timing (see in this regard paragraph [109](d) above.)

[141] Polisuk's testimony with respect to the matters discussed with Sanfelice during their telephone conversations on January 19 and 20, 2009 was evasive, particularly as it related to whether or not he had provided Sanfelice with any indication of Deloitte's views with respect to the valuation of CHW. Two exchanges during Polisuk's cross-examination by Sanfelice's counsel are relevant. The following is the first such exchange:

> Q. So, again, are you able to testify today, sir, under oath whether you told Mr. Sanfelice a value?
>
> A. I can't say for certain if I did or not.
>
> Q. And, therefore, you can't indicate, as you previously testified, that when you told Mr. Sanfelice a value, he didn't want the report?
>
> A. I can't say that we told him that the value was not the 2.6 million or near there and that he said okay, forget it. I seem to recall -- I can't say for sure, I'm not a hundred percent positive what he said, <u>but I know that was the end of the engagement.</u> [Emphasis added.]
>
> (Hearing Transcript, May 13, 2015 at p 59)

[142] In the second exchange,[28] Polisuk testified that:

> And as I said previously, I can't tell you for sure what was said, what I said to him and when I said to him and whether I gave him a number or I didn't give him a number.
>
> <u>I can definitely tell you I indicated we weren't coming close to the 2.65 million</u>, and I can't tell you for sure what this note means sitting here in 2015. [Emphasis added.]
>
> (Hearing Transcript, May 13, 2015 at p 64)

[143] Notwithstanding the fact that parts of Polisuk's testimony were evasive, his evidence, taken as a whole, is consistent with his written notes which were prepared before and/or during his telephone conversations with Sanfelice on January 19 and 20, 2009. I find that, on a balance of probabilities, Polisuk communicated to Sanfelice the fact that Deloitte could not provide a valuation in the amount of $2.65 million and that he made it clear to Sanfelice that Deloitte's valuation would be well below $2.65 million. Polisuk's telephone conversations with Sanfelice were, in my view, the proximate cause for Nagy's and Sanfelice's decision to terminate Deloitte's engagement only a few hours after the telephone conversation on January 20, 2009.

[28] This exchange is already described in paragraph [107] above and is included again for convenience of reference.

[144] Given the foregoing evidence, I find that, on a balance of probabilities, Nagy and Sanfelice terminated the Deloitte engagement because the almost certain outcome of Deloitte's valuation of CHW would have been far less than the $2.65 million amount described in the First DALP OM. Such a valuation would, in turn, have reduced the proceeds of the sale received by Nagy and Sanfelice as the majority shareholders of CHW.

2. Revised Forecasts

[145] The parties led a considerable amount of evidence at the Hearing and provided extensive written submissions with respect to the Revised Forecasts, including (i) extensive financial analyses; (ii) details relating to the timing of the preparation of the Revised Forecasts and the assumptions that were employed in their preparation; (iii) details about what was known about the Henton Transaction at the time the Revised Forecasts were prepared; and (iv) details about what, if anything, was communicated to each of Deloitte and HJF with respect to CHW's proposed e-learning platform.

[146] It is Sanfelice's evidence that he revised the Initial CHW Business Plan (provided to Deloitte) to give effect to the Henton Agreement and reflect CHW's 2008 audited financial statements, which were received in January 2009 and resulted in further adjustments to the overall forecast. The Revised Forecasts were prepared on or about January 19, 2009, the date on which Sanfelice sent Nagy's three valuations to Polisuk.

[147] Nagy testified that it was appropriate to update the forecasts after the Henton Transaction "became very likely in January 2009." (See also paragraph [91] above.) Sanfelice, through his counsel, advised the Commission in a letter dated November 25, 2013 that:

> It should also be noted that although the "Henton" deal was struck effective January 1, 2009 as per the agreement, the transaction agreement was not finalized until March 5, 2009. However, as of February 2, 2009 (the date when the forecast was provided to HJF) there was a high degree of certainty the deal would close in order to permit including the impact of the deal in the forecasts.
>
> (Exhibit 400 at p 2)

[148] Notwithstanding their assertions about the high degree of certainty of an agreement with Henton on February 2, 2009, neither Nagy nor Sanfelice even raised with Deloitte the possibility of an agreement with Henton on January 20, 2009 when Deloitte expressly requested that they justify their revenue projections relating to education. Yet, within the ensuing 13 days, Nagy and Sanfelice terminated the Deloitte engagement, retained HJF, concluded that "there was a high degree of certainty" that the Henton Agreement would close and prepared the Revised Forecasts, primarily on the basis of the anticipated Henton Agreement, and delivered the Revised Forecasts to Figov. In my view, the improbability of the foregoing events as recounted by Nagy and Sanfelice seriously undermines the credibility of their assertions that they terminated the Deloitte engagement because they had lost confidence in Polisuk, Deloitte were taking too long to prepare a valuation, were continuing to request information and would be expensive and that the Henton Agreement was the primary reason they felt justified in increasing their revenue projections beyond the forecasted amounts which Deloitte viewed as unsupportable.

[149] In addition, Sanfelice testified that he had made it clear to Figov when they met on February 17, 2009 that the Second CHW Business Plan included the effect of the Henton Agreement. However, when cross-examined, Sanfelice acknowledged that he made no reference to the Henton Agreement or its effect on the financial performance of CHW when describing the expansion of CHW's educational initiatives in the Second CHW Business Plan.

[150] Figov testified that he did not recall being advised about the Henton Agreement but, on cross-examination, acknowledged that it was possible that either Sanfelice or Nagy told him about the e-learning business. Given the importance that Nagy and Sanfelice subsequently ascribed to the Henton Agreement in this proceeding, it would be reasonable to expect that such importance would have been communicated to Figov in a memorable manner. It should also be noted that, in paragraph 4 of his letter of representations to HJF dated March 2, 2009, Nagy represented that:

> At the Valuation Date, no contracts or agreements were in effect or being negotiated, that would have a material effect on the future operations of [CHW] or on the value of the Assets, that have not been referred to in your Valuation Report. [Emphasis added.]
>
> (Exhibit 489)

[151] If Nagy and Sanfelice had advised Figov that the Revised Forecasts were substantially based on an agreement that would not be concluded for more than another month, it would be reasonable to expect that Figov would have undertaken some form of review to ensure that the revenue forecasts were reasonable. In this regard, the following exchange between Staff and Mohamed is instructive:

> Q. …And in this estimate of valuation approach that Deloitte is taking, these growth assumptions, how much are they just accepted and how much do you test them? Like, what's part of the retainer or the engagement?

> A. So under an estimate, we are required to corroborate the significant assumptions, so we wouldn't corroborate all assumptions, but the more significant. And revenues would be the most significant assumption.
>
> (Hearing Transcript, April 24, 2015 at p 31)

The HJF valuation report does not disclose any consideration by Figov of the Henton Transaction or any other contract or agreement in effect or being negotiated that would have had a material effect on CHW's future operations.

[152] Ho testified at length with respect to his analysis of the financial information set out in the Initial and Second CHW Business Plans. The essence of Ho's evidence was that the aggregate increase in CHW's EBITDA of $1,656,450 over the five year forecast period resulted from an increase in revenues of $627,250 and a decrease in expenses of $1,029,200. Ho also testified that, of the $627,250 increase in revenues set out in the Revised Forecasts provided to HJF, only $41,250 was attributable to an increase in education revenue while the balance was attributable to an increase in subscription revenues. With respect to the decrease in expenses reflected in the Revised Forecasts, Ho testified that only the personnel expenses had changed. I accept Ho's evidence, which I found credible and based on a thorough analysis of the financial information provided to him by the Respondents. In addition, and notwithstanding the acknowledgements by Ho summarized in paragraph [125] above, none of which affect Ho's analyses or conclusions, the Respondents have failed to demonstrate that Ho's financial analyses were incorrect or deficient in any material respect.

[153] The numerous explanations for the differences between the forecasts included in the Initial CHW Business Plan and the Second CHW Business Plan provided by Sanfelice through his counsel prior to the Hearing and in his testimony at the Hearing are inconsistent with the facts described above. Had Nagy and Sanfelice been as certain of the economic effects of the Henton Agreement as they purported to be after the fact, it stands to reason that they would have attempted to use the information to provide support for their assumptions, as they were asked to do by Deloitte, and would have made significant changes to the narrative of the Second CHW Business Plan. In addition, I found Sanfelice to be hesitant and less than forthright when testifying with respect to these issues.

[154] I find that Nagy's and Sanfelice's submissions that the Henton Agreement was the primary reason for CHW's enhanced forecasted financial performance, as reflected in the Second CHW Business Plan, are not supported by, and are inconsistent with, other proven or undisputed facts including the following:

(a) The projected increase in education revenue during the five year forecast period reflected in the Revised Forecasts of only $41,250 and the total net forecasted benefits attributable to education during the same period of only $35,000 (see paragraphs [111] and [121] above);

(b) The absence of any evidence that, by February 2, 2009, the negotiations relating to the Henton Agreement were any more advanced than they were on January 20, 2009 (see paragraphs [115] and [124] above);

(c) The absence of any details relating to the Henton Agreement in the Second CHW Business Plan (see paragraph [116] above);

(d) The absence of any provision for acquisitions in the balance sheet provided by Sanfelice to Figov on February 10, 2009 and Nagy's representation to HJF on March 2, 2009 that there were no contracts or agreements in effect or being negotiated that would have a material effect on the future operations of CHW (see paragraphs [116] and [117] above); and

(e) Nagy's and Sanfelice's failure to make any reference to the Henton Agreement in their discussions with Deloitte, despite being expressly requested to provide support for their forecasts relating to education (see paragraph [129] above).

[155] Having carefully observed and considered Polisuk's testimony in which he attempted to avoid definitive responses, and the explanations that he provided with respect to his written notes, I find that, on a balance of probabilities, Polisuk did communicate Deloitte's evolving views with respect to its valuation of CHW to Sanfelice. More particularly, I find that Nagy and Sanfelice knew that they would receive a valuation from Deloitte that would be well below the $2.65 million described in the First DALP OM and, as soon as they acquired that knowledge, they swiftly terminated the Deloitte engagement before they could receive a formal valuation report. Nagy and Sanfelice then altered the revenues and expenses in their five year forecast by just enough to support a valuation that they knew from their own calculations would approximate their target value of $2.65 million and provided them to HJF.

[156] I also find that the Revised Forecasts were not prepared in good faith and that the purported reliance by the Respondents on the Henton Agreement as the primary justification for the improved financial forecasts of CHW was dishonest and deceitful.

3. Allegation of Fraud

[157] As described in paragraph [19] above, to establish that the Respondents directly or indirectly engaged or participated in an act, practice or course of conduct related to the DALP Securities that they knew or reasonably ought to have known perpetrated a fraud on DALP investors in breach of subsection 126.1(1)(b) of the Act, Staff must establish both elements of fraud, namely, the *actus reus* and *mens rea* of fraud.

[158] As the general partner of DALP, QHCM was required by the terms of both the First and Second DALP OMs "to exercise its powers and discharge its duties honestly, in good faith and in the best interests of [DALP] and to exercise the care, diligence and skill of a prudent and qualified manager." Given that QHCM was controlled and directed by Nagy and Sanfelice who, between them, owned more than 80% of CHW's shares, the need for the Respondents to act honestly, in good faith and in the best interests of DALP was particularly compelling.

[159] As summarized above, the Respondents embarked on a process to sell CHW that entailed the formation of a limited partnership, which they effectively controlled through the general partner, and the retention of a third party business valuator to value the fair market value of CHW. The use of the terms "third party business valuator" and "fair market value" in the First DALP OM were undoubtedly intended to convey to investors that the purchase price for the shares of CHW would be determined by a professional valuator independently of QHCM and would reflect "the highest price, expressed in terms of money or money's worth, obtainable in an open and unrestricted market between informed and prudent parties, acting at arm's length and under no compulsion to transact."[29]

[160] On the basis of the analysis described above, I find that, on a balance of probabilities, Nagy and Sanfelice created the Revised Forecasts for the sole purpose of improving CHW's EBITDA to support a valuation that would approximate the $2.65 million reflected in the First DALP OM. I also find that, following the initiation of Staff's investigation, Nagy and Sanfelice seized on the Henton Agreement and CHW's 2008 audited financial statements as a seemingly plausible basis for justifying the changes to the initial forecasts, after the fact.

[161] By manipulating the valuation process as described above, the Respondents acted deceitfully and caused DALP to pay a higher price for the CHW shares than it would have paid had the Respondents permitted Deloitte to complete and issue its valuation report, which Nagy testified was their sole objective.

[162] The conduct of the Respondents was dishonest and deceitful and enriched Nagy and Sanfelice as the owners of more than 80% of CHW's shares at the expense of DALP and its investors. The Respondents' dishonest and deceitful conduct and the deprivation suffered by the investors establish the *actus reus* of fraud and it is not an answer to the foregoing for the Respondents to assert that Deloitte had never issued its report on value and that they did not think that they were "doing [any]thing wrong or because of a sanguine belief that all will come out right in the end."[30] In addition, by abruptly terminating the Deloitte engagement to preclude what Nagy and Sanfelice viewed as an unacceptable risk of receiving a valuation that was adverse to their personal interests and by immediately retaining a different business valuator who was provided with artificially enhanced economic forecasts, Nagy and Sanfelice knowingly undertook acts which were deceitful and which they knew would prejudice the economic interests of the DALP investors. The foregoing conduct by Nagy and Sanfelice establishes the *mens rea* of fraud.

[163] Based on the foregoing, I find that Nagy, Sanfelice and QHCM directly or indirectly engaged or participated in an act, practice or course of conduct relating to DALP Securities that they knew or reasonably ought to have known perpetrated a fraud on DALP investors in breach of subsection 126.1(1)(b) of the Act and contrary to the public interest.

IV. USE OF INVESTOR FUNDS BY QUADREXX TO PAY DIVIDENDS TO PREVIOUS QUADREXX INVESTORS

A. Overview

[164] During the period from August 2009 to March 2011, Quadrexx issued and sold its QAM31 Class I Cumulative, Redeemable, Retractable Convertible Preference Shares (the "QAM I Shares") which raised a total of $7,970,000 (the "QAM I Offering"). The QAM I Shares paid dividends at the rate of 13.5% per annum, paid as to 6.75% on June 30 and December [31] of each year. In the event that Quadrexx missed any dividend payments, the dividends would be due and payable upon redemption or retraction together with an additional dividend payment of 0.5% for each month the cumulative dividend was in arrears.

[165] During the period from March 2011 to June 2012, Quadrexx issued and sold its QAM Class II Cumulative, Redeemable, Retractable Convertible Preference Shares (the "**QAM II Shares**") which raised a total of $4,105,780 (the "QAM **II Offering**"). The QAM II Shares paid dividends at the rate of 12.0% per annum, paid as to 6.0% on June 30 and December 31 of

[29] The definition of fair market value employed in the Deloitte engagement letter dated December 11, 2008 (Exhibit 75).
[30] *Théroux* at para 36.
[31] QAM is the acronym for Quadrexx Asset Management Inc. which is referred to in these Reasons as Quadrexx.

each year, commencing on June 30, 2011. In the event that Quadrexx missed any dividend payments, the dividends would be due and payable upon redemption or retraction together with an additional dividend payment of 0.5% for each month the cumulative dividend was in arrears.

[166] The QAM II Shares were sold pursuant to an offering memorandum dated March 8, 2011 (the "**First QAM II OM**") and an undated two page marketing brochure (the "**QAM II Brochure**"), which provided details relating to Quadrexx and the QAM II Offering. Quadrexx provided copies of the QAM II Brochure to its agents who, in turn, provided the QAM II Brochures and the First QAM OM to potential investors. Although a second offering memorandum dated May 22, 2012 (the "Second QAM II OM") was prepared, Sanfelice testified that it was not provided to investors.

B. Staff's Allegations

[167] Staff alleges that, during the period from July 1, 2011 to May 1, 2012, Quadrexx paid dividends to investors of approximately $1.3 million using in whole or in part funds raised from the QAM II Offering. From July 1, 2011 to June 12, 2012, Quadrexx raised $3,175,000 from the QAM II Offering without advising investors that QAM II investor funds had been and/or would be used in whole or in part to pay dividends to Quadrexx investors.

[168] Staff alleges that, as a result of the foregoing, Nagy, Sanfelice and Quadrexx, directly or indirectly, engaged or participated in a course of conduct relating to the QAM II Offering that they knew or reasonably ought to have known perpetrated a fraud on Quadrexx investors, contrary to subsection 126.1(1)(b) of the Act and contrary to the public interest.

C. QAM II Offering and Intended Use of Proceeds

[169] Item 1.2 of the First QAM II OM stated that, assuming the maximum offering of $7.0 million, the net proceeds were intended to be applied in the following order of priority:

(a) Working capital in the amount of $4,894,116 with any balance of net proceeds not used for the stated purposes to be added to working capital;

(b) The repayment of a loan from CHW in the amount of $376,435; and

(c) The purchase for cancellation of up to 1.0 million Class I non-voting, non-cumulative, non-participating, redeemable, retractable preference shares in the aggregate amount of $750,000. A footnote disclosed that certain of the shares expected to be purchased by Quadrexx were held by the principals of Quadrexx.[32]

[170] Item 1.3 of the First QAM II OM stated that Quadrexx could only reallocate all or a portion of the net proceeds from the QAM II Offering after the payment of commissions, fees and offering costs (the "QAM II Proceeds") for sound business reasons. Items 1.2 and 1.3 of the Second QAM II OM were identical to the corresponding provisions of the First QAM II OM.

[171] Under the heading "Short Term Objective and How We Intend to Achieve It", both the First QAM II OM and the Second QAM II OM stated that Quadrexx's intent was to "expand its distribution network through hiring additional sales force [*sic*] and the acquisition of financial advisory business(es) (ideally with assets under management of between $40,000,000 and $100,000,000)." (Exhibit 67 at p 12)

[172] The principal purpose of the QAM II Offering was summarized in the QAM II Brochure as follows:

> Primarily Working Capital for business growth and expansion purposes (offices and agents), business acquisitions, product creation and to a lesser extent, debt reduction and share repurchase.

(Exhibit 237 at p 1)

[173] In Item 8, entitled "Risk Factors", the First QAM II OM stated:

> There can be no assurance that Quadrexx will, or will be permitted under applicable corporate law to, pay dividends on the QAM Class II Shares in the stated amounts or at the stated times.
>
> (Exhibit 67 at p 29)

[32] Although not identified by name, the principals were Nagy and Sanfelice.

D. Payment of Dividends

[174] The QAM II Proceeds were initially deposited to TD Account Number 5238170 which was described in Quadrexx's General Ledger as "TD Trust – DALP I and II" (the "**DALP I and II Account**"). TD Account Number 5407218, which was described in Quadrexx's General Ledger as the "TD – QAM II operating account" (the "**QAM II Account**"), was opened on April 14, 2011 and, thereafter, the QAM II Proceeds were deposited to that account. There was also a third relevant account, namely, TD Account Number 5206589, which was described in Quadrexx's General Ledger as "TD – Corporate Quadrexx" (the "**Quadrexx Corporate Account**").

[175] During the period from July 1 to September 16, 2011, Quadrexx paid dividends relating to the June 30, 2011 dividend obligations of the QAM I Shares and the QAM II Shares in the aggregate amount of $585,292.50 (the "**June 2011 Dividends**"). During the period from January 24 to March 23, 2012, Quadrexx paid dividends relating to the December 31, 2011 dividend obligations of the QAM I Shares and the QAM II Shares in the aggregate amount of amount of $712,702.50 (the "**December 2011 Dividends**").

[176] Following his analysis of Quadrexx's bank accounts and bank statements, Ho testified that:

(a) Of the total amount of $3,514,444.93 deposited to the QAM II Account, $3,514,261.03 were QAM II Proceeds and all but $472.92 of such amount was transferred to the Quadrexx Corporate Account;

(b) During the period from July 1 to September 16, 2011, (i) $1,403,326.06 was transferred from the QAM II Account to the Quadrexx Corporate Account; (ii) $585,292.50 was disbursed from the Quadrexx Corporate Account in relation to the June 2011 Dividends; (iii) the Quadrexx Corporate Account was credited with a total of $282,363.56 from sources other than the QAM II Account which, together with the opening balance in the Quadrexx Corporate Account of $43,916.88, was insufficient to fund the June 2011 Dividends; and

(c) During the period from January 24 to March 23, 2012, (i) $690,020 was transferred from the QAM II Account to the Quadrexx Corporate Account; (ii) $685,515 of the December 2011 Dividends, including a single June 2011 Dividend payment of $1,678.50, were disbursed from the Quadrexx Corporate Account; and (iii) the Quadrexx Corporate Account was credited with a total of $368,078.48 from sources other than the QAM II Account which, together with the opening balance in the Quadrexx Corporate Account on January 24, 2012 of $67,050.43, was insufficient to fund the December 2011 Dividends.

[177] The last of the cheques drawn on the Quadrexx Corporate Account to pay the June 2011 Dividends did not clear the account until September 16, 2011. The last of the cheques drawn on the Quadrexx Corporate Account to pay the December 2011 Dividends did not clear the account until May 1, 2012.

