The Ontario Securities Commission

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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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1.1 Notices

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CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 11-333
Withdrawal of Notices

December 1, 2016

This notice formally withdraws a number of CSA and local notices. In general, the withdrawn material will remain available for historical research purposes in the CSA members' websites that permit comprehensive access to CSA notices.

Staff of the members of the CSA have reviewed a number of CSA Notices. They have determined that some are outdated, no longer relevant or no longer required. The following CSA Notices are therefore withdrawn, in the applicable CSA jurisdictions in which they have not already been withdrawn, effective immediately.

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81-706	*Treatment of Sales Commissions in the Calculation of Net Asset Value of Labour Sponsored Investment Funds*

Questions

Please refer your questions to any of the following people:

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1.5 Notices from the Office of the Secretary

1.5.1 AAOption et al.

FOR IMMEDIATE RELEASE
November 24, 2016

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

AND

IN THE MATTER OF
AAOPTION,
GALAXY INTERNATIONAL SOLUTIONS LTD. and
DAVID ESHEL

TORONTO – The Commission issued an Order in the above noted matter which provides that the hearing in this matter is adjourned to December 7, 2016 at 3:00 p.m., or such further and other date as may be agreed to by the parties and set by the Office of the Secretary.

A copy of the Order dated November 23, 2016 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.2 Garth H. Drabinsky et al.

FOR IMMEDIATE RELEASE
November 24, 2016

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

AND

IN THE MATTER OF
GARTH H. DRABINSKY,
MYRON I. GOTTLIEB AND
GORDON ECKSTEIN

TORONTO – The Commission issued an Order in the above named matter which provides that a confidential pre-hearing conference shall take place at 8:30 a.m. on January 10, 2017 or at such other time and on such other date as may be ordered by the Commission.

A copy of the Order dated November 22, 2016 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSLI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

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

1.5.3 Edward Furtak et al.

FOR IMMEDIATE RELEASE
November 25, 2016

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 – 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 November 24, 2016 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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For investor inquiries:

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 JMP Securities LLC

Headnote

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

Applicable Legislative Provisions

Statutes Cited

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

Instruments Cited

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

November 25, 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
JMP SECURITIES LLC
(the Filer)

DECISION

Background

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

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

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

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under the laws of the State of Delaware. The head office of the Filer is located in San Francisco, California, 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 is a full-service investment banking firm that provides investment banking, sales and trading, and equity research services to corporate and institutional clients. In addition to equities the Filer provides corporate fixed income products to 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 Ontario and Québec.

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 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.

"Deborah Leckman"
Commissioner
Ontario Securities Commission

"Christopher Portner"
Commissioner
Ontario Securities Commission

2.1.2 Vision Capital Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from subparagraphs 13.5(2)(b)(ii) and (iii) of NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations to permit inter-fund trades between investment funds and pooled funds managed by the same manager – Inter-fund trades subject to conditions, including IRC approval and pricing requirements – Trades involving exchange-traded securities permitted to occur at last sale price as defined in the Universal Market Integrity Rules.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5(2)(b), 15.1.
National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.1(2).

Citation: Re Vision Capital Corporation, 2016 ABASC 267

November 3, 2016

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
VISION CAPITAL CORPORATION
(the Filer)
AND THE INITIAL TOP FUNDS AND THE INITIAL UNDERLYING FUND

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Makers**) has received an application from the Filer on behalf of itself, its Affiliates, the Initial Top Funds and each other Pooled Fund.

The application consists of two parts. First, the application is for a decision under the securities legislation (the **Legislation**) of the Jurisdictions for the following:

(a) an exemption from the restriction in paragraph 13.5(2)(a) of NI 31-103 that prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase a security of an issuer in which a responsible person or an associate of a responsible person is a partner, officer or director, unless that fact is disclosed to the client and the written consent of the client to the purchase is obtained before the purchase, to permit a Top Fund to invest in an Underlying Fund (the **Consent Relief**); and

(b) an exemption from the restrictions in subparagraphs 13.5(2)(b)(ii) and (iii) of NI 31-103 that prohibit a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase or sell a security from or to the investment portfolio of any of (i) an associate of a responsible person and (ii) an investment fund for which a responsible person acts as an adviser, to permit:

(i) the In Specie Transactions in connection with effecting the Reorganization (the **In Specie Relief**); and

(ii) Inter-Fund Trades (the **Inter-Fund Trading Relief**);

Second, the application is for a decision solely from the securities regulatory authority in Alberta under the *Securities Act* (Alberta) (the **Alberta Act**):

(a) exempting each Alberta Top Fund from the restriction in section 185(2)(b) of the Alberta Act that prohibits a mutual fund from knowingly making an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder to permit each Alberta Top Fund to invest in an Underlying Fund; and

(b) exempting each Alberta Top Fund, the Filer and its Affiliates from the restriction in section 185(3) of the Alberta Act that prohibits them from holding an investment described in paragraph (a) above,

(together, the **Related Issuer Relief**).

The Consent Relief, the In Specie Relief, the Inter-Fund Trading Relief, and the Related Issuer Relief are collectively defined as the **Requested Relief**.

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

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

(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 British Columbia, Manitoba and Québec in respect of the Consent Relief, In Specie Relief and Inter-Fund Trading Relief; and

(c) this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario in respect of the Consent Relief, In Specie Relief and Inter-Fund Trading Relief.

Definitions and Interpretation

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

The terms set out below have the following meanings:

Affiliate means a person or company that is affiliated with the Filer;

Alberta Top Fund means a Top Fund that is a mutual fund under the Alberta Act;

Canadian LP means the Pooled Fund, Vision Opportunity Fund Limited Partnership;

Closing Sale Price means the "current market price of the security" as defined in subparagraph 6.1(1)(a)(i) of NI 81-107;

Existing Pooled Fund means a Pooled Fund that is currently in existence;

Fund-on-Fund Structure means a master-feeder, fund-on-fund structure in which one or more Pooled Funds act as feeder funds in respect of an underlying master Pooled Fund;

Future Pooled Fund means a Pooled Fund for which the Filer or an Affiliate will in future act as manager, portfolio manager or both;

Future Top Fund means a Future Pooled Fund that is a Top Fund;

Future Underlying Fund means a Future Pooled Fund that is an Underlying Fund;

illiquid asset has the meaning ascribed to it in NI 81-102;

IRC means an independent review committee as defined in NI 81-107;

Initial Top Fund means any of the Canadian LP, the Non-Resident LP or the Trust and Initial Top Funds refers to those three funds collectively;

Initial Underlying Fund means a Future Pooled Fund, expected to be named Vision Opportunity Master Fund Limited Partnership, that will be an Underlying Fund;

In Specie Transaction means a type of Inter-Fund Trade involving the one-time purchase by an Initial Top Fund of securities of the Initial Underlying Fund, providing as payment, good delivery of all of the Initial Top Fund's portfolio securities and other assets;

Inter-Fund Trade means the purchase and sale of securities between two Pooled Funds, or between a Managed Account and a Pooled Fund;

Last Sale Price means in respect of a security traded on an exchange, the last sale price, as defined in the Universal Market Integrity Rules of the Investment Industry Regulatory Organization of Canada, on that exchange, prior to the execution of the trade on that trading day;

Managed Account means an account managed by the Filer or an Affiliate for a client that is not a responsible person and over which the Filer or an Affiliate has discretionary authority;

NAV means net asset value;

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

NI 45-106 means National Instrument 45-106 *Prospectus Exemptions*;

NI 81-102 means National Instrument 81-102 *Investment Funds*;

NI 81-107 means National Instrument 81-107 *Independent Review Committee for Investment Funds*;

Non-Resident LP means the Pooled Fund, Vision Opportunity Non-Resident Limited Partnership;

Pooled Fund means an investment fund that is not a reporting issuer in any jurisdiction of Canada in respect of which the Filer or an Affiliate acts as manager, portfolio adviser, or both;

portfolio manager has the meaning ascribed to it in NI 31-103;

Registered Plans include registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, registered disability savings plans, tax-free savings accounts and registered education savings plans;

Reorganization means the creation of a Fund-on-Fund Structure such that the Initial Underlying Fund will become the master fund and the Initial Top Funds will be the feeder funds;

responsible person has the meaning ascribed to it in subsection 13.5(1) of NI 31-103;

Top Fund means a Pooled Fund that invests in another Pooled Fund in a Fund-on-Fund Structure;

Trust means the Pooled Fund, Vision Opportunity Trust Fund;

Underlying Fund means a Pooled Fund in which another Pooled Fund invests in a Fund-on-Fund Structure; and

VS Funds means, together, the two Existing Pooled Funds, Vision Strategic Opportunity Fund Limited Partnership and Vision Strategic Opportunity Non-Resident Fund Limited Partnership.

Representations

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

The Filer

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

2. The Filer is registered as an investment fund manager, portfolio manager and exempt market dealer in Alberta, British Columbia, Manitoba and Ontario and as an investment fund manager and exempt market dealer in Québec.

3. The Filer is not a reporting issuer in any jurisdiction of Canada and is not in default of securities legislation in any jurisdiction of Canada.

4. The Filer is the investment fund manager and portfolio manager of the Initial Top Funds and will be the investment fund manager and portfolio manager of the Initial Underlying Fund. The Filer is also currently the investment fund manager and portfolio manager of the VS Funds.

5. The Filer or an Affiliate will act as investment fund manager, portfolio manager or both of each Future Pooled Fund and Managed Account.

6. Each Affiliate will be registered, as required, as an investment fund manager, portfolio manager, or both.

7. The Filer or an Affiliate has or will have complete discretion to invest and reinvest the assets of each Pooled Fund and Managed Account and is or will be responsible for executing all portfolio transactions. Furthermore, the Filer may act as a distributor of securities of the Pooled Funds not otherwise sold through another registered dealer.

The Reorganization

8. The Filer wishes to effect the Reorganization because the Fund-on-Fund Structure will accommodate continued investment by non-resident investors and Canadian taxable and non-taxable investors through independent feeder funds in a cost efficient manner. The Filer believes a larger master fund with more than one feeder fund will provide each of the Initial Top Funds with the benefits of economies of scale and greater diversification.

9. The VS Funds are not part of the Reorganization and will remain as stand-alone funds with direct, separately managed portfolios.

Reorganization via In Specie Transactions

10. The Filer wishes to effect the Reorganization by way of the In Specie Transactions because it considers that to be the most efficient and cost effective way for the Initial Underlying Fund to acquire the portfolio securities and for each Initial Top Fund to dispose of the portfolio securities. In particular, it allows:

    (a) each Initial Top Fund to dispose of portfolio securities and the Initial Underlying Fund to purchase the same portfolio securities without incurring unnecessary brokerage costs: and

    (b) the Filer to maintain within its control larger blocks of securities that would otherwise have to be broken up and then re-assembled.

11. Pursuant to the declaration of trust that governs the Trust and each of the limited partnership agreements that govern the Canadian LP and the Non-Resident LP, the Filer has the authority to implement the Reorganization and the In Specie Transactions without securityholder approval.

12. Prior to effecting the Reorganization the securityholders of each Initial Top Fund will receive:

    (a) a notice describing the Reorganization, the reasons for, and benefits of, the Reorganization, the changes being made to such Initial Top Fund as a result of the Reorganization, and disclosure of the pro rata on-going expenses of the Initial Underlying Fund to be borne indirectly by the Initial Top Fund; and

    (b) a revised offering memorandum for the Initial Top Fund.

13. The Initial Top Funds do not charge redemption fees. No redemption fees, sales charges, or other fees or commissions will be payable by securityholders of the Initial Top Funds in connection with the Reorganization. No sales or brokerage charges will be payable by the Initial Top Funds or the Initial Underlying Fund in connection with the Reorganization.

14. All costs of the Reorganization will be borne by the Filer.

15. There will be no increase in the fees, including management fees, to which an Initial Top Fund or its securityholders are directly or indirectly subject as result of the Reorganization. The fees will remain the same except that an incentive distribution will be made at the level of the Initial Underlying Fund instead of at the level of the Initial Top Funds.

16. Each Initial Top Fund will bear its *pro rata* share of the ongoing expenses of the Initial Underlying Fund, which will not be duplicative of the expenses that are charged by the Initial Top Fund to its securityholders.

17. There will be no changes to the investment objectives and strategies of any Initial Top Fund as a result of the Reorganization, with the exception that each Initial Top Fund will seek to achieve its investment objectives by investing through the Initial Underlying Fund rather than directly. The portfolio assets of each Initial Top Fund to be acquired by the Initial Underlying Fund pursuant to the Reorganization will be acceptable to the portfolio manager of the Initial Underlying Fund and consistent with the investment objective of the Initial Underlying Fund.

18. There will be no changes to the frequency of subscriptions, valuations, and redemptions of the Initial Top Funds. Securityholders of the Initial Top Funds will be able to redeem their shares or units at all redemption dates both prior to and after the Reorganization.

19. The transfer of the portfolio assets of the Initial Top Funds to the Initial Underlying Fund will not adversely impact the liquidity of the Initial Top Funds.

20. Each Initial Top Fund intends to elect to transfer its portfolio assets to the Initial Underlying Fund on a tax-deferred basis under the *Income Tax Act* (Canada), to the extent applicable. Accordingly, it is anticipated there will be no tax consequences to securityholders of the Initial Top Funds who are resident in Canada and no material tax consequences to non-resident securityholders of the Initial Top Funds resulting from the Reorganization.

21. It is anticipated that the Reorganization and In Specie Transactions will be executed by the Filer. The Filer will not receive any compensation in respect of the Reorganization or In Specie Transactions.

22. It is anticipated that the proposed Reorganization will be completed as soon as possible following the granting of the Requested Relief.

23. The Filer submits that the conflicts of interest in respect of the Reorganization and In Specie Transactions are addressed because:

    (a) the IRC of each Initial Top Fund will have approved the applicable In Specie Transaction as required by this Decision in respect of an Inter-Fund Trade;

    (b) each In Specie Transaction will be subject to compliance with written policies and procedures of the Filer that are consistent with applicable securities legislation and the oversight of the Filer's chief compliance officer to ensure that the In Specie Transaction represents the business judgment of the Filer acting in its discretionary capacity with respect to each Initial Top Fund and the Initial Underlying Fund, uninfluenced by considerations other than the best interests of each Initial Top Fund and the Initial Underlying Fund;

    (c) the issue of units will be based upon the relative NAV of the portfolio assets received by the Initial Underlying Fund from each Initial Top Fund;

    (d) the portfolio assets of each of the Initial Top Funds will be capable of being objectively valued because no Initial Top Fund holds more than 10% of its NAV in illiquid assets;

    (e) the units of the Initial Underlying Fund that each Initial Top Fund receives in exchange for its portfolio assets will have an aggregate value equal to the value of the portfolio assets of such Initial Top Fund determined as at the date of the In Specie Transaction;

    (f) the value of the portfolio assets will be calculated in accordance with the valuation policies and procedures outlined in the Initial Top Fund's offering memorandum as it existed prior to the Reorganization, and will be consistent with the valuation policies of the Initial Underlying Fund; and

    (g) the Reorganization by In Specie Transactions represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Initial Top Funds and the Initial Underlying Fund.

24. The Filer will keep a written record of the In Specie Transactions reflecting the details of the portfolio securities and other assets delivered to the Initial Underlying Fund, the value assigned to same and to the limited partnership units of the Initial Underlying Fund received by each Initial Top Fund in exchange for a period of at least five years after the In Specie Transactions, with the records for at least the first two years being maintained in a reasonably accessible place.

25. In the absence of the In Specie Relief, the Filer would be prohibited from engaging in the In Specie Transactions.

The Initial Top Funds

26. The Canadian LP is a Manitoba limited partnership, governed by a limited partnership agreement. The Canadian LP is available for investment only by Canadian-resident investors. The general partner of the Canadian LP is Vision Opportunity Fund (GP) Inc., a corporation incorporated under the laws of the province of Ontario and an Affiliate.

27. The Non-Resident LP is a Manitoba limited partnership, governed by a limited partnership agreement. The Non-Resident LP is available for investment only by non-resident investors. The general partner of the Non-Resident LP is Vision Opportunity Fund (GP) III Inc., a corporation incorporated under the laws of the province of Ontario and an Affiliate.

28. The Trust is a mutual fund trust established under the laws of the province of Manitoba pursuant to a declaration trust. The Filer is the trustee of the Trust. The Trust was formed to facilitate investment by Registered Plans since limited partnership interests are not eligible investments for Registered Plans.

29. Non-resident investors may invest indirectly in the Initial Underlying Fund through the Non-Resident LP, and Canadian investors may invest indirectly in the Initial Underlying Fund through either the Canadian LP or the Trust.

30. Each Initial Top Fund has substantially similar investment objectives and restrictions and, as a result, substantially similar investment portfolios. Pursuant to the Reorganization, rather than continuing to invest in a direct portfolio, each of the Initial Top Funds will seek to achieve its investment objective by investing all of its assets in the Initial Underlying Fund.

31. The Initial Top Funds are not in default of the securities legislation of any jurisdiction of Canada.

The Top Funds

32. Each Top Fund is and each Future Top Fund will be an investment fund under the Legislation.

33. No Top Fund is, or will be, a reporting issuer in any jurisdiction of Canada. Securities of each Top Fund will be offered for sale in Canada solely pursuant to exemptions from the prospectus requirement in NI 45-106.

34. Each Future Top Fund will be formed as a limited partnership, trust or corporation under the laws of the province of Manitoba, another jurisdiction of Canada, or a foreign jurisdiction.

35. The Filer may be the trustee of Future Pooled Funds established as trusts in Canada.

36. An Affiliate is expected to be the general partner of each Future Top Fund structured as a limited partnership.

37. Each Future Top Fund will seek to achieve its investment objective by investing all or substantially all of its assets in one or more Underlying Fund.

The Initial Underlying Funds

38. The Initial Underlying Fund will be an open-ended limited partnership formed under the laws of the province of Manitoba. The general partner of the Initial Underlying Fund will be an Affiliate that is expected to be a corporation named Vision Opportunity Master Fund (GP) Inc., incorporated under the laws of the province of Ontario.

39. The Filer will be entitled to receive management fees with respect to one or more classes of securities of the Initial Underlying Fund. The performance distributions are expected to be calculated based on increases in the NAV of certain classes of securities of the Initial Underlying Fund. The general partner of the Initial Underlying Fund will be entitled to receive 0.01% of profits of, and incentive distributions from, the Initial Underlying Fund.

40. The investment objective of the Initial Underlying Fund will be to generate consistent favourable risk-adjusted total returns to investors with a focus on the real estate sector. The Initial Underlying Fund will invest predominantly in North American exchange-traded equity and debt securities.

41. The assets of the Initial Underlying Fund (and the assets of the Initial Top Funds only if the Initial Top Funds hold securities other than securities of the Initial Underlying Fund) will be held by a custodian that meets the qualifications of section 6.2 of NI 81-102 (for assets held in Canada) or a custodian that meets the qualifications of section 6.3 of NI 81-102 (for assets held outside Canada) except that the financial statements of the custodian may not be publicly available.