[178] Quadrexx continued to sell QAM II Shares until June 19, 2012. On the following day, Staff required, and Quadrexx provided, the written undertaking of Quadrexx, Nagy and Sanfelice to cease trading in the securities of Quadrexx until Staff was satisfied that Quadrexx was in compliance with section 42 of the *Canada Business Corporations Act*. See also paragraph [218] below. Following the payment of the December 2011 Dividends, Quadrexx did not pay any dividends to the holders of the QAM I Shares or QAM II Shares, including the holders of QAM II Shares purchased after January 2012.

E. Quadrexx's Financial Situation

[179] Quadrexx experienced losses from at least 2007 to 2011. The 2009 and 2010 net losses were disclosed in the audited financial statements attached to the First QAM II OM. Quadrexx's loss before other items for 2010 was $2,154,373 and $2,310,279 for 2011. Quadrexx's deficit grew from approximately $4.2 million as at December 31, 2007 to approximately $9.2 million as at December 31, 2010 and approximately $12.9 million as at December 31, 2011.

[180] Given the losses, among other things, the following going concern note was included as Note 1 to Quadrexx's audited financial statements for each year from 2008 to 2011:

> [Quadrexx] has continued net losses for the year and has financed its operations from using a combination of debt and equity. [Quadrexx]'s ability to realize the carrying value of its assets and continue as a going concern is uncertain and is currently dependent on the continued support of its shareholders, the providers of debt, and the growth of assets under management. The outcome of these matters cannot be determined at this time.
>
> (Exhibits 113, 117, 125 and 43)

[181] As at December 31, 2011, Quadrexx only had approximately $118,000 in the aggregate in all of its bank accounts. The cash flow problems prompted Sanfelice to decline to receive his salary for the first three months of 2012 and, in addition, he loaned Quadrexx $50,000. Nagy reduced his salary in the early part of 2012 by approximately 50% and, while both he and

Sanfelice equivocated about the reason for their respective salary adjustments, it is quite clear from the evidence that they were prompted by Quadrexx's cash flow problems, including the need to fund the December 2011 Dividends.

[182] Orlova, Quadrexx's Controller from 2011 to mid-2013, testified that (i) Quadrexx did not have an adequate amount of cash to pay the December 2011 Dividends; (ii) the QAM II Proceeds were being transferred from the QAM II Account to the Quadrexx Corporate Account throughout the month of January 2012 and that money was allocated "between accounts based on the needs of the company"; and (iii) Sanfelice was aware that there was not enough cash to pay all of the December 2011 Dividends at the same time. The fact that Quadrexx did not have enough cash to pay all of the December 2011 Dividends concurrently was also acknowledged by Nagy in his testimony.

[183] When cross-examined by Staff with respect to the delays in the distribution of cheques in payment of the December 2011 Dividends, Sanfelice was evasive and justified the payments on the basis that "We were expecting revenues." When pressed, Sanfelice finally conceded that the money to pay the December 2011 Dividends was not in the Quadrexx Corporate Account at the end of December 2011.[33] (Hearing Transcript, December 16, 2015 at pp 102-104)

[184] Nagy and Sanfelice were both acutely and intimately aware of Quadrexx's financial condition. Sanfelice oversaw the preparation of and then reviewed Quadrexx's monthly financial statements and also reviewed and approved Quadrexx's monthly working capital calculations. Nagy reviewed Quadrexx's draft financial statements and received copies of the monthly working capital calculations. He was also kept up to date on financial matters by Sanfelice.

F. Use of QAM II Proceeds to Pay Dividends

[185] In addition to the evidence relating to Quadrexx's financial condition in 2011 summarized above, the parties led a significant amount of evidence with respect to the transfer and use of the QAM II Proceeds.

[186] Ho conducted an extensive review of the records relating to the QAM II Account, the Quadrexx Corporate Account and the Quadrexx general ledger, and performed a detailed analysis of the source and application of funds. Ho determined that approximately $3.5 million of the QAM II Proceeds were deposited to the QAM II Account and that, over time, virtually all of the QAM II Proceeds were transferred from the QAM II Account to the Quadrexx Corporate Account.

[187] Ho determined that the opening balance of the Quadrexx Corporate Account when payment of the June 2011 Dividends commenced, together with all other sources of funds other than the QAM II Proceeds during the period from July 1 to September 16, 2011 when the June 2011 Dividends were paid, totalled $326,290.44. That amount was far less than the aggregate amount of the June 2011 Dividends which were paid from the Quadrexx Corporate Account during the same period which totalled $585,292.50. Accordingly, Ho concluded that the difference of approximately $259,000 of the QAM II Proceeds must have been used to pay the June 2011 Dividends. Ho's analysis also shows that all of the cheques issued in payment of the June 2011 Dividends were dated June 30, 2011 or, in two cases, July 31, 2011.

[188] Using the same type of analysis, Ho determined that the opening balance of the Quadrexx Corporate Account on January 24, 2012 was approximately $67,000 and, during the period from that date to March 23, 2012, approximately $690,020 of the QAM II Proceeds and approximately $368,078 of funds from other sources were transferred to the Quadrexx Corporate Account. Based on the foregoing analysis, Ho concluded that the payment of approximately $685,515 of the December 2011 Dividends could not have been effected without the use of the QAM II Proceeds.

[189] It is quite clear from the evidence that Quadrexx did not have the necessary cash on hand to pay the June 2011 Dividends and that they were paid, at least in part, with the QAM II Proceeds. When questioned repeatedly with respect to this issue by Staff, Nagy consistently responded by stating that the dividend payments were made from working capital. However, he eventually acknowledged in at least the three instances that QAM II Proceeds had been used, including in the following exchange when he was cross-examined by Staff:

> Q. So, [Ho's] conclusion is that you have to be using some of the investor monies on this analysis because the 43,916, plus the 282,363, doesn't give you enough money to pay $585,292.50 in the dividend cheques that have been written?
>
> A. To describe this as investors' monies that's wrong. It's not the investors' money. The investors invested in Quadrexx. So, how can you say -- describe this as investors' money?
>
> Q. It's money that was raised through the sale of QAM II shares to the QAM investors.
>
> A. Yes.

[33] The Hearing Transcript mistakenly identifies the date as December 30th, 2012. The date should have been recorded as 2011.

> Q. So, you take no issue with Mr. Ho's analysis and his conclusion that monies from the sale of QAM II shares are being used to pay dividends to QAM I and QAM II investors?
>
> A. After they have transferred to our general account, which is part of our working capital, they were used from the working capital accounts, yes. [Emphasis added.]
>
> (Hearing Transcript, November 16, 2015 at p 106)

[190] The following similar exchange took place when Nagy was cross-examined by Staff with respect to the December 2011 Dividends:

> Q. So, we agree that investor monies are being used to pay these December 31, 2011, dividend cheques?
>
> A. You use the term "investors' money". It's not the investors' money.
>
> Q. It's monies raised from QAM II shareholders from the sale of the QAM II shares which paid a 12 percent dividend semi-annually.
>
> A. Yes. And it moved normally as always. These monies were deposited to our general account and was forming a part of the working capital.
>
> (Hearing Transcript, November 16, 2015 at pp 110-111)

[191] The Respondents disagree with Ho's analysis, but primarily for the purpose of arguing that a smaller amount of the QAM II Proceeds was used to pay dividends than suggested by Ho. They submit that, when calculating the funds available to Quadrexx to pay the December 2011 Dividends, Ho inappropriately excluded loans from Sanfelice, another Quadrexx investor and QHCM in the aggregate amount of $160,000. As a result, Sanfelice submits that the amount of the QAM II Proceeds that was used to pay the December 2011 Dividends was overstated and points to the following portion of Ho's cross-examination:

> Q. You'll agree with me that if you add the 160,000 to these other sources and opening balances, that there is sufficient funds, independent of the proceeds of QAM II, to pay the dividends?
>
> A. Yes.
>
> (Hearing Transcript, May 15, 2015 at p 102)

[192] Staff submits that the continued reference by the Respondents to Ho's testimony as evidencing "that there were sufficient funds to pay the December 2011 Dividends without recourse to any proceeds from the QAM offering" mischaracterizes Ho's evidence. Staff also asserts that there was overwhelming evidence from Ho, Orlova and the bank documents in evidence that Quadrexx did not have sufficient funds to pay the December 2011 Dividends which were, as a result, delayed and staggered. Moreover, Quadrexx needed both the QAM II Proceeds and loans to pay the December 2011 Dividends.

[193] The Respondents submit that "[i]n using, based on Mr. Ho's analysis, $259,012 to pay dividends, the Respondents have used approximately 2.1% of the entire proceeds to pay dividends, or 6.3% of the proceeds from the QAM II offering." (Respondents' Written Submissions at para 397)

[194] In response, Staff submits that the over $259,000 in proceeds used for the June 2011 Dividends actually represented 18.5% of the QAM II Proceeds transferred to the Quadrexx Corporate Account (from which the dividend cheques were drawn) during the period that the cheques for the June 2011 Dividends cleared that account. Staff also argues that the effect was greater on the QAM II investors who invested just before or after dividends were declared.

G. Other Uses of the QAM II Proceeds

[195] In June 2012, Sanfelice provided Staff with a schedule purporting to summarize the actual uses of the QAM II Proceeds. The schedule indicated that Quadrexx had revenues of $1,310,870 for the period of April 1, 2011 to April 30, 2012 and a minimum of $100,000 of shareholder support, including Sanfelice's loan. The schedule also indicated that Quadrexx's revenues and shareholder support amounts were used to pay for the $1.3 million in QAM I and QAM II dividends, as well as $78,000 of debenture interest. In its written Submissions on the Hearing dated February 26, 2016 ("**Staff's Written Submissions**"), Staff noted that the revenue amount of $1,310,870 had not accounted for selling commissions in the amount of $691,057 that Quadrexx was required to pay on the sale of products other than the QAM II Shares.

[196] In May 2012, in the course of a compliance interview by Staff, Nagy was asked how the QAM II Proceeds had actually been used. According to the notes taken by Pawelek, an accountant in the CRR Branch, and Pawelek's recollection, Nagy

responded that the purpose of the QAM II Offering was to execute the business plan to reach 100 EMD agents. He also indicated that the QAM II Proceeds were used to expand operations in Calgary, including renting more office space, and for working capital, including the creation of new products, legal expenses and salaries. He did not indicate that any of the QAM II Proceeds had been used to pay, or facilitate the payment of, dividends.

[197] Despite the stated purposes of the QAM II Offering, Quadrexx did not increase the number of agents as anticipated and did not acquire any financial advisory businesses after the date of the First QAM II OM.

H. 2011 Compliance Review and the Proposed Purchase of MineralFields

[198] On June 24, 2011, Staff of the CRR Branch initiated a compliance review of Quadrexx for the period June 2010 to May 2011 (the "2011 Compliance Review"). There had been two prior compliance reviews which were completed successfully. The initial meeting of the 2011 Compliance Review was attended by Nagy, Sanfelice and Parent, from Quadrexx, and by Pawelek and Caruso, both accountants in the CRR Branch, and two other members of Staff who did not appear to have any subsequent involvement. The discussion at the initial meeting, which focussed on the business affairs of Quadrexx, raised, among other things, an issue relating to the sale of preferred shares by Quadrexx. The issue would have a significant and, in the submission of the Respondents, seriously adverse effect on the outcome of Staff's investigation of Quadrexx and on Quadrexx's ability to fulfill its stated investment objectives.

[199] Staff alleges in its oral submissions and in Staff's Written Submissions, but not in the Statement of Allegations, that Nagy and Sanfelice failed on several occasions to inform Pawelek that Quadrexx had issued preferred shares in connection with the implementation of its business plan. Although, as noted, the matter does not form part of the Statement of Allegations, Staff placed the matter in issue over the objections of the Respondents in connection with its allegations of fraud during the Hearing, as is evident from the following paragraphs of Staff's Written Submissions:

> 833. Staff submit that Nagy and Sanfelice's conduct during the 2011 Compliance Review also casts serious doubt on their position that they thought that they weren't doing anything wrong when they used QAM II monies to pay dividends to investors.
>
> ….
>
> 838. Staff submit that if Sanfelice and Nagy truly believed that Quadrexx was not doing anything wrong in selling QAM II shares and using the proceeds to pay dividends to investors, Sanfelice and Nagy would have been forthcoming with information about QAM I and QAM II to Staff from the beginning of the 2011 Compliance Review.

[200] In the Respondents' Written Submissions, the Respondents respond to the foregoing submissions by Staff as follows:

> 56. To be clear, Staff are clearly alleging that the Respondents deliberately mislead Staff by concealing the existence of the QAM II offering to conceal the fact they were doing something "wrong", specifically using proceeds from the QAM II offering to pay dividends to investors. To suggest that Staff are not alleging that the Respondents misled Staff is not accurate.
>
> 57. With respect, while Staff chose not to make a specific allegation of misleading Staff in the Statement of Allegations, they were permitted to lead such evidence and are expressly asking the Commission to make a finding that Staff were deliberately mislead in order to conceal what Staff allege was a fraud. In short they are asking [the Commission] to find that the Respondents alleged misleading of Staff is a basis to dismiss the Respondent's [*sic*] position as incredible, premised on the reasoning "if they didn't believe it was wrong then why would they have mislead staff."

[201] During the initial meeting of the 2011 Compliance Review and in follow-up conversations, Pawelek followed the work steps set out in the CRR Branch's Portfolio Manager review program for which there were a number of templates. One of such templates, entitled "Gain an understanding of the financial condition of the Registrant", included the following statement drafted by Pawelek:

> Management's plan to improve operating results of the company in the near future. Per discussion with Tony Sanfelice, the Registrant plans to cut it's [*sic*] losses in half this year, and to break even next year. Slower product sales in the last few years have resulted in low revenues. Business is expected to improve with the launch of the new fund - Diversified Assets 3 and potential new wealth management clients. The Registrant's subsidiary insurance business provides revenue to the consolidated firm.
>
> (Exhibit 19 at para 1)

[202] In Staff's submission, the foregoing response by Sanfelice reflected his failure to inform Pawelek that Quadrexx had issued preferred shares to further its business plan.

[203] Staff came to a similar conclusion with respect to Nagy on the basis that he had failed to mention either the QAM I or QAM II Offering that were then underway when he certified a 2011 Compliance Risk Assessment Questionnaire in which Nagy indicated that:

> Quadrexx has generated a loss in both 2009 and 2010. Quadrexx forecasts to reduce its loss in 2011 and achieve break-even status by the end of 2012. Quadrexx has built the personnel structure and expects its fees revenue to increase in all areas of its business including portfolio management, investment fund management, exempt market product and insurance.
>
> (Exhibit 21 at para 8)

[204] The Respondents point to the following evidence in response to the CRR Branch's assertions that they had been misled by Nagy and Sanfelice:

(a) A Report of Exempt Distribution with respect to the QAM I Shares was filed with the Commission on January 21, 2010 and on December 9, 2011;

(b) A copy of the First QAM II OM was filed with the Commission on April 15, 2011;

(c) Neither Pawelek nor Caruso ever checked the Commission's files on the basis that this did not form part of a portfolio review nor did they directly ask Nagy or Sanfelice about Quadrexx's capital raising activities but, rather, expected those details in response to the general questions in their questionnaire relating to their business plans for Quadrexx; and

(d) Pawelek's acknowledgment that there was a reference to the QAM I Shares in the notes to Quadrexx's December 2010 financing statements which she reviewed following the initial meeting with Quadrexx on June 24, 2011.

[205] When Pawelek was cross-examined with respect to the filing of the First QAM II OM, the following exchange took place:

> Q. Now, when you became aware that this offering memorandum had been filed with the Ontario Securities Commission prior to your even commencing your compliance review, did that at least give you some changed perspective of whether or not there was an attempt to deliberately mislead you?
>
> A. No.
>
> (Hearing Transcript, April 23, 2015 at p 124)

[206] The Respondents further submit that the evidence makes it clear that information relating to the QAM I and QAM II Shares was included in various documents provided to the CRR Branch, including Quadrexx's Statement Concerning Conflicts of Interest and Quadrexx's financial statements and general ledger.

[207] On October 4, 2011, Pawelek received a copy of an anonymous complaint that had been filed with the Commission which stated that Quadrexx had been offering preferred shares in itself to the public/accredited investors, that the disclosure appeared to be grossly inadequate and that the balance sheet showed a deficit of $6 million in shareholder equity and losses for the most recent fiscal year of $2 million.

[208] During the period from October 5 to October 26, 2011, Pawelek sent six separate requests to Sanfelice requesting information about preferred shares, but received no information relating to the QAM II Shares. In April 2012, Pawelek was informed by a member of the CRR Branch who was not involved in the Quadrexx matter, that Quadrexx was planning to purchase the assets of MineralFields Fund Management Inc., Pathway Investment Counsel Inc. and Limited Market Dealer Inc. (collectively, "**MineralFields"**).

[209] To determine how Quadrexx could finance the proposed MineralFields acquisition, Pawelek and Caruso obtained and reviewed Quadrexx's unconsolidated December 31, 2011 financial statements which disclosed that over $3.3 million of the QAM II Shares had been issued in 2011. Separate but concurrent meetings were held on May 10, 2012 with Nagy, who met with Pawelek and Skuce, a legal counsel in the CRR Branch, and with Sanfelice, who met with Caruso and David Santiago, a senior accountant in the CRR Branch. Each of Nagy and Sanfelice were represented by counsel during their respective meetings. Pawelek testified at the Hearing that the purpose of the meetings was to gather more information regarding the QAM II Offering.

[210] Staff of the CRR Branch prepared a detailed questionnaire for the purposes of the meetings with Nagy and Sanfelice. Nagy was asked a series of questions relating to the purpose of the QAM II Offering, given that Quadrexx had just raised approximately $8.0 million under the QAM I Offering. In response, Nagy stated that additional funds were required to execute Quadrexx's business plan and he believed that Quadrexx would break even if they had 100 agents, rather than the existing 30 agents, selling their products and third party products.

[211] Pawelek kept written notes of the information provided by Nagy at the May 10, 2012 meeting which were later transcribed. With respect to her notes relating to the June 2011 and December 2011 Dividends, Pawelek testified that:

> I have written that on June 30th and December 31st they paid -- they pay all the dividends and they are getting cash to do so from the revenues of all business and from working capital which includes money that they put in. It may have included money that they put in but that money had not been marked as such.
>
> (Hearing Transcript, April 23, 2015 at p 40)

[212] During his re-examination at the Hearing, Skuce testified that Nagy had informed him during the meeting on May 10, 2012 that QAM II Proceeds were being used to pay dividends to prior investors. Skuce testified that this information concerned him as the use of the money to pay dividends to prior investors is one of the indicia of a potential Ponzi scheme and led to the matter being referred to the Enforcement Branch.

[213] On May 14, 2012, Quadrexx and MineralFields entered into a non-binding letter of intent pursuant to which MineralFields agreed to sell the assets described in the letter of intent to Quadrexx. On May 22, 2012, Sharp, on behalf of Quadrexx, filed a formal notice of the proposed acquisition of the assets of MineralFields (the "**MineralFields Transaction**") with the Commission pursuant to section 11.9 of NI 31-103, as the transaction could not proceed if the Commission objected. Quadrexx submitted that the MineralFields Transaction would not give rise to a conflict of interest, hinder Quadrexx from complying with securities legislation, impair investor protection or otherwise be prejudicial to the public interest.

[214] Quadrexx retained Gilkes, an experienced securities law compliance consultant, to assist with, among other things, Quadrexx's compliance issues and the MineralFields Transaction. On June 18, 2012, Gilkes and Sharp had a telephone conversation with Jennifer Lynch ("**Lynch**") and Sean Horgan ("**Horgan**"), both litigation counsel with the Enforcement Branch. Gilkes testified that Sharp advised Lynch and Horgan that the MineralFields Transaction was important to and would benefit Quadrexx and its investors. Although Horgan replied that the CRR Branch, and not the Enforcement Branch, was dealing with the MineralFields matter, Gilkes testified that there had been no discussion with the CRR Branch. Gilkes also testified that, at some point in the discussion, Horgan indicated that the Enforcement Branch was concerned that investors in the QAM II Shares were paying the dividends received by the investors in the QAM I Shares, which eventually led to a discussion about an undertaking by Quadrexx to cease trading its preferred shares.

[215] On June 20, 2012, Sharp advised Nagy, Sanfelice and others by e-mail that the Enforcement Branch was refusing to revise the form of undertaking they required by which the Respondents would undertake to cease all trading of the securities of Quadrexx and that the Enforcement Branch would seek a cease trade order from the Commission if the undertaking was not signed immediately. Sharp also confirmed that Quadrexx would have to deal with the CRR Branch with respect to the MineralFields Transaction and that the Enforcement Branch would not involve itself in that matter. In the evening of the same day, Gilkes sent an e-mail message to the group working on the MineralFields Transaction to indicate that he and Sharp had had a productive call with the Commission. Gilkes stated that he and Sharp had been advised that a decision to settle the preferred share matter had been reached and that, once the undertaking had been signed, Gilkes would contact Skuce to see how the matter could be expedited.