The Underlying Funds

42. Each Future Underlying Fund will be structured as a limited partnership, trust or corporation under the laws of the province of Manitoba, another jurisdiction of Canada, or a foreign jurisdiction.

43. Each Underlying Fund will be an investment fund under the Legislation.

44. No Underlying Fund will be a reporting issuer in any jurisdiction of Canada. Securities of each Underlying Fund will be offered for sale in Canada solely pursuant to exemptions from the prospectus requirement in NI 45-106.

45. No Underlying Fund will be a Top Fund.

46. An Affiliate is expected to be the general partner of each Future Underlying Fund formed as a limited partnership.

47. Each Underlying Fund may have separate investment objectives, strategies and restrictions.

48. The fee arrangements for the Future Underlying Funds will be substantially similar to those described above in respect of the Initial Underlying Fund.

49. The portfolio of each Underlying Fund will consist primarily of publicly traded securities. While an Underlying Fund is not, or will not be, restricted from purchasing and holding illiquid assets, the Filer or an Affiliate, manages or will manage the portfolio of each Underlying Fund to ensure there is sufficient liquidity to provide for redemptions of securities by securityholders of the Top Funds. Further, no Underlying Fund will hold more than 10% of its NAV in illiquid assets.

Fund-on-Fund Structure

50. In addition to creating a Fund-on-Fund Structure pursuant to the Reorganization, the Filer intends to set up future Fund-on-Fund Structures in which a Future Underlying Fund is the master fund and Future Top Funds are feeder funds investing in securities of the Underlying Fund.

51. A Fund-on-Fund Structure allows investors in a Top Fund to obtain exposure to the investment portfolio of the Underlying Fund and its strategies.

52. The primary purpose of the contemplated Fund-on-Fund Structures is to permit the Filer, or an Affiliate, to manage a single portfolio of assets in a single investment vehicle, the master fund, on a more efficient basis while accepting investments from both Canadian investors and investors in foreign jurisdictions, through one or more investment vehicles, feeder funds, that are designed to address the specific tax, securities and other legislation of each jurisdiction or type of investor.

53. Managing a single pool of assets provides economies of scale and allows a Top Fund to achieve its investment objectives in a cost efficient manner, can provide greater diversification for a Top Fund in particular asset classes and will not be detrimental to the interests of other security holders of the Underlying Funds.

54. Any investment by a Top Fund in an Underlying Fund will be aligned with the investment objectives, investment strategy, risk profile and other principal terms of the Top Fund.

55. An investment in an Underlying Fund by a Top Fund will be effected at an objective price.

56. A Top Fund will have the same valuation and redemption dates as the corresponding Underlying Fund.

Consent Relief

57. A person who is an officer or director, or both, of the Filer or an Affiliate, may be considered a responsible person of a Pooled Fund. Further, a person or company that is one or more of a partner, officer, or director of a Fund or the general partner of an Underlying Fund that is a limited partnership, may be an associate of a responsible person of an Underlying Fund. Consequently, in the absence of the Consent Relief, the Top Funds may be precluded from investing in their corresponding Underlying Funds, unless the specific fact is disclosed to security holders of the Top Fund and the written consent of the security holders of the Top Fund to the investment is obtained prior to the purchase.

Related Issuer Relief

58. Section 185(2)(b) of the Alberta Act prohibits a mutual fund from knowingly making an "investment" in a person or company in which the mutual fund, alone or together with one or more "related mutual funds" is a "substantial security holder", each such term as defined or interpreted in the Alberta Act. Section 185(3) of the Alberta Act prohibits a mutual fund, its management company and distribution company from knowingly holding certain investments, including an "investment" referred to in section 185(2)(b) of the Alberta Act.

59. The Top Funds will be "related mutual funds" under the Alberta Act by virtue of the common management by the Filer or an Affiliate. Further, the amounts invested from time to time in an Underlying Fund by an Alberta Top Fund, either alone or together with other Top Funds that are "related mutual funds", may exceed 20% of the outstanding voting securities of the Underlying Fund. As a result, each Alberta Top Fund could, either alone or together with other Top Funds that are "related mutual funds", become a "substantial security holder", as defined in the Alberta Act, of an Underlying Fund.

60. The shareholders, officers and directors of the Filer are not expected to have a "significant interest", as defined in the Alberta Act, in the Initial Underlying Fund at the time the Alberta Top Funds invest in the Initial Underlying Fund.

61. In the absence of the Related Issuer Relief, each Alberta Top Fund would be precluded from purchasing and holding securities of an Underlying Fund due to the investment restrictions contained in section 185 of the Alberta Act.

Inter-Fund Trades

62. The Filer wishes to be able to effect Inter-Fund Trades.

63. The Filer and its Affiliates offer or will offer discretionary portfolio management services to clients with a Managed Account.

64. Neither the Filer nor an Affiliate will engage in an Inter-Fund Trade in respect of a Managed Account unless:

    (a) the client wishing to receive discretionary investment management services pursuant to a Managed Account has entered into a written agreement appointing the Filer or its Affiliate to act as portfolio manager in connection with an investment portfolio of the client, with full discretionary authority to trade in securities for the Managed Account without obtaining the specific consent of the client to execute the trade; and

    (b) the client has provided written authorization to the Filer or its Affiliate, as applicable, as portfolio manager of the Managed Account, to engage in Inter-Fund Trades.

65. Each Inter-Fund Trade will be consistent with the investment objectives of the Pooled Fund or Managed Account, as applicable.

66. At the time of an Inter-Fund Trade, the Filer will have policies and procedures in place to enable the Pooled Funds and Managed Accounts to engage in Inter-Fund Trades.

67. Prior to carrying out any Inter-Fund Trade pursuant to the Requested Relief, the Filer will establish an IRC for the Pooled Funds to review and approve, including by way of standing instructions, any proposed Inter-Fund Trade involving a Pooled Fund.

68. The Filer will cause each Pooled Fund to have an IRC that meets the requirements of section 3.7 of NI 81-107. Each IRC will comply with the standard of care set out in section 3.9 of NI 81-107. The IRC of a Pooled Fund will not approve an Inter-Fund Trade unless it has made the determination set out in subsection 5.2(2) of NI 81-107.

69. When the Filer or an Affiliate engages in an Inter-Fund Trade, it will comply with the following procedures:

    (a) the portfolio manager will deliver the trading instructions for the Inter-Fund Trade to a trader on the trading desk of the Filer or an Affiliate;

    (b) the trader on the trading desk in executing the trade will comply with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107, except that, if the security traded is listed on a Canadian or foreign exchange, the trade may be executed at the Last Sale Price rather than the Closing Sale Price;

    (c) the policies applicable to the trading desk will require that all trades be executed on a timely basis; and

(d) the trader on the trading desk will advise the portfolio manager of the price at which the Inter-Fund Trade occurs.

70. If the IRC of a Pooled Fund becomes aware of an instance where the Filer did not comply with the terms of any decision document issued in connection with the Inter-Fund Trades, or a condition imposed by securities legislation or the IRC in its approval, the IRC of the Pooled Fund will, as soon as practicable, notify in writing the Decision Makers.

Inter-Fund Trading Relief

71. The Filer has determined that it is in the best interests of the Pooled Funds and the Managed Accounts to obtain the Inter-Fund Trading Relief.

72. The Filer has determined that because of the various investment objectives and investment strategies that are or will be utilized by the Pooled Funds and Managed Accounts, it may be appropriate for different investment portfolios to acquire or dispose of the same securities. The Filer has determined that engaging in these Inter-Fund Trades directly rather than with a third party has potential benefits such as lower trading costs, reduced market disruption and quicker execution. For example, such Inter-Fund Trades would enable the Pooled Funds and Managed Accounts to efficiently process trades desired by both portfolios at the current market price of the security without having to pay the costs of brokerage commissions, and may also enable the Pooled Funds and Managed Accounts to have access to securities that may be scarce in the open market (as may be the case for certain fixed income securities that have the characteristics sought by the Pooled Funds or Managed Accounts that they may not be otherwise able to access).

73. The Filer has also determined that the Inter-Fund Trading Relief would be beneficial because making the Pooled Funds and Managed Accounts subject to the same set of rules governing the execution of transactions will result in cost and timing efficiencies and in simplified and more reliable compliance procedures and simplified and more efficient monitoring of those procedures in connection with the execution of transactions.

74. The Filer believes it would be in the best interests of the Pooled Funds and Managed Accounts, as applicable, if an Inter-Fund Trade in an exchange-traded security could be made at the Last Sale Price prior to the execution of the trade, in lieu of the Closing Sale Price, in the Filer's discretion, as this will result in the trade being done at the price which is closest to the price at the time the decision to make the trade is made.

75. The Filer is or may be the trustee of a Pooled Fund formed as a trust and, as a result, is or will be an associate of such Pooled Fund. In the absence of the Inter-Fund Trade Relief the Filer, or an Affiliate, as applicable:

(a) is prohibited by subparagraph 13.5(2)(b)(ii) of NI 31-103 from effecting an Inter-Fund Trade with an associate; and

(b) is a responsible person prohibited by paragraph 13.5(2)(b)(iii) of NI 31-103 from effecting an Inter-Fund Trade.

76. The exception in section 6.1 of NI 81-107 for the Inter-Fund Trades is not available because that exemption requires each party to the transaction to be a reporting issuer and requires the Inter-Fund Trade to occur at the Closing Sale Price.

(a) None of the Existing Pooled Funds are reporting issuers and the Manager has no current intention of forming any Future Pooled Fund that will be a reporting issuer.

(b) In respect of exchange-traded securities, the Filer wants to effect the trade at the Last Sale Price.

Decision

Decision of the Decision Makers under the Legislation

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 Consent Relief, the Inter-Fund Trading Relief and the In Specie Relief is granted, provided as set out below:

1. In respect of the Consent Relief and In Specie Relief:

(a) securities of each Top Fund are distributed in Canada solely pursuant to exemptions from the prospectus requirement in NI 45-106;

(b) the investment by a Top Fund in an Underlying Fund is compatible with the investment objectives of the Top Fund;

(c) no Top Fund will purchase or hold securities of an Underlying Fund unless, at the time of the purchase of securities of the Underlying Fund, the Underlying Fund holds no more than 10% of its net assets in securities of other investment funds, excluding securities:

(i) of a "money market fund" (as defined by NI 81-102); and

(ii) that are "index participation units" (as defined by NI 81-102) issued by an investment fund;

(d) no management fees or incentive fees are payable by a Top Fund that, to a reasonable person, would duplicate a fee payable by an Underlying Fund for the same service;

(e) no sales fees or redemption fees are payable by a Top Fund in relation to its purchases or redemptions of securities of an Underlying Fund;

(f) neither the Filer, nor an Affiliate, causes the securities of the Underlying Fund held by a Top Fund to be voted at any meeting of holders of such securities, except that the Filer, or an Affiliate, may arrange for the securities the Top Fund holds of the Underlying Fund to be voted by the beneficial holders of securities of the Top Fund; and

(g) in respect of an existing investor in an Initial Top Fund, prior to the Reorganization, and in respect of other investors in a Top Fund, prior to making an investment in a Top Fund, the investor will be provided with a revised offering memorandum and disclosure:

(i) that the Top Fund may purchase securities of the Underlying Fund;

(ii) that the Filer, or an Affiliate, is the investment fund manager or portfolio manager of both the Top Fund and the Underlying Fund;

(iii) that the Top Fund will invest all of its assets in the Underlying Fund;

(iv) the fees, expenses and any performance or special incentive distributions payable by the Underlying Fund that the Top Fund invests in; and

(v) that the Filer, or an Affiliate, will provide to the investor, on request and free of charge, the annual and, if available, interim financial statements relating to the Underlying Fund in which the Top Fund invests its assets.

2. In respect of the In Specie Relief, prior to effecting the In Specie Transactions, the board of directors of the Filer determines that the Reorganization and In Specie Transactions are in the best interests of each Initial Top Fund and the Initial Underlying Fund.

3. In respect of the Inter-Fund Trading Relief:

(a) each Inter-Fund Trade is consistent with the investment objectives of the Pooled Fund or Managed Account, as applicable;

(b) the Filer, or an Affiliate, as manager of a Pooled Fund, refers the Inter-Fund Trade involving a Fund to the IRC of that Fund in the manner contemplated by section 5.1 of NI 81-107 and the Filer or Affiliate, and the IRC of the Fund comply with section 5.4 of NI 81-107 in respect of any standing instructions the IRC provides in connection with the Inter-Fund Trade;

(c) the IRC complies with paragraphs 69 and 71 of this Decision;

(d) in the case of an Inter-Fund Trade between Pooled Funds:

(i) the IRC of each Pooled Fund has approved the Inter-Fund Trade in respect of the Fund in accordance with the terms of subsection 5.2(2) of NI 81-107; and

(ii) the Inter-Fund Trade complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107 except that for purposes of paragraph (e) of subsection 6.1(2) of NI 81-107 in respect of exchange-traded securities, the current market price of the securities may be the Last Sale Price;

(e) in the case of an Inter-Fund Trade between a Managed Account and a Pooled Fund:

(i) the IRC of the Pooled Fund has approved the Inter-Fund Trade in respect of such Pooled Fund in accordance with the terms of subsection 5.2(2) of NI 81-107;

(ii) the client has authorized the Inter-Fund Trade as contemplated by paragraph 65 of this Decision; and

(iii) the Inter-Fund Trade complies with paragraphs (c) to (g) of subsection 6.1(2) of NI 81-107 except that for purposes of paragraph (e) of subsection 6.1(2) of NI 81-107 in respect of exchange-traded securities, the current market price of the securities may be the Last Sale Price.

Decision of principal regulator under the Alberta Act

The decision of the Principal Regulator under the Alberta Act is that the Related Issuer Relief is granted, provided that the same conditions set out above in respect of the Consent Relief also apply to the Related Issuer Relief.

"Tom Graham"
Director, Corporate Finance

2.2 Orders

2.2.1 Besra Gold Inc. – s. 144

Headnote

Section 144 – application for variation of cease trade order – issuer cease traded due to failure to file certain continuous disclosure documents required by Ontario securities law – issuer previously granted a partial revocation order to permit the issuer to proceed with a proposal under the Bankruptcy and Insolvency Actand to permit the issuer to proceed with a private placement, in connection with the proposal, with an accredited investor (as such term is defined under Ontario securities law) – issuer has applied for a variation of certain conditions of the partial revocation order – variation of partial revocation granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127, 144.

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

AND

IN THE MATTER OF
BESRA GOLD INC.

ORDER
(SECTION 144)

WHEREAS the securities of Besra Gold Inc. (the **Filer**) are subject to a temporary cease trade order made by the Director of the Ontario Securities Commission (the **Commission**) dated December 17, 2014 pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act and a further cease trade order issued by the Director of the Commission on December 29, 2014 pursuant to paragraph 2 of subsection 127(1) of the Act (together, the **Cease Trade Order**) directing that trading in securities of the Filer cease until further order by the Director;

AND WHEREAS by order dated October 14, 2016 the Commission granted the Filer a partial revocation of the Cease Trade Order pursuant to section 144 of the Act (the **Partial Revocation Order**) to permit trades and acts in furtherance of trades that are necessary for and are in connection with an amended proposal (the **Amended Proposal**) to creditors made by the Filer pursuant to the *Bankruptcy and Insolvency Act* (R.S.C. 1985, c. B-3) (the **BIA**) and in connection with a proposed financing (the **Proposed Exit Financing**) that will satisfy a condition of the completion of the transactions contemplated by the Amended Proposal;

AND WHEREAS the Filer has applied to the Commission pursuant to section 144 of the Act for a variation of the Partial Revocation Order;

AND WHEREAS the Filer has represented to the Commission that:

1. The Partial Revocation Order requires that prior to completing the Proposed Exit Financing the Filer will provide a copy of the Cease Trade Order and a copy of the Partial Revocation Order to each creditor of the Filer under the Amended Proposal (or such creditor's legal representative) and will obtain a signed and dated acknowledgement (a **CTO Acknowledgement**) from each creditor (or such creditor's legal representative) stating, among other things, that all of the Filer's securities, including the securities to be issued in connection with the Amended Proposal, will remain subject to the Cease Trade Order until it is revoked.

2. Creditors of the Filer that elect under the Amended Proposal to receive cash in settlement of their proven claims (each, a **Cash Electing Creditor** and, collectively, the **Cash Electing Creditors**) will not receive securities in settlement of their claim and the settlement of each such claim will not involve a "trade" (as such term is defined in the Act). However, the Partial Revocation Order may be interpreted to require the Filer to provide a copy of the Cease Trade Order and a copy of the Partial Revocation Order to each Cash Electing Creditor (or such creditor's legal representative) and to receive a CTO Acknowledgement from each Cash Electing Creditor (or such creditor's legal representative).

3. The Filer does not contemplate being able to close the transactions contemplated by the Amended Proposal concurrently with the closing of the Proposed Exit Financing.

4. Pursuant to the Amended Proposal, the Filer has up to forty-five (45) days from the implementation date of the Amended Proposal to deliver to the proposal trustee under the Filer's BIA proceedings the convertible notes, common shares and warrants issuable to creditors who are not Cash Electing Creditors. The Filer intends to obtain a CTO Acknowledgement from each creditor that is not a Cash Electing Creditor, on or prior to the date on which the Proposal Trustee distributes the Filer's securities, on the Filer's behalf, to such creditors. However, the Partial Revocation Order may be interpreted to require that the Filer receive all required CTO Acknowledgements prior to the completion of the Proposed Exit Financing.

5. A condition of the Amended Proposal is that an exit financing be completed on or before November 17, 2016. The Proposed Exit Financing will satisfy this condition, provided it is completed on or before November 17, 2016. However, the Partial Revocation Order would require the Filer to provide a copy of the Cease Trade Order and a copy of the Partial Revocation Order to each creditor under the Amended Proposal (or such creditor's legal representative), and receive a CTO Acknowledgement from each creditor under the Amended Proposal (or such creditor's legal representative) before completion of the Proposed Exit Financing. The Filer does not contemplate being able to obtain all required CTO Acknowledgements by the November 17, 2016 deadline.

6. The definition of "Proposed Investor" in the Partial Revocation Order refers only to Hedger Management SA. (**Hedger**). Pursuant to the financing commitment letter the Filer entered into with Hedger, Hedger is entitled to assign its rights thereunder. Hedger has advised the Filer that it intends to assign its rights to entities that are each an "accredited investor" (as such term is defined in the Act). However, the Partial Revocation Order may be interpreted to the effect that it does not apply to Hedger's assignees. Furthermore, the Partial Revocation Order listed the securities issuable under the Proposed Exit Financing as secured convertible notes, preferred shares or similar instruments ranking in preference to the Common Shares as well as warrants to purchase Common Shares. The terms of the Proposed Exit Financing will also include the issuance of Common Shares.