[216] By letter to Sharp dated June 20, 2012, a Manager of the CRR Branch objected to the MineralFields Transaction pursuant to subsection 11.9(5) of NI 31-103 (the "CRR Objection") on the basis that it was (i) likely to hinder Quadrexx in complying with securities legislation; (ii) inconsistent with an adequate level of investor protection; and (iii) otherwise prejudicial to the public interest. The CRR Objection followed a notice of objection dated June 14, 2012 from the Alberta Securities Commission with respect to the proposed MineralFields Transaction.

[217] After listing 12 separate compliance concerns with Quadrexx, the CRR Objection specifically noted Staff's concern with respect to the sale by Quadrexx of the QAM I and II Shares including (i) the use of approximately $1.3 million of the QAM II Proceeds to pay dividends to previous investors; (ii) the use by Quadrexx of $78,000 of the QAM II Proceeds to pay interest on a debenture; and (iii) the inclusion in the First QAM II OM of a general reference to the use of investor proceeds for working capital, but not to the use of investor proceeds to pay dividends and debenture interest.

[218] The CRR Objection also stated that it appeared to Staff that the payment of dividends on the QAM I and II Shares was not permitted by section 42 of the *Canada Business Corporations Act* (the "**CBCA**"). The CRR Objection also stated that Quadrexx had failed to analyse paragraph 42(b) of the CBCA and that, if it had done so, Quadrexx would have concluded that

the payment of dividends was not permitted as the value of Quadrexx's assets was less than the aggregate of its liabilities and stated capital.

[219] Quadrexx provided a detailed response to the CRR Objection in a letter to the CRR Branch dated July 3, 2012 (the "**Quadrexx Response**") in which the Respondents indicated that they were:

> …shocked and completely blindsided, as were our advisors, to find out that Enforcement was still conducting an investigation as noted in the letter objecting [*sic*] the proposed MineralFields acquisition. We were further surprised to learn that Compliance and Registrant Regulation would not discuss the reasons for objection as the "matter had been referred to Enforcement". When Enforcement was contacted they noted the MineralFields acquisition was a Compliance and Registrant Regulation matter. As set out above, we do not understand the process that was followed and feel the objection was based on a very unfair characterization and assessment of our conduct and operations.
>
> (Exhibit 59 at p 16)

[220] Although a number of issues were addressed in both the CRR Objection and the Quadrexx Response, I will only briefly address two matters directly relevant to these Reasons, the first being the CRR Branch's concern that approximately $1.3 million of the QAM II Proceeds had been used to pay dividends to previous investors. The Quadrexx Response barely addressed the issues that were raised in the CRR Objection including the allegation that Quadrexx's failure to disclose in the QAM II OM that investor proceeds would be used to pay dividends to other investors appeared to have been a breach of subsection 44(2) of the Act.

[221] The second matter is the CRR Branch's allegations relating to section 42 of the CBCA. Although both Nagy and Sanfelice testified that they were unaware of the CBCA provision when paying the June 2011 and December 2011 Dividends, the Quadrexx Response includes a lengthy and detailed after the fact justification by Quadrexx, including a valuation of Quadrexx's assets as at December 31, 2011 and a statement that the CBCA test is flawed and outdated. As the Statement of Allegations does not allege a breach of the CBCA and there is no need for me to determine whether such a breach occurred in order to apply the relevant law to the QAM II fraud allegations, I do not propose to further address the matter.

[222] On July 30, 2012, Sharp sent an e-mail message to Lynch confirming that Quadrexx had abandoned the MineralFields Transaction as its exclusivity rights had expired, given the CRR Objection. Sharp also confirmed that the CRR Branch had declined to afford Quadrexx the opportunity to be heard under NI 31-103 and had specifically instructed Quadrexx to deal with the Enforcement Branch, which they had done without success.

[223] The Respondents made extensive oral and written submissions with respect to the MineralFields Transaction to the effect that Staff would not even attempt to determine if Quadrexx could address their concerns, before "rejecting the transaction out of hand, despite the transaction being wholly consistent with what the Respondents had represented to investors of QAM I and QAM II preferred shares Quadrexx intended to pursue, and which was clearly in the best interests of the preferred shareholders who since July 2009 had invested $12 million in the Company based on that business plan." (Respondents' Written Submissions at para 243)

[224] The MineralFields Transaction occurred well after the matters which are central to this proceeding and which I address below and does not form any part of the allegations set out in the Statement of Allegations. The Respondents have, however, raised the circumstances relating to the MineralFields Transaction as further evidence of their repeated allegations that they were unfairly treated by Staff, and by one member of the Staff in particular, which effectively precluded the realization of Quadrexx's fading hopes of salvaging its business. Although the MineralFields Transaction is not relevant to these Reasons (and, as acknowledged by the Respondents, the CRR Branch was not obligated to approve the MineralFields Transaction), I should observe that the evidence clearly establishes that Quadrexx and its advisors were relegated to a regulatory no man's land by the CRR Branch and the Enforcement Branch. Quadrexx and its advisors Gilkes and Sharp, both of whom were experienced professionals, were doing everything possible to consummate the MineralFields Transaction in the long-term interests of Quadrexx's investors while each of the CRR Branch and the Enforcement Branch clung to its respective area of responsibility without jointly taking steps to ensure that Quadrexx's compliance and other issues were addressed on a comprehensive basis to ensure that the interests of the investors were protected to the maximum extent possible.

I. Submissions of the Parties

[225] Staff submits that:

(a) The essence of the QAM II fraud allegation is that the Respondents drafted and certified the First and Second QAM II OMs and the QAM II Brochure which did not disclose that QAM II Proceeds would be, or were, used to pay dividends to QAM I and QAM II investors and provided the offering memoranda and brochure to investors when they knew that QAM II Proceeds would be, or had been, used for such purpose;

(b) Although Quadrexx represented to investors that the QAM II Proceeds would be used primarily for working capital purposes, the overwhelming message of the First QAM II OM and the QAM II Brochure was that Quadrexx intended to use the QAM II Proceeds to implement Quadrexx's expansion plans;

(c) According to the QAM II Brochure, Quadrexx's expansion plans included additional offices and agents, business acquisitions and product creation;

(d) The Respondents committed an act of deceit, falsehood or some other fraudulent means by diverting QAM II Proceeds in an unauthorized manner and, after July 1, 2011, by failing to disclose to investors Quadrexx's intention to use QAM II Proceeds to pay dividends to prior investors;

(e) Sanfelice's assertion that it never dawned on him that Pawelek would not have been aware of the QAM II Offering, which had been filed with the Commission, makes no sense given that he informed Pawelek about the QAM I Shares and provided her with the QAM I offering memorandum even though it had been filed with the Commission; and

(f) The reasonableness of Staff's objection to the MineralFields Transaction is not relevant to any of the allegations in the Statement of Allegations.

[226] The Respondents submit that:

(a) Ho's analysis establishes that, of the approximately $1.3 million paid by Quadrexx in connection with the June 2011 Dividends ($585,292) and the December 2011 Dividends ($712,702), on Staff's own analysis, only $259,012 was paid from the QAM II Proceeds and that related to the June 2011 Dividends as there were sufficient funds, independent of the proceeds of the QAM II Proceeds, to pay the December 2011 Dividends;

(b) Staff made no allegation in this proceeding that any of the $12 million raised was spent inappropriately or in a manner inconsistent with what was disclosed to investors and, more specifically, investors were told that most of the QAM II Proceeds would be used for working capital;

(c) They honestly and reasonably believed that they could pay dividends from working capital, having assessed in good faith that Quadrexx had sufficient working capital (current assets less current liabilities) to do so;

(d) The only misrepresentation alleged by Staff as the basis for the alleged fraud is that the Respondents failed to disclose to investors that, among the uses of working capital (a permitted use of proceeds under the terms of the QAM I offering memorandum and the First QAM II OM), 6.3% of the QAM II Proceeds may be used to pay the June 2011 Dividends;

(e) The use of 6.3% of the QAM II Proceeds for working capital to make a dividend payment on one occasion did not represent a material change as contemplated by NI 45-106 and, therefore, did not obligate Quadrexx to amend the First QAM II OM;

(f) Even if the use of 6.3% of the QAM II Proceeds for working capital to make a dividend payment did constitute a material change, the matter should have been dealt with as a breach of the disclosure rules and not as an alleged fraud;

(g) By objecting to a clearly significant and material acquisition, i.e., the MineralFields Transaction, without any reasonable inquiry into the potential benefits to investors, Quadrexx was unreasonably impeded by Staff from pursuing its long-term goal of establishing itself as a medium-sized EMD, private wealth and private equity firm with combined assets under management of at least $4 billion;

(h) Although not alleged in the Statement of Allegations, the allegation by Staff that Sanfelice mislead Pawelek by deliberately concealing the existence of the QAM II Offering, which Staff asserts is evidence of *mens rea* to commit fraud in connection with the payment of dividends, is unfounded, highly prejudicial and should never have been made; and

(i) It was no more obvious to the Respondents that they were doing anything fraudulent in declaring and paying dividends in the circumstances than it was to Staff, when conducting its compliance review, Quadrexx's auditors, when they issued their audit report, or Sharp, Quadrexx's legal advisor, who worked closely with the Respondents in the preparation of the QAM I offering memorandum and the First QAM II OM.

J. Analysis and Finding

[227] Staff alleges that Nagy, Sanfelice and Quadrexx, directly or indirectly, engaged or participated in an act, practice or course of conduct relating to Quadrexx securities that they knew or reasonably ought to have known perpetrated a fraud on Quadrexx investors, thereby breaching section 126.1(1)(b) of the Act and acting contrary to the public interest.

[228] As noted in paragraph [19] above, fraud has two components, the first of which is the *actus reus*, or prohibited act, which is established by proof of an act of deceit, a falsehood or some other fraudulent means, and deprivation caused by the prohibited act which may be actual loss or the placing of the victim's pecuniary interests at risk. The second element is the *mens rea*, or criminal intent, which is established by subjective knowledge of the prohibited act and subjective knowledge that the prohibited act could have as a consequence the deprivation of another, which deprivation may be the knowledge that the victim's pecuniary interests are placed at risk.

[229] Although the Respondents dispute that any QAM II Proceeds were used to pay any part of the December 2011 Dividends, the Respondents' Written Submissions and Sanfelice's counsel, when making his oral closing submissions, acknowledge that QAM II Proceeds were used to pay part of the June 2011 Dividends and do not seriously dispute Ho's determination that approximately $259,000 of the QAM II Proceeds were used for this purpose. On the basis of Ho's analysis and testimony, which I find persuasive, I am satisfied and find that QAM II Proceeds were also used to pay at least part of the December 2011 Dividends. I must now determine whether, by using QAM II Proceeds for the purpose of paying dividends to previous investors in the circumstances described in these Reasons, the Respondents directly or indirectly engaged or participated in an act, practise or course of conduct relating to Quadrexx securities that they knew or reasonably ought to have known perpetrated a fraud on Quadrexx investors in breach of section 126.1(1)(b) of the Act and contrary to the public interest.

1. Representations to Investors

[230] The First QAM II OM stated that, assuming the maximum offering, Quadrexx intended to use approximately $4.9 million of the approximately $6.0 million of QAM II Proceeds for working capital and the balance for the repayment of a loan from CHW and the purchase for cancellation of up to 1.0 million Class "I" preference shares.[34] Although no expert evidence was led in this regard, Staff did not object to the Respondents' reference to working capital as being the capital of a business which is used for its day-to-day operations, calculated as the current assets less the current liabilities. Pawelek testified that, when she previously worked as an auditor, working capital was current assets minus liabilities. Lo, a senior forensic accountant in the Enforcement Branch, testified that "… in my view, references to use of working capital really relate to the ongoing business operations of the -- of a company. It's the normal course operations." (Hearing Transcript, May 6, 2015 at p 35)

[231] The First QAM II OM also stated that Quadrexx's short-term objective was to expand its distribution network through the employment of additional sales personnel and the acquisition of financial advisory business(es), ideally with assets under management of between $40.0 million and $100.0 million.[35] To achieve its short-term objective, Quadrexx indicated that the full amount of the QAM II Proceeds ($7.0 million if the maximum offering was achieved) would be used for (i) working capital (without distinguishing the additional uses for debt repayment and the purchases of shares for cancellation described above); (ii) a further amount of up to $1.0 million would be used to acquire financial advisory business(es) and expanding staff and the EMD business; and (iii) a further amount of up to $500,000 would be used to expand its product line offering and geographical territory. The expenditure of the working capital had a targeted completion date of the final Closing Date (which was not defined but was rather tied to the maximum offering being attained), and the remaining expenditures had a targeted completion date of December 31, 2012. Quadrexx's ability to achieve the foregoing short-term objectives was qualified by the statement that the QAM II Proceeds may or may not be sufficient for such purposes and there was no assurance that alternative sources of financing would be available.[36]

[232] The disclosure to investors in the QAM II Brochure clearly supplements the disclosure in the First QAM II OM by stating that the principal purpose of the QAM II Offering was primarily for working capital, which would be used for business growth and expansion purposes (offices and agents), business acquisitions and product creation, and to a lesser extent, debt reduction and share repurchase.

[233] On July 6, 2011, the Quadrexx Corporate Account had a balance of only $34,290.64. On the following date, Doody, at the time the Controller of Quadrexx, transferred $600,000 from the QAM II Account to the Quadrexx Corporate Account. When Nagy was cross-examined about the transfer, the following exchange took place:

> Q. … So, as of, for example, July 6th, when that $600,000 comes over from the QAM II account, that at that point in time you know that that money isn't going to be used for business acquisition. It's also not going to be used for product creation. Rather, it's going to be used to pay dividends.

[34] A footnote to Item 1.2 of the First QAM II OM indicated that certain of the holders of the Class "I" preference shares purchased by Quadrexx would be held by the principals of Quadrexx.

[35] Item 2.5 of the First QAM II OM.

[36] Item 2.6 of the First QAM II OM.

A. Only for the time being until we have revenues. So, that's only partially true.

(Hearing Transcript, November 16, 2015 at p 136)

2. Other Factors

[234] Sanfelice testified that, when he and Nagy made the decision to pay the June 2011 Dividends, he relied on a cash flow projection entitled "Consolidated Cash Projection 2011"[37] which had been prepared by Doody and was sent to him by Doody on November 3, 2011. The Consolidated Cash Projection reflected actual information for the first ten months of 2011 and forecasted cash inflows and outflows for November and December 2011. According to Sanfelice, the Consolidated Cash Projection supported his and Nagy's decision to declare the June 2011 Dividends in the aggregate amount of approximately $585,000 as it showed that Quadrexx's closing cash position on May 31, 2011 was $700,272. When cross-examined, however, Sanfelice conceded that the Total Inflows shown in the Consolidated Cash Projection included two adjustments which alone would have reduced the closing cash position from the $700,272 reflected in the Consolidated Cash Projection to $490,273, far less than the amount of the June 2011 Dividends.

[235] On March 8, 2011, the date on which Nagy and Sanfelice certified that the First QAM II OM did not contain a misrepresentation, Nagy and Sanfelice knew that, for the year ended December 31, 2010, Quadrexx had revenues of only $396,795 and had experienced a net loss and comprehensive loss exceeding $2.5 million. Being acutely aware of Quadrexx's financial circumstances, Nagy and Sanfelice had to have known that the cash flow forecasts prepared by Doody were inaccurate, overly-optimistic and highly improbable based on Quadrexx's most recent financial results and were a totally inadequate basis for making the decision to pay dividends.

[236] Although the risk section of the First QAM II OM stated that there could be no assurance that Quadrexx would be permitted under applicable corporate law to pay dividends on the QAM II Shares, the Respondents did not seek legal advice with respect to the payment of the June 2011 and December 2011 Dividends or otherwise ensure that the payment of the dividends complied with applicable corporate law. In fact, Sanfelice acknowledged that he was unaware of section 42 of the CBCA.

[237] Contrary to the submissions of the Respondents, it was not the responsibility of Quadrexx's auditors to determine whether Quadrexx had the financial capacity, or that it was legally entitled, to use QAM II Proceeds to pay dividends in the absence of a specific retainer to do so.

3. Disclosure Obligations

[238] When Sharp sent the First QAM II OM to the various provincial securities regulators, he indicated that the QAM II Offering was proposed to be made pursuant to the prospectus exemption provided by section 2.9 of NI 45-106 (in all provinces other than Ontario) and, potentially, sections 2.3 and 2.10 of NI 45-106 (in all provinces).

[239] Form 45-106F2 prescribes the form that must be completed and filed with provincial securities regulations and was the form appended to Sharp's letter. In 2011, paragraph 3 under the heading Instructions for Completing - Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* stated that:

> The issuer may include additional information in the offering memorandum other than that specifically required by the form. An offering memorandum is generally not required to contain the level of detail and extent of disclosure required by a prospectus. Generally, this description should not exceed 2 pages. However, an offering memorandum must provide a prospective purchaser with sufficient information to make an informed investment decision. [Emphasis added.]

[240] The investors in QAM II Shares were entitled to rely on the representations by Quadrexx set out in the First QAM II OM and the QAM II Brochure. At no time were existing investors apprised of the use of the QAM II Proceeds to pay dividends to prior investors and neither the First QAM II OM nor the QAM II Brochure was amended to reflect this fact. In addition, Nagy admitted to continuing to sell QAM II Shares in 2012 at approximately the same time as the staggered delivery of the cheques in payment of the December 2011 Dividends without advising prospective investors that there had been delays in the payment of the December 2011 Dividends as the result of Quadrexx's cash flow issues. The diversion of the QAM II Proceeds to a use of which investors and prospective investors had not been informed clearly created an increased financial risk and prejudiced their economic interests.

[241] When testifying at the Hearing, both Nagy and Sanfelice acknowledged that the QAM II Proceeds used to pay dividends could not be used by Quadrexx for the growth of its business, as the Respondents had represented to investors. I do not accept the submission by Sanfelice that Quadrexx was not obligated to amend Quadrexx's disclosure documents as the amount of the QAM II Proceeds that was diverted to the payment of dividends was relatively small and did not constitute a

[37] Exhibit 127.

material change. I agree with the position of the CRR Branch set out in the CRR Objection in which they suggested, among other things, that it appeared that the disclosure to investors by means of the First QAM II OM and the QAM II Brochure omitted information necessary to prevent the statements set out in such documents from being false or misleading in the circumstances. The accurate disclosure of information is one of the basic tenets of Ontario securities law and is equally applicable to exempt market dealers. There is also no de minimis exception to compliance with the disclosure obligations under Ontario securities law.

[242] By using QAM II Proceeds in an undisclosed fashion, the Respondents diminished Quadrexx's ability to remain a viable enterprise and thereby increased the risk of economic loss to investors. The conduct of the Respondents also placed the pecuniary interests of the investors at significantly increased risk.

4. Allegation of Fraud

[243] As described in paragraph [19] above, to establish that the Respondents directly or indirectly engaged or participated in an act, practice or course of conduct related to the QAM II Offering that they knew or reasonably ought to have known perpetrated a fraud on QAM II investors in breach of subsection 126.1(1)(b) of the Act, Staff must establish both elements of fraud, namely, the *actus reus* and *mens rea* of fraud.

[244] The Respondents represented to potential investors that the QAM II Proceeds would be primarily used for working capital which would be employed for business growth, including the expansion of offices, additional agents, business acquisitions and product creation, and, to a lesser extent, debt reduction and the repurchase of certain shares. Nagy and Sanfelice did not, at any time, obtain the approval of the board of directors of Quadrexx to reallocate all or any portion of the QAM II Proceeds to the payment of dividends which, as required by Item 1.3 of the QAM II OM, would have had to be for sound business reasons, as such use would impair Quadrexx's ability to fulfill the representations made to its investors.

[245] The Respondents intentionally used the QAM II Proceeds in a manner other than for the purposes represented to investors, so that the First QAM II OM and the QAM II Brochure effectively "conveyed a thoroughly misleading picture of what investors were buying into and what was happening with their money." (*Re Capital Alternatives Inc.*, 2007 ABASC 482 ("**Re Brost**") at para 61; aff'd at *Alberta (Securities Commission) v Brost*, 2008 ABCA 326 ("***Brost CA***"))

[246] Similarly, the Respondents acted deceitfully and created and perpetuated a falsehood by diverting the use of the QAM II Proceeds to the payment of dividends rather than to the growth and expansion of the Quadrexx business. The Respondents failed to (i) amend the provisions of the First QAM II OM and the QAM II Brochure to reflect the change in the intended use of the QAM II Proceeds by at least July 1, 2011; and (ii) inform prospective investors of the change in use of the QAM II Proceeds after the Respondents had become aware that they would be needed to pay the December 2011 Dividends.