7. As a result of further negotiations between the Filer and Hedger, the Filer intends to reallocate the proceeds of the Proposed Exit Financing to allow for the repayment of the Filer's outstanding secured debt. In addition, Hedger has agreed to provide an additional committed tranche of $2,000,000 conditional on a full revocation of the Cease Trade Order and two subsequent tranches of $3,000,000 and $5,000,000, respectively, which subsequent tranches will be at the discretion of the Proposed Investor.

8. The Filer confirms the representations made to the Commission in connection with the Partial Revocation Order, except as expressly varied by this order.

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

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

IT IS ORDERED, pursuant to section 144 of the Act, that the Partial Revocation Order be varied to:

(a) delete paragraph 24 of the Partial Revocation Order and replace it with the following:

> "The Filer has entered into a commitment letter with Hedger Management SA pursuant to which Hedger Management SA or its assignees (each a **Proposed Investor**) may invest up to $20,000,000 by way of one or more of secured convertible notes, preferred shares or similar instruments ranking in preference to the Common Shares, or Common Shares as well as warrants to purchase Common Shares (the **Proposed Exit Financing**). The up to $20,000,000 proposed investment consists of a committed first tranche in the amount of $10,000,000 (the **Committed Tranche**), a subsequent committed tranche of $2,000,000 conditional on a full revocation of the Cease Trade Order and two subsequent tranches of $3,000,000 and $5,000,000, respectively, which subsequent tranches will be at the discretion of the Proposed Investor. The Filer will not close on any amounts under the Proposed Exit Financing unless the full Committed Tranche is received. The proposed valuation for the Proposed Exit Financing is such that a $15,000,000 investment is expected to result in the issuance on an as-converted basis of 50.1% of the Common Shares of the Filer post-issuance."

(b) delete paragraph 25 of the Partial Revocation Order and replace it with the following:

"The Filer intends to use the $10,000,000 from the Committed Tranche as follows:

Cash settlement in relation to the Amended Proposal	$2,200,000
Compliance, Audit and associated professional fees	$960,000
Bau Project & Malaysian costs	$650,000
Acquisition Payments for Bau Project	$1,250,000
Payment to suppliers, management and staff	$650,000
Repayment of Secured Debt (including interest)	$3,006,864
Ongoing Working Capital	$1,233,136
Applications to apply for a full revocation of all cease trade orders issued against the Filer	$50,000
Total	**$10,000,000**

"

(c) delete paragraph 27 of the Partial Revocation Order and replace it with the following:

"As described above, for creditors of the Filer who elect Option 1, Option 2 or Option 3 (each a **Securities Electing Creditor** and, collectively, the **Securities Electing Creditors**), the Amended Proposal when completed will involve the issuance to the Securities Electing Creditors of convertible notes (pursuant to Option 1 and Option 3) and Common Shares and warrants (pursuant to Option 2 and Option 3)."

(d) delete the order of the Partial Revocation Order commencing with "**IT IS ORDERED**" and ending with "90 days from the date hereof" and replace it with the following:

"**IT IS ORDERED**, pursuant to section 144 of the Act, that the Cease Trade Order be and is hereby partially revoked solely to permit trades and acts in furtherance of trades that are necessary for and are in connection with the Amended Proposal and the Committed Tranche of the Proposed Exit Financing and all other acts in furtherance of the Amended Proposal and the Committed Tranche of the Proposed Exit Financing that may be considered to fall within the definition of "trade" within the meaning of the Act, provided that:

(a) prior to the completion of the Committed Tranche of the Proposed Exit Financing, the Filer, or the Proposal Trustee on the Filer's behalf, will:

(i) provide a copy of the Cease Trade Order to each Proposed Investor;

(ii) provide a copy of this order to each Proposed Investor; and

(iii) obtain a signed and dated acknowledgement from each Proposed Investor clearly stating that all of the Filer's securities, including the securities to be issued in connection with the Proposed Exit Financing, will remain subject to the Cease Trade Order until it is revoked, and that the granting of this order does not guarantee the issuance of a full revocation order in the future;

(b) on or prior to the date on which the Proposal Trustee distributes the Filer's securities, on the Filer's behalf, to Securities Electing Creditors, the Filer, or the Proposal Trustee on the Filer's behalf, will:

(i) provide a copy of the Cease Trade Order to each Securities Electing Creditor or such creditor's legal representative;

(ii) provide a copy of this order to each Securities Electing Creditor or such creditor's legal representative; and

(iii) obtain signed and dated acknowledgements from each Securities Electing Creditor or such creditor's legal representative, clearly stating that all of the Filer's securities, including the

securities to be issued in connection with the Amended Proposal, will remain subject to the Cease Trade Order until it is revoked, and that the granting of this order does not guarantee the issuance of a full revocation order in the future;

(c) the Filer undertakes to make available copies of the signed and dated written acknowledgments referred to in paragraphs (a)(iii) and (b)(iii) above to staff of the Commission on request; and

(d) the order will terminate on the earlier of the completion of the Amended Proposal and 90 days from the date hereof."

DATED at Toronto, Ontario on this 16th day of November, 2016.

"Michael Balter"
Manager, Corporate Finance Branch
Ontario Securities Commission

2.2.2 AAOption et al.

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

AND

IN THE MATTER OF
AAOPTION,
GALAXY INTERNATIONAL SOLUTIONS LTD.
and DAVID ESHEL

ORDER

WHEREAS:

1. On October 26, 2016, Staff of the Ontario Securities Commission filed a Statement of Allegations seeking an order against AAOption, Galaxy International Solutions Ltd. and David Eshel (collectively, the "Respondents"), pursuant to subsections 127(1) and 127(10) of the Securities Act;

2. On October 28, 2016, the Commission issued a Notice of Hearing in respect of that Statement of Allegations, setting November 23, 2016 as the date of the hearing;

3. On November 16, 2016, Staff filed an affidavit of service sworn by Lee Crann on the same day, describing steps taken by Staff to serve the Respondents with the Notice of Hearing, Statement of Allegations and Staff's disclosure materials; and

4. On November 23, 2016, Staff appeared before the Commission and made submissions and the Respondents did not appear or make submissions;

IT IS ORDERED that the hearing in this matter is adjourned to December 7, 2016 at 3:00 p.m., or such further and other date as may be agreed to by the parties and set by the Office of the Secretary.

DATED at Toronto this 23rd day of November, 2016.

"Monica Kowal"
Vice-Chair

2.2.3 Garth H. Drabinsky et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
GARTH H. DRABINSKY,
MYRON I. GOTTLIEB AND
GORDON ECKSTEIN

ORDER
(Sections 127 and 127.1)

WHEREAS on February 20, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in relation to an Amended Statement of Allegations issued by Staff of the Commission ("Staff") regarding Garth H. Drabinsky, Myron I. Gottlieb and Gordon Eckstein (collectively, the "Respondents");

AND WHEREAS the Notice of Hearing stated that an initial hearing before the Commission would be held on March 19, 2013;

AND WHEREAS on March 19, 2013, the Commission convened a hearing and ordered that the matter be adjourned to a confidential pre-hearing conference on May 23, 2013;

AND WHEREAS on May 23, 2013, a confidential pre-hearing conference was held, at which counsel for Staff and counsel for each of the Respondents attended;

AND WHEREAS counsel for Drabinsky requested that a motion be scheduled respecting certain portions of Staff's Statement of Allegations (the "Motion") and a date for the motion was scheduled for July 10, 2013;

AND WHEREAS on July 2, 2013, counsel for Drabinsky communicated to the Commission that he would no longer be proceeding with the Motion;

AND WHEREAS on July 3, 2013, the Commission ordered that the July 10, 2013 Motion date be vacated;

AND WHEREAS on September 8, 2014, a confidential pre-hearing conference was held, at which counsel for Staff and counsel for each of the Respondents attended;

AND WHEREAS on September 8, 2014, the Commission ordered that:

1. A further confidential pre-hearing conference shall take place on December 2, 2014 at 3:00 p.m., or on such other date as may be ordered by the Commission;

2. A hearing shall commence on June 22, 2015 and continue on the following dates in June 2015:

23-26, 29-30, or on such other dates as may be ordered by the Commission;

3. Parties shall disclose any expert evidence according to the following schedule:

   a. Respondents shall identify any expert witness that they intend call and the subject of their testimony by March 9, 2015;

   b. Respondents shall serve any expert report(s) on Staff by April 8, 2015;

   c. Staff shall serve any expert response report(s) on the Respondents by May 8, 2015; and

   d. Respondents shall serve any expert reply report(s) on Staff by May 25, 2015;

4. Parties shall disclose witness lists and witness summaries by May 4, 2015; and

5. Parties shall serve and file hearing briefs by June 1, 2015;

AND WHEREAS on September 9, 2014, the Commission approved the settlement agreement reached between Staff and Gottlieb;

AND WHEREAS on December 2, 2014, a confidential pre-hearing conference was held, at which counsel for Staff, counsel for Drabinsky and counsel for Eckstein attended;

AND WHEREAS all parties agreed to adjourn the matter to a further confidential pre-hearing conference to be held at a later-scheduled date;

AND WHEREAS on April 7, 2015, a confidential pre-hearing conference was commenced, at which counsel for each of Staff, Drabinsky and Eckstein attended;

AND WHEREAS the confidential pre-hearing conference was continued on April 23 and May 6, 2015, and counsel for each of Staff and Drabinsky attended;

AND WHEREAS Drabinsky requested that the hearing scheduled in this matter be adjourned;

AND WHEREAS by Order dated May 22, 2015, the Commission approved the Settlement Agreement between Staff and Eckstein dated April 20, 2015;

AND WHEREAS on May 25, 2015, the Commission ordered that:

1. The hearing dates scheduled for June 22 to June 26, 2015 and June 29 to June 30, 2015 are vacated;

2. The hearing in this matter shall commence at 10:00 a.m. on January 21, 2016 and continue on January 22, January 25 to 29, 2016 and on February 19, 2016, or at such other time or times and on such other dates as may be ordered by the Commission;

3. A further confidential pre-hearing conference shall take place at 2:00 p.m. on September 24, 2015 or at such other time and on such other date as may be ordered by the Commission;

4. The parties shall disclose expert and/or industry practice evidence according to the following schedule:

   a. The parties shall identify the expert and/or industry practice witnesses they intend to call and the subject matter of their testimony by no later than 105 days prior to the commencement of the hearing;

   b. Each of the parties shall serve his or its expert report(s) on the other parties by no later than 75 days prior to the commencement of the hearing;

   c. Each of the parties shall serve his or its response report(s) on the other parties by no later than 45 days prior to the commencement of the hearing; and

   d. Each of the parties shall serve his or its reply report(s) on the other parties by no later than 30 days prior to the commencement of the hearing;

5. Each of the parties shall disclose his or its initial witness lists and witness summaries by no later than 60 days prior to the commencement of the hearing; and

6. Each of the parties shall serve his or its hearing brief materials by no later than 20 days prior to the commencement of the hearing;

AND WHEREAS on September 24, 2015, a confidential pre-hearing conference was held, at which counsel for Staff and counsel for Drabinsky attended;

AND WHEREAS at the confidential pre-hearing conference held on September 24, 2015, Drabinsky requested that the hearing scheduled in this matter be adjourned to a later date;

AND WHEREAS on September 29, 2015, the Commission ordered that:

1. The hearing dates scheduled for January 21 to January 22, January 25 to 29, and February 19, 2016 are vacated;

2. The hearing in this matter shall commence at 10:00 a.m. on June 20, 2016 and continue on June 21, June 24 to June 28, 2016 and July 19, 2016 or at such other time or times and on such other dates as may be ordered by the Commission;

3. A further confidential pre-hearing conference shall take place at 10:00 a.m. on February 22, 2016 or at such other time and on such other date as may be ordered by the Commission;

4. The parties shall disclose expert and/or industry practice evidence according to the following schedule:

   a. The parties shall identify the expert and/or industry practice witnesses they intend to call and the subject matter of their testimony by no later than 105 days prior to the commencement of the hearing;

   b. Each of the parties shall serve his or its expert report(s) on the other parties by no later than 75 days prior to the commencement of the hearing;

   c. Each of the parties shall serve his or its response report(s) on the other parties by no later than 45 days prior to the commencement of the hearing; and

   d. Each of the parties shall serve his or its reply report(s) on the other parties by no later than 30 days prior to the commencement of the hearing;

5. Each of the parties shall disclose his or its initial witness lists and witness summaries by no later than 60 days prior to the commencement of the hearing; and

6. Each of the parties shall serve his or its hearing brief materials by no later than 20 days prior to the commencement of the hearing.

AND WHEREAS on February 22, 2016, a confidential pre-hearing conference was held, at which counsel for Staff and counsel for Drabinsky attended;

AND WHEREAS at the confidential pre-hearing conference held on February 22, 2016, Drabinsky again requested that the hearing scheduled in this matter be adjourned to a later date;

AND WHEREAS on February 22, 2016, the Commission ordered that:

1. The hearing dates scheduled for June 20, June 21, June 24 to June 28, 2016 and July 19, 2016 are vacated;

2. The hearing in this matter shall commence at 10:00 a.m. on September 19, 2016 and continue on September 21 and 22, September 26 and 29, 2016 and October 19, 2016 or at such other time or times and on such other dates as may be ordered by the Commission;

3. A further confidential pre-hearing conference shall take place at 10:00 a.m. on June 20, 2016 or at such other time and on such other date as may be ordered by the Commission;

4. The parties shall disclose expert and/or industry practice evidence according to the following schedule:

   a. The parties shall identify the expert and/or industry practice witnesses they intend to call and the subject matter of their testimony by no later than 105 days prior to the commencement of the hearing;

   b. Each of the parties shall serve his or its expert report(s) on the other parties by no later than 75 days prior to the commencement of the hearing;

   c. Each of the parties shall serve his or its response report(s) on the other parties by no later than 45 days prior to the commencement of the hearing; and

   d. Each of the parties shall serve his or its reply report(s) on the other parties by no later than 30 days prior to the commencement of the hearing;

5. Each of the parties shall disclose his or its initial witness lists and witness summaries by no later than 60 days prior to the commencement of the hearing; and

6. Each of the parties shall serve his or its hearing brief materials by no later than 20 days prior to the commencement of the hearing.

AND WHEREAS Staff requested, on consent, that the pre-hearing conference scheduled to take place at 10:00 a.m. on June 20, 2016 be rescheduled to 11:00 a.m. on June 27, 2016;

AND WHEREAS on June 27, 2016, a confidential pre-hearing conference was held, at which Staff and counsel for Drabinsky attended;

AND WHEREAS at the confidential pre-hearing conference held on June 27, 2016, Drabinsky again requested that the hearing scheduled in this matter be adjourned to a later date;

AND WHEREAS Drabinsky continues to be subject to an interim undertaking made to the Director of

Enforcement of the Commission (the "Director") providing that, pending the conclusion of the Commission proceeding, he will not apply to become a registrant or an employee of a registrant or an officer or director of a reporting issuer without the express written consent of the Director or an order of the Commission releasing him from the undertaking;

AND WHEREAS Drabinsky continued to be subject to parole terms in effect until September 2016 (the "Parole Terms") which prohibited him from owning or operating a business or being in a position of responsibility for the management of finances or investments of any other individual, charity, business or institution, among other things;

AND WHEREAS upon expiry of the Parole Terms, and as a condition of the adjournment sought on June 27, 2016, Drabinsky agreed to the following terms until the conclusion of the Commission proceeding:

1. He will not own or operate a business; and

2. He will not be in a position that would entail the management, control or administration of finances or investments of any other individual, charity, business or institution;

AND WHEREAS on June 27, 2016, the Commission ordered that:

1. The hearing dates scheduled for September 19, 21, 22, 26 and 29, 2016 and October 19, 2016 are vacated;

2. The hearing in this matter shall commence at 10:00 a.m. on February 22, 2017 and continue on February 23, 24, 27 and 28, 2017 and March 10, 2017, each day commencing at 10:00 a.m., or at such other time or times and on such other dates as may be ordered by the Commission;

3. A further confidential pre-hearing conference shall take place at 10:00 a.m. on November 22, 2016 or at such other time and on such other date as may be ordered by the Commission;

4. The parties shall disclose expert and/or industry practice evidence according to the following schedule:

   a. The parties shall identify the expert and/or industry practice witnesses they intend to call and the subject matter of their testimony by no later than 105 days prior to the commencement of the hearing;

   b. Each of the parties shall serve his or its expert report(s) on the other parties by no later than 75 days prior to the commencement of the hearing;

   c. Each of the parties shall serve his or its response report(s) on the other parties by no later than 45 days prior to the commencement of the hearing; and

   d. Each of the parties shall serve his or its reply report(s) on the other parties by no later than 30 days prior to the commencement of the hearing;

5. Each of the parties shall disclose his or its initial witness lists and witness summaries by no later than 60 days prior to the commencement of the hearing; and

6. Each of the parties shall serve his or its hearing brief materials by no later than 20 days prior to the commencement of the hearing.

AND WHEREAS on November 22, 2016, a confidential pre-hearing conference was held, at which Staff and counsel for Drabinsky attended;

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

IT IS HEREBY ORDERED that:

A confidential pre-hearing conference shall take place at 8:30 a.m. on January 10, 2017 or at such other time and on such other date as may be ordered by the Commission.

DATED at Toronto this 22nd day of November, 2016.

"Christopher Portner"

2.2.4 Northquest Ltd. – s. 1(6) of the OBCA

Headnote

Applicant deemed to have ceased to be offering its securities to the public under the OBCA.

Applicable Legislative Provisions

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 1(6).

IN THE MATTER OF
THE BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990, c. B.16, AS AMENDED
(the OBCA)

AND

IN THE MATTER OF
NORTHQUEST LTD.
(the Applicant)

ORDER
(Subsection 1(6) of the OBCA)

UPON the application of the Applicant to the Ontario Securities Commission (the **Commission**) for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public;

AND UPON the Applicant representing to the Commission that:

1. The Applicant is an "offering corporation" as defined in the OBCA and has an authorized capital consisting of an unlimited number of common shares (**Common Shares**).

2. The head office of the Applicant is located at 50 Richmond Street East, Suite 101, Toronto, ON M5C1N7.

3. On October 14, 2016, the Applicant completed a statutory plan of arrangement (the **Arrangement**) under the OBCA, whereby all of the issued and outstanding Common Shares of the Applicant were acquired by Nord Gold SE (the **Purchaser**) for $0.26 in cash per Common Share and each outstanding warrant to acquire a Common Share was transferred to the Applicant and cancelled in exchange for $0.10 in cash. As a result, the Purchaser became the sole beneficial holder of all of the Common Shares.

4. As of the date of this decision, all of the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by a sole securityholder, the Purchaser.

5. On October 7, 2016, the Common Shares were delisted from the Quotation Board of the Frankfurt Exchange and on October 19, 2016, the Common Shares were delisted from the TSX Venture Exchange (**TSXV**).

6. No securities of the Applicant, including debt securities, are traded 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.

7. The Applicant is a reporting issuer in Ontario, British Columbia, Alberta, and New Brunswick (the **Jurisdictions**), and is not in default of any of securities legislation in any of the Jurisdictions.

8. On September 23, 2016 the Applicant made an application to the Ontario Securities Commission, as principal regulator, for a decision that the Applicant is not a reporting issuer in the Jurisdictions (the **Reporting Issuer Requested Relief**).

9. The Applicant has no intention to seek public financing by way of an offering of securities.

10. Upon the grant of the Reporting Issuer Requested Relief, the Applicant will not be a reporting issuer in any jurisdiction of Canada.

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

IT IS HEREBY ORDERED by the Commission pursuant to subsection 1(6) of the OBCA that the Applicant be deemed to have ceased to be offering its securities to the public for the purpose of the OBCA.

DATED at Toronto on this 1st day of November, 2016.

"Judith Robertson"
Commissioner
Ontario Securities Commission

"Garnet W. Fenn"
Commissioner
Ontario Securities Commission

2.2.5 IsoOre Ltd. – s. 1(6) of the OBCA

Headnote

Applicant deemed to have ceased to be offering its securities to the public under the Business Corporations Act (Ontario).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 1(6).

IN THE MATTER OF
THE BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990, c. B.16, AS AMENDED
(the OBCA)

AND

IN THE MATTER OF
ISOORE LTD.
(the Applicant)

ORDER
(Subsection 1(6) of the OBCA)

UPON the application of the Applicant to the Ontario Securities Commission (the **Commission**) for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public;

AND UPON the Applicant representing to the Commission that:

1. Effective October 13, 2016, Airesurf Networks Holdings Ltd. (**Airesurf**), IsoEnergy Ltd. (**IsoEnergy Ltd.**) and 2532314 Ontario Ltd. (**IsoEnergy Subco**), a wholly-owned subsidiary of IsoEnergy Ltd., completed a "three cornered amalgamation" (the **Amalgamation**) whereby Airesurf and IsoEnergy Subco amalgamated under the *Business Corporations Act* (Ontario). Following the Amalgamation, IsoEnergy Subco changed its name to IsoOre Ltd.

2. The Applicant is an "offering corporation" as defined in the OBCA, and has an authorized capital consisting of an unlimited number of common shares (**Common Shares**).

3. The head office of the Applicant, as of immediately prior to the Amalgamation, was located at 365 Bay Street, Suite 400, Toronto, Ontario, M5H 2V1.

4. Following the Amalgamation, and as of the date of the application, all of the outstanding securities of the Applicant, including debt securities, which are beneficially owned, directly or indirectly, are held by a sole securityholder, IsoEnergy Ltd.

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

6. The Applicant is a reporting issuer, or the equivalent, in the provinces of Ontario and Alberta (the **Jurisdictions**).

7. The Applicant is not in default of any requirement of the securities legislation in any of the Jurisdictions.

8. On November 8, 2016 the Applicant made an application to the Ontario Securities Commission, as principal regulator on behalf of the securities regulator authorities in the Jurisdictions, for a decision that the Applicant is not a reporting issuer in the Jurisdictions (the **Reporting Issuer Relief Requested**).

9. The Applicant has no intention to seek public financing by way of an offering of securities.

10. Upon the grant of the Relief Requested, the Applicant will not be a reporting issuer or equivalent in any jurisdiction of Canada.

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

IT IS HEREBY ORDERED by the Commission pursuant to subsection 1(6) of the OBCA that the Applicant be deemed to have ceased to be offering its securities to the public for the purpose of the OBCA.

DATED at Toronto on this 25th day of November, 2016.

"Deborah Leckman"
Commissioner
Ontario Securities Commission

"Christopher Portner"
Commissioner
Ontario Securities Commission

2.2.6 IsoOre Ltd.

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).

November 25, 2016

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

AND

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

AND

IN THE MATTER OF
ISOORE LTD.
(the Filer)

ORDER

Background

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

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

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

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta.

Interpretation

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

Representations

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

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

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

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Winnie Sanjoto"
Manager, Corporate Finance
Ontario Securities Commission

2.2.7 BW Park Place Limited Partnership – s. 1(10)(a)(ii)

Headnote

OSC Staff Notice 12-703 Applications for a Decision that an Issuer is not a Reporting Issuer – The issuer was only a reporting issuer in Ontario – 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).

November 25, 2016

BW Park Place Limited Partnership
1350 Plains Road West
Burlington, Ontario
L7T 1H6

Dear Sirs/Mesdames:

Re: BW Park Place Limited Partnership (the Applicant) – application for an order under subclause 1(10)(a)(ii) of the Securities Act (Ontario) (the Act) that the Applicant is not a reporting issuer

The Applicant has applied to the Ontario Securities Commission for an order under subclause 1(10)(a)(ii) of the Act that the Applicant is not a reporting issuer.

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

The Applicant has represented to the Commission that:

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

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

(c) the Applicant is not in default of securities legislation in any jurisdiction; and

(d) the Applicant will not be a reporting issuer in any jurisdiction of Canada immediately following the Director granting the relief requested.

The Director is satisfied that it would not be prejudicial to the public interest to grant the requested relief and orders that the Applicant is not a reporting issuer.

"Winnie Sanjoto"
Manager,
Corporate Finance
Ontario Securities Commission

2.2.8 HeartWare International, Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer was a "SEC foreign issuer" – The issuer filed a SEC Form 15 to terminate its registration and suspend reporting obligations – The issuer has outstanding notes held by less than 15 beneficial securityholders in each jurisdiction and less than 51 securityholders worldwide – The issuer has 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).

November 24, 2016

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

AND

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

AND

IN THE MATTER OF
HEARTWARE INTERNATIONAL, INC.
(the Filer)

ORDER

Background

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

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

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

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

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

1. The Filer is incorporated under the laws of the State of Delaware and has its head office at 500 Old Connecticut Path, Building A, Framingham, Massachusetts 01701.

2. The Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador. The Filer is not a reporting issuer in any other jurisdiction in Canada.

3. Filer is a "foreign reporting issuer" (as defined in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**)) that has a class of securities registered under Section 12 of the U.S. Securities Exchange Act of 1934, as amended (the **1934 Act**), and it is not registered or required to be registered as an investment company under the U.S. Investment Company Act of 1940, as amended. Accordingly, the Filer is an "SEC foreign issuer" as defined in NI 71-102.

4. As a result of being an SEC foreign issuer, the Filer is generally able to satisfy its continuous disclosure obligations in Canada by (i) filing documents with the Canadian securities regulatory authorities at the same time as, or as soon as practicable after, the filing or furnishing of those documents with the U.S. Securities and Exchange Commission (**SEC**), and (ii) sending documents to Canadian securityholders in the same manner and at the same time, or as soon as practicable after, those documents are sent to holders of securities of the same class under U.S. federal securities law, in each case in compliance with the requirements as set out in NI 71-102. In addition, the insider reporting requirement of Canadian securities legislation does not apply to an insider of the Filer if the insider complies with the requirements of U.S. federal securities law relating to insider reporting.

5. On August 23, 2016, Medtronic, Inc. (**Medtronic**) completed its acquisition of the Filer following a cash tender offer by Medtronic Acquisition Corp., a wholly-owned subsidiary of Medtronic, for all of the outstanding shares of common stock of the Filer (the **Common Stock**). On completion of the acquisition, the only beneficial holder of the Common Stock is Medtronic and the Filer ceased

to be a publicly traded company on the NASDAQ Stock Market LLC.

6. On September 2, 2016, the Filer filed SEC Form 15 (Certification and Notice of Termination of Registration Under Section 12(g) of the Securities Exchange Act of 1934 or Suspension of Duty to File Reports Under Sections 13 and 15(d) of the Securities Exchange Act of 1934) with the SEC. As a result, the Filer's duty to file reports under Sections 13 and 15(d) of the 1934 Act has been suspended and will terminate on December 1, 2016.

7. On September 27, 2016, following a repurchase offer by the Filer for all of its outstanding debt securities, no 1.75% Convertible Senior Notes due 2021 of the Filer remained outstanding and the number of beneficial holders, direct or indirect, of the Filer's 3.50% Convertible Senior Notes due 2017 were fewer than 15 in each of the jurisdictions of Canada and fewer than 50 in total worldwide.

8. The Filer's outstanding securities, 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.

9. The Filer has no current intention to seek public financing by way of an offering of its securities.

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

11. The Filer's securities, including debt securities, are not 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.

12. The Filer is not in default of securities legislation in any jurisdiction.

13. 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.

Order

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

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Winnie Sanjoto"
Manager, Corporate Finance
Ontario Securities Commission

2.2.9 CDCC – s. 147

Headnote

Application under section 147 of the Securities Act (Ontario) (Act) exempting The Canadian Derivatives Clearing Corporation (CDCC) from providing an annual written report to the Commission describing how CDCC is meeting its public interest responsibility as required in term and condition 3.1 of Schedule C to the Commission's recognition order issued under section 21.2 of the Act.

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

AND

IN THE MATTER OF
THE CANADIAN DERIVATIVES CLEARING CORPORATION

ORDER
(Section 147 of the Act)

WHEREAS the Ontario Securities Commission (**Commission**) issued an order dated April 8, 2014 (**OSC Recognition Order**), recognizing the Canadian Derivatives Clearing Corporation (**CDCC**) as a clearing agency pursuant to subsection 21.2(0.1) of the *Securities Act* (Ontario) (Act);

AND WHEREAS section 3.1 of Schedule C of the OSC Recognition Order requires CDCC to provide a written report to the Commission at least annually, or as required by the Commission, describing how it is meeting its public interest responsibility (**Reporting Requirement**);

AND WHEREAS CDCC is next required to comply with the Reporting Requirement by December 31, 2016;

AND WHEREAS CDCC has applied to the Commission for exemptive relief pursuant to section 147 of the Act from complying with the Reporting Requirement (**Application**);

AND WHEREAS CDCC has other requirements in the OSC Recognition Order and under securities legislation that requires CDCC to operate in the public interest;

AND WHEREAS based on the Application and the representations that CDCC has made to the Commission, the Commission has determined that it is not prejudicial to the public interest to exempt CDCC from complying with the Reporting Requirement;

IT IS HEREBY ORDERED that pursuant to section 147 of the Act, CDCC is exempted from the Reporting Requirement.

DATED this 25th day of November, 2016.

"Deborah Leckman"

"Christopher Portner"

2.2.10 Campar Capital Corporation

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).

November 29, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE JURISDICTION)

AND

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

AND

IN THE MATTER OF
CAMPAR CAPITAL CORPORATION
(THE FILER)

ORDER

Background

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

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

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

(b) the Filer has provided notice that sub-section 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta and British Columbia.

Interpretation

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

Representations

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

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

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

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Jo-Anne Matear"
Manager, Corporate Finance
Ontario Securities Commission

2.2.11 Starlight U.S. Multi-Family Core Fund

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).

November 29, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE JURISDICTION)

AND

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

AND

IN THE MATTER OF
STARLIGHT U.S. MULTI-FAMILY CORE FUND
(THE FILER)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Jo-Anne Matear"
Manager, Corporate Finance
Ontario Securities Commission

2.2.12 Starlight U.S. Multi-Family (No. 2) Core Fund

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).

November 29, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE JURISDICTION)

AND

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

AND

IN THE MATTER OF
STARLIGHT U.S. MULTI-FAMILY (NO. 2) CORE FUND
(THE FILER)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Jo-Anne Matear"
Manager, Corporate Finance
Ontario Securities Commission

2.2.13 Starlight U.S. Multi-Family (No. 3) Core Fund

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).

November 29, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE JURISDICTION)

AND

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

AND

IN THE MATTER OF
STARLIGHT U.S. MULTI-FAMILY (NO. 3) CORE FUND
(THE FILER)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Jo-Anne Matear"
Manager, Corporate Finance
Ontario Securities Commission

2.2.14 Starlight U.S. Multi-Family (No. 4) Core Fund

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).

November 29, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE JURISDICTION)

AND

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

AND

IN THE MATTER OF
STARLIGHT U.S. MULTI-FAMILY (NO. 4) CORE FUND
(THE FILER)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Jo-Anne Matear"
Manager, Corporate Finance
Ontario Securities Commission

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Edward Furtak et al. – s.127

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.

REASONS AND DECISION
(Section 127 of the Act)

Hearing:	May 9–13, 16, 18, 27 and 30, 2016 June 10, 2016 July 6 and 7, 2016 October 5 and 6, 2016		
Decision:	November 24, 2016		
Panel:	Janet Leiper	–	Chair of the Panel
	D. Grant Vingoe	–	Vice-Chair
	AnneMarie Ryan	–	Commissioner
Appearances:	Catherine Weiler Yvonne B. Chisholm Christina Galbraith	–	For Staff of the Commission
	Julia Dublin	–	For the Respondents

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REASONS AND DECISION

I. INTRODUCTION

[1] On March 30, 2015, Staff of the Ontario Securities Commission issued a Statement of Allegations pursuant to section 127 of the *Securities Act*[1] (the **Act**) against the Respondents. According to the Allegations, the Respondents variously violated Ontario securities laws by:

a. engaging in illegal distributions of securities, contrary to subsection 53(1) of the Act (all Respondents);

b. engaging in or holding themselves out as engaging in trading in securities without registration, contrary to subsection 25(1) of the Act (Lorne Allen, Strictrade Marketing Inc. (**SMI**), Edward Furtak, Axton 2010 Finance Corp. (**Axton**) and Strict Trading Limited (**STL**));

c. making misleading statements in contracts entered into with investors, contrary to subsection 44(2) of the Act (Furtak and STL);

d. violating several provisions of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (Trafalgar Associates Limited (**TAL**) and Ronald Olsthoorn);

e. failing to comply with Ontario securities laws as directors and officers, contrary to section 129.2 of the Act (Furtak, Olsthoorn and Allen);

[2] The Commission conducted a hearing into the merits of these Allegations over the course of 13 hearing days. Furtak and Olsthoorn attended and testified during the hearing. Allen did not appear, although he was represented at the hearing by counsel, as were the other Respondents.

[3] For the reasons that follow, we find that the allegations made by Staff have been established on a balance of probabilities, except for the allegation that Respondents Furtak and STL made misleading statements in contracts entered into with investors, contrary to subsection 44(2) of the Act.

II. BACKGROUND

A. The Strictrade Offering Components

[4] The Respondents marketed and sold the "Strictrade Offering,"[2] a package of agreements in which third parties purchased, and financed, licences of the Strictrade software, in $10,000 units, from Furtak's company, Axton. Participants received a licence certificate granting them the ability to use the Strictrade software "up to a maximum of $50,000 trading capital per $10,000 of License Fee." The purchase of the software licence was financed by Axton itself and purchasers signed a promissory note in favour of Axton for the purchase amount of the licences. Purchasers simultaneously contracted with another of Furtak's companies, STL, the "customer" who was intended to operate the software by trading futures contracts using the "trading report" instructions generated by the software.

[5] The contract with STL required that the software be operated outside of Canada. STL would operate the software at their premises and provide the computer equipment, internet connectivity and any third party software needed to operate the Strictrade software. STL would also install, operate and monitor the operation of the software and perform necessary upgrades.

[6] Purchasers were required to purchase a minimum licence unit valued at $10,000 and to pay 15% in fees in advance annually: interest on the purchase loan, at 9.5%, and a 1% loan maintenance fee paid to Axton and an annual 4.5% software "hosting fee" paid to STL. These fees and interest payments were payable in advance in respect of each succeeding year. No payment of the principal was included in these amounts.

[7] In return, purchasers received annual "trading report payments" based on STL's use of the software. Use of the software for this purpose meant the receipt of trading signals provided by the software, whether or not STL actually effected such trades. These were fixed returns ($1.00 per trade report to a maximum of $950 on a $10,000 investment, or 9.5%, to be increased by 4.25% of the previous year's amount in each succeeding year). The payments to participants were not due until the participants made their next year's advance payments of interest and fees, creating a lag between the payments made and income received by purchasers.

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1 RSO 1990, c S.5.

2 A diagram representing the Strictrade Offering is contained in Appendix A of these reasons.

[8] Purchasers did not share in any profits or losses as a result of the use of the trading software by STL. This was promoted as a benefit because only STL, the customer, would be exposed to market volatility and risk, or as one promotional slide put it:

> So Whether The Trading Manager Makes Money or Loses Money Trading In The Market … Your Business Earns Revenue!

[9] The annual fees and interest paid by the purchasers to Axton and STL exceeded the trading report payments the purchasers received (all purchasers uniformly received the contractual maximum) both because the purchasers were required to pay the amounts due from them a year in advance and because of the quantum of the interest and various fees payable.

[10] One additional payment to participants was possible under the agreement. Purchasers who remained in the program for five years were entitled to a "Software Performance Bonus." Although it was called a "Performance Bonus," it was not connected to trading performance. The Bonus was calculated as 60% of the trading report payments made to date. Payment of the Bonus would trigger the termination of the program.

[11] A $10,000 licence that earned the maximum $950 in annual trading report payments, with a 4.25% increase annually, held for five years, means that a participant would receive a Bonus equal to 60% of $5,171.28, or $3,102.77. This means that over the life of the program, such a participant would, assuming that the fifth year payment is made following the termination of the licence, receive revenue of $8,274.00 from the trading report payments and the Bonus.[3] This hypothetical licensee would pay STL and Axton a total of $7,500 over the term of the scheme, resulting in a gain of $774.04 after the Bonus payment is made and the licensee is out of the program.

[12] The marketing of the Strictrade Offering focused on the benefits to be had from deducting business costs and depreciation of the software, as well as potentially utilizing other tax deductions. These calculations were included in the spreadsheets Olsthoorn created to show to potential buyers. The promotional slides referred to the specific tax considerations and to the "AFTER TAX PROFIT" available to a person with a 40% tax rate.

B. The Strictrade Promoters

[13] On February 24, 1994, TAL was incorporated in Ontario. In August 2011, TAL was registered as an exempt market dealer. Olsthoorn owned 50% of TAL, and the other 50% was held by Trafalgar Securities Limited, another of Furtak's companies, making Furtak the 50% beneficial owner of TAL.

[14] Furtak founded Axton in 2010 and STL in 2012. Both were incorporated in the British Virgin Islands. Furtak developed the software that was the basis for the licences sold in the Strictrade Offering. He arranged for his business associates, Olsthoorn and Allen, to assist with the promotion of the Strictrade Offering beginning in 2012.

[15] During 2010 and 2011, Furtak, Olsthoorn and Allen developed the structure of the Strictrade Offering and planned a marketing strategy. Furtak drafted most of the agreements in consultation with a lawyer.