[247] The *actus reus* of the offence of fraud will be established by proof of the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means and deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk. Furthermore:

> …where it is alleged that the *actus reus* of a particular fraud is "other fraudulent means", the existence of such means will be determined by what reasonable people consider to be dishonest dealing. In instances of fraud by deceit or falsehood, it will not be necessary to undertake such an inquiry; all that need to be determined is whether the accused, as a matter of fact, represented that a situation was of a certain character, when, in reality, it was not.
>
> (*Théroux* at paras 16 and 18)

[248] The Commission has previously found payments of new investor money to prior investors to be an act of deceit, falsehood or some other fraudulent means. (*Re North American Financial Group* (2013), 36 OSCB 12095 at para 310)

[249] It is clear that the misuse of the QAM II Proceeds described above deprived Quadrexx of the funds it needed to generate revenue through the growth and expansion of its business. This placed the pecuniary interests of Quadrexx's investors at increased risk. As the evidence discloses, on June 18, 2013, Quadrexx filed an assignment in bankruptcy with no prospect that the investors in QAM II Shares would recover any part of their investments, thereby causing actual loss of the investors' pecuniary interests.

[250] Based on the foregoing, I find that the *actus reus* of fraud has been established by proof of Quadrexx's deceit and the falsehood resulting from its intentional use of new investor money to pay dividends to prior investors. The conduct of the Respondents caused the investors' pecuniary interests to be subject to increased risk which was eventually realized when Quadrexx became bankrupt.

[251] Staff led a great deal of evidence at the Hearing for the purpose of establishing the Respondents' *mens rea*, a significant amount of which was based on the communications between Sanfelice and Pawelek as summarized in paragraphs

[195] and following above. The failure of Pawelek and Caruso to have reviewed the Commission's own files relating to Quadrexx before commencing a compliance review may have been consistent with the CRR Branch's policies with respect to such matters, however, it is clearly not a tenable basis for Staff's submission that Sanfelice's failure to advise them of the existence of the QAM II Shares, all of the required filings relating to which had been made with the Commission, was evidence that Sanfelice was intending to mislead the Commission. Similarly, Pawelek's subsequent e-mail messages to Sanfelice relating to Quadrexx's preferred shares were imprecise and lacked clarity and do not provide a reliable basis for concluding that, on the basis of Pawelek's evidence alone, Staff has established *mens rea* on the part of the Respondents.

[252] Notwithstanding the foregoing, the evidence is clear that, from and after July 1, 2011, the date on which the Respondents commenced the transfer of QAM II Proceeds from the QAM II Account to the Quadrexx Corporate Account, the Respondents knew that the QAM II Proceeds were being used, at least in part, for the payment of the June 2011 Dividends and the December 2011 Dividends. This fact, and the fact that the actual payment of dividends had been delayed and staggered given the cash flow problems being experienced by Quadrexx, were not disclosed to prospective investors, who continued to be advised that the QAM II Proceeds would be primarily used for the expansion of Quadrexx's business. In short, investors were not apprised of the resulting altered risk profile of the QAM II Offering.

[253] Nagy's assertions during his testimony that he and Sanfelice reasonably believed that Quadrexx would generate sufficient revenue to cover the dividends, notwithstanding Quadrexx's historical results to the contrary, are clearly not an acceptable justification for the diversion of the QAM II Proceeds. As noted by the Supreme Court of Canada in *R v Zlatic* (1993), 100 DLR (4th) 642 (SCC) ("***Zlatic***"):

> …there is nothing in the evidence which negates the natural inference that when a person gambles with funds in which others have a pecuniary interest, he knows that he puts that interest at risk: see *Théroux*, at pp. 12 and 15 [*ante*, pp. 634 and 636]. On the contrary, the accused expressly acknowledged that he was aware of the risk.
>
> The foregoing establishes *mens rea*. It is no defence that the accused believed he would win at the casinos and be able to pay his creditors.
>
> (*Zlatic* at p 657)

[254] In *Théroux,* the Supreme Court of Canada stated at paragraph 36 that:

> A person who deprives another person of what the latter has should not escape criminal responsibility merely because, according to his moral or her personal code, he or she was doing nothing wrong or because of a sanguine believe that all will come out right in the end. Many frauds are perpetrated by people who think there is nothing wrong in what they are doing or who sincerely believe that their act of placing other people's property at risk will not ultimately result in actual loss to those persons.

[255] Based on the foregoing, I find that the *mens rea* of fraud has been established by proof that the Respondents' had subjective knowledge of their acts of deceit and falsehood and subjective knowledge that such acts could have as a consequence the deprivation of the investors in QAM II Shares.

[256] Accordingly, I find that Nagy, Sanfelice and Quadrexx directly or indirectly engaged or participated in an act, practice or course of conduct relating to Quadrexx securities that they knew or reasonably ought to have known perpetrated a fraud on Quadrexx investors in breach of subsection 126.1(1)(b) of the Act and contrary to the public interest.

V. MISAPPROPRIATION OF QSA INVESTOR FUNDS

A. Staff's Allegations

[257] Staff alleges that the Respondents perpetrated a fraud on QSA investors by using funds raised from QSA investors to pay Quadrexx more than Quadrexx was entitled to receive for Quadrexx's selling commissions and cost recovery, in a manner inconsistent with the representations made in the QSA offering memoranda and marketing brochures.

[258] The Respondents admit that the language included in QSA's offering memoranda and marketing brochures is ambiguous, but deny that their conduct amounts to fraud. The Respondents argue that, at most, their conduct reflects a deficiency in QSA's disclosure, which is not alleged in the Statement of Allegations.

B. QSA Offering

[259] QSA was established to provide investors with a return derived from an investment portfolio of U.S. residential mortgage-backed securities which would be managed by Quadrexx or by a sub-advisor retained by Quadrexx. The offering (the "**QSA Offering**") would be of notional units comprised of 20 non-voting participating Class A Shares of QSA (collectively, the

"**Class A Shares**") having an issue price of $5.00 per share and a promissory note in the principal amount of $900.00 (collectively, the "**Notes**"), for a total of $1,000 per unit (collectively, the "**QSA Units**"). The Notes would bear interest at the rate of 13.35% to the note maturity date which would represent an annual rate of return of 12%, not compounded, over the term of the investment based on the aggregate amount invested in the Class A Shares and the Notes. The maximum amount of the QSA Offering that was contemplated was $40 million with a minimum amount of $250,000.

[260] Quadrexx was to be responsible for managing the assets of QSA and Quadrexx Residual Income Ltd., a wholly-owned subsidiary of QSA ("**Quadrexx Residual**"), pursuant to a Management and Distribution Agreement dated as of June 15, 2011. The sub-advisor, Samas Capital LLC, a U.S. based investment management firm ("**Samas**"), would manage the proceeds of the QSA Offering. Pursuant to Section 8.1.1 of the Investment Management Agreement among Samas, Quadrexx, QSA and Quadrexx Residual dated as of August 18, 2011 (the "**Investment Agreement**"), 14% of the amount raised through the QSA Offering would be used to pay Quadrexx for agents' commissions, legal expenses, marketing, etc. and the balance of 86% would be loaned by QSA to Quadrexx Residual and invested in the account to be managed by Samas.

C. Use of Proceeds

[261] The initial QSA offering memorandum setting out the terms of the QSA Offering was prepared by Nagy and Sharp and dated August 15, 2011 (the "**First QSA OM**"). The First QSA OM included a chart which described the use of proceeds from the sale of the QSA Units, assuming both the minimum and maximum offerings, net of selling commissions of 10% per unit payable to Quadrexx, and offering costs.[38] The offering costs were stated to be $10,000, assuming the minimum offering, and $1.6 million, assuming the maximum offering. A footnote to the offering costs stated that:

> [QSA] will be responsible for paying 4%[39] of the gross proceeds realized to [Quadrexx] in respect of all legal, accounting, audit, printing, some Directors' compensation, design, marketing, travel and other costs associated with the setting up of [QSA], as well as the other costs of Offering. Any costs in excess of this amount will be borne by [Quadrexx].
>
> (Exhibit 182 at p 9)

[262] Although Sharp provided a copy of the First QSA OM to the various provincial Securities Commissions by letter dated September 1, 2011, the First QSA OM was not provided to prospective investors. At about the same time, the initial QSA marketing brochure (the "**First QSA Brochure**") was distributed to Quadrexx's dealing representatives. The First QSA Brochure stated that the "Total Initial Costs/Fees" would be "14.0% (10% to selling agents, 4% for legal, marketing printing etc.)". (Exhibit 179 at p 1)

[263] The First QSA Brochure also stated that there would be no Additional Costs/Fees to QSA and that Quadrexx "covered other structuring costs and will receive nominal interest payments from portfolio holdings". (Exhibit 179 at p 1)

D. Delays Following the First QSA Offering Memorandum

[264] After the First QSA OM and First QSA Brochure were drafted, Quadrexx experienced lengthy delays securing the approval of at least one of the two trust companies which would deal with EMD products. There were delays in ensuring that the Class A Shares and Notes would be qualified investments for the purposes of Registered Retirement Savings Plan ("**RRSP**") and other similar plans.

[265] Nagy testified that the process of qualifying the Class A Shares and Notes as registered products entailed additional costs that were not anticipated at the time that the First QSA OM was drafted and that the costs were significantly greater than the Respondents had incurred to launch previous products. Sanfelice testified that the expenses of the QSA Offering in the amount of approximately $187,000 were similar to those incurred in other offerings, such as the DALP Securities in respect of which expenses of $250,000 were incurred.

[266] Quadrexx's balance sheet as of March 31, 2012, which was submitted to the CRR Branch as part of Quadrexx's Form 31-103F1 Calculation of Excess Working Capital as at the same date, includes an account receivable in the amount of $187,749 relating to QSA under the heading "Due from Related Parties". When Pawelek inquired about the amount by e-mail message to Sanfelice dated May 15, 2012, Sanfelice replied that the receivable related to start-up costs (legal, structuring, audit and accounting) during the period from August to December 2011 and that payment was expected in August 2012.

[267] n a further e-mail message to Pawelek on May 16, 2012 to which Sanfelice attached, among other things, a copy of QSA's unaudited financial statements for the period ended April 30, 2012, Sanfelice clarified the list of expenses to be covered by the 4% charge as follows:

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[38] The complete description in the First QSA OM was "Offering costs (e.g. legal, accounting, audit, printing, some Directors' compensation)".

[39] The 4% amount is sometimes referred to in these Reasons at the "4% charge", "4% of the issue price of the Units" and the "4% fee".

> For Quadrexx Secured Assets (QSA) we expected to have launched May 1st. I have been told that we should launch by June 1st and we expect to have $3-4 million in assets raised in QSA by July 31, 2012. Based on the QSA OM Quadrexx Asset Management is entitled to be reimbursed up to 4% of gross proceeds raised for all legal, accounting, audit, printing, other costs associated with setting up the company and initial costs of the offering.
>
> (Exhibit 55 at p 1)

E. Revised QSA Offering Memoranda

[268] Nagy testified that, when preparing QSA's audited financial statements in July 2012, it became apparent that, given Quadrexx's financial circumstances, it was necessary for Quadrexx to recover the costs associated with the QSA Offering as soon as possible. Sanfelice testified that, as the result of Quadrexx's voluntary undertaking to Staff on June 20, 2012 to cease trading in the securities of Quadrexx, QSA was Quadrexx's "main lifeline" for revenues in mid-2012. This also followed Quadrexx's failure to obtain the Commission's approval to complete the MineralFields Transaction.

[269] Nagy testified that he and Sanfelice decided to achieve the recovery of the costs associated with the QSA Offering "…by amending the QSA OM to permit Quadrexx to take the $187,000 from the first money raised under the QSA offering rather than simply recovering the costs from the 4 percent fee Quadrexx was to receive." (Hearing Transcript, October 2, 2015 at p 65) To effect the change, Nagy sent Sharp an e-mail message on August 1, 2012, in which he wrote:

> One additional thing [Sanfelice] wanted to clarify more clearly is that we want the 4% one-time initial charge classified as for reimbursement of expenses, marketing and otherwise and an [*sic*] an extra fee for Quadrexx. We don't want to be accused on use of proceeds hence we want to add this minor clarification to the OM.
>
> (Exhibit 204 at p 3)

[270] Nagy acknowledged that his instructing e-mail message to Sharp "may not have been as clear as it could have been. However, based on that instruction, Mr. Sharp took steps to amend the OM, to address the ability of take the $187,000 as a one-time charge off the top from the proceeds raised." Sharp amended the First QSA OM and provided a black-lined version dated August 1, 2012 (the "**Second QSA OM**") to Nagy and Sanfelice. The Second QSA OM was not provided to prospective investors. (Hearing Transcript, October 2, 2015 at pp 65-66)

[271] Only two of the changes reflected in the Second QSA OM are relevant for the purposes of these Reasons. The first such change was to replace the reference to "Offering costs" in the chart relating to the use of proceeds with the words "Organizational and offering costs" (see paragraph [261] above). The second, and more important, change was to replace the text of the footnote relating to such costs with the following (the "**OM Footnote**"):

> [QSA] will pay 4% of the issue price of the Units ($40 per Unit) to Quadrexx. The first $187,749 so received by Quadrexx shall be treated as the repayment of amounts advanced by Quadrexx to [QSA], and thereafter shall be treated as a one-time management fee to Quadrexx. Out of such repayment and management fee, Quadrexx will be responsible for all of the costs of establishing [QSA], including all legal, audit and accounting fees, for compensating some of [QSA]'s Directors and for marketing the offering of Units. Any costs in excess of this amount will be borne by Quadrexx. [Emphasis added.]
>
> (Exhibit 178 at p 11)

[272] When cross-examined by Staff with respect to the interpretation of the revised fee section set out in paragraph [271] above, Nagy acknowledged that the use of proceeds provision did not show the payment of the $187,749 amount as an additional fee (the "Additional Fee"). Nagy also acknowledged that, if only the minimum subscription of $250,000 was achieved, the deduction of the Additional Fee would only leave an amount of approximately $27,000 for investment purposes.

[273] During the same cross-examination, Staff suggested to Nagy that what he was really concerned about when he asked Sharp to revise the use of proceeds provision was the possible criticism of Quadrexx for taking a 4% charge when only the amount of the Additional Fee was shown in the financial statements. Nagy responded as follows:

> A. No. My intention was to have this being able to recover that from off the top.
>
> Q. Well, that's not what you've set out in your use of proceeds chart, is it, sir?
>
> A. Yeah, I know. We made the language is [*sic*] ambiguous and the chart was not done properly.
>
> (Hearing Transcript, October 9, 2015 at p 149)

[274] A third offering memorandum dated August 31, 2012 (the "**Third QSA OM**") was prepared and provided to investors. The use of proceeds provisions of the Third QSA OM, including the OM Footnote, were identical to those found in the Second QSA OM. When cross-examined about his failure to correct the use of proceeds section in the Third QSA OM to reflect the purported deduction of the Additional Fee off the top, Nagy testified that he had made a mistake and it was not intentional.

[275] The Third QSA OM was amended to create a fourth offering memorandum dated November 30, 2012 (the "**Fourth QSA OM**") to reflect the issuance of Class A Shares only in blocks of 100 shares at a price of $5.00 per Class A Share up to a maximum of 150 Class A Share blocks. Nagy explained that the change was required to ensure that QSA had at least 150 shareholders to meet the RRSP eligibility requirements of the *Income Tax Act*.[40] The use of proceeds provisions of the Fourth QSA OM, including the OM Footnote, were identical to those found in the Second QSA OM and the Third QSA OM.

[276] Nagy testified that, by November 30, 2012 (the date on which Nagy certified the Fourth QSA OM), the QSA Offering had raised approximately $321,000 of which $221,024[41] had been transferred from the QSA accounts to Quadrexx. Nagy acknowledged that the use of proceeds section of the Fourth QSA OM did not reflect the proceeds received to that time, which exceeded the minimum offering set out in the Fourth QSA OM, or the amounts paid to Quadrexx on account of the Additional Fee or otherwise.

[277] It should be noted that the revised text of the use of proceeds provision of the Third QSA OM, including the OM Footnote, was also reflected in the description of the Management and Distribution Agreement with Quadrexx in both the Third QSA OM and the Fourth QSA OM. Item 4.2 of the Third QSA OM, which describes QSA's Long Term Debt, states that QSA had borrowed an amount of $187,749, being the amount of the Additional Fee, from Quadrexx, which amount would be repaid out of the proceeds of the QSA Offering. An adjacent chart reflects such amount as evidenced by a promissory note payable on demand, without interest. The comparable provision of the Fourth QSA OM shows only that no amount was outstanding under an unidentified promissory note that was payable on demand, without interest. In other words, it only shows that the promissory note evidencing the purported debt to Quadrexx had been repaid in full.

[278] When cross-examined by Staff with respect to the documentation of the purported loan by Quadrexx to QSA, Sanfelice acknowledged that there was no written agreement between Quadrexx and QSA with respect to the repayment of QSA's start-up costs.

[279] Recording the QSA start-up costs as a liability was a departure from Quadrexx's previous offerings for which the offering costs were not recorded as liabilities. Nagy and Sanfelice both testified that the decision to record the offering costs as a liability of QSA was made in consultation with QSA's auditor although there was no corroboration of this purported advice. The liability was also reflected in QSA's financial statements for the period ended May 31, 2012 which were attached to the Third QSA OM.

F. Revised QSA Brochures

[280] The First QSA Brochure was amended twice, once in September 2012 and once in October 2012 (the "**Second QSA Brochure**" and the "**Third QSA Brochure**", respectively, and, collectively with the First QSA Brochure, the "**QSA Brochures**"). The description of "Total Initial Costs/Fees" in the Second and Third QSA Brochures is identical to the disclosure in the First QSA Brochure, i.e., "14.0% (10% to selling agents, 4% for legal, marketing printing etc.)". There is no reference in the Second and Third QSA Brochures to the Additional Fee or the subject matter of the OM Footnote.

[281] Nagy acknowledged when cross-examined that, having relied on whichever of the marketing brochures they reviewed, the initial investors, in particular, would have been unaware that the Additional Amount was being "taken off the top of their investment" and characterized the failure to inform the investors as a mistake. When asked to acknowledge that the behaviour of the Respondents in this regard was deceitful, Nagy replied that it would not be deceitful if the deception was unintended. Sanfelice testified that the failure to refer to the Additional Fee in the QSA Brochures was an oversight on their part.

G. Risk Acknowledgement Form

[282] The Risk Acknowledgement Forms attached to the Subscription Agreement of all three QSA investor witnesses does include the identical text of the OM Footnote. However, as noted below, only one of such investors read the provision.

H. QSA Sales and Payments to Quadrexx

[283] The distribution of QSA Units took place during the period from August 31 to December 22, 2012 using the Third and Fourth QSA OMs and raised a total of $470,660. The distribution of the Class A Share blocks using the Fourth QSA OM took

[40] RSC, 1985, c 1.

[41] This amount is also referred to in testimony or in Staff's Written Submissions as $218,348 or $218,893. As the differences do not affect my analysis or findings, I have used the amounts disclosed in the hearing transcript or in Staff's Written Submissions, as the case may be. The same applies to the amount raised which is shown as $321,000 or $327,534.

place between November 29 and December 22, 2012 and raised a total of $30,500. The proceeds from the QSA Offering were never transferred to the investment account which Samas was retained to manage.

[284] In October 2012, the Respondents started transferring funds from the QSA bank accounts to Quadrexx. By the end of October 2012, approximately $81,000 of the approximately $109,330 of QSA Offering proceeds raised to that time had been transferred to Quadrexx. By November 30, 2012 (the date on which the Respondents certified the Fourth QSA OM), QSA had collected approximately $327,534 and Quadrexx had paid itself approximately $218,348, or approximately two-thirds of the QSA Offering proceeds raised to that date.

[285] Sanfelice acknowledged that, by November 30, 2012, Quadrexx had paid itself the full amount of the Additional Fee and that he was aware of the transfers of funds to Quadrexx made on October 29, 30 and 31, 2012. Sanfelice testified that the transfer of funds "was money off the top, the $187,000, so [Quadrexx] could transfer that at any time." (Hearing Transcript, December 17, 2015 at p 84)

[286] By letter dated May 28, 2013, Quadrexx advised the QSA investors that, as Quadrexx would be filing an assignment in bankruptcy, QSA would be dissolved and the funds held in trust would be distributed to them on a pro rata basis, net of all fees. The letter also included the following table:

Total Subscription Amount:	$502,385.64
Total Commission Paid:	$45,100.00
Fee of 4% per Offering Memorandum:	$18,040.00
Fee of $187,476 per Offering Memorandum:	$186,949.00
Net Invested Amount:	$250,896.64
Percentage of Investment Returned versus Investment Amount:	49.94%

(Exhibit 248)

I. Sanfelice's Compelled Testimony and Subsequent Retractions

[287] On January 13, 2013, during his compelled examination by Staff under subsection 13(1) of the Act, Sanfelice was questioned about QSA, among other things. Sanfelice agreed with Staff that, once approximately $4.7 million of the QSA Units had been sold, Quadrexx would have been entitled to take the first $187,749 out of the 4% charge. Sanfelice also stated that QSA had forecasted up to $5.0 million in sales to the end of December 2012 and, as a result, Orlova, who had questioned the payment of the amount up front, agreed to make the $187,749 payment to Quadrexx.

[288] When questioned about his response to Orlova during his cross-examination by Staff at the Hearing, Sanfelice testified as follows:

> A. [Orlova] was asking me why 187 upfront and I was explaining to her. And Mr. Nagy and I had made the decision that, because the offering is large, and that this was an extraneous circumstance where Quadrexx had advanced the money over a year, that we would be raising 5 million, you know, in short order.
>
> …
>
> Q. So you took that money in the expectation that the sales of QSA shares and notes to investors would reach that 4 million or 5 million figure –
>
> A. Yes, yes, because - -
>
> Q. By the end of the year? Or…
>
> A. Yes, because Mr. Nagy mentioned to us that there were several large clients in the wealth management that were very interested in this fund. So there were a couple of million dollars right there.

(Hearing Transcript, December 17, 2015 at pp 104-106)

[289] Sanfelice was also asked during his compelled examination whether Quadrexx had been overpaid and that the maximum amount it should have received was 4% of the $600,000 of QSA Units that were sold rather than $4.7 million, the maximum amount of the QSA Offering. Sanfelice replied as follows:

> And we are talking to Samas to give us some money back as well. So, we are -- yes, we are -- but like I said, there were 2 million or 3 million in assets that can be put into this fund. But there was a 90-day redemption period number one, and number two was I am not sure if Miklos [Nagy] has done it yet because he was hesitant with this.
>
> (Hearing Transcript, December 17, 2015 at pp 107-108)

[290] During the compelled examination, Sanfelice confirmed that the Additional Fee was taken by Quadrexx in the expectation that the sale of QSA Units would reach $4.0 to $5.0 million and that it was taken "to ease cash flow issues at Quadrexx at the time." When asked about the foregoing answer, Sanfelice testified that: "So, because the MineralField[s] deal was rejected and then we had the undertaking.[42] So, we needed it for working capital for cash flow." (Hearing Transcript, December 17, 2015 at p 107)

[291] On the day following his compelled examination, Sanfelice sent an e-mail message to Ryder Gilliland, the colleague of Sharp who attended the examination with him, stating that the pressure of attending the recorded examination with five representatives of the Commission had caused him to be nervous in some instances and, as a result, he incorrectly answered certain questions which he wanted to retract. He then stated that:

> One of the main reasons we updated the Aug 15th OM was to add the $187,749 in fees in the August 31st OM as a start up fee reimbursement for Quadrexx to be paid on the first dollars raised by the QSA fund. This amount of $187,749 was not intended to be included in the management fee of 4%. Based on the QSA forecast for 2012 of $3-5 million out of the gate [Nagy] and I felt comfortable adding this amount in the August 31st OM to be taken on the first dollars raised as it would quickly become a small % of QSA funds raised overall even if we didn't get to the entire $40 million raise. This is what I was attempting to relay in the meeting yesterday with the OSC.
>
> The other thing I was trying to relay yesterday in the OSC meeting was that we are now in discussions with Samas to pay $90k back. This is for obvious reasons with the issues at Quadrexx presently and the monies they owe us we felt it reasonable to ask them to pay 50% of this cost.
>
> (Exhibit 204 at p 56)

[292] During his cross-examination by Staff at the Hearing, Sanfelice retracted that part of his compelled evidence in which he agreed that Quadrexx would have been entitled to take the first $187,749 out of the 4% charge, once approximately $4.7 million of QSA Units had been sold. Sanfelice testified that he intended to say that Quadrexx was entitled to take the $187,749 Additional Fee "off the top" as Quadrexx "was raising 5 million in short order." (Hearing Transcript, December 17, 2015 at p 106)

[293] Sanfelice also retracted that part of his compelled evidence in which he stated that Samas had agreed to "give us some money back" and testified that Quadrexx had received the full amount of the Additional Fee, but the QSA investors "were only sitting at $600,000 in assets." Sanfelice testified that Quadrexx's sales manager in Alberta had advised them that Samas was receptive to paying $90,000, but there was no written agreement to that effect. Sanfelice also retracted an answer provided during his compelled evidence to the effect that, if QSA was unsuccessful in raising the full amount of $4.7 million, Quadrexx would try to repay the difference between the Additional Fee and 4% of the amount actually raised.

J. Evidence of Investor Witnesses

[294] Staff called three witnesses, RL, JS and MS, each of whom had invested in QSA. Both RL and JS testified that they had not read the Risk Acknowledgement Form attached to their QSA Subscription Agreements which incorporated the text of the OM Footnote. MS, who was a dealing representative for Quadrexx and sold QSA Units to both RL and JS, testified that he attended the launch of the product at Quadrexx's Calgary office and used the Second and Third QSA Brochures to market the QSA Units to investors.

[295] Sanfelice's counsel objected to much of the evidence of the three QSA investors which he viewed as highly prejudicial given that Staff made no allegations relating to the suitability of the QSA Units as investments or Quadrexx's sales practices. Given the foregoing objection and as the evidence of the QSA investors is of limited relevance to the fraud allegations relating to QSA set out in the Statement of Allegations, I have not relied on such evidence in making the findings that are set out below.

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[42] The undertaking was to cease trading Quadrexx securities. See paragraph [215] above.

K. Submissions of the Parties

[296] Staff submits that none of the Second, Third and Fourth QSA OMs (collectively, the "**QSA OMs**") provide for the payment of the Additional Fee to Quadrexx out of the initial proceeds from the QSA Offering and in addition to the 4% charge. It is Staff's position that the OM Footnote provided that the Additional Fee was to be paid out of the 4% charge as and when the QSA Units were sold. Staff further submits that, on each occasion that Nagy and Sanfelice certified the Second, Third and Fourth QSA OMs and thereby confirmed that they did not contain a misrepresentation, they had the opportunity to make the required revisions to reflect what they allege was the intended objective of the OM Footnote. Staff also submits that there is no corroboration of Nagy's and Sanfelice's testimony with respect to what they allege were mistakes and oversights in the drafting of the offering memoranda and the QSA Brochures.

[297] Staff submits that the testimony of Nagy and Sanfelice is inconsistent with the use of proceeds provisions of the QSA OMs and the Total Initial Costs/Fees and Additional Costs/Fees provisions of the QSA Brochures and that Nagy's and Sanfelice's repeated assertions that the failure of the QSA OMs and QSA Brochures to reflect their purported intended meanings was the result of mistakes and oversight are simply not credible.

[298] Staff also submits that Sanfelice's retraction of the evidence he provided under oath during his compelled examination adversely affects his credibility as his compelled testimony contradicts his and Nagy's assertions that they intended to amend the QSA OMs to permit the up-front payment of the Additional Fee to Quadrexx in addition to the 4% charge.

[299] On the basis of an analysis undertaken by Lo, Staff submits that QSA overpaid Quadrexx by $185,397, calculated as follows:

Amount Paid to Quadrexx	$254,964
Amount Owed to Quadrexx	
Sales Commission (10% of proceeds of QSA unit sales)	($47,006)
Cost Recovery (4% of proceeds of QSA unit sales)	($18,826)
Repayment of working capital	($3,675)
Amount of Alleged Overpayment of Quadrexx	$185,397

[300] Staff submits that the Commission has previously found that using investor funds in a manner contrary to the representations made to investors constitutes the *actus reus* of fraud. In this regard, Staff relies on *Re Pogachar* (2012), 35 OSCB 3389 ("***Pogachar***") at para 96, Re Axcess Automation LLC (2012), 35 OSCB 9019 ("***Axcess***") at paras 249-269 and *Re Lewis* (2011), 34 OSCB 11127 ("***Lewis***") at para 231.

[301] Staff submits that, by paying itself approximately $218,893, or approximately two-thirds of the total proceeds received from the QSA Offering at the time, Quadrexx failed to comply with the modified 4% cost recovery provision reflected in the OM Footnote in the Third and Fourth QSA OMs.

[302] Staff submits that the misappropriation of proceeds from the QSA Offering without following the 4% cost recovery provisions set out in the Third and Fourth QSA OMs and in a manner contrary to the QSA Brochures were dishonest acts and, together with the deprivation experienced by the investors who recovered less than half of the amounts they invested following Quadrexx's bankruptcy, establish the *actus reus* of fraud.

[303] Finally, Staff submits that the requisite mental elements of *mens rea* set out in *Théroux* have been established and that, as the directing minds of Quadrexx, Nagy and Sanfelice knew that they were using the proceeds of the QSA Offering in a manner that was inconsistent with the representations made to investors and that such use would place the investors' funds at risk. In this regard, Staff relies on *Pogachar* at para 98, *Axcess* at paras 249-269, *Lewis* at para 232, and *Re New Found Freedom* (2012), 35 OSCB 11522 at para 201.

[304] The Respondents submit that Quadrexx's receipt of the Additional Fee from the initial proceeds of the QSA Offering satisfied legitimate expenses that had been incurred by Quadrexx in connection with the QSA Offering and were shown as a current liability on QSA's balance sheet. Given the financial condition of Quadrexx at the time, the Respondents decided to recover the QSA start-up costs as soon as possible and amended the First QSA OM prior to the sale of any QSA Units.

[305] The Respondents further submit that the First QSA OM was amended so that the Additional Fee would be deducted first from the initial proceeds of the QSA Offering. They admit that the amendment was ambiguous and that mistakes were made, but submit that the amendment was solely intended to permit the recovery of the Additional Fee from the initial QSA proceeds and that they honestly and reasonably believed that they were entitled to do so. The Respondents submit that they had no intention of deceiving investors when they used the proceeds of the QSA Offering to satisfy a liability recorded on the QSA balance sheet, which, they submit, was reviewed and approved by QSA's auditors.

[306] The Respondents submit that they made a mistake by failing to revise the First QSA Brochure to reflect the Additional Fee, which they describe as a debt of QSA owing to Quadrexx. The Respondents do, however, point to the Risk Acknowledgement Form signed by investors which includes, under the heading "Distribution Fees and Related Expenses of the Offering", a statement relating to the Additional Fee which is identical to the OM Footnote.

[307] Finally, the Respondents deny Staff's submissions relating to the real intention for amending the cost recovery provision of the First QSA OM. They submit that there would have been no reason to amend the First QSA OM if the sole objective was to recover the Additional Fee from the 4% charge being received by Quadrexx on the sale of each QSA Unit. The Respondents further submit that, even though the disclosure relating to the Additional Fee was ambiguous, the deficiency in disclosure does not constitute fraud.

L. Analysis and Finding

1. Representations to Investors

[308] It is clear from the evidence that prospective QSA investors were provided with copies of the Third or Fourth QSA OM and not either of the First or the Second QSA OM. As a result, QSA represented to all prospective investors by means of the OM Footnote that:[43]

> [QSA] will pay 4% of the issue price of the Units ($40 per Unit) to Quadrexx. The first $187,749 so received by Quadrexx shall be treated as the repayment of amounts advanced by Quadrexx to [QSA], and thereafter shall be treated as a one-time management fee to Quadrexx. Out of such repayment and management fee, Quadrexx will be responsible for all of the costs of establishing [QSA], including all legal, audit and accounting fees, for compensating some of [QSA]'s Directors and for marketing the offering of Units. Any costs in excess of this amount will be borne by Quadrexx. [Emphasis added.]
>
> (Exhibit 178 at p 11)

[309] The Fourth QSA OM was dated November 30, 2012 and certified on the same date by Nagy and Sanfelice on behalf of QSA as containing no misrepresentation. By that date, Quadrexx had already paid itself approximately $221,024 of the approximately $321,000 received by QSA from the QSA Offering at that time, however, no disclosure of that fact was made in the Fourth QSA OM.

[310] As noted in paragraph [262] above, the description of "Total Initial Costs/Fees" in the QSA Brochures is identical, i.e., "14.0% (10% to selling agents, 4% for legal, marketing printing etc.)". As a result, QSA represented to all prospective investors by means of the QSA Brochures, under the heading "Additional Costs/Fees", that the fees would be equal to 14% of the issue price of the QSA Units that were sold and further represented that no additional fees would be payable to Quadrexx.

[311] There is no reference in any of the QSA Brochures to the Additional Fee or the subject matter of the OM Footnote. Nagy and Sanfelice testified that their failure to update the representations and disclosure relating to fees in the QSA Brochures, including the payment of the Additional Fee, was the result of mistake and oversight.

[312] On the basis of the Risk Acknowledgement Forms signed by each of the QSA investors who testified at the Hearing, it appears that such Forms did include the identical text of the OM Footnote in the use of proceeds provisions of the Third and Fourth QSA OMs. That said, each of the QSA investor witnesses testified that they had not read the Risk Acknowledgement Form or could not recall having done so even though each of them signed their respective Risk Acknowledgement Forms.

2. Meaning of the OM Footnote

[313] As noted above, the parties made extensive submissions with respect to the meaning and interpretation of the OM Footnote. It is Staff's submission that, when Sharp amended the First QSA OM, he accurately reflected the instructions he received from Nagy on August 1, 2012 when he drafted the revised text of the OM Footnote (see paragraphs [269] and [271] above). The Respondents submit that (i) the First QSA OM was amended so that the Additional Fee would be deducted first from the initial proceeds of the QSA Offering; (ii) the amount of the Additional Fee was a liability recorded on QSA's balance sheet with the approval of QSA's auditors; and (iii) the Respondents had no intention of deceiving investors.

[314] I have considered the plain meaning of the OM Footnote and the extensive evidence relating to the issue and have reached the following conclusions:

(a) The critical clause in the OM Footnote, "The first $187,749 so received by Quadrexx" and the following words "and thereafter" clearly modify the first sentence "[QSA] will pay 4% of the issue price of the Units ($40 per Unit) to Quadrexx". As a result, the OM Footnote clearly stipulates that the first $187,749 received by

[43] The text of the OM Footnote is set out in paragraph [271] above and is repeated here for convenience of reference.

Quadrexx from the payment by QSA of the 4% charge would be treated as the repayment of the start-up costs relating to QSA by Quadrexx. Thereafter, i.e., after the payment of $187,749, the remaining payments by QSA of the 4% charge would be treated as the payment of a one-time management fee to Quadrexx. In my view, the text of the OM Footnote is consistent with the written instructions provided by Nagy to Sharp.

(b) The text of the OM Footnote is also consistent with the QSA Brochures which state that no fees would be paid by QSA in addition to the 10% commission to selling agents and 4% of the issue price of the QSA Units. I do not find credible Nagy's and Sanfelice's testimony that their purported failure to amend the QSA Brochures to reflect the use of the proceeds of the QSA Offering to repay the Additional Fee and then to pay an additional 4% of the issue price of the QSA Units was the result of multiple mistakes and instances of oversight. Rather, I believe that attributing the disclosure failures to mistakes and oversight was nothing more than a convenient stratagem developed after the fact to conceal the reality that disclosing the diversion of the initial proceeds of the QSA Offering to the payment of the Additional Fee with a minimum offering of only $250,000 would have likely precluded any further sales of the QSA Units to properly informed investors.

(c) Sanfelice's evidence during his compelled examination relating to the payment of the Additional Fee was consistent with my conclusion that the OM Footnote accurately reflected Nagy's instructions to Sharp and Sanfelice's and Nagy's objectives at the time. His retraction of his evidence in this regard does raise the issue of his credibility given that his compelled evidence, but not his testimony at the Hearing, is consistent with the other evidence in this matter.

(d) The QSA Brochures make no reference to the repayment of a debt, i.e., the amount of the Additional Fee, from the initial proceeds of the QSA Offering in addition to the 4% charge.

(e) The imposition of a debt repayment obligation to be paid from the initial proceeds of the QSA Offering prior to the payment of the 4% charge would not have been a "minor clarification to the OM" and would have likely raised issues in Sharp's mind. That was the case in 2008, when Nagy was advised by Sharp that he could not use the initial proceeds relating to the CHW offering to pay commissions to agents if there was a minimum offering (see paragraph [47] above).

(f) Giving effect to the Respondents' proposed interpretation of the OM Footnote would have produced an unconscionable economic outcome for QSA investors in the event that only the minimum amount of the offering, namely, $250,000, was achieved thereby leaving approximately $27,000 for investment purposes. This would be particularly true for eligible investors[44]44 who, as noted by Sharp in a message to Nagy relating to the CHW offering, are a significantly less sophisticated class of investors (see paragraph [46] above).

(g) The timing and amounts of the transfers of funds from QSA to Quadrexx were far more consistent with Quadrexx's need for cash flow than the repayment of amounts due and payable from, and to the extent of, the 4% charge.

3. Other Factors

[315] In the Respondents' Written Submissions, the Respondents argue that, although they consistently acknowledge that the language in the QSA OMs is ambiguous and that mistakes were made, other parts of the QSA OMs were entirely consistent with the position taken by the Respondents. In this regard, they submit that the table under the heading "Long Term Debt" refers to the amount of the Additional Fee "as a debt payable on demand, and makes no mention of any amount of the debt being outstanding assuming the minimum offering of $250,000." I reject the submission as the only offering memorandum that shows a nil balance is the Fourth QSA OM dated November 30, 2012, by which date, Quadrexx had paid itself approximately $218,348, which exceeded the amount of the Additional Fee. In other words, there was a nil balance as the amount had been fully paid (see paragraph [285]).

[316] The Respondents also submit that there was no need to amend the 4% cost recovery provision for the sole purpose of confirming that it could be used to pay the Additional Fee. Staff submits in response, and I agree, that the change by means of the OM Footnote removed any uncertainty as to Quadrexx's entitlement to receive 4% of the issue price of all QSA Units even if Quadrexx's costs did not exceed the amount of the Additional Fee. In fact, Staff's response is consistent with the last sentence of Nagy's e-mail to Sharp dated August 1, 2012 in which he stated that "We don't want to be accused on use of proceed hence we want to add this minor clarification to the OM." (Exhibit 204 at p 3)

[44] The three QSA investor witnesses invested on the basis that they were eligible investors.

4. Allegation of Fraud

[317] As described in paragraph [19] above, to establish that the Respondents directly or indirectly engaged or participated in an act, practice or course of conduct related to the QSA Offering that they knew or reasonably ought to have known perpetrated a fraud on QSA investors in breach of subsection 126.1(1)(b) of the Act, Staff must establish both elements of fraud, namely, the *actus reus* and *mens rea* of fraud.

[318] The Respondents represented to the QSA investors by means of the Third and Fourth QSA OMs and the QSA Brochures that the proceeds of the QSA Offering would be subject to selling commissions of 10% per QSA Unit and organizational and offering costs equal to 4% of the issue price of the QSA Units and that the net proceeds of the QSA Offering would be invested in a portfolio of U.S. residential mortgage-backed securities.

[319] During the period from October 28 to November 30, 2012, Quadrexx transferred to itself from QSA's accounts approximately $218,893. This amount represented approximately two-thirds of the total proceeds from the QSA Offering received to that date and exceeded the amount which Quadrexx was entitled to receive under the terms of the Third or Fourth QSA OM by at least $185,397.

[320] It is clear from the evidence that, by October 2012, Quadrexx was in serious financial distress and the proceeds of the QSA Offering were the only new source of funds available to Quadrexx. In my view, the evidence, which is summarized above, establishes beyond a balance of probabilities, that Nagy and Sanfelice determined that they could divert the initial proceeds from the QSA Offering to repay Quadrexx for the start-up costs relating to the QSA Offering and justify the diversion on the basis of the text of the OM Footnote. They then transferred such proceeds from QSA to Quadrexx as and when required to meet Quadrexx's cash flow requirements while continuing to market the QSA Units without advising either existing or prospective investors of that diversion of funds.

[321] The testimony of Nagy and Sanfelice to the effect that the OM Footnote was intended to entitle Quadrexx to receive the Additional Fee prior to the intended use of the proceeds of the QSA Offering (and in addition to the 4% charge) is not consistent with Nagy's instructions to his counsel or with any of the written disclosure documents and representations to investors. In short, Nagy's and Sanfelice's testimony in this regard and their assertions that their failure to amend the QSA OMs and the QSA Brochures to reflect their purported interpretation of the OM Footnote was attributable to mistakes and oversight are simply not credible.

[322] It follows from the foregoing and I find that, on the basis of the written representations made to QSA investors by Quadrexx pursuant to the Third and Fourth QSA OMs and the QSA Brochures, Quadrexx was only entitled to receive its share of the 10% selling commission and 4% of the issue price of the QSA Units as set out in the Third and Fourth QSA OMs and the QSA Brochures. Accordingly, the payments to Quadrexx from QSA's accounts of amounts that exceeded its entitlement to sales commissions and 4% of the issue price of the QSA Units were made by the Respondents in a deceitful and dishonest manner.

[323] The net proceeds of the QSA Offering were never transferred to the investment account which Samas was retained to manage and were returned to the QSA investors following the bankruptcy of Quadrexx. As a result of the fees and expenses that had been paid to Quadrexx and others, the QSA investors lost more than 50% of the amounts that they invested in QSA Units and thereby suffered significant deprivation.