[16] On January 1, 2012, Allen incorporated SMI in Canada. SMI, Allen and Olsthoorn all received compensation for their marketing activities for the Strictrade Offering. Furtak testified that SMI was created to market the Strictrade Offering because the Respondents believed that they were not marketing a security. They said that they did not want to use TAL to market the Strictrade Offering because it was a registrant who was a named defendant in a class action suit, which could be discovered by a web search. The licensees were asked to make their cheques out to SMI for their first year's prepaid interest and loan maintenance fees.

[17] Allen, Axton, STL and SMI have never been registered with the Commission. Furtak was registered in 1992–1994 and was an approved shareholder of TAL, an exempt market dealer, since August 19, 2011. Furtak was not registered to sell securities during the Strictrade Offering marketing period.

[18] Olsthoorn was registered as the Ultimate Designated Person (UDP) and Chief Compliance Officer (CCO) of TAL.

C. The Marketing of the Strictrade Offering

[19] Beginning in January of 2012, Allen and Olsthoorn gave presentations on the Strictrade Offering to financial professionals in various cities across Canada. Olsthoorn also gave presentations in Las Vegas, United States. All told, Allen and/or Olsthoorn gave 43 group presentations to over 1,000 individuals between January 2012 and October 2013. Allen also gave 60–80 individual presentations to accountants, life insurance agents and mortgage brokers.

[3] The evidence was not entirely clear on this point; however we have assumed the payment of the fifth year is included in the bonus calculation, as this is the most favourable interpretation to the Respondents.

[20] The Respondents operated according to a Master Distributor Agreement between Axton and SMI, which provided for the payment of commissions and advances to SMI for the marketing of the Strictrade Offering. Axton agreed to fund the marketing by SMI through TAL, and when Olsthoorn began travelling to promote Strictrade, TAL paid his salary and expenses.

[21] Although Olsthoorn testified that TAL was not doing anything of significance in its marketing of the Strictrade Offering, TAL did the following:

a. shared its office space with SMI and Toronto Research and Trading, an entity that monitored the software for STL;

b. provided staff to do the bookkeeping and administrative paperwork for SMI including, corresponding with purchasers and arranging for trading report payments;

c. paid $328,000 to SMI in funds received from Axton to fund the marketing activities of SMI;

d. paid Olsthoorn's expenses and salary for travel to present the Strictrade Offering based on received expense forms; and

e. provided access to the TAL database of contacts for Olsthoorn's use in marketing the Strictrade Offering.

[22] The Panel was also presented with evidence that Olsthoorn's biography on the Pro-Seminars website noted him as "President of TAL" and as a "training and development specialist for distributors of Strictrade." Further, the agenda for a Pro-Seminar in August 2013 noted that Olsthoorn was from "Strictrade/Trafalgar Associates Limited" and would present an item entitled "Generating attractive net after-tax annual PROFITS for your client."

[23] The Respondents concede that no prospectus was filed or receipted. They assert that the Strictrade Offering did not involve the distribution of a security when marketed by Olsthoorn and others. As a result, the Respondents assert that TAL and/or Olsthoorn were right not to collect Know Your Client (**KYC**) information or to conduct a suitability assessment during the marketing of the Strictrade Offering. Olsthoorn testified that if he had done so, this would have been admitting that it was a security. He characterized the Strictrade Offering as an "alternative arrangement."

[24] Allen and Olsthoorn used slides and provided brochures to seminar attendees. A number of versions of the slides were filed at the hearing, all with essentially the same elements. The slides described the Strictrade Offering in terms that included:

> "an opportunity to start your own business using computerized Trading Software and to profit from volatility in the financial markets"

and

> "The Software is Hosted and Operated By a Professional Trading Manager – Insulating You From Any Market Volatility, Risk and Operations."

[25] The Strictrade software licence was described as the foundation of the "Strictrade Business Model." The business opportunity for using the licences had "two easy steps." The first step was to finance the purchase of the licences on the terms offered. The second step was to sublicense the software to the professional trading manager, STL. Essentially, Furtak inserted a group of purchasers between his company, Axton, and his other company, STL, to use software he had developed to generate trading instructions. No business reason was provided for Axton and STL needing to contract with third party purchasers of the licences.

1. The References in the Marketing Materials to the "Independent Software Valuation"

[26] In 2011, Furtak retained an accounting firm, Wise-Blackman, now MNP, to conduct a valuation of a software licence with associated agreements, in which participants would pay a monthly hosting fee and receive a share of the profits and losses traded using the software (the **2011 Valuation**).

[27] Furtak later used the results of this software licence valuation in the promotional materials developed for the Strictrade Offering. The presentation slides referenced an "Independent Software Valuation by Wise-Blackman now MNP," which the Respondents confirmed was the 2011 Valuation. A copy of the 2011 Valuation was not provided to prospective purchasers. The cover page of the 2011 Valuation was included in the promotional material, as was information about the credentials of the partners of MNP. One sentence was lifted from the body of the 2011 Valuation, which noted:

> Based on and subject to the foregoing analysis and comments, and as outlined in this report, the estimated Fair Market Value of the License at the Valuation Date was $10,800.

[28] The 2011 Valuation report filed at the hearing included an opinion on the estimated fair market value of a licence to use STRICT trading software, purchased under a Trading Software License Agreement. This was not the licence that participants in the Strictrade Offering purchased. The 2011 Valuation evaluated historical simulated data provided by management (Furtak), which showed profits from the trading software between 2002 and 2011. These profits ranged from a low of 6.54% in 2010 to a high of 41.24% in 2008. The 2011 Valuation was based on an allocation of monthly profit or loss to licensees, less a monthly trading fee. MNP relied on the data provided by Furtak and did not independently verify this data. It applied a discount to expected shares of profits based on the fact that simulated data had been provided. The underlying licences being valued involved a share in the expected profits. However, Furtak continued to update this valuation by adjusting only for trading signals that the software continued to generate, regardless of actual trading, without any change in assumptions and without any additional verification or updating by MNP. The updated valuations were nonetheless continuously published on STL's website. Such valuations purported to provide a termination price at which Axton would repurchase the licences if the licensee exited the program, although such commitment was entirely an unsecured obligation of Axton.

[29] The 2011 Valuation did not consider a licences agreement in which participants were insulated from profits or losses and were paid a fixed rate of return via trading report payments. It made no mention of a Software Performance Bonus. Furtak testified at first that the valuators were aware of the entire transaction and structure but later said that they must not have considered the STL Services and Trading Report Sales Agreement (**STL Services Agreement**) to be relevant.

[30] The 2011 Valuation report noted that the opinion had been requested "solely for internal purposes and for Axton's management's use in financial planning." Restrictions were placed on its general circulation and publication or reproduction in whole or in part without express written consent from MNP.

[31] Both Olsthoorn and Furtak agreed that the 2011 Valuation was included in the presentation materials to lend credibility to the offering and to assure purchasers that they were getting something of value. The "value" was also used to provide assurance that if any purchaser chose to leave the scheme, they could "sell back" their initial investment at the base amount paid in order to avoid a claim for the principal on their loans from Axton.

2. Anticipated Tax Consequences

[32] The role of tax deductions in generating profit appears on a number of the promotional slides. For example, on the "Business Opportunity" slides, the business is described as "Simple to Manage-Only Requires An Annual Tax Filing" and claims that it "produces personal tax benefits." Later on in the presentation, a slide titled "Tax Considerations for Your Small Business" provided three tax aspects: the depreciation on the computer software, the interest on the money borrowed and the hosting fees as business expenses.

[33] The promoters also described how the participants could generate income from the Strictrade Offering. Allen said that all the participants had to do was "file a tax return, that's it." Olsthoorn said that from a "hands-on perspective" all the investors had to do "physically" was to make their annual payments and file a tax return. This was consistent with the representations made in the slides used at the presentations, including statements such as "Strictrade Provides An Opportunity To Operate A Business – Trading Securities Without Any Personal Expertise Or Personal Time Commitment."

[34] The focus on the tax aspects of the scheme was necessary because there was little to be had in the way of profits from the enterprise for at least five years from the payments alone. It also necessitated the assurance that the "asset" at the core of the offering, the licence, had been independently valued. It had not. However, the evidence also demonstrated that any tax benefits were not generally worthwhile for those who were not in a 40% tax bracket.

[35] In an interview with Staff, Allen described the Strictrade Offering in these terms:

> It's complicated and very difficult for even accountants to understand. But once they get it, it's a wonderful program. That's why no one actually sold one other than myself and Mr. Olsthoorn. That's it. We had to do all the work. It was too complicated for individuals to do it on their own.

D. The Purchasers of the Strictrade Offering

[36] Five purchasers of the Strictrade Offering testified at the hearing. Two of them had already terminated their involvement in the scheme. The others continued to pay the annual fees and receive trading report payments.

[37] The participants all signed the package of agreements described above with STL being the software user. None of the participants had seen the software, operated the software or was put forward as being capable of operating the trading software.

[38] As for their understanding of the scheme from the presentations they attended, every participant was motivated by some form of income or return. Some took money from a registered retirement saving plan (**RRSP**) (a "strategy" discussed in the presentations) to finance their payments for the Strictrade Offering.

1. Geraldine O

[39] Geraldine O, a 59-year-old nurse, said that she had limited understanding of the financial world. She attended one of Allen's presentations at her accountant's office. Ms. O found the details of the Strictrade Offering complex to understand. She was reassured by the statements in the brochure, such as "recession-proof" and "low levels of personal risk." Ms. O and her sister Moira O each purchased licences. Ms. O financed her purchase by withdrawing $10,000 from her RRSP. Ms. O saw the Strictrade Offering as "an opportunity to invest in a piece of software and everything was taken care of by somebody else."

[40] Ms. O believed that her initial investment was the only payment required, in part because the brochure read "no additional capital requirements." When she later realized that the contracts required annual payments, Ms. O and her sister terminated their involvement in the scheme.

[41] Three years after making her initial investment of $10,000, Ms. O received her trading report payment of $6,650. She did not know if she received any tax benefits from the scheme. Moira O received $4,500 from her $7,500 investment. Neither was entitled to any Software Performance Bonus because they had not stayed in the scheme for five years.

2. David D

[42] David D is a 75-year-old grocery clerk with a "fair" knowledge of investments. He had investments in a number of companies and a net worth that qualified him as an accredited investor. Mr. D's accountant introduced him to Allen, who he described as someone knowledgeable about computers with a good investment. After spending time with Allen to discuss the Strictrade Offering, Mr. D paid $75,000 and signed the contracts.

[43] Mr. D understood the Strictrade Offering as "just give them the money and they looked after everything and it was a good investment." He has paid $75,000 annually since entering into the agreement in May 2012 and received back approximately $50,000 on the anniversary, or recently, much later than the anniversary. He also claimed a tax deduction for the payments made each year, which has not been challenged.

3. Daniel G

[44] Daniel G is a 60-year-old life insurance agent registered with the Financial Services Commission of Ontario. His annual income was approximately $25,000 per year. He heard about the Strictrade Offering at a Pro-Seminar session given by Olsthoorn in September 2012 in Cambridge, Ontario.

[45] Olsthoorn met with Mr. G after a seminar in London, Ontario, to discuss the Strictrade Offering. Olsthoorn provided a set of projections that demonstrated profitability for a person in a 40% tax bracket. According to Mr. G, he told Olsthoorn he made $25,000 and that Olsthoorn said that the Strictrade Offering would still be beneficial for a person in a 20% or 24% tax bracket.

[46] According to Olsthoorn, Mr. G did not tell him his income was $25,000. Olsthoorn also said that he did not collect KYC information or have Mr. G fill out a form that would have shown his income. Olsthoorn later said that he assumed Mr. G had other sources of income in addition to that of his business.

[47] Mr. G chose to invest because his mutual funds in his RRSPs were not bringing a sufficient return. He believed that the Strictrade Offering did not seem to have any risk and that there would be positive income at the end of the six years, a time frame he decided would fit with his retirement plans. He believed the Offering would function like an investment in a mutual fund, changing in value over time.

[48] Mr. G did not understand that he was financing a purchase, believing that his initial payment of $15,000 was the purchase of the licence outright. He also was not aware that he would be required to pay this amount every year, believing that the phrase on the brochure "no additional capital requirements" meant that from then on he would receive returns and the investment would "pay for itself."

[49] Mr. G has struggled to make the annual payments. He has reduced his RRSP by over one-third to make the ongoing payments and said at one point, "This is killing me." He discussed leaving the program, but Olsthoorn told him he might be denied his tax deductions if he terminated early.

[50] Mr. G continues to pay $15,000 annually, receiving back approximately $10,000 annually under the terms of the agreement. He testified that "it hasn't turned out to be a good financial decision."

4. Georgina F

[51] Georgina F is a 59-year-old financial planner, licensed to sell insurance and mutual funds. She described her investment knowledge as excellent. Ms. F is an accredited investor because she is a registrant. Ms. F attended a Pro-Seminar conference in September 2012, where she saw Olsthoorn give a slide presentation about the Strictrade Offering to a group of 50 people.

[52] Ms. F decided to purchase $50,000 in licences under the Strictrade Offering as a way of generating money for herself in retirement. She testified that she would not have bought it had she not thought it would be profitable. She reviewed the slides, visited the website and asked Olsthoorn questions. She consulted with her accountant who advised her about tax deductions that could relate to the Strictrade Offering.

[53] Ms. F paid $7,500 in upfront fees and interest in December 2012. She signed all the agreements, dealing with Allen and Judy Smyth, an employee of TAL. In July of 2014, Ms. F purchased an additional $50,000 licence, requiring an additional annual upfront payment of $7,500 per year. The second licence was sold two months after the Respondents advised Staff of the Commission that they had voluntarily suspended the sale of the Strictrade Offering.

[54] Ms. F described the Strictrade Offering as a business, but one that she would not have to run herself. She did not see the Strictrade software in operation or use the Strictrade software. Ms. O believed that STL was the professional trading manager who either found customers for her or purchased the trading instructions at the predetermined price. The licence was an asset that she was purchasing for "someone" to use. Ms. F has continued to make her annual payments and treats the licence as a business asset for tax purposes.

5. Edna K

[55] Edna K testified that she and her husband, Warren K, run a business purchasing and renting residential properties, along with a home-building business. She is a former mutual fund and life insurance sales licensee. In 2012, Olsthoorn made a Strictrade presentation at the office of a "tax shelter" person, who was known to Ms. K.

[56] Ms. K and her husband wanted to offset their income for 2012 to pay less tax. She also hoped that the Strictrade Offering would be profitable, although she could not recall the details of the Software Performance Bonus. She testified that she found the Strictrade Offering complicated and met with Olsthoorn a second time to ask questions and make sure that she and her husband could take tax deductions from the Offering in 2012. Although her accountant advised caution, she and her husband decided to proceed.

[57] Ms. K received a one-page marketing document that described the Strictrade Offering as a "self-sustaining business in a box," which she understood as saying that the business would pay for itself. Although she signed a sub-distributor agreement and received a commission for her own and her husband's licence purchase, Ms. K did not intend to become a distributor, as she found it "too complicated to offer to any other people." She understood it as a business that somebody else ran for you and in which she and her husband did not have to do any of the work involved.

[58] Ms. K and Mr. K bought a $100,000 licence each and made their first payment of $30,000 for the total first year's fees and interest. Ms. K did not understand how the Strictrade software worked, who was using it and what was being traded. When she received the Trading Report Summary, she recalled that the income was what she expected.

[59] Ms. K and Mr. K terminated their involvement after the first year. Their deduction was denied because they had not owned it for long enough to take the deduction. Under the terms of the agreement, Ms. K and Mr. K had to wait three years to receive their trading report payments. They each received a $9,500 cheque in 2016 for these payments, a total of $19,000 paid to them as a result of their involvement in the Strictrade Offering.

E. STL and the Use of the Trading Software

[60] In the STL Services Agreement entered into with each purchaser, STL agreed as follows:

> 7.3 Notwithstanding any other term of this Agreement, STL shall commence trading Contracts on its own account as of the Effective Date provided STL has received Trading Instructions, unless this Agreement is terminated.

[61] The first STL Services Agreement was entered into in June 2012 (Mr. D), followed by six more in December of 2012 (Mr. G, Ms. O and Moira O, Ms. K and Mr. K and Olsthoorn, one of the Respondents). However, difficulties in opening a brokerage account, apparently due to civil proceedings involving Furtak, Olsthoorn and companies connected to them as defendants, meant that STL did not have the ability to trade until November 2013, contrary to section 7.3 of the STL Services Agreement.

[62] Ultimately, when the brokerage account was opened in November of 2013, Axton provided funding for trading through a loan to STL. The loan agreement, which Furtak signed on behalf of Axton and STL, permitted loans of up to 5 million USD from Axton to STL for "investment purposes." On October 30, 2013, Axton transferred $44,000 from its account to STL's account, which STL in turn transferred to the brokerage account.

[63] By August 2014, all of the trading capital in the STL brokerage account was lost or spent on fees and commissions. In November 2014, additional funds were provided from SMI and Axton to STL, which were wired to the brokerage account.

III. ISSUES AND ANALYSIS

[64] The Respondents submit that the Strictrade Offering was a set of contracts that created a business, not a security. They argue that the Strictrade Offering falls outside the jurisdiction of the Act. Staff submits that the Strictrade Offering was an investment contract and thus is a security within the meaning of subparagraph 1(1)(n) the Act. Given that the rest of the allegations turn on whether or not the Strictrade Offering is a security, we consider that question first.

A. The Preliminary Issue: Did the Strictrade Offering Involve an Investment Contract?

1. The Test and the Principles

[65] The Act sets out a number of documents, agreements, certificates and other contracts that are defined as securities. Subparagraph 1(1)(n) includes "any investment contract." This term is not further defined in the legislation but has been the subject of substantial consideration by courts in Canada and the United States, as well as the Commission.

[66] Counsel agree that the leading test for "investment contract" in Canada is articulated in *Pacific Coast Coin Exchange v Ontario Securities Commission*, [1978] 2 SCR 112. These elements can be described as:

1. an investment of money,
2. with an intention or an expectation of profit,
3. in a common enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties,
4. whether the efforts made by those other than the investor are the undeniably significant ones – essential managerial efforts which affect the failure or success of the enterprise.

[67] The courts apply these elements to a given set of facts in the context of the purposes of the Act, which include the protection of the investing public. In *Pacific Coast Coin*, the Supreme Court of Canada considered substance over form as well as the economic realities of the enterprise (at 127).