[324] As the Respondents intentionally used the QSA proceeds in a manner other than for the purposes represented to investors, the Third and Fourth QSA OMs and the QSA Brochures effectively "conveyed a thoroughly misleading picture of what investors were buying into and what was happening with their money." (*Re Brost* at para 61; aff'd at *Brost CA*)

[325] Based on the foregoing, I find that the *actus reus* of fraud has been established by proof of an act of deceit, a falsehood or other fraudulent means which caused the QSA investors to incur serious financial losses.

[326] As noted in paragraph [22] above, to establish the *mens rea* of fraud, Staff must prove that the Respondents knowingly undertook the acts which constituted the falsehood, deceit or other fraudulent means and that the Respondents knew that deprivation could result from such conduct.

[327] Nagy and Sanfelice certified that the Third and Fourth QSA OMs did not contain a misrepresentation. Given the fact that Nagy and Sanfelice were instrumental in drafting the Third and Fourth QSA OMs and the QSA Brochures, it is simply not credible that Nagy and Sanfelice were unaware that the written representations provided to investors misrepresented the use of proceeds which is clearly one of the most important pieces of information provided to investors.

[328] The failure of the Respondents to disclose the payment of the Additional Fee from the initial proceeds of the QSA Offering was egregious given that, at the very least, the payment of such amount was not contingent on a minimum level of subscriptions that would far exceed the amount of the Additional Fee. In fact, by November 30, 2012, only $109,186 remained

for investment purposes after Quadrexx had paid itself approximately two-thirds of the funds raised from the QSA Offering to that date, a fact that would have been of considerable importance to existing and prospective investors.

[329] Nagy and Sanfelice were fully aware that their attempts to establish successful ventures in the exempt market had achieved mixed to very poor results and that Quadrexx was continuing to incur significant monthly operating losses, as it had almost from its inception. Under the circumstances, their purported belief that the QSA Offering would be successful was unrealistic and unreasonable. As noted in *Théroux*:

> A person who deprives another person of what the latter has should not escape criminal responsibility merely because, according to his moral or her personal code, he or she was doing nothing wrong or because of a sanguine belief that all will come out right in the end. Many frauds are perpetrated by people who think there is nothing wrong in what they are doing or who sincerely believe that their act of placing other people's property at risk will not ultimately result in actual loss to those persons.
>
> (*Théroux* at para 36)

[330] I am satisfied, beyond a balance of probabilities, that, on the basis of the evidence including, in particular, their own testimony and the matters summarized in paragraph [314] above, Nagy and Sanfelice had subjective knowledge that they were deceiving the QSA investors and that they also had subjective knowledge that their deceit and falsehoods were placing the investors' pecuniary interests at serious and increased risk.

[331] Accordingly, I find that Nagy, Sanfelice, Quadrexx and QSA directly or indirectly engaged or participated in an act, practice or course of conduct relating to QSA securities that they knew or reasonably ought to have known perpetrated a fraud on QSA investors in breach of subsection 126.1(1)(b) of the Act and contrary to the public interest.

VI. MAINTENANCE AND REPORTING OF EXCESS WORKING CAPITAL

A. Staff's Allegations

[332] As set out in Section V of these Reasons, Staff alleges that, commencing in October 2012, Quadrexx began to pay itself fees from the initial proceeds of the QSA Offering which exceeded the amount of fees to which it was entitled. Staff further alleges that the excess payments inflated Quadrexx's cash position and that, if Quadrexx had only taken the fees to which it was entitled, Quadrexx's excess working capital would have been below zero by October 31, 2012.

[333] As Quadrexx did not notify the Commission that its excess working capital was less than zero until January 14, 2013, Staff alleges that Quadrexx was in breach of subsections 12.1(1) and (2) of NI 31-103 during the period from October 31, 2012 to January 14, 2013.

B. Working Capital Obligation

[334] Section 12.1 of NI 31-103 provides that:

(1) If, at any time, the excess working capital of a registered firm, as calculated using Form 31-103F1 Calculation of Excess Working Capital, is less than zero, the registered firm must notify the regulator as soon as possible.

(2) A registered firm must ensure that its excess working capital, as calculated using Form 31-103F1 Calculation of Excess Working Capital, is not less than zero for 2 consecutive days.

C. Submissions of the Parties

[335] Staff submits that maintaining adequate working capital is a basic obligation of continuing registration as solvency is one of the three pillars of suitability for registration.[45] However, Staff concedes that, if I conclude that Quadrexx was entitled to take the Additional Fee out of the first proceeds of the QSA Offering, Staff's allegation that Quadrexx had a working capital deficiency by October 31, 2012 and failed to notify the Commission would fail.

[336] Sanfelice testified that, even if Quadrexx had not taken the Additional Fee from the initial proceeds of the QSA Offering, the amount was recorded as a current liability on the audited financial statements of QSA for the period from June 15, 2011 to May 31, 2012 and as a current asset on Quadrexx's balance sheet. Accordingly, in Sanfelice's submission, even if the Additional Fee had not been paid by QSA, Quadrexx would have been entitled to continue to reflect the amount receivable from QSA as a current asset which would have been included in the calculation of excess working capital resulting in a positive amount of

[45] *Re Sterling Grace & Co.*, 37 OSCB 8298 at para 203; *Re Takota Asset Management, Inc.* (2013), 36 OSCB 7808 at para 6.

excess working capital. Sanfelice also testified that the financial statements of QSA reflecting the Additional Fee as a liability had been audited by QSA's external auditors who had not, according to Sanfelice, raised any issue with respect to the matter.

[337] The Respondents submit that, as Quadrexx was entitled to the payment of the Additional Fee from the initial proceeds of the QSA Offering, there was no working capital deficiency until December 31, 2012, at which time Quadrexx promptly reported the deficiency to the Commission.

[338] Staff submits that Quadrexx's excess working capital calculations should be adjusted in the manner reflected in the "Adjusted Form 31-103F1 Calculation of Excess Working Capital of Quadrexx Assets Management Inc. for the months ended October, November and December 2012" which was prepared by Lo and entered into evidence as Exhibit 167 (the "**Adjusted Calculation**"). The principal adjustments reflected in the Adjusted Calculation were the deduction of the amount of the QSA receivable at the time and the amount by which the 4% charge had been overpaid. Lo testified that, because the QSA receivable was not readily convertible into cash as required by Form 31-103F1[46], it could not be included as a current asset. With respect to the overpayment of the management fee, Lo testified that Quadrexx was paid $49,350 in October 2012, but was only entitled to receive $4,373, resulting in an overpayment of $44,977. The two adjustments, and the effect of two smaller adjustments, resulted in an adjusted working capital deficiency of $161,956 as of October 30, 2012.

D. Analysis and Finding

[339] The issue of the inclusion of receivables in working capital calculations has been addressed in a number of Commission Staff Notices. For instance, in September 2011, a Commission Staff Notice expressed the following concern about accounts receivables, particularly from related parties, being improperly included in current assets when the receivables were not readily convertible into cash:

> When calculating their excess working capital, registered firms should exclude any current assets that are not readily convertible into cash, such as prepaid expenses and security deposits with service providers. We also have concerns with firms that include accounts receivables, especially from related parties, that are not readily convertible to cash. Any receivables that are not able to be converted to cash in a prompt and timely manner should be excluded from the excess working capital calculation.
>
> …. Registrants should review items that are included in current assets on Line 1 of Form 31-103F1 to identify those that are not readily convertible into cash, and deduct these items on Line 2 of the form.
>
> (OSC Staff Notice 33-736 - *2011 Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, 34 OSCB 9750)

[340] It is clear from the evidence that there was no written agreement between Quadrexx and QSA with respect to the payment by QSA of the offering costs incurred by Quadrexx in the amount of the Additional Fee. As noted in paragraph [336] above, the amount of the Additional Fee was recorded as a current liability on QSA's audited financial statements and as a current asset on Quadrexx's balance sheet. Sanfelice testified that, as a current liability of QSA, the amount was payable within one year although, as noted above in these Reasons, the QSA OMs listed the amount as long term debt evidenced by a promissory note, payable on demand.

[341] Lo's evidence was that the amount of the Additional Fee owing as at October 31, 2012 and the overpayment of the 4% charge should not have been included by Quadrexx in the calculation of excess working capital. Given my finding in paragraph [322] above that the Additional Fee was payable out of the amount of the 4% charge received by Quadrexx and not as and when required by Quadrexx, as determined by Nagy and Sanfelice, I accept Lo's evidence which was not seriously contested by the Respondents. As a consequence, I find that (i) Quadrexx was capital deficient as at October 31, 2012; (ii) Quadrexx's excess working capital was less than zero for two consecutive days; and (iii) Quadrexx failed to notify the Commission, contrary to subsections 12.1(1) and (2) of NI 31-103.

VII. LOAN BY DALP TO QUADREXX

A. Staff's Allegations

[342] Staff alleges that, on December 1, 2008, Quadrexx transferred $200,000 from DALP's bank account to CHW's bank account. On the same day, CHW transferred $170,000 to Quadrexx which recorded the transfer in its accounting records as a loan from CHW. Staff further alleges that, based on CHW's bank balance on December 1, 2008, it would not have been capable of making the loan to Quadrexx without having previously received $200,000 from DALP.

[46] Form 31-103F1 – *Calculation of Excess Working Capital.*

[343] Staff alleges that, as the portfolio manager of DALP, Quadrexx knowingly caused DALP to lend $170,000 to Quadrexx in breach of subsection 118(2)(c) of the Act as in effect in 2008 and contrary to the public interest.

B. Prohibited Loans by Investment Portfolios to Portfolio Managers

[344] Portfolio managers are prohibited from knowingly causing any investment portfolio they manage to make loans to the portfolio manager. In 2008, subsection 118(2)(c) of the Act in effect at the time provided that:

> (2) The portfolio manager shall not knowingly cause any investment portfolio managed by it to,
>
> …
>
> (c) make a loan to a responsible person or an associate of a responsible person or the portfolio manager.
>
> (*Securities Act*, RSO 1990, c S.5, s 118, as repealed by the *Budget Measures Act*, 2009, SO 2009, c 18, Schedule 26, s 15)

[345] The term "responsible person", which appears in subsection 118(2)(c) of the Act, was defined for the purposes of the section by subsection 118(1) of the Act as follows:

> "responsible person" means a portfolio manager and every individual who is a partner, director or officer of a portfolio manager together with every affiliate of a portfolio manager and every individual who is a director, officer or employee of such affiliate or who is an employee of the portfolio manager, if the affiliate or the individual participates in the formulation of, or has access prior to implementation to investment decisions made on behalf of or the advice given to the client of the portfolio manager.

C. Submissions of the Parties

[346] Staff submits that, prior to receiving the transfer from DALP of $200,000 on December 1, 2008, CHW's bank account balance was $13,550.26 and the balance in Quadrexx's bank account prior to receipt of the $170,000 from CHW was $19,191.54. Accordingly, without the receipt of the $200,000 transfer from DALP, CHW would not have had sufficient funds to lend $170,000 to Quadrexx.

[347] Staff submits that Quadrexx used the proceeds of the loan from CHW to make a final loan repayment of $90,000 to Sanfelice and to make a payment of $78,687.50 as the first instalment due by Quadrexx in connection with another investment.

[348] Staff submits that the former subsection 118(2)(c) of the Act prohibits Quadrexx, as portfolio manager, from knowingly causing DALP, an investment portfolio it manages, from making a loan to Quadrexx, as portfolio manager.

[349] Staff also submits that the indirect loan from DALP, as an investment portfolio, to Quadrexx, its investment advisor, through CHW is the type of self-dealing conduct prohibited by the former subsection 118(2)(c) of the Act. Staff argues that, as portfolio manager, Quadrexx should not be permitted to accept a loan through an intermediary when the source of the loan is investor monies managed by Quadrexx.

[350] Nagy testified that he saw no conflict or potential conflict arising from the loan by DALP to Quadrexx because he was "100 percent sure the loan will be paid back" (Hearing Transcript, October 5, 2015 at p 49). Nagy also testified that, at the time, he may not have been aware that the Act prohibited portfolio managers from borrowing from assets that it was managing. Sanfelice testified that the loan was repaid and that he did not believe that the loan breached the Act.

[351] The Respondents submit that the provision by DALP of the $200,000 loan to CHW was specifically contemplated in the First and Second DALP OMs in which the possible investment by DALP in CHW of additional amounts by way of equity or debt is expressly contemplated. They also submit that the loan from DALP to CHW was part of a series of loans by DALP to CHW that were fully documented. Finally, they submit that the loan by CHW to Quadrexx in the amount of $170,000 did not constitute a loan prohibited by the former subsection 118(2)(c) of the Act as CHW was not an investment portfolio managed by Quadrexx.

D. Analysis and Finding

[352] The principal role of a portfolio manager is to make investment decisions with respect to fund assets. As the Commission stated in *Re Crown Hill Capital Corp.* (2013), 36 OSCB 8721 ("***Crown Hill***"):

> Section 118 of the Act was intended to prevent self-dealing transactions between a portfolio manager and the fund it manages. A portfolio manager's principal role is to make investments of fund assets. Among other things, section 118 of the Act prevented a portfolio manager from making a decision to invest fund assets, including by way of loan, in an

affiliate of the portfolio manager if that affiliate participated in or had access prior to implementation to investment decisions made by the portfolio manager.

(*Crown Hill* at para 358)

[353] In *Crown Hill*, the Commission determined that the appointment of a third party to act as portfolio manager in connection with a proposed loan transaction was designed to avoid the application of former section 118 of the Act and that the decision by the new portfolio manager to make the loan was not an independent investment decision. The Commission concluded that the entering into of the loan in the foregoing circumstances was contrary to and breached the respondent's duty to act in good faith and in the best interests of the investment fund, contrary to section 116(a) of the Act.

[354] Although the Respondents' submission that the provision by DALP of the $200,000 loan to CHW was specifically contemplated in the First and Second DALP OMs is not entirely accurate, the First and Second DALP OMs do contemplate that additional amounts would be invested by way of debt or equity as its investment advisor, Quadrexx, may determine. However, the First and Second DALP OMs also state that such additional funds "will permit CHW to plan and execute on a major expansion plan" and make no reference to the making of loans with such additional funds. (Exhibit 95 at p 8)

[355] The fact that the First and Second DALP OMs contemplated additional investments by way of debt did not, and could not, absolve DALP from complying with former section 118 of the Act. That said, in the absence of any evidence that the loan by DALP to CHW was made for a legitimate business purpose and given that the loan by CHW to Quadrexx was not made for the purpose of permitting CHW to plan and execute on a major expansion plan, I can only conclude that the initial loan by DALP to CHW was made for the sole purpose of avoiding the application of former section 118 of the Act.

[356] In its written reply submissions, Staff submits that, by causing CHW, an asset within DALP's portfolio, to make the loan to Quadrexx of $170,000 at a time that Quadrexx was the investment advisor, Quadrexx and Sanfelice, as Quadrexx's CCO and as a person who benefitted from the loan, engaged in a prohibited loan. Staff does not, however, cite any authority for the proposition that I may look through the transaction and treat the two loans as a single transaction that was prohibited by former subsection 118(2)(c) of the Act.

[357] As Quadrexx, in its capacity as portfolio manager, did not knowingly cause the investment portfolio it managed to make a loan to Quadrexx for the foregoing reasons, I am unable to find a breach of former section 118(2)(c) of the Act. I do, however, find that, having undertaken a loan transaction which amounted to self-dealing by a portfolio manager and which I have concluded was structured for the purpose of avoiding the application of former section 118(2)(c) of the Act, Quadrexx acted contrary to the public interest.

VIII. FAILURE BY QUADREXX TO DEAL FAIRLY, HONESTLY AND IN GOOD FAITH WITH ITS CLIENTS

A. Staff's Allegations

[358] Staff alleges that Quadrexx sold DALP Securities, QAM II Shares and QSA Units with knowledge of the facts described in Sections III, IV and V of these Reasons without disclosing those facts to investors. As a result, Staff alleges that, as a registrant, Quadrexx failed to deal fairly, honestly and in good faith with its clients, in breach of section 2.1 of OSC Rule 31-505 which provides that:

(1) A registered dealer or adviser shall deal fairly, honestly and in good faith with its clients.

(2) A representative of a registered dealer or a registered adviser shall deal fairly, honestly and in good faith with his or her clients.

B. Submissions of the Parties

[359] 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*[47] and the definition of "good faith" found in *Black's Law Dictionary*.[48]

Fairly: in a just and equitable manner;

Honest: never deceiving, stealing or taking advantage of the trust of others; sincere, truthful; and

[47] *Webster's Encyclopaedic Dictionary,* Canadian ed. (New York, NY: Lexicon Publications Inc., 1988) at pp 338 and 465.
[48] *Black's Law Dictionary*, 9th ed. (St. Paul, MN: West Publishing Co., 2009) at p 762.

> **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.

[360] Staff submits that, in addition to its allegations of fraud, Quadrexx's:

(a) Failure to disclose important information to DALP investors;

(b) Conduct in raising funds in connection with the QAM II Offering purportedly to carry out its expansion plans when, in fact, QAM II Proceeds were used, or had been used, in whole or in part, to pay dividends to Quadrexx investors; and

(c) Conduct in raising funds in connection with the QSA Offering that were subject to a 14% cap on fees when, in fact, Quadrexx paid itself an up-front fee of $187,749 in addition to the 14% fee;

constituted a breach of Quadrexx's obligation as a registrant to deal fairly, honestly and in good faith with its clients.

[361] Staff also submits that, as Nagy and Sanfelice were the directing minds of Quadrexx during the Material Time, Quadrexx had knowledge of the matters referred to above by virtue of Nagy's and Sanfelice's knowledge.

[362] The Respondents' submit that, given their position that the allegations of fraud against them are unfounded, there is no basis for the Commission to find that the Respondents breached their duties to deal fairly, honestly and in good faith with their clients.

C. Analysis and Finding

[363] In *Re Norshield Asset Management (Canada) Ltd.* (2010), 33 OSCB 7171, the Commission found that two registrants breached their duties under section 2.1 of Rule 31-505 when they communicated information to investors which was based on artificially inflated net asset values and engaged in transactions that amounted to giving preference to particular redemption requests over others. As stated by the Commission at paragraph 79, "The duty to deal fairly, honestly and in good faith goes to the heart of what securities regulation is about and a breach of this obligation is especially serious."

[364] Although the terms are not defined, the Commission has previously held that the words "honestly" and "in good faith" can be applied to the conduct of respondents using the ordinary, every-day meaning of the words.[49] See in this regard, paragraph [359] above.

[365] Both Nagy, as Quadrexx's UDP, and Sanfelice, as Quadrexx's CCO, testified that they understood Quadrexx's duty to deal fairly, honestly and in good faith as required by section 2.1 of Rule 31-505. Quadrexx's duty was also expressly stated in section 2 of Quadrexx's Policies and Procedures Manual.

[366] It is clear from the evidence, which is summarized in detail in these Reasons, that relying on the ordinary, every-day meaning of the phrase "fairly, honestly and in good faith", the Respondents, in each of the matters summarized in Sections III, IV and V of these Reasons (i) did not deal with investors justly or in an equitable manner; (ii) deceived investors and took advantage of their trust; (iii) were not faithful in discharging their contractual and legal duties to investors; (iv) did not observe reasonable commercial standards of fair dealing; and (v) defrauded investors and took unconscionable advantage of them.

[367] Accordingly, I find that Quadrexx failed to deal fairly, honestly and in good faith with its clients in breach of subsection 2.1(1) of Rule 31-505.

IX. FAILURE BY NAGY AND SANFELICE TO FULFILL THEIR RESPONSIBILITIES AS UDP AND CCO OF QUADREXX

A. Staff's Allegations

[368] Staff alleges that, as the UDP of Quadrexx, Nagy had an obligation pursuant to section 5.1 of NI 31-103 to supervise the activities of Quadrexx that were directed towards ensuring compliance with securities legislation by Quadrexx and individuals acting on its behalf and an obligation to promote compliance by them with securities legislation. Staff further alleges that Nagy breached his foregoing obligations as a result of his conduct referred to in these Reasons and also acted contrary to the public interest.

[49] *Re Sextant Capital Management Inc.* (2011), 34 OSCB 5829 at paras 248-250.

[369] Staff alleges that Sanfelice, as the CCO of Quadrexx from December 3, 2007 to May 15, 2013, had monitoring and reporting obligations in connection with assessing and ensuring Quadrexx's compliance with securities legislation pursuant to subsection 1.3(1) of OSC Rule 31-505, before September 28, 2009, and pursuant to section 5.2 of NI 31-103 on and after September 28, 2009. Staff further alleges that Sanfelice breached his foregoing obligations as a result of his conduct referred to in these Reasons and also acted contrary to the public interest.

B. Nagy's Obligations as Ultimate Designated Person

[370] Pursuant to section 11.2 of NI 31-103, a registered firm is required to designate an individual who is registered under securities legislation and is either the chief executive officer, the sole proprietor or the officer in charge of a division, in the category of UDP to perform the functions described in section 5.1 of NI 31-103, which provides as follows:

> 5.1 **Responsibilities of the ultimate designated person -** The ultimate designated person of a registered firm must do all of the following:
>
> (a) 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;
>
> (b) promote compliance by the firm, and individuals acting on its behalf, with securities legislation.

[371] Nagy was registered as the UDP of Quadrexx from December 18, 2009 to May 15, 2013. Accordingly, his actions prior to December 18, 2009, which included dealings with the DALP Securities and the loan from DALP to Quadrexx through CHW, cannot be considered in determining whether Nagy breached his obligations as the UDP.

[372] Nagy updated Quadrexx's Policies and Procedures Manual, which provided that the UDP was responsible for monitoring Quadrexx's due diligence procedures and sustaining ethical and professional standards on a continuous basis. In addition, the UDP was expressly responsible for ensuring that appropriate internal controls were in place and that Quadrexx was in compliance with supervisory and regulatory guidance. The UDP's supervisory responsibilities were to include not only a review of policies and procedures, but also a review of client files and the sampling of accounts. The UDP had the right to access all documentation related to client accounts.

[373] Nagy testified that he understood his responsibilities as the UDP and also agreed that one of his responsibilities as the UDP was to ensure that marketing brochures were accurate.

C. Sanfelice's Obligations as Chief Compliance Officer

[374] Since September 28, 2009, the responsibilities of a CCO have been listed in section 5.2 of NI 31-103 and are as follows:

> 5.2 **Responsibilities of the chief compliance officer -** The chief compliance officer of a registered firm must do all of the following:
>
> (a) establish and maintain policies and procedures for assessing compliance by the firm, and individuals acting on its behalf, with securities legislation;
>
> (b) monitor and assess compliance by the firm, and individuals acting on its behalf, with securities legislation;
>
> (c) report to the ultimate designated person of the firm as soon as possible if the chief compliance officer becomes aware of any circumstances indicating that the firm, or any individual acting on its behalf, may be in non-compliance with securities legislation and any of the following apply:
>
> (i) the non-compliance creates, in the opinion of a reasonable person, a risk of harm to a client;
>
> (ii) the non-compliance creates, in the opinion of a reasonable person, a risk of harm to the capital markets;
>
> (iii) the non-compliance is part of a pattern of non-compliance;

(d) submit an annual report to the firm's board of directors, or individuals acting in a similar capacity for the firm, for the purpose of assessing compliance by the firm, and individuals acting on its behalf, with securities legislation.

[375] For the period from July 2008 to September 27, 2009, the CCO obligations were set out in subsection 1.3(1) of OSC Rule 31-105 which provided as follows:

(a) A registered dealer shall designate a registered partner or officer as the compliance officer who is responsible for discharging the obligations of the registered dealer under Ontario securities law.

(b) The person designated under paragraph (a) by a registered dealer shall also be responsible for opening each new account, supervising trades made for or with each client or, if a branch manager is designated under subsection 1.4(1), for supervising the branch manager's conduct of the activities specified in subsection 1.4(2).

(c) Despite paragraphs (a) and (b), the designated compliance officer may delegate supervisory functions to an individual who reports to the compliance officer and who meets the proficiency requirements under Rule 31-502 Proficiency Requirements for Registrants for a salesperson in the same category of registration as the dealer that has designated the compliance officer.

(d) An applicant for registration or reinstatement of registration as a dealer shall deliver to the Commission, with the application, written notice of the name of the person proposed to be designated under paragraph (a).

[376] Sanfelice was the CCO of Quadrexx from December 3, 2007 to May 15, 2013. In that period, pursuant to OSC Rule 31-505, before September 28, 2009, and pursuant to NI 31-103 thereafter, Sanfelice had monitoring and reporting obligations in connection with assessing and ensuring Quadrexx's compliance with securities legislation.

D. Submissions of the Parties

[377] Staff submits that Nagy's knowledge and participation in the following demonstrate Nagy's failure to comply with his obligations as the UDP of Quadrexx:

(a) The use of QAM II Proceeds, in whole or in part, to pay dividends to QAM I and QAM II investors;

(b) The non-disclosure to QAM II investors that QAM II Proceeds would in fact be used, in whole or in part, to pay dividends to QAM I and QAM II investors;

(c) The taking by Quadrexx of QSA investor monies above the permitted fees referred to in the QSA OMs and the QSA Brochures;

(d) The non-disclosure to QSA investors of Quadrexx's intention to take fees from QSA investor monies beyond the fees disclosed in the QSA OMs and the QSA Brochures; and/or

(e) The failure to properly identify and notify the Commission of Quadrexx's excess working capital deficiency as at October 31, 2012.

[378] Staff submits that Sanfelice's knowledge and participation in the following demonstrate Sanfelice's failure to comply with his obligations as the CCO of Quadrexx:

(a) The use of QAM II Proceeds, in whole or in part, to pay dividends to QAM I and QAM II investors;

(b) The non-disclosure to QAM II investors that QAM II Proceeds would in fact be used, in whole or in part, to pay dividends to QAM I and QAM II investors;

(c) The taking by Quadrexx of QSA investor monies above the permitted fees referred to in the QSA OMs and the QSA Brochures;

(d) The non-disclosure to QSA investors of Quadrexx's intention to take fees from QSA investor monies beyond the fees disclosed in the QSA OMs and the QSA Brochures;

(e) The failure to properly identify and notify the Commission of Quadrexx's excess working capital deficiency as at October 31, 2012;

(f) The engagement of Deloitte by CHW to prepare a valuation of CHW, the termination of Deloitte because Deloitte's anticipated estimate was well below $2.65 million, the retaining of a second valuator, the increase in the second set of CHW forecasts given to the second valuator and the non-disclosure to DALP investors of this information; and/or

(g) The prohibited loan provided to Quadrexx in December 2001 from DALP investor funds.

[379] The Respondents deny the alleged breaches and submit that none of the alleged deficiencies purportedly identified by Staff during the 2011 Compliance Review form any part of Staff's allegations in the enforcement proceedings commenced in January 2014. In particular, the Respondents emphasize that the Statement of Allegations does not make any allegations about the suitability or eligibility of the investments made.

[380] The Respondents submit that they did not breach the Act and that Nagy and Sanfelice did not fail in their duties as the UDP and CCO, respectively, of Quadrexx.

E. Analysis and Finding

[381] As stated by the Commission in *Re Sterling Grace & Co.* (2014), 37 OSCB 8298 at para 255:

> …the UDP and CCO roles are critical to securities law compliance oversight. Subsection 3.4(1) of NI 31-103, which sets out the proficiency requirements to be registered, establishes that a registrant must not engage in registerable activity unless he or she has "education, training and experience that a reasonable person would consider necessary to perform the activity competently". As a result, a registrant should not assume the role of UDP and/or CCO unless he or she is able to exercise the diligence and judgment required to fulfill the specific requirements of these roles. While the legislation accommodates different sizes of firms and levels of resources, including instances where one person fulfills multiple roles, that should not be used as an excuse for non-compliance with the regulatory requirements.

[382] Nagy's and Sanfelice's conduct throughout the transactions and events that are the subject matter of these Reasons demonstrate repeatedly their commitment to the survival of Quadrexx without regard to the consequences of their actions. That they were the UDP and CCO, respectively, of Quadrexx was merely incidental to their roles as Chief Executive Office and Chief Financial Officer and there is no evidence that they paid any attention to their respective obligations under NI 31-103.

[383] Based on the foregoing and my other findings in these Reasons, I find that, other than in respect of the allegations against the Respondents relating to the loan transaction involving DALP, CHW and Quadrexx:

(a) Nagy breached his obligations as the UDP of Quadrexx pursuant to section 5.1 of NI 31-103 and also acted contrary to the public interest; and

(b) Sanfelice breached his obligations as the CCO of Quadrexx pursuant to subsection 1.3(1) of Rule 31-505, from July 2008 to September 27, 2009, and pursuant to section 5.2 of NI-31-103, from September 28, 2009 to January 14, 2013 and also acted contrary to the public interest.

X. NAGY'S AND SANFELICE'S LIABILITY AS OFFICERS AND DIRECTORS

A. Staff's Allegations

[384] Staff alleges that, as officers and/or directors of Quadrexx, QSA and QHCM, Nagy and Sanfelice authorized, permitted or acquiesced in the breaches of Ontario securities law by Quadrexx, QSA and QHCM referred to in these Reasons and, pursuant to section 129.2 of the Act, are deemed to have also not complied with Ontario securities law.

B. Legislation

[385] Section 129.2 of the Act attaches liability to directors and officers who authorize, permit or acquiesce in the non-compliance of a company, whether or not any proceedings have been commenced against the company itself, as follows:

> 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.

C. Submissions of the Parties

[386] Nagy was an officer and director of Quadrexx since its incorporation on March 12, 2003. Sanfelice was a founding officer and director of Quadrexx at the time of Quadrexx's incorporation and then resigned as both an officer and director. Sanfelice again became an officer of Quadrexx on December 6, 2004, with primary responsibility for Quadrexx's finances, and a director on October 10, 2007. Staff submits that, as officers and directors, Nagy and Sanfelice authorized, permitted or acquiesced in the breaches of the Act by Quadrexx as evidenced by the following:

(a) Nagy and Sanfelice were the signatories for all of the Quadrexx bank accounts;

(b) Nagy signed the First and Second QAM II OMs as a director, President and Chief Executive Officer of Quadrexx;

(c) Sanfelice signed the First and Second QAM II OMs as a director and Senior Vice-President and CCO;

(d) Nagy and Sanfelice were the only members of Quadrexx's board of directors when the decisions were made to declare the June 2011 Dividends and the December 2011 Dividends;

(e) Nagy and Sanfelice signed all of the cheques to pay the June 2011 Dividends, all but two of which were dated June 30, 2011 with the remaining two dated July 30, 2011;

(f) Nagy and Sanfelice signed all of the cheques to pay the December 2011 Dividends which were dated between January 24 and February 17, 2012;

(g) Nagy and Sanfelice were the signatories for the DALP bank account from which $200,000 was transferred on December 1, 2008;

(h) Nagy and Sanfelice were the directing minds of both Quadrexx and QSA and directed the payments from QSA to Quadrexx from October to December 2012;

(i) Both Nagy and Sanfelice signed the Quadrexx cheque payable to CHW dated December 1, 2008 in the amount of $200,000;

(j) Sanfelice signed Quadrexx's Form 31-103F1 *Calculation of Excess Working Capital* as Senior Vice-President and CCO of Quadrexx; and

(k) As set out in Staff's submissions, Nagy and Sanfelice were aware at all material times of, and/or participated in, the conduct that formed the basis of the frauds relating to QAM II and QSA, the unreported excess working capital deficiency and the failure to deal fairly, honestly and in good faith with clients.

[387] Nagy has been an officer, director and a directing mind of QHCM since its incorporation on May 22, 2007. Sanfelice was an officer, director and a directing mind of QHCM from its incorporation on May 22, 2007 to November 24, 2009. Staff submits that, as officers and directors, Nagy and Sanfelice authorized, permitted or acquiesced in the breach by QHCM of the fraud provisions of the Act as evidenced by the following:

(a) The First DALP OM was signed and certified by Nagy as President and a director of QHCM and by Sanfelice as Secretary and a director of QHCM;

(b) The Second DALP OM was signed and certified by Nagy as President and a director of QHCM and by Sanfelice as Secretary and a director of QHCM;

(c) The investment advisory agreement between Quadrexx and QHCM on behalf of DALP was signed by Sanfelice on behalf of QHCM and Nagy on behalf of Quadrexx;

(d) The DALP bank account into which all DALP investor monies were paid was opened by QHCM on behalf of DALP, with Nagy and Sanfelice as the signing officers; and

(e) As set out in Staff's submissions, Nagy and Sanfelice were aware at all material times of, and/or participated in, the conduct that formed the basis of the fraud relating to DALP.

[388] Nagy was an officer and director of QSA, and Sanfelice was an officer of QSA, between June 15, 2011 and March 25, 2013. Nagy and Sanfelice were the directing minds of QSA from June 15, 2011 to March 25, 2013. Staff submits that, as officers

and directors, Nagy and Sanfelice authorized, permitted or acquiesced in the breach by QSA of the fraud provisions of the Act as evidenced by the following:

(a) Sanfelice was the Chief Financial Officer of QSA;

(b) Nagy signed each of the four QSA OMs as the President and Chief Executive Officer of QSA;

(c) Sanfelice signed each of the four QSA OMs as the Chief Financial Officer of QSA;

(d) Each of the QSA Brochures listed Nagy as the President and Chief Executive Officer of QSA;

(e) Each of the three QSA Brochures listed Sanfelice as the Chief Compliance Officer and Chief Financial Officer of QSA;

(f) Nagy and Sanfelice were involved in the drafting or approval of the CHW Brochures;

(g) Nagy and Sanfelice had signing authority on QSA's bank accounts: and

(h) As set out in Staff's submissions, Nagy and Sanfelice were aware at all material times of, and participated in, the conduct that formed the basis of the fraud relating to QSA.

D. Analysis and Finding

[389] The Commission considered the threshold for finding a director or officer liable under section 129.2 in *Re Momentas Corp.* (2006), 29 OSCB 7408 and, at para 118, stated that:

> Although these terms have been interpreted to include some form of knowledge or intention, 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.

[390] It is quite clear from the evidence that, at all material times, Nagy and Sanfelice made all decisions on behalf of Quadrexx, QHCM and QSA. In fact, it would be accurate to say that Nagy and Sanfelice directed all matters pertaining to Quadrexx, QHCM and QSA, a standard well beyond that required to establish that they authorized, permitted or acquiesced in the non-compliance by Quadrexx, QHCM and QSA with Ontario securities law and thereby are deemed to also have not complied with Ontario securities law.

[391] Accordingly, I find that:

(a) Nagy and Sanfelice, as officers and directors of Quadrexx, authorized, permitted or acquiesced in the breaches by Quadrexx of subsection 126.1(1)(b) of the Act, subsections 12.1(1) and (2) of NI 31-103, and subsection 2.1(1) of OSC Rule 31-505 and Quadrexx's conduct contrary to the public interest, and are thereby deemed to have breached subsection 126.1(1)(b) of the Act, subsections 12.1(1) and (2) of NI 31-103 and subsection 2.1(1) of OSC Rule 31-505 pursuant to section 129.2 of the Act and to have acted contrary to the public interest;

(b) Nagy and Sanfelice, as officers and directors of QHCM, authorized, permitted or acquiesced in the breach by QHCM of subsection 126.1(1)(b) of the Act and are thereby deemed to have breached subsection 126.1(1)(b) of the Act pursuant to section 129.2 of the Act; and

(c) Nagy and Sanfelice, as officers and directors of QSA, authorized, permitted or acquiesced in the breach by QSA of subsection 126.1(1)(b) of the Act and are thereby deemed to have breached subsection 126.1(1)(b) of the Act pursuant to section 129.2 of the Act.

XI. FINDINGS AND CONCLUSIONS

[392] Based on the foregoing, I make the following findings:

(a) Nagy, Sanfelice and QHCM directly or indirectly engaged or participated in an act, practice or course of conduct relating to DALP Securities that they knew or reasonably ought to have known perpetrated a fraud on DALP investors in breach of subsection 126.1(1)(b) of the Act and contrary to the public interest;

(b) Nagy, Sanfelice and Quadrexx directly or indirectly engaged or participated in an act, practice or course of conduct relating to Quadrexx securities that they knew or reasonably ought to have known perpetrated a fraud on Quadrexx investors in breach of subsection 126.1(1)(b) of the Act and contrary to the public interest;

(c) Nagy, Sanfelice, Quadrexx and QSA directly or indirectly engaged or participated in an act, practice or course of conduct relating to QSA securities that they knew or reasonably ought to have known perpetrated a fraud on QSA investors in breach of subsection 126.1(1)(b) of the Act and contrary to the public interest;

(d) Quadrexx failed to notify the Commission as soon as possible that its excess working capital was less than zero and Quadrexx's excess working capital was less than zero for two consecutive days in breach of subsections 12.1(1) and (2) of NI 31-103 and contrary to the public interest;

(e) Quadrexx knowingly caused an investment portfolio managed by it to make a loan to Quadrexx contrary to the public interest;

(f) Quadrexx failed to deal fairly, honestly and in good faith with its clients in breach of subsection 2.1(1) of OSC Rule 31-505;

(g) Nagy and Sanfelice, as officers and directors of Quadrexx, authorized, permitted or acquiesced in the breaches by Quadrexx of subsection 126.1(1)(b) of the Act, subsections 12.1(1) and (2) of NI 31-103, and subsection 2.1(1) of OSC Rule 31-505, and thereby, Nagy and Sanfelice are deemed to have breached subsection 126.1(1)(b) of the Act, subsections 12.1(1) and (2) of NI 31-103, and subsection 2.1(1) of OSC Rule 31-505 pursuant to section 129.2 of the Act;

(h) Nagy and Sanfelice, as officers and directors of QHCM, authorized, permitted or acquiesced in the breach by QHCM of subsection 126.1(1)(b) of the Act and thereby Nagy and Sanfelice are deemed to have breached subsection 126.1(1)(b) of the Act pursuant to section 129.2 of the Act;

(i) Nagy and Sanfelice, as officers and directors of QSA, authorized, permitted or acquiesced in the breach by QSA of subsection 126.1(1)(b) of the Act and thereby Nagy and Sanfelice are deemed to have breached subsection 126.1(1)(b) of the Act pursuant to section 129.2 of the Act;

(j) Sanfelice breached his obligations as CCO of Quadrexx contrary to subsection 1.3(1) of OSC Rule 31-505 and, on and after September 28, 2009 contrary to section 5.2 of NI 31-103 and contrary to the public interest; and

(k) Nagy breached his obligations as UDP of Quadrexx contrary to section 5.1 of NI 31-103 and contrary to the public interest.

[393] The parties are requested to contact the Office of the Secretary of the Commission within 30 days of the date of these Reasons to schedule a sanctions hearing.

Dated at Toronto this 6th day of February, 2017.

"Christopher Portner"

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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
Sparrow Ventures Corp.	13-Oct-2015	26-Oct-2015	26-Oct-2015	06-Feb-2017

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Abattis Bioceuticals Corp.	03 February 2017	
Biosenta Inc.	03 February 2017	
Chieftain Metals Corp.	03 February 2017	
Primaria Capital (Canada) Ltd.	03 February 2017	
Portex Minerals Inc.	03 February 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
Quest Rare Minerals Ltd.	02 February 2017	15 February 2017			

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
AlarmForce Industries Inc.	19 September 2016	30 September 2016	30 September 2016		
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
BMO Monthly Dividend Fund Ltd.
BMO Monthly Income Fund
BMO Mortgage and Short-Term Income Fund
BMO Preferred Share Fund BMO Tactical Global Bond ETF Fund
BMO World Bond Fund
BMO Asian Growth and Income Fund
BMO Asset Allocation Fund
BMO Canadian Equity Fund
BMO Canadian Stock Selection Fund
BMO Dividend Fund
BMO European Fund
BMO Global Infrastructure Fund
BMO Growth Opportunities Fund
BMO North American Dividend Fund
BMO Tactical Balanced ETF Fund
BMO Tactical Global Growth ETF Fund
BMO U.S. Dividend Fund
BMO U.S. Equity Fund
BMO U.S. Equity Plus Fund
BMO Canadian Small Cap Equity Fund
BMO Emerging Markets Fund
BMO Balanced ETF Portfolio
BMO U.S. Dollar Balanced Fund
BMO U.S. Dollar Dividend Fund
BMO U.S. Dollar Monthly Income Fund
BMO Asian Growth and Income Class
BMO Canadian Equity Class
BMO Dividend Class
BMO Short-Term Income Class
BMO U.S. Equity Class
BMO SelectClass Income Portfolio
BMO Balanced ETF Portfolio Class
BMO LifeStage Plus 2022 Fund
BMO LifeStage Plus 2025 Fund
BMO LifeStage Plus 2026 Fund
BMO LifeStage Plus 2030 Fund
BMO Tactical Dividend ETF Fund

Principal Regulator - Ontario
Type and Date:
Amendment #4 to the Final Simplified Prospectus dated February 3, 2017
Received on February 3, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BMO Investments Inc.
Guardian Group of Funds Ltd.
Promoter(s):
BMO Investments Inc.
BMO Global Tax Advantage Funds Inc.
Project #2453803

Issuer Name:
Fiera Capital Global Equity Fund
Fiera Capital Defensive Global Equity Fund
Fiera Capital U.S. Equity Fund
Principal Regulator - Quebec
Type and Date:
Amendment #1 to the Final Simplified Prospectus dated February 3, 2017
Received on February 3, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Fiera Capital Corporation
Project #2508051

Issuer Name:
June 2021 Investment Grade Bond Pool
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated February 1, 2017
NP 11-202 Preliminary Receipt dated February 1, 2017
Offering Price and Description:
Maximum Offering: $ * - * Units
Minimum Offering: $15,000,000 - 1,500,000 Units
Price: $10.00 per Class A Unit and Class T Unit
Minimum Purchase: 100 Units
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Promoter(s):
Redwood Asset Management Inc.
Project #2580503