[68] The Supreme Court in *Pacific Coast Coin* referred to *State of Hawaii, Commissioner of Securities v Hawaii Market Center, Inc.*, 485 P 2d 105 (1971), in which the Supreme Court of Hawaii articulated the risk capital approach to the definition of "investment contract":

> The salient feature of securities sales is the public solicitation of venture capital to be used in a business enterprise. … This subjection of the investor's money to the risks of an enterprise over which he exercises no managerial control is the basic economic reality of a security transaction.
>
> (at 109)

[69] Cases that have applied *Pacific Coast Coin* in subsequent years have involved schemes that related to trading in accounts held by promoters who argued that their fundraising efforts were not sales of securities. In *MP Global*

Financial Ltd. (Re) (2011), 34 OSCB 8897, the respondents raised funds from investors by selling debentures. The funds were to be used for forex trading, although the investors did not participate in the trading themselves. Investors received a flat interest rate regardless of the generation of profit. The respondents in *MP Global* argued that the investors did not share the risk and that the investors' fortunes were not "interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties." The Commission disagreed, finding that the debentures were investment contracts because the trading efforts were the underpinning of the scheme and the potential for profit was dependent on the success of the respondents at trading in foreign currency.

[70] Investment contracts have been found in Canadian and US cases in arrangements as diverse as:

a. investments in solar panels and small plots of land in England (*Energy Syndications Inc. (Re)* (2013), 36 OSCB 6500);

b. proprietary software that would generate profits based on volatility (*Axcess Automation LLC (Re)* (2012), 35 OSCB 9019);

c. fractional interests in death benefits of life insurance policies (*Universal Settlements International Inc. (Re)* (2006), 29 OSCB 7880);

d. payphones (*SEC v Edwards*, 540 US 389 (2004));

e. dental devices sold by the promoter under sales agency agreements (*SEC v Aqua-Sonic Products Corp.*, 687 F 2d 577 (2d Cir 1982)); and

f. an agreement to share in the ownership and revenue from blood alcohol testing machines in taverns (*R v Ausmus*, [1976] 5 WWR 105).

[71] In these cases, the promoters of the schemes had to do what was necessary to generate profits of the common enterprise that was the subject of contractual obligations among the parties. It did not matter whether there were fixed or variable returns (*Edwards*) or whether the investors had other opportunities to work with the underlying asset, where that was an unrealistic option (*Energy Syndications*; *Aqua-Sonic*).

B. The Application of the Test to the Strictrade Offering

[72] Staff argues that all four elements of the *Pacific Coast Coin* test apply to the Strictrade Offering. It submits that this is a classic example of an investment contract in that it was a package of agreements in which the investors were "entirely passive providers of capital, who funded an enterprise which was run entirely by the Respondents." Its structure as a licencing agreement does not insulate it from the substantive reality nor does its description by the promoters and some of the participants as a "business" and not an "investment." In identifying the issuer of the securities, Staff argues that the issuer consists of the parties to the key contracts, namely Axton and STL, and that the totality of these contractual arrangements constitutes the security in question.

[73] The Respondents submit that none of the elements of the *Pacific Coast Coin* test apply. The Respondents also urge the Commission to consider a different articulation of the *Pacific Coast Coin* test that would be easier to apply by business owners who may wish to consider whether or not a given scheme falls within the definition of an investment contract. They argue that this would avoid the potential for an overbroad application of the Act to legitimate business enterprises, which Laskin CJC cautioned against in his dissent in *Pacific Coast Coin*:

> It is easy, in a case like the present one, when faced with a widely-approved regulatory statute embodying a policy of protection of the investing public against fraudulent or beguilingly misleading investment schemes, attractively packaged, to give broad undefined terms a broad meaning so as to bring doubtful schemes within the regulatory authority. Yet if the Legislature, in an area as managed and controlled as security trading has deliberately chosen not to define a term which, admittedly, embraces different kinds of transactions, of which some are innocent, and prefers to rest on generality, I see no reason of policy why Courts should be oversolicitous in resolving doubt in enlargement of the scope of the statutory control.
>
> (at 117)

[74] The Respondents' alternative test has four questions:

1. How well does the form of business or investment relationship match the substance? Is there a business purpose to the business form?

2. Can the independent action of the party to the contract that is a putative investor materially affect its own commercial outcome?

3. Is the vulnerability of the putative investor solely attributable to the need for the other party to remain solvent in order to perform its obligations?

4. How are the purchasers approached?

[75] Counsel for the Respondents urges us to equate these policy questions to the test in *Pacific Coast Coin* and consider them as a preferred articulation of the test for a "business citizen." We considered this submission and have concluded that while some of these questions might well be relevant to the test, they cannot be meaningfully substituted for the Pacific Coast Coin test without changing the analysis in a way that the law does not contemplate. The policy questions would need to be asked within the framework set in place by the Supreme Court of Canada and applied in the numerous subsequent cases since *Pacific Coast Coin* was decided.

C. Application of the *Pacific Coast Coin* Test

1. Investment of Money

[76] Staff submits that the fact that investors paid money to the Respondents for the Strictrade Offering, by writing a cheque to SMI for the first year's interest and loan maintenance fees and the hosting fee owed to STL under the STL Services Agreement, equates to a finding that the investors invested money, a total of $513,000.00 in interest and fees, and that this represents the "investment of money."

[77] The Respondents argue that there was no "investment of money," but rather there was an agreement to purchase a limited use software licence at a fair market value, which could also be used to trade in the futures markets by the purchasers. They focus on the purposes for the "investment of money" versus the action of purchasers putting money into an enterprise.

[78] A plain reading of *Pacific Coast Coin* and other cases favour the straightforward question: Was there a payment? The purpose of the payment and aspects of the economic arrangements are addressed in the other elements of the test. In *Pacific Coast Coin*, the money was for purchases of silver coins, on margin or for cash. In *Hawaii*, purchasers paid money to become members of a store and were responsible for recruiting other members to buy interests in the store. In the Strictrade Offering, purchasers paid money for software licences. This part of the test is met because there was an investment of money.

2. With the Intention or Expectation of Profit

[79] Staff submits that the evidence of the investors demonstrates that each had an expectation of profit. Mr. G thought the Strictrade Offering would generate a profit he was not getting from his RRSPs, Ms. F believed she could earn "retirement income" and Ms. O testified, "I wanted to make some money if I could."

[80] The marketing materials emphasized the ability to reap "predictable after tax profits" from the Strictrade Offering in three ways: trading report payments, the Software Performance Bonus and tax deductions from the fees paid and depreciation of the software.

[81] The Respondents submit the case law is conflicting on whether or not the expectation of tax benefits forms part of the expectation of profit for purposes of the investment contract test. They point to cases that go both ways (*Kolibash v Sagittarius Recording Co.*, 626 F Supp 1173 (1986) and *Sunshine Kitchens v Alanthus Corporation*, 403 F Supp 719 (1975)) for the proposition that not all schemes will include tax benefits as part of the expected profits. *Kolibash* involved marketing in which the tax benefits represented a substantial inducement to enter into the contract. *Sunshine Kitchens* involved two counterparties where the complaining counterparty had specific expectations of the tax benefits that were personal to that counterparty.

[82] In *Kustom Design Financial Services Inc. (Re)*, 2010 ABASC 179, a decision of the Alberta Securities Commission, profit was found to include "all types of economic return, financial benefit or gain." The program in that case created a risk of financial loss, but this was sold as an overall benefit arising from potential tax advantages.

[83] The *Kustom Design* reasoning is applicable here given that the creation of the scheme, its marketing and the understanding of the various investors included the promise of profits that turned on the ability to secure favourable tax treatment by claiming expenses and depreciation. The model outlined in the Strictrade Offering meant that investors did not see a positive return unless they continued in the program for at least five years, at which point they would realize a small annual return on a completely unsecured investment only if they received the Performance Bonus. Thus, the only potential and meaningful "profits" from the Strictrade Offering were those resulting from tax deductions and depreciation.

[84] We prefer the reasoning in both *Kolibash* and *Kustom Design* in applying this part of the test. The marketing of the Strictrade Offering emphasized the role of tax benefits in profit to the participants, both in writing and during their evidence. The Respondents emphasized the need for participants to file a tax return. This was part of the expectation of profit on both sides of the transactions.

3. A Common Interwoven Enterprise with Passive Investors – Success is Dependent on the Effort of Others

[85] Staff argues that all of the investors were passive participants. None of them saw, used or received the trading software. None of the investors believed they had the knowledge to run the software. The presentations were consistent with this as well, including the slide that contained the representations that participants were insulated from any operations, the business required only an annual tax filing and the software required "no personal expertise whatsoever." Although a participant could have theoretically used the trading software, in reality, that was not the package sold to any participant, and none of them testified that they could have operated the software or were interested in doing so.

[86] The ability of the investors to earn any returns depended wholly on the companies set up by Furtak who were the counterparties to the various agreements. The obligation to pay the trading report payments and the Bonus fell with STL. STL lost money in its use of the trading software (taking into account both trading and liabilities in connection with the offering of the licences) and required intercompany loans from other companies owned and controlled by Furtak, including Axton. The returns to the licensees were based on unsecured promises from STL to pay, which in practice had to be supported by loans from other companies controlled by Furtak. Such support could have been withdrawn by Furtak at any time.

[87] Thus, the issuers of the investment contract consisted of Axton and STL. These companies provided the key contractual attributes of this common enterprise, and the investors were legally dependent on them for their promised returns.

[88] In contrast, the Respondents operated the technical, administrative and financial aspects of the enterprise, including:

a. hosting and operating the trading software;

b. monitoring the internet connection to access real time market data;

c. connecting additional software to serve as the interface between the Strictrade software and the brokerage account;

d. opening and funding a brokerage account;

e. generating the trading instructions to the participants;

f. making payments to the participants;

g. moving money from various corporate entities to enable the payments to the participants;

h. sending anniversary notices to the participants to ensure they made their annual payments; and

i. processing early terminations of participation.

[89] The Respondents argue that in the Strictrade Offering, the licensees were not merely passive investors. They said that participants controlled the number of licences purchased, the timing of the purchase, the decision to continue to stay in the scheme and when and how to claim their tax deductions. These actions can fairly be said to be a function of virtually any type of investment and are personal to each participant. None of these actions, taken individually, involved running the business at the heart of the Strictrade Offering. They are consistent with the choices and decisions made by a passive investor when purchasing any financial instrument (equity, bond, mutual fund) and are not, on their own, evidence of significant involvement in the "business" of the Strictrade Offering.

[90] Furthermore, the Respondents submit that the Panel ought to consider the impact a finding that the Strictrade Offering was a security may have on taxpayers. The fact that another body of law such as the *Income Tax Act*, in furthering other governmental objectives, allows for elections of this kind by a taxpayer and may characterize the licence as a business asset in determining the availability of these elections is not relevant to whether these arrangements constitute a "security" for purposes of the Act.

[91] We conclude that all of the elements of the *Pacific Coast Coin* test have been met by the evidence on a balance of probabilities. The investors were completely dependent on the promoters for the success of the enterprise, paid money into the enterprise and had an expectation of profit. The Strictrade Offering was an investment contract and was a security within the meaning of the Act. In conducting this analysis, we considered the third and fourth elements of the investment contract test together, as has been done in other decisions.

[92] The Respondents' final submission asked the Commission to find that the Strictrade Offering was not an investment contract due to the lack of any misconduct by the Respondents in marketing and creating the Offering. The Respondents characterize themselves as responsible promoters. They argue that this feature should "tip the scale" in favour of finding no investment contract in this case and that this application of the rule is in line with the caution articulated by Laskin CJC in his dissent in *Pacific Coast Coin*.

[93] Even if responsible promoter conduct is relevant to the investment contract test in *Pacific Coast Coin*, the evidence here does not support such a finding. The Strictrade Offering was a non-arm's length group of companies selling software licences of uncertain value. The scheme was marketed to participants in a way that made the structure and "business" operations difficult to understand. The slides used at the various presentations implied that there were profits, revenues and money involved. In one presentation, every slide contained an image of a puzzle piece with a dollar sign on it. Phrases, such as "Profit from Volatility in the markets," "Less than 15% of Managers and Brokers Beat the S&P Index" and "Equity Management Program Turn Strategies On and Off To Maximize Profits" suggest attractive returns from the Strictrade investment.

[94] The evidence establishes that the Respondents created a complicated structure that was not well understood by potential purchasers. The structure included an agreement for Axton to "loan" money to investors even though Axton actually did not have to provide any capital. There was no logical link between the amount of capital specified that could be used per licence to any actual trading leverage related to the STL trading account. Further, the use of the trading software produced the same trade reports for each licence holder. Thus, the "selling" of multiple licences, which produced the same reports to purchasers, enabled Axton and STL to have use of the licensees' capital for one year before any "trade report" payments were made.

[95] Participants did not understand that the deal promised little in the way of before tax profits or an independent source of income for the purchasers. Mr. G and Ms. O were surprised to find out that although the Strictrade Offering was described as "self-financing," they were required to make annual payments beyond the initial payment. Mr. G misunderstood that he was financing the purchase of the asset. The marketing materials, both the slides and the website, referred to the valuation of a differently structured licence to lend credibility and evidence of "intrinsic value" to this licence. This was misleading.

[96] Overall, we decline to find that this was a responsible business arrangement caught by an overbroad definition of investment contract. The Strictrade Offering has more in common with the type of investments described by Laskin CJC as "beguilingly misleading investment schemes, attractively packaged."

[97] In their submissions, the Respondents refer to Canadian and US case law that sets the framework for defining an "investment contract." They argue that "these broad tests are meant to catch novel avoidance schemes." The evidence in this case establishes that the Strictrade Offering was such a scheme.

[98] Having found that the Strictrade Offering was a security, it is necessary to consider the balance of the allegations and the evidence in support of those allegations.

D. Subsection 25(1): Did Furtak, Axton, STL, Allen and SMI Engage in the Business of Trading without Being Registered?

[99] The Act requires registration to ensure that those who engage in trading securities are solvent, knowledgeable and have the necessary integrity to properly deal with investors (*Limelight Entertainment Inc. (Re)* (2008), 31 OSCB 1727 at para 135). Registration is a key feature of the investor protection provisions within the Act.

[100] Furtak, Axton, STL, Allen and SMI were neither registered nor exempt from being registered. Each of them engaged in activities that meet the definition of trading as defined in the Act. Furtak, Axton and STL prepared and signed the

License, Credit and Services Agreements, marketed and sold the Strictrade Offering, used and directed investor funds and made trading report payments.

[101] SMI and Allen marketed and sold the Strictrade Offering to investors by arranging meetings with professionals, conducting public Pro-Seminars and handing out brochures. SMI and Allen sent out packages of signed agreements, annual renewal letters and trading report summaries. These activities were not those of a *bona fide* start-up business that, of necessity, must seek out additional funds to operate its business, as was the case in *Future Solar Development Inc. (Re)* (2016), 39 OSCB 4495. Instead, the Strictrade Offering involved the use of pre-existing software sought to be monetized by a salesforce that was motivated by the opportunity to earn commissions from the sale of securities.

[102] We find that the Respondents engaged in the business of trading securities, in the form of the Strictrade Offering. They formed companies to market and sell the Strictrade Offering to members of the public. They used a website, slides and brochures. They held numerous presentations to small and larger groups across Canada and in Las Vegas, United States. SMI was created to market the Strictrade offering. The active solicitation by Allen, the creation of the structure by Furtak and the role of the corporate entities in carrying out the Strictrade Offering were all features of the business of selling this security to the public.

[103] The Respondents have not relied on any exemption from registration, and there was no evidence tendered of any exemption. We find that the Respondents Furtak, Axton, STL, Allen and SMI breached subsection 25(1) of the Act.

E. Subsection 53(1): Did the Respondents Distribute a Security without Filing a Prospectus as Required?

[104] The prospectus requirement in the Act is another important aspect of investor protection. The receipt of prospectuses by the Commission to ensure compliance with disclosure to potential investors in accordance with the Act and regulations provides another layer of oversight in the market. Subsection 53(1) requires securities that have not previously been distributed to include a preliminary prospectus and a prospectus filed and receipted by the Director.

[105] Counsel for the Respondents submits that TAL was not involved in the Strictrade Offering; this was the reason for incorporating SMI, which had an agreement in place setting out its role in marketing the Strictrade Offering. In contrast, there was no such agreement in place for TAL. However, in the absence of any formal arrangement, TAL was an active participant in the Strictrade Offering. TAL provided administrative and bookkeeping services for the Offering through a TAL employee, acted as the funder of Allen's marketing services by making payments to Allen's numbered company, paid expenses for Olsthoorn's travel to present the Strictrade Offering, provided a database of contacts to whom Olsthoorn marketed the Strictrade Offering and allowed Olsthoorn to hold himself out as a TAL executive in his investor presentations.

[106] We find that in carrying out the various activities used to assist with the marketing of the Strictrade Offering, TAL acted in furtherance of trades.

[107] The Respondents acknowledged that no prospectus was filed, given their position that the Strictrade Offering was not a security. Having found that it was a security, the Respondents breached subsection 53(1) of the Act in distributing the Strictrade Offering without having filed a prospectus.

F. Subsection 44(2): Did Furtak and STL Make a Misrepresentation to the Investors in the STL Services Agreement?

[108] Staff alleged that Furtak and STL misrepresented to each investor that STL would begin trading using the software on the effective date of the agreement as signed. In fact, when the agreements were signed, there was no brokerage account yet opened, and it took months before it was opened and in place. Staff submits that this information would be relevant to a reasonable investor in deciding whether to enter into or maintain a trading relationship with Furtak and STL.

[109] Furtak testified that this was not a concern because the trading report payments were accounted for and made as if the trading had begun on the effective dates. The Respondents argue that this was not a misrepresentation but rather a failure to abide by the term of a contract.

[110] The term of each agreement that is alleged to be a misrepresentation reads:

> 7.3 Notwithstanding any other term of this Agreement, STL shall commence trading Contracts on its own account as of the Effective Date provided STL has received Trading Instructions, unless this Agreement is terminated.

[111] In addition to this term, there was a second term in the agreements that referred to the timing of the start of trading. Section 7.2 reads:

> 7.2 STL shall as soon as commercially practicable after the Effective Date, and subject to any trading capacity restrictions on the License, use the Trading Instructions to commence trading Contracts for its own account. STL shall, in its sole discretion, have the right to determine, within the limits of the License, the allocation and to set the quantum and level of margin (i.e., cash) and trading leverage in STL's Trading Account.

[112] Subsection 44(2) of the Act reads:

> No person or company shall make a statement about any matter that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with the person or company if the statement is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances in which it is made.

[113] Untrue statements have been found to breach this provision in circumstances where promoters included misleading, unsupported or inaccurate marketing materials to investors. In this case, Staff relies on the provisions of the contracts rather than the marketing information to support a finding of misrepresentation. The Respondents submit that a contractual term is not a statement and that a failure to comply would have remedies in contract. They also submit that sections 7.2 and 7.3, read together, are ambiguous as to the requirements of when the trading had to occur. Finally, given that the licensees had already decided to enter into the agreements, it could not be said that this term was relevant to their decision.

[114] A reasonable investor might well wonder why they were to receive payments for trading when their "customer" STL was neither trading until many months later nor generating any profits. The business motivations of the promoters in obtaining the funds, rather than the trading software (which they did not actually need participants to obtain since the software was controlled by Furtak), would have been highly relevant to an understanding of the nature of the scheme. The trade start delay would therefore be considered relevant. Certainly, it was to Ms. O, Mr. G and Ms. F, who all believed that the trading would begin right away. However, is section 7.3 of the agreement an untrue statement prohibited by subsection 44(2)?

[115] We agree with the Respondents that the terms of section 7.3 are an obligation rather than a representation. The relevant phrase is, "STL shall commence trading Contracts on its own account as of the Effective Date provided STL has received Trading Instructions." However, the wording in section 7.2, "as soon as commercially practicable," leaves the impression that there could be some leeway regarding the starting date for using the trading instructions. It is unclear why section 7.2 is included given that section 7.3 begins with "Notwithstanding any other term of this Agreement … ." These provisions describe STL's obligations. They do not constitute marketing or promotional materials intended to persuade investors to participate. The wording is not a clear inducement, and the combined impact of sections 7.2 and 7.3 creates some ambiguity.

[116] Accordingly, although there might well be situations where the nature of a contract or an agreement amounts to a misrepresentation under subsection 44(2), we decline to make such a finding on the facts in this case. The allegations under subsection 44(2) against Furtak and STL are dismissed.

G. Did Olsthoorn and TAL Fail to Meet their Obligations as Registrants?

[117] The Respondents TAL and Olsthoorn did not challenge the evidence that they did not meet their KYC, Know Your Product (**KYP**) or suitability obligations. We have found that the Strictrade Offering was a security and that TAL was involved in its distribution. Neither Olsthoorn nor TAL discharged their obligations, as set out in subsection 13.2(2) and section 13.3 of NI 31-103. As a registrant, Olsthoorn had an obligation in dealing with clients or potential clients to consider whether the investment was suitable for that individual, given his or her financial circumstances.

[118] In particular, Olsthoorn recommended to investors that they withdraw money from existing RRSPs to make their investments, suggesting that their earnings from Strictrade could earn more than the tax consequences of an RRSP withdrawal. One investor, Mr. G, withdrew funds from his RRSP and made payments to Strictrade amounting to more than 60% of his annual income. We accept Staff's submissions that the Strictrade Offering was unsuitable for this investor and that Olsthoorn failed to collect the necessary information. Rather, Olsthoorn told Mr. G that the Strictrade Offering would perform better than his RRSP and that there was little to no risk in using his funds to purchase the Offering.

[119] Olsthoorn testified that he suggested to investors that they speak with their accountants; however, this does not permit him to delegate his responsibility to satisfy suitability criteria, under section 13.3 of NI 31-103. As the seller of the

product, which investors described as difficult to understand, Olsthoorn bore the responsibility of determining its suitability for the potential purchasers.

[120] The KYC and suitability obligations in the Act require reasonable steps to ensure a registrant has sufficient information about investors, including investment needs and objectives, the client's financial circumstances and the client's risk tolerance. Olsthoorn testified that he refrained from collecting this information given his belief that the Strictrade Offering was not a security. In this sense, he preferred his own legal interests over the financial interests of the participants. Further, his lack of understanding of the features and nature of the Offering meant that he failed in his KYP obligations. This revealed a lack of proficiency and a failure of this obligation as required under NI 31-103.

H. Olsthoorn's UDP and CCO Obligations

[121] Olsthoorn, as the UDP and CCO of TAL, was required to:

> "Establish and maintain policies and procedures for assessing TAL's compliance with securities legislation, monitor and assess compliance by TAL and individuals acting on TAL's behalf"

and

> "Supervise the activities of TAL that were directed towards ensuring compliance with securities legislation, and to promote compliance by TAL and individuals acting on TAL's behalf with securities legislation."

[122] Olsthoorn failed to carry out these obligations in relation to TAL's involvement in the Strictrade Offering. We find that these allegations have been made out.

I. Did Furtak, Allen and Olsthoorn Authorize, Permit or Acquiesce in Non-compliance by their Companies of Securities Laws, Contrary to Section 129.2 of the Act?

[123] Furtak as an officer of Axton and STL, Allen as an officer and director of SMI and Olsthoorn as an officer and director of TAL, each authorized, permitted or acquiesced in their companies' non-compliance with Ontario securities laws. As a result, the allegations under section 129.2 of the Act have been made out on a balance of probabilities.

IV. PUBLIC INTEREST MANDATE: REMEDIAL PROVISIONS OF SECTION 127 OF THE ACT

[124] For the reasons stated above, we find that during the Material time:

a. Allen, SMI, Furtak, Axton and STL engaged in, or held themselves out as engaging in, the business of trading in securities without registration, contrary to subsection 25(1) of the Act;

b. all of the Respondents distributed securities when a preliminary prospectus and a prospectus had not been filed and a receipt had not been issued by the Director, contrary to subsection 53(1) of the Act;

c. Olsthoorn and TAL:

   i. failed to discharge their KYP obligation in respect of the Strictrade Offering and therefore breached their suitability obligations under sections 3.4 and 13.3 of NI 31-103; and

   ii. failed to take reasonable steps to collect sufficient information to determine whether the Strictrade Offering was suitable for investors, breaching their KYC and suitability obligations under sections 13.2 and 13.3 of NI 31-103;

d. Olsthoorn, as CCO and UDP of TAL:

   i. failed to fulfill his obligations as UDP of TAL to supervise the activities of TAL in order to ensure compliance with securities legislation by TAL and individuals acting on its behalf, and to promote compliance with securities legislation, contrary to section 5.1 of NI 31-103; and

   ii. failed to fulfill his obligations as CCO of TAL to monitor and assess compliance by TAL and individuals acting on its behalf with securities legislation, contrary to section 5.2 of NI 31-103;

e. Furtak, Olsthoorn and Allen, as directors and officers of Axton and STL (Furtak), TAL (Olsthoorn) and SMI (Allen) (the **Corporate Respondents**), authorized, permitted or acquiesced in the Corporate Respondents'

non-compliance with Ontario securities law, and accordingly are deemed to have failed to comply with Ontario securities law, pursuant to section 129.2 of the Act; and

f. the Respondents engaged in conduct contrary to the public interest.

[125] Section 127 of the Act permits the Commission to make orders where conduct is contrary to the public interest and harmful to the integrity of capital markets. A number of remedial options are available to the Commission to meet the protective and preventative purposes of the Act.

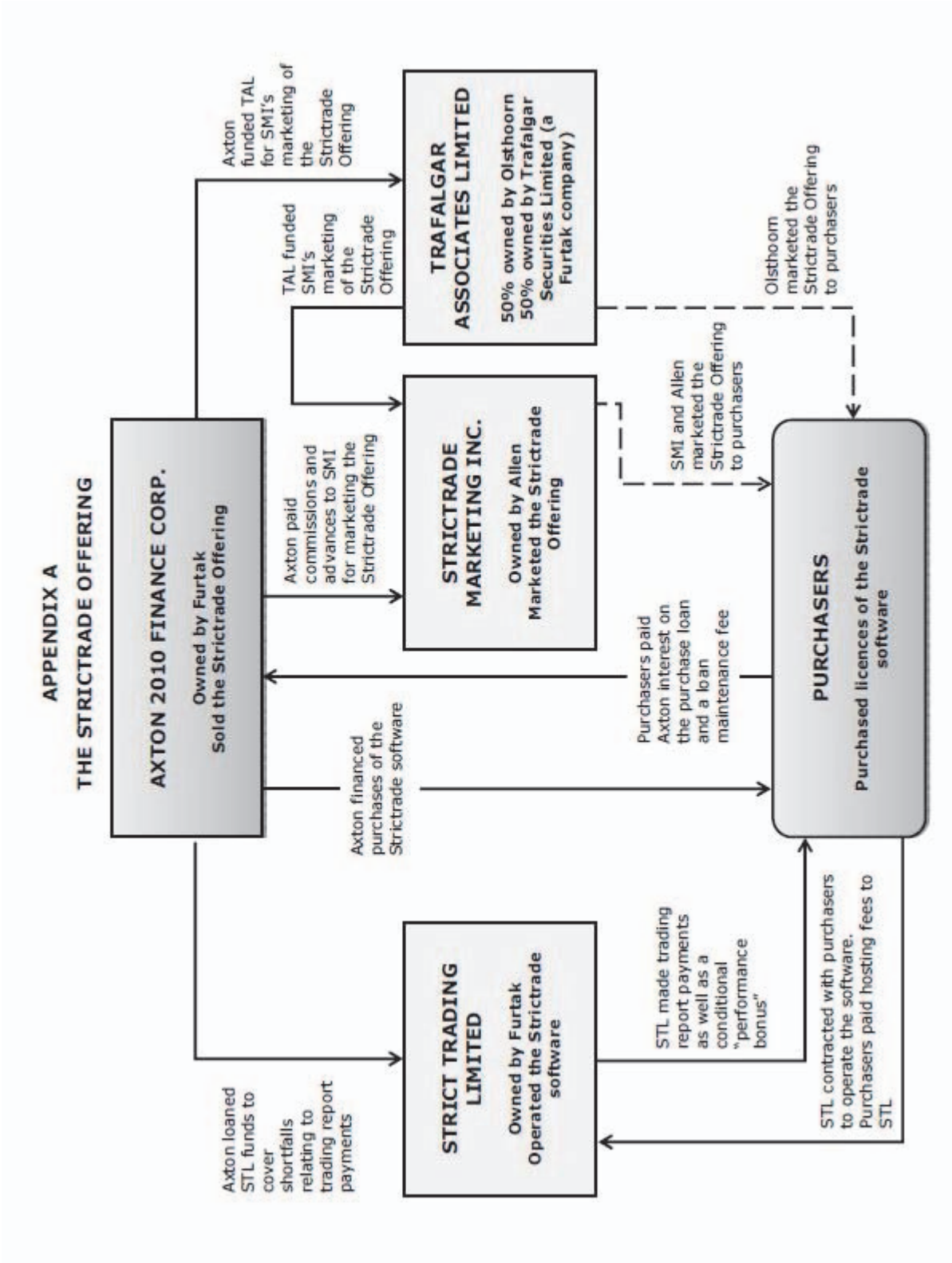
[126] We find that the public interest mandate of the Commission has been engaged by the evidence heard in this matter. Staff shall contact the Commission's Office of the Secretary, copying all parties, within 15 days of these Reasons and Decision to arrange dates for a hearing regarding sanctions.

Dated at Toronto this 24th day of November, 2016.

"Janet Leiper"

"D. Grant Vingoe"

"AnneMarie Ryan"


APPENDIX A
THE STRICTRADE OFFERING
AXTON 2010 FINANCE CORP.
Owned by Furtak
Sold the Strictrade Offering
TRAFALGAR ASSOCIATES LIMITED
50% owned by Olsthoorn
50% owned by Trafalgar Securities Limited (a Furtak company)
STRICTRADE MARKETING INC.
Owned by Allen
Marketed the Strictrade Offering
STRICT TRADING LIMITED
Owned by Furtak
Operated the Strictrade software
PURCHASERS
Purchased licences of the Strictrade software
Axton funded TAL for SMI's marketing of the Strictrade Offering
TAL funded SMI's marketing of the Strictrade Offering
Axton paid commissions and advances to SMI for marketing the Strictrade Offering
Olsthoorn marketed the Strictrade Offering to purchasers
SMI and Allen marketed the Strictrade Offering to purchasers
Purchasers paid Axton interest on the purchase loan and a loan maintenance fee
Axton financed purchases of the Strictrade software
Axton loaned STL funds to cover shortfalls relating to trading report payments
STL made trading report payments as well as a conditional "performance bonus"
STL contracted with purchasers to operate the software. Purchasers paid hosting fees to STL

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke

THERE IS NOTHING TO REPORT THIS WEEK.

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
DataWind Inc.	07 September 2016	25 November 2016
LiveReel Media Corporation	03 November 2016	22 November 2016

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Starrex International Ltd.	14 November 2016	25 November 2016		28 November 2016	

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
AlarmForce Industries Inc.	19 September 2016	30 September 2016	30 September 2016		
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		
Starrex International Ltd.	30 December 2015	11 January 2016	11 January 2016		
Starrex International Ltd.	14 November 2016	25 November 2016		28 November 2016	

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
407 International Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated November 28, 2016
NP 11-202 Preliminary Receipt dated November 28, 2016
Offering Price and Description:
$1,800,000,000.00
Medium-Term Notes (Secured)
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
CASGRAIN & COMPANY LIMITED
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
Promoter(s):
-
Project #2558444

Issuer Name:
Alignvest Acquisition Corporation
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated November 22, 2016
NP 11-202 Preliminary Receipt dated November 24, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
ALIGNVEST MANAGEMENT CORPORATION
Project #2556407

Issuer Name:
Baylin Technologies Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 22, 2016
NP 11-202 Preliminary Receipt dated November 22, 2016
Offering Price and Description:
$5,000,000.00 – * Common Shares
Price: $* per Common Share
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
Raymond James Ltd.
Promoter(s):
-
Project #2555534

Issuer Name:
Baytex Energy Corp.
Principal Regulator – Alberta
Type and Date:
Preliminary Short Form Prospectus dated
Received on November 22, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2555636

Issuer Name:
RBC Private U.S. Large-Cap Core Equity Currency Neutral Pool
RBC Private U.S. Large-Cap Core Equity Pool
Principal Regulator – Ontario
Type and Date:
Amendment #2 dated November 24, 2016 to Final Simplified Prospectus dated June 30, 2016
Received on November 24, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
Royal Mutual Funds Inc.
Royal Mutual Funds Inc./RBC Direct Investing Inc.
RBC Global Asset Management Inc.
Royal Mutual Funds Inc.
The Royal Trust Company
RBC Dominion Securities Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #2486611

Issuer Name:
Brookfield Business Partners L.P.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated November 22, 2016
NP 11-202 Preliminary Receipt dated November 23, 2016
Offering Price and Description:
US$1,000,000,000.00
Limited Partnership Units
Preferred Limited Partnership Units
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
Brookfield Asset Management Inc.
Project #2555710

Issuer Name:
CanniMed Therapeutics Inc.
Principal Regulator – Saskatchewan
Type and Date:
Preliminary Long Form Prospectus dated November 23, 2016
NP 11-202 Preliminary Receipt dated November 28, 2016
Offering Price and Description:
$ * – * Common Shares
Price: $ * per Common Share
Underwriter(s) or Distributor(s):
ALTACORP CAPITAL INC.
Promoter(s):
-
Project #2557942

Issuer Name:
Distinct Infrastructure Group Inc. (formerly QE2 Acquisition Corp.)
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 25, 2016
NP 11-202 Preliminary Receipt dated November 28, 2016
Offering Price and Description:
$10,000,001.00 – 7,407,408 Common Shares
Price: $1.35 per Common Share
Underwriter(s) or Distributor(s):
ALTACORP CAPITAL INC.
CANACCORD GENUITY CORP.
CORMARK SECURITIES INC.
HAYWOOD SECURITIES INC.
MACKIE RESEARCH CAPITAL CORPORATION
Promoter(s):
-
Project #2555391

Issuer Name:
Emera Incorporated
Principal Regulator – Nova Scotia
Type and Date:
Preliminary Short Form Prospectus dated
Received on November 28, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2559548

Issuer Name:
European Commercial Real Estate Limited
Type and Date:
Preliminary Long Form Prospectus dated November 24, 2016
Receipt dated November 24, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Thomas Schwartz
Phillip Burns
Project #2557078

Issuer Name:
Fortis Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated November 23, 2016
NP 11-202 Preliminary Receipt dated November 23, 2016
Offering Price and Description:
$5,000,000,000.00
COMMON SHARES
FIRST PREFERENCE SHARES
SECOND PREFERENCE SHARES
SUBSCRIPTION RECEIPTS
DEBT SECURITIES
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2556023

Issuer Name:
Horizons BetaPro S&P 500 VIX Short-Term Futures Bull Plus ETF
Principal Regulator – Ontario
Type and Date:
Amendment #2 dated November 21, 2016 to Final Long Form Prospectus dated December 22, 2015
Received on November 22, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Horizons ETFs Management (Canada) Inc.
Project #2419198

Issuer Name:
Horizons NYMEX® Natural Gas ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 dated November 21, 2016 to Final Long Form Prospectus dated July 7, 2016
Received on November 22, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
HORIZONS ETFs MANAGEMENT (CANADA) INC.
Project #2495615

Issuer Name:
IA Clarington Inhance Bond SRI Fund
Principal Regulator – Quebec
Type and Date:
Preliminary Simplified Prospectus dated November 21, 2016
NP 11-202 Preliminary Receipt dated November 22, 2016
Offering Price and Description:
Series B, Series E, Series F, Series FE and Series I Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
IA Clarington Investments Inc.
Project #2555118

Issuer Name:
IGM Financial Inc.
Principal Regulator – Manitoba
Type and Date:
Preliminary Shelf Prospectus dated November 21, 2016
NP 11-202 Preliminary Receipt dated November 22, 2016
Offering Price and Description:
$3,000,000,000.00
Debt Securities (unsecured)
First Preferred Shares
Common Shares
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2555128

Issuer Name:
Jet Metal Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Prospectus dated November 25, 2016
NP 11-202 Preliminary Receipt dated November 25, 2016
Offering Price and Description:
Minimum Offering: $6,000,000.00 – 20,000,000 Subscription Receipts
Maximum Offering: $9,999,999.90 – 33,333,333 Subscription Receipts
Price: $0.30 per Subscription Receipt
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:
Mackenzie Canadian Growth Fund
Mackenzie Canadian Large Cap Dividend & Growth Fund
Mackenzie Global Concentrated Equity Fund
Principal Regulator – Ontario
Type and Date:
Amendment #2 dated November 23, 2016 to Final Simplified Prospectus dated September 29, 2016
Received on November 24, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd.
LBC Financial Services Inc
LBC Financial Services Inc.
Promoter(s):
Mackenzie Financial Corporation
Project #2516157

Issuer Name:
Marquis Balanced Class Portfolio
Marquis Balanced Growth Class Portfolio
Marquis Balanced Growth Portfolio
Marquis Balanced Income Portfolio
Marquis Balanced Portfolio
Marquis Equity Portfolio
Marquis Growth Portfolio
Marquis Institutional Balanced Growth Portfolio
Marquis Institutional Balanced Portfolio
Marquis Institutional Bond Portfolio
Marquis Institutional Canadian Equity Portfolio
Marquis Institutional Equity Portfolio
Marquis Institutional Global Equity Portfolio
Marquis Institutional Growth Portfolio
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated November 25, 2016
NP 11-202 Receipt dated November 25, 2016
Offering Price and Description:
Series A, E, F, G, I, T, O and V @ Net Asset Value
Underwriter(s) or Distributor(s):
1832 ASSET MANAGEMENT L.P.
1832 Asset Management L.P.
Promoter(s):
1832 ASSET MANAGEMENT L.P.
Project #2542470

Issuer Name:
Mackenzie Canadian Growth Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 dated November 23, 2016 to Final Simplified Prospectus dated November 11, 2016
Received on November 24, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd.
Promoter(s):
Mackenzie Financial Corporation
Project #2538654