Issuer Name:
Manulife Multifactor Canadian Large Cap Index ETF
Manulife Multifactor Developed International Index ETF
Manulife Multifactor U.S. Large Cap Index ETF
Manulife Multifactor U.S. Mid Cap Index ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 30, 2017
NP 11-202 Preliminary Receipt dated January 31, 2017
Offering Price and Description:
Unhedged Units and Hedged Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Manulife Asset Management Limited
Project #2578920

Issuer Name:
Marquest Monthly Pay Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to the Final Simplified Prospectus dated January 31, 2017
Received on February 1, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Marquest Asset Management Inc.
Project #2495425

Issuer Name:
National Bank Consensus American Equity Fund
National Bank Consensus International Equity Fund
Principal Regulator - Quebec
Type and Date:
Amendment #4 to the Final Simplified Prospectus dated February 6, 2017
Received on February 6, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
National Bank Investments Inc.
National Bank Financial Ltd.
National Bank Financial Inc.
Promoter(s):
National Bank Investments Inc.
Project #2453653

Issuer Name:
W.A.M. Collins Global Portfolio
Willoughby Investment Pool
Principal Regulator - British Columbia
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated January 31, 2017
NP 11-202 Preliminary Receipt dated February 1, 2017
Offering Price and Description:
Series A and Series F Units
Underwriter(s) or Distributor(s):
Harbourfront Wealth Management Inc.
Promoter(s):
Willoughby Asset Management Inc.
Project #2580129

Issuer Name:
Advanced Education Savings Plan
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 31, 2017
NP 11-202 Receipt dated February 6, 2017
Offering Price and Description:
Scholarship trust units @net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2570068

Issuer Name:
BMO Aggregate Bond Index ETF
BMO China Equity Index ETF (formerly, BMO China Equity Hedged to CAD Index ETF)
BMO Discount Bond Index ETF
BMO Dow Jones Industrial Average Hedged to CAD Index ETF
BMO Emerging Markets Bond Hedged to CAD Index ETF
BMO Equal Weight REITs Index ETF
BMO Equal Weight US Banks Hedged to CAD Index ETF
BMO Equal Weight US Banks Index ETF
BMO Equal Weight US Health Care Hedged to CAD Index ETF
BMO Equal Weight Utilities Index ETF
BMO Global Bank Hedged to CAD Index ETF
BMO Global Consumer Discretionary Hedged to CAD Index ETF
BMO Global Consumer Staples Hedged to CAD Index ETF
BMO Global Infrastructure Index ETF
BMO Global Insurance Hedged to CAD Index ETF
BMO High Yield US Corporate Bond Hedged to CAD Index ETF
BMO India Equity Index ETF (formerly, BMO India Equity Hedged to CAD Index ETF)
BMO Junior Gas Index ETF
BMO Junior Gold Index ETF
BMO Junior Oil Index ETF
BMO Laddered Preferred Share Index ETF (formerly BMO S&P/TSX Laddered Preferred Share Index ETF)
BMO Long Corporate Bond Index ETF
BMO Long Federal Bond Index ETF
BMO Long Provincial Bond Index ETF
BMO Long-Term US Treasury Bond Index ETF
BMO Mid Corporate Bond Index ETF
BMO Mid Federal Bond Index ETF
BMO Mid Provincial Bond Index ETF
BMO Mid-Term US IG Corporate Bond Hedged to CAD Index ETF
BMO Mid-Term US IG Corporate Bond Index ETF
BMO Mid-Term US Treasury Bond Index ETF
BMO MSCI All Country World High Quality Index ETF
BMO MSCI EAFE Hedged to CAD Index ETF (formerly, BMO International Equity Hedged to CAD Index ETF)
BMO MSCI EAFE Index ETF
BMO MSCI Emerging Markets Index ETF (formerly, BMO Emerging Markets Equity Index ETF)
BMO MSCI Europe High Quality Hedged to CAD Index ETF
BMO MSCI USA High Quality Index ETF
BMO Nasdaq 100 Equity Hedged to CAD Index ETF
BMO Real Return Bond Index ETF
BMO S&P 500 Hedged to CAD Index ETF (formerly, BMO US Equity Hedged to CAD Index ETF)
BMO S&P 500 Index ETF
BMO S&P/TSX Capped Composite Index ETF (formerly, BMO Dow Jones Canada Titans 60 Index ETF)
BMO S&P/TSX Equal Weight Banks Index ETF
BMO S&P/TSX Equal Weight Global Base Metals Hedged to CAD Index ETF
BMO S&P/TSX Equal Weight Global Gold Index ETF
BMO S&P/TSX Equal Weight Industrials Index ETF
BMO S&P/TSX Equal Weight Oil & Gas Index ETF
BMO Short Corporate Bond Index ETF
BMO Short Federal Bond Index ETF
BMO Short Provincial Bond Index ETF
BMO Short-Term US IG Corporate Bond Hedged to CAD Index ETF
BMO Short-Term US Treasury Bond Index ETF
BMO US Preferred Share Hedged to CAD Index ETF
BMO US Preferred Share Index ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 30, 2017
NP 11-202 Receipt dated February 2, 2017
Offering Price and Description:
CAD, USD and Accumulating units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
BMO Asset Management Inc.
Project #2569190

Issuer Name:
BMO Canadian Dividend ETF
BMO Canadian High Dividend Covered Call ETF
BMO Covered Call Canadian Banks ETF
BMO Covered Call Dow Jones Industrial Average Hedged to CAD ETF
BMO Covered Call Utilities ETF
BMO Europe High Dividend Covered Call Hedged to CAD ETF
BMO Floating Rate High Yield ETF
BMO International Dividend ETF
BMO International Dividend Hedged to CAD ETF
BMO Low Volatility Canadian Equity ETF
BMO Low Volatility Emerging Markets Equity ETF
BMO Low Volatility International Equity ETF
BMO Low Volatility International Equity Hedged to CAD ETF
BMO Low Volatility US Equity ETF
BMO Low Volatility US Equity Hedged to CAD ETF
BMO Monthly Income ETF
BMO Ultra Short-Term Bond ETF (formerly, BMO 2013 Corporate Bond Target Maturity ETF)
BMO US Dividend ETF
BMO US Dividend Hedged to CAD ETF
BMO US High Dividend Covered Call ETF
BMO US Put Write ETF
BMO US Put Write Hedged to CAD ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 30, 2017
NP 11-202 Receipt dated February 2, 2017
Offering Price and Description:
CAD, USD and Accumulating units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
BMO Asset Management Inc.
Project #2569378

Issuer Name:
Dividend 15 Split Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus (NI 44-101) dated February 1, 2017
NP 11-202 Receipt dated February 2, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
BMO NESBITT BURNS INC.
TD SECURITIES INC.
GMP SECURITIES L.P.
CANACCORD GENUITY CORP.
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
ECHELON WEALTH PARTNERS INC.
MACKIE RESEARCH CAPITAL CORPORATION
MANULIFE SECURITIES INCORPORATED
Promoter(s):
-
Project #2577074

Issuer Name:
Templeton EAFE Developed Markets Fund
Templeton Emerging Markets Fund
Templeton Emerging Markets Corporate Class
Templeton Global Balanced Fund
Templeton Global Bond Fund
Templeton Global Bond Fund (Hedged)
Templeton Global Smaller Companies Fund
Templeton Growth Fund, Ltd.
Templeton Growth Corporate Class
Templeton International Stock Fund
Templeton International Stock Corporate Class
Franklin Global Growth Fund
Franklin Global Small-Mid Cap Fund
Franklin High Income Fund
Franklin Strategic Income Fund
Franklin U.S. Core Equity Fund
Franklin U.S. Monthly Income Fund
Franklin U.S. Monthly Income Corporate Class
Franklin U.S. Monthly Income Hedged Corporate Class
Franklin U.S. Opportunities Fund
Franklin U.S. Rising Dividends Fund
Franklin U.S. Rising Dividends Corporate Class
Franklin Bissett All Canadian Focus Fund
Franklin Bissett Canadian All Cap Balanced Fund
Franklin Bissett Canadian Balanced Fund
Franklin Bissett Canadian Balanced Corporate Class
Franklin Bissett Canadian Dividend Fund
Franklin Bissett Canadian Dividend Corporate Class
Franklin Bissett Canadian Equity Fund
Franklin Bissett Canadian Equity Corporate Class
Franklin Bissett Canadian Short Term Bond Fund
Franklin Bissett Core Plus Bond Fund
Franklin Bissett Corporate Bond Fund
Franklin Bissett Dividend Income Fund
Franklin Bissett Dividend Income Corporate Class
Franklin Bissett Energy Corporate Class
Franklin Bissett Microcap Fund
Franklin Bissett Money Market Fund
Franklin Bissett Monthly Income and Growth Fund
Franklin Bissett Small Cap Fund
Franklin Bissett U.S. Focus Corporate Class
Franklin Mutual European Fund
Franklin Mutual Global Discovery Fund
Franklin Mutual Global Discovery Corporate Class
Franklin Mutual U.S. Shares Fund
Franklin Quotential Balanced Growth Portfolio
Franklin Quotential Balanced Growth Corporate Class Portfolio
Franklin Quotential Balanced Income Portfolio
Franklin Quotential Balanced Income Corporate Class Portfolio
Franklin Quotential Diversified Equity Portfolio
Franklin Quotential Diversified Equity Corporate Class Portfolio
Franklin Quotential Diversified Income Portfolio
Franklin Quotential Diversified Income Corporate Class Portfolio
Franklin Quotential Growth Portfolio
Franklin Quotential Growth Corporate Class Portfolio
Principal Regulator - Ontario
Type and Date:

Amendment #6 to the Final Simplified Prospectus dated January 24, 2017
NP 11-202 Receipt dated February 2, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Franklin Templeton Investments Corp.
Promoter(s):
Franklin Templeton Investments Corp.
Project #2469490

Issuer Name:
Franklin Bissett Canadian Government Bond Fund
Franklin Quotential Fixed Income Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #2 to the Final Simplified Prospectus dated January 24, 2017
NP 11-202 Receipt dated February 1, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Franklin Templeton Investments Corp.
FTC Investors Services Inc.
Promoter(s):
Franklin Templeton Investments Corp.
Project #2535927

NON-INVESTMENT FUNDS

Issuer Name:
Acasti Pharma Inc.
Principal Regulator - Quebec
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated January 31, 2017
NP 11-202 Preliminary Receipt dated February 2, 2017
Offering Price and Description:
Maximum $8,000,000 (* Units)
Minimum $4,500,000 (* Units)
Price: $* per Unit
Underwriter(s) or Distributor(s):
Echelon Wealth Partners Inc.
Promoter(s):
-
Project #2563694

Issuer Name:
Ag Growth International Inc.
Principal Regulator - Manitoba
Type and Date:
Preliminary Short Form Prospectus dated February 1, 2017
NP 11-202 Preliminary Receipt dated February 1, 2017
Offering Price and Description:
$60,610,000.00 - 1,100,000 Common Shares
Price: $55.10 per Common Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
National Bank Financial Inc.
TD Securities Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
Altacorp Capital Inc.
Cormark Securities Inc.
Laurentian Bank Securities Inc.
Promoter(s):
-
Project #2580481

Issuer Name:
Alamos Gold Inc.
Principal Regulator - Ontario
Type and Date:
Second Amended and Restated dated Preliminary Short Form Prospectus dated January 31, 2017
NP 11-202 Preliminary Receipt dated January 31, 2017
Offering Price and Description:
US$250,027,500.00 - 31,450,000 Class A Common Shares
Price: US$7.95 per Common Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
BMO Nesbitt Burns Inc.
Macquarie Capital Markets Canada Ltd.
CIBC World Markets Inc.
National Bank Financial Inc.
Scotia Capital Inc.
Desjardins Securities Inc.
Haywood Securities Inc.
Paradigm Capital Inc.
RBC Dominion Securities Inc.
Barclays Capital Canada Inc.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Merrill Lynch Canada Inc.
Raymond James Ltd.
Citigroup Global Markets Canada Inc.
Morgan Stanley Canada Limited
Promoter(s):
-
Project #2576771

Issuer Name:
Kew Media Group Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated February 3, 2017
NP 11-202 Preliminary Receipt dated February 6, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
KMG Entertainment GP Inc
John Schmidt
Project #2581476

Issuer Name:
Red Eagle Mining Corporation
Principal Regulator - British Columbia
Type and Date:
Amendment dated February 6, 2017 to Preliminary Shelf Prospectus dated December 2, 2016
Received on February 6, 2017
Offering Price and Description:
$15,000,000 - 20,000,000 Common Shares
Price: $0.75 per Offered Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #2563415

Issuer Name:
Alamos Gold Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 2, 2017
NP 11-202 Receipt dated February 2, 2017
Offering Price and Description:
US$250,027,500.00 - 31,450,000 Class A Common Shares at a price of US$7.95 per Offered Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
BMO Nesbitt Burns Inc.
Macquarie Capital Markets Canada Ltd.
CIBC World Markets Inc.
National Bank Financial Inc.
Scotia Capital Inc.
Desjardins Securities Inc.
Haywood Securities Inc.
Paradigm Capital Inc.
RBC Dominion Securities Inc.
Barclays Capital Canada Inc.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Merrill Lynch Canada Inc.
Raymond James Ltd.
Citigroup Global Markets Canada Inc.
Morgan Stanley Canada Limited
Promoter(s):
-
Project #2576771

Issuer Name:
Atrium Mortgage Investment Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 3, 2017
NP 11-202 Receipt dated February 3, 2017
Offering Price and Description:
$30,039,750.00 - 2,535,000 Common Shares at a price of $11.85 per Offered Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Industrial Alliance Securities Inc.
Raymond James Ltd.
Promoter(s):
-
Project #2575938

Issuer Name:
Columbus Gold Corp.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated February 2, 2017
NP 11-202 Receipt dated February 3, 2017
Offering Price and Description:
$5,040,000.00 - 8,000,000 Common Shares at a price of $0.63 per Offered Share
Underwriter(s) or Distributor(s):
Beacon Securities Limited
Promoter(s):
-
Project #2576327

Issuer Name:
Enercare Solutions Inc. (formerly The Consumers' Waterheater Operating Trust)
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated January 30, 2017
NP 11-202 Receipt dated January 31, 2017
Offering Price and Description:
$1,000,000,000.00 - Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2575540

Issuer Name:
Golden Star Resources Ltd.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated January 31, 2017
NP 11-202 Receipt dated January 31, 2017
Offering Price and Description:
Cdn.$30,000,300.00 - 27,273,000 Common Shares ta price of Cdn.$1.10 per Common Share
Underwriter(s) or Distributor(s):
Clarus Securities Inc.
BMO Nestbitt Burns Inc.
National Bank Financial Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #2574299

Issuer Name:
Jet Metal Corp.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated January 30, 2017
NP 11-202 Receipt dated January 31, 2017
Offering Price and Description:
Minimum Offering: $6,000,000.00 or 20,000,000 Subscription Receipts
Maximum Offering: $9,999,999.90 or 33,333,333 Subscription Receipts
Underwriter(s) or Distributor(s):
MACKIE RESEARCH CAPITAL CORPORATION
HAYWOOD SECURITIES INC.
PI FINANCIAL CORP.
ECHELON WEALTH PARTNERS INC.
Promoter(s):
-
Project #2557807

Issuer Name:
Timbercreek Financial Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated January 31, 2017
NP 11-202 Receipt dated January 31, 2017
Offering Price and Description:
$40,000,000.00 - 5.45% Convertible Unsecured Subordinated Debentures due March 31, 2022
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
TD Securities Inc.
CIBC World Markets Inc.
Raymond James Ltd.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
GMP Securities L.P.
Canaccord Genuity Corp.
Industrial Alliance Secuirities Inc.
Manulife Securities Incorporated
Promoter(s):
-
Project #2574901

Issuer Name:
Trinidad Drilling Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated February 1, 2017
NP 11-202 Receipt dated February 1, 2017
Offering Price and Description:
$130,000,000.00 - 41,269,841 Common Shares Price: $3.15 per Common Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
RBC Dominion Securities Inc.
GMP Securities L.P.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
CIBC World Markets Inc.
Cormark Securities Inc.
Paradigm Capital Inc.
Peters & Co. Limited
Promoter(s):
-
Project #2575221

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	GenFund Management Inc.	Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	January 30, 2017
Voluntary Surrender	Private Capital Markets Corp.	Exempt Market Dealer	January 25, 2017
New Registration	EDE Asset Management Inc.	Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	February 3, 2017
Voluntary Surrender	Selexia Investment Management Inc.	Portfolio Manager	February 3, 2017
Voluntary Surrender	Capital Insight Partners, LLC	Portfolio Manager	January 30, 2017
Voluntary Surrender	Precipice Capital Corporation Inc.	Exempt Market Dealer	February 6, 2017
Name Change	From: Freshcap Financial Inc. To: Merchinson Ltd.	Portfolio Manager	January 24, 2017

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Chapter 25

Other Information

25.1 Other Information

25.1.1 Razor Energy Corp. – s. 4(b) of the Regulation

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
RAZOR ENERGY CORP.
(formerly VECTOR RESOURCES INC.)

CONSENT
(Subsection 4(b) of the Regulation)

UPON the application (the "**Application**") of Razor Energy Corp. (the "**Applicant**") to the Ontario Securities Commission (the "**Commission**") requesting consent of the Commission for the Applicant to continue in another jurisdiction (the "**Continuance**"), pursuant to subsection 4(b) of the Regulation;

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated as 002236235 Ontario Inc. under the laws of Ontario pursuant to Articles of Incorporation adopted on March 5, 2010. The Applicant's name was changed to Vector Resources Inc. pursuant to Articles of Amendment adopted on April 15, 2011. The Applicant's name was further changed to Razor Energy Corp. pursuant to Articles of Amendment adopted on January 31, 2017.

2. The Applicant's registered and head office is located at Suite 3800, 200 Bay Street, Toronto, Ontario M5J 2Z4.

3. The Applicant intends to apply to the Director under the OBCA pursuant to section 181 of the OBCA (the "**Application for Continuance**") for authorization to continue under the *Business Corporations Act* (Alberta), R.S.A. 2000, c. B-9 (the "**ABCA**").

4. The authorized capital of the Applicant consists of an unlimited number of common shares of which 3,736,221 were issued and outstanding as of January 5, 2017 and all such shares are listed for trading on the NEX board of the TSX Venture Exchange under the symbol "VCR". The Applicant does not have any securities listed on any other exchange.

5. The Application for Continuance is being made in connection with the reverse take-over transaction involving the acquisition by the Applicant of Razor Energy Corp., a private company incorporated under the ABCA (the "**Transaction**"), which was completed on January 31, 2017.

6. Pursuant to the subsection 4(b) of the Regulation, an application for continuance under section 181 of the OBCA must, in the case of an "offering corporation" (as that term is defined in the OBCA), be accompanied by a consent from the Commission.

7. The Applicant is an offering corporation under the OBCA and is a reporting issuer within the meaning of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") and the securities legislation of each of British Columbia and Alberta. The Applicant intends to remain a reporting issuer in British Columbia, Alberta and Ontario.

8. The Applicant is not in default under any provision of the Act or the regulations or rules made under the Act, and is not in default under the securities legislation of any other jurisdiction where it is a reporting issuer.

9. The Applicant is not a party to any proceeding or to the best of its knowledge, information and belief, any pending proceeding under the OBCA and the Act or under the securities legislation of any other jurisdiction where it is a reporting issuer.

10. The Applicant's current principal regulator is Ontario. After the Continuance, pursuant to Multilateral Instrument 11-102 Passport System, the Applicant's principal regulator will be Alberta.

11. A summary of the material provisions respecting the proposed Continuance was provided to the shareholders of the Applicant in the management information circular of the Applicant dated January 5, 2017 (the "**Circular**") in respect of the Applicant's special meeting held on January 30, 2017 (the "**Meeting**"). The Circular was mailed to shareholders of record at the close of business on December 19, 2016 and was filed on SEDAR on January 10, 2017.

12. In accordance with the OBCA and the Applicant's constating documents, the special resolution of shareholders to be obtained at the Meeting in connection with the proposed Continuance (the "**Continuance Resolution**") requires 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. Each shareholder present in person or by proxy at the Meeting is entitled to one vote for each common share held.

13. The Applicant's shareholders had the right to dissent with respect to the Continuance Resolution pursuant to section 185 of the OBCA, and the Circular disclosed full particulars of this right in accordance with the applicable law.

14. The Continuance Resolution was approved at the Meeting by 93.05 % of the votes cast by shareholders in respect of the Continuance Resolution. None of the shareholders exercised dissent rights pursuant to section 185 of the OBCA.

15. The Applicant believes that certain aspects of the ABCA will better facilitate the Applicant's business and affairs than the OBCA. In particular, the Applicant's head office will be located in Calgary, Alberta and all of the Applicant's assets will be located in the Province of Alberta.

16. The material rights, duties and obligations of a corporation governed by the ABCA are substantially similar to those of a corporation 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 ABCA.

DATED at Toronto, Ontario this 3rd day of February, 2017.

"William Furlong"
Ontario Securities Commission

"Janet Leiper"
Ontario Securities Commission

Index