Issuer Name:
Opsens Inc.
Principal Regulator – Quebec
Type and Date:
Preliminary Short Form Prospectus dated November 22, 2016
Received on November 22, 2016
Offering Price and Description:
$10,000,000.00 (the "Maximum Offering") – A maximum of * Common Shares
Price of $ * per Common Share
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
RBC Dominion Securities Inc.
M Partners Inc.
Promoter(s):
-
Project #2555426

Issuer Name:
Opsens Inc.
Principal Regulator – Quebec
Type and Date:
Amened and Restated Preliminary Short Form Prospectus dated November 23, 2016
NP 11-202 Preliminary Receipt dated November 23, 2016
Offering Price and Description:
Maximum Offering: approximately $13,000,500.00 – A maximum of 8,667,000 Common Shares
Price of $1.50 per Common Share
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
RBC Dominion Securities Inc.
M Partners Inc.
Promoter(s):
-
Project #2555426

Issuer Name:
Phillips, Hager & North U.S. Equity Fund
Phillips, Hager & North Currency-Hedged U.S. Equity Fund
Phillips, Hager & North U.S. Growth Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 dated November 24, 2016 to Final Simplified Prospectus dated June 30, 2016
Received on November 25, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
RBC Global Asset Management Inc.
Project #2485604, 2485597

Issuer Name:
Prairie Provident Resources Inc.
Principal Regulator – Alberta
Type and Date:
Amened and Restated Preliminary Short Form Prospectus dated November 25, 2016
NP 11-202 Preliminary Receipt dated November 25, 2016
Offering Price and Description:
Up to $300,000 – Up to 375,000 CDE Flow-Through Shares
Price: $0.80 per CDE Flow-Through Share
and
Up to $5,000,000 – Up to 5,882,353 CEE Flow-Through Shares
Price: $0.85 per CEE Flow-Through Share

Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Industrial Alliance Securities Inc.
Promoter(s):
-
Project #2555393

Issuer Name:
Savanna Energy Services Corp.
Principal Regulator – Alberta
Type and Date:
Preliminary Short Form Prospectus dated November 28, 2016
NP 11-202 Preliminary Receipt dated November 28, 2016
Offering Price and Description:
$18,850,000.00 -13,000,000 Common Shares
Price: $1.45 per Common Share

Underwriter(s) or Distributor(s):
Peters & Co. Limited
TD Securities Inc.
Altacorp Capital Inc.
HSBC Securities (Canada) Inc.
National Bank Financial Inc.
Raymond James Ltd.
Scotia Capital Inc.
Promoter(s):
-
Project #2555670

Issuer Name:
SOLEIL CAPITAL CORP.
Principal Regulator – British Columbia
Type and Date:
Preliminary CPC Prospectus dated November 23, 2016
NP 11-202 Preliminary Receipt dated November 24, 2016
Offering Price and Description:
Minimum Offering: $500,000.00 – 5,000,000 Common Shares
Maximum Offering: $1,000,000.00 -10,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
INDUSTRIAL ALLIANCE SECURITIES INC.
Promoter(s):
Michael Thomson
Project #2556334

Issuer Name:
Spartan Energy Corp.
Principal Regulator – Alberta
Type and Date:
Preliminary Short Form Prospectus dated November 23, 2016
NP 11-202 Preliminary Receipt dated November 23, 2016
Offering Price and Description:
$250,050,000.00 – 83,350,000 Subscription Receipts each representing the right to receive one Common Share
Price: $3.00 per Subscription Receipt
Underwriter(s) or Distributor(s):
PETERS & CO. LIMITED
TD SECURITIES INC.
GMP SECURITIES L.P.
MACQUARIE CAPITAL MARKETS CANADA LTD.
CORMARK SECURITIES INC.
DESJARDINS SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
DUNDEE SECURITIES LTD.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
CLARUS SECURITIES INC.
ALTACORP CAPITAL INC.
PARADIGM CAPITAL INC.
Promoter(s):
-
Project #2554246

Issuer Name:
TD Managed Aggressive Growth ETF Portfolio
TD Managed Balanced Growth ETF Portfolio
TD Managed Income & Moderate Growth ETF Portfolio
TD Managed Income ETF Portfolio
TD Managed Maximum Equity Growth ETF Portfolio
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated November 24, 2016
NP 11-202 Preliminary Receipt dated November 24, 2016
Offering Price and Description:
D-Series Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
TD Asset Mangement Inc.
Project #2556889

Issuer Name:
Aphria Inc. (formerly, Black Sparrow Capital Corp.)
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated November 24, 2016
NP 11-202 Receipt dated November 24, 2016
Offering Price and Description:
$35,000,000 – 8,750,000 Common Shares, at a price of $4.00 per Offered Share
Underwriter(s) or Distributor(s):
CLARUS SECURITIES INC.
CORMARK SECURITIES INC.
MACKIE RESEARCH CAPITAL CORPORATION
HAYWOOD SECURITIES INC.
SPROTT PRIVATE WEALTH LP
Promoter(s):
COLE CACCIAVILLANI
JOHN CERVINI
Project #2551906

Issuer Name:
Brand Leaders Plus Income ETF
Energy Leaders Plus Income ETF
Healthcare Leaders Income ETF
US Buyback Leaders ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 dated November 18, 2016 to Final Long Form Prospectus dated October 14, 2016
NP 11-202 Receipt dated November 23, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Harvest Portfolios Group Inc.
Project #2536861

Issuer Name:
Counsel Income Managed Portfolio
Counsel Regular Pay Portfolio
Principal Regulator – Ontario
Type and Date:
Amendment #1 dated November 21, 2016 to Final Simplified Prospectus dated October 28, 2016
NP 11-202 Receipt dated November 28, 2016
Offering Price and Description:
Series A, B, D, DT, I, IT and T securities @ Net Asset Value
Underwriter(s) or Distributor(s):
none
Promoter(s):
Counsel Portfolio Services Inc.
Project #2534094

Issuer Name:
Desjardins Canadian Equity Fund
Principal Regulator – Quebec
Type and Date:
Final Simplified Prospectus, Annual Information Form and Fund Facts (NI 81-101) dated November 18, 2016
NP 11-202 Receipt dated November 24, 2016
Offering Price and Description:
A-, I-, C- and F-Class Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Desjardins Investments Inc.
Project #2538851

Issuer Name:
DMP Power Global Growth Class
DMP Resource Class
DMP Value Balanced Class
Dynamic Advantage Bond Class
Dynamic Advantage Bond Fund
Dynamic Alternative Yield Class
Dynamic Alternative Yield Fund
Dynamic American Value Class
Dynamic American Value Fund
Dynamic Aurion Tactical Balanced Class
Dynamic Aurion Total Return Bond Class
Dynamic Aurion Total Return Bond Fund
Dynamic Blue Chip Balanced Fund (formerly Dynamic Focus+ Balanced Fund)
Dynamic Blue Chip Equity Fund (formerly Dynamic Focus+ Equity Fund)
Dynamic Blue Chip U.S. Balanced Class (formerly Dynamic Blue Chip Balanced Class)
Dynamic Canadian Asset Allocation Class (formerly Dynamic Income Growth Opportunities Class)
Dynamic Canadian Bond Fund (formerly Dynamic Income Fund)
Dynamic Canadian Dividend Fund
Dynamic Canadian Value Class
Dynamic Corporate Bond Strategies Class
Dynamic Corporate Bond Strategies Fund
Dynamic Credit Spectrum Fund (formerly Dynamic High Yield Credit Fund)
Dynamic Diversified Real Asset Fund
Dynamic Dividend Advantage Class
Dynamic Dividend Advantage Fund (formerly Dynamic Dividend Value Fund)
Dynamic Dividend Fund
Dynamic Dividend Income Class
Dynamic Dividend Income Fund
Dynamic Dollar-Cost Averaging Fund
Dynamic EAFE Value Class
Dynamic Emerging Markets Class
Dynamic Energy Income Fund (formerly Dynamic Focus+ Energy Income Trust Fund)
Dynamic Equity Income Fund (formerly Dynamic Focus+ Diversified Income Fund)
Dynamic European Value Fund
Dynamic Far East Value Fund
Dynamic Financial Services Fund (formerly Dynamic Focus+ Wealth Management Fund)
Dynamic Global All-Terrain Fund
Dynamic Global Asset Allocation Class
Dynamic Global Asset Allocation Fund (formerly Dynamic Global Value Balanced Fund)
Dynamic Global Balanced Fund
Dynamic Global Discovery Class
Dynamic Global Discovery Fund
Dynamic Global Dividend Class (formerly Dynamic Global Dividend Value Class)
Dynamic Global Dividend Fund (formerly Dynamic Global Dividend Value Fund)
Dynamic Global Equity Fund
Dynamic Global Equity Income Fund
Dynamic Global Infrastructure Class
Dynamic Global Infrastructure Fund
Dynamic Global Real Estate Fund (formerly Dynamic Focus+ Real Estate Fund)
Dynamic Global Strategic Yield Fund
Dynamic Global Value Class
Dynamic Global Value Fund (formerly Dynamic International Value Fund)
Dynamic High Yield Bond Fund
Dynamic Investment Grade Floating Rate Fund
Dynamic Money Market Class
Dynamic Money Market Fund
Dynamic Power American Currency Neutral Fund
Dynamic Power American Growth Class
Dynamic Power American Growth Fund
Dynamic Power Balanced Class
Dynamic Power Balanced Fund
Dynamic Power Canadian Growth Class
Dynamic Power Canadian Growth Fund
Dynamic Power Dividend Growth Class (formerly Dynamic Power Managed Growth Class)
Dynamic Power Global Balanced Class
Dynamic Power Global Growth Class
Dynamic Power Global Growth Fund
Dynamic Power Global Navigator Class
Dynamic Power Small Cap Fund
Dynamic Precious Metals Fund
Dynamic Preferred Yield Class
Dynamic Premium Yield Class
Dynamic Premium Yield Fund
Dynamic Resource Fund (formerly Dynamic Focus+ Resource Fund)
Dynamic Short Term Bond Fund
Dynamic Small Business Fund (formerly Dynamic Focus+ Small Business Fund)
Dynamic Strategic Bond Fund (formerly Dynamic Strategic Global Bond Fund)
Dynamic Strategic Energy Class (formerly Dynamic Global Energy Class)
Dynamic Strategic Gold Class
Dynamic Strategic Growth Portfolio (formerly Dynamic Fund of Funds)
Dynamic Strategic Income Portfolio (formerly Dynamic Strategic All Income Portfolio)
Dynamic Strategic Resource Class
Dynamic Strategic Yield Class
Dynamic Strategic Yield Fund
Dynamic U.S. Dividend Advantage Fund (formerly Dynamic U.S. Dividend Advantage Class)
Dynamic U.S. Equity Income Fund
Dynamic U.S. Monthly Income Fund (formerly Dynamic U.S. Value Balanced Fund)
Dynamic U.S. Sector Focus Class
Dynamic U.S. Strategic Yield Fund
Dynamic Value Balanced Class
Dynamic Value Balanced Fund
Dynamic Value Fund of Canada
DynamicEdge Balanced Class Portfolio
DynamicEdge Balanced Growth Class Portfolio
DynamicEdge Balanced Growth Portfolio
DynamicEdge Balanced Portfolio
DynamicEdge Conservative Class Portfolio
DynamicEdge Defensive Portfolio
DynamicEdge Equity Class Portfolio
DynamicEdge Equity Portfolio

DynamicEdge Growth Class Portfolio
DynamicEdge Growth Portfolio
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated November 18, 2016
NP 11-202 Receipt dated November 22, 2016
Offering Price and Description:
Series A, E, F, FH, FL, FN, FT, G, I, IT, O, OP, and T units, and Series A, E, F, FH, FT, G, H, I, IP, IT, O, OP and T shares @ Net Asset Value
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
1832 Asset Management L.P.
GCIC Ltd.
1832 Asset Management L. P.
1832 AssetManagement L.P.
Promoter(s):
1832 Asset Management L.P.
Project #2540701

Issuer Name:
Dundee Acquisition Ltd.
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated November 25, 2016
NP 11-202 Receipt dated November 25, 2016
Offering Price and Description:
No securities are being offered pursuant to this prospectus
Underwriter(s) or Distributor(s):
-
Promoter(s):
Dundee Corporation
Project #2544312

Issuer Name:
ECN Capital Corp.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated November 22, 2016
NP 11-202 Receipt dated November 23, 2016
Offering Price and Description:
$2,000,000,000.00
Debt Securities
Preferred Shares
Common Shares
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2553154

Issuer Name:
First Trust Dorsey Wright U.S. Sector Rotation Index ETF (CAD-Hedged)
Principal Regulator – Ontario
Type and Date:
Amendment dated November 17, 2016 to Final Long Form Prospectus dated September 19, 2016
NP 11-202 Receipt dated November 24, 2016
Offering Price and Description:
Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
FT PORTFOLIOS CANADA CO.
Project #2506138

Issuer Name:
GDI Integrated Facility Services Inc.
Principal Regulator – Quebec
Type and Date:
Final Short Form Prospectus dated November 25, 2016
NP 11-202 Receipt dated November 25, 2016
Offering Price and Description:
$25,000,000.00 – 5.00% Convertible Unsecured Subordinated Debentures
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
GMP Securities L.P.
Desjardins Securities Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
Industrial Alliance Securities Inc.
Promoter(s):
-
Project #2553835

Issuer Name:
Horizons BetaPro NYMEX® Crude Oil Bull Plus ETF
Horizons BetaPro NYMEX® Crude Oil Bear Plus ETF
Horizons BetaPro COMEX® Gold Bullion Bull Plus ETF
Horizons BetaPro COMEX® Silver Bear Plus ETF
Horizons BetaPro US 30-year Bond Bear Plus ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 dated November 21, 2016 to Final Long Form Prospectus dated July 7, 2016
NP 11-202 Receipt dated November 24, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
HORIZONS ETFs MANAGEMENT (CANADA) INC.
Project #2495606

Issuer Name:
Horizons BetaPro S&P/TSX Global Gold Bear Plus ETF
Horizons BetaPro S&P/TSX Global Gold Bull Plus ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 dated November 21, 2016 to Final Long Form Prospectus dated July 7, 2016
NP 11-202 Receipt dated November 24, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
HORIZONS ETFs MANAGEMENT (CANADA) INC.
Project #2495604

Issuer Name:
Horizons BetaPro S&P 500 VIX Short-Term Futures Bull Plus ETF
Principal Regulator – Ontario
Type and Date:
Amendment #2 dated November 21, 2016 to Final Long Form Prospectus dated December 22, 2015
NP 11-202 Receipt dated November 24, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Horizons ETFs Management (Canada) Inc.
Project #2419198

Issuer Name:
Horizons US Dollar Currency ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 dated November 21, 2016 to Final Long Form Prospectus dated April 28, 2016
NP 11-202 Receipt dated November 24, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
HORIZONS ETFs MANAGEMENT (CANADA) INC.
Project #2456903

Issuer Name:
Horizons NYMEX® Natural Gas ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 dated November 21, 2016 to Final Long Form Prospectus dated July 7, 2016
NP 11-202 Receipt dated November 24, 2016
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
HORIZONS ETFs MANAGEMENT (CANADA) INC.
Project #2495615

Issuer Name:
iShares Alternatives Completion Portfolio Builder Fund
iShares Conservative Core Portfolio Builder Fund
iShares Global Completion Portfolio Builder Fund
iShares Growth Core Portfolio Builder Fund
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated November 21, 2016
NP 11-202 Receipt dated November 22, 2016
Offering Price and Description:
Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2542301

Issuer Name:
Lysander TDV Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated November 21, 2016
NP 11-202 Receipt dated November 22, 2016
Offering Price and Description:
Series A, Series D and Series F Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Promoter(s):
Lysander Funds Limited
Project #2542798

Issuer Name:
Primerica Balanced Yield Fund (formerly Primerica Conservative Growth Fund)
Primerica Canadian Balanced Growth Fund (formerly Primerica Growth Fund)
Primerica Canadian Money Market Fund
Primerica Global Balanced Growth Fund (formerly Primerica Moderate Growth Fund)
Primerica Global Equity Fund (formerly Primerica Aggressive Growth Fund)
Primerica Income Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated November 21, 2016
NP 11-202 Receipt dated November 22, 2016
Offering Price and Description:
Mutual fund units at net asset value
Underwriter(s) or Distributor(s):
PFSL Investments Canada Ltd.
Promoter(s):
-
Project #2542956

Issuer Name:
Theratechnologies Inc.
Principal Regulator – Quebec
Type and Date:
Final Short Form Prospectus dated November 25, 2016
NP 11-202 Receipt dated November 25, 2016
Offering Price and Description:
$16,501,300.00 – 5,323,000 Common Shares, at a price of $3.10 per Common Share
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Echelon Wealth Partners Inc.
National Bank Financial Inc.
Laurentian Bank Securities Inc.
Promoter(s):
-
Project #2552685

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Silverton Financial Inc.	Exempt Market Dealer	November 23, 2016
New Registration	Convergence Blended Finance, Inc.	Restricted Dealer	November 23, 2016
Change in Registration Category	Canadian ShareOwner Investments Inc.	From: Investment Dealer To: Investment Dealer and Investment Fund Manager	November 28, 2016

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 IIROC – Proposed Fee Model for the Information Processor for Corporate Debt Securities – Request for Comment

REQUEST FOR COMMENT

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

PROPOSED FEE MODEL FOR THE INFORMATION PROCESSOR FOR CORPORATE DEBT SECURITIES

IIROC is publishing for public comment a proposed fee model for the information processor for corporate debt securities (Corporate Debt IP). The fee model will recover the costs associated with the operation of the Corporate Debt IP.

A copy of the IIROC Notice including the proposed amendments is published on our website at www.osc.gov.on.ca. The comment period ends on January 1, 2017.

13.2 Marketplaces

13.2.1 Liquidnet Canada Inc. – Targeted invitation functionality for trading of equity securities – OSC Staff Notice of Proposed Change and Request for Comments

LIQUIDNET CANADA INC.

NOTICE OF PROPOSED CHANGE AND REQUEST FOR COMMENTS

OSC staff (**staff** or **we**) are publishing today a Notice of Proposed Change and Request for Comment (Notice) from Liquidnet Canada Inc. (**Liquidnet**) which relates to the proposed introduction of a trading functionality that would allow Liquidnet's marketplace participants to send and receive targeted invitations to trade (proposed functionality). While staff seek comment on all aspects of the proposed functionality, we are also seeking answers on a number of specific questions, set out below.

Overview of the proposed functionality

The proposed functionality is described in detail in the Notice. We have also included a high-level summary below in order to provide context for the request for comments.

Liquidnet's proposed functionality would enable a marketplace participant that is an institutional investor (**buy-side participant**) to send an invitation to trade a block-sized quantity to one or more buy-side participants. The sender of the invitation must specify, among others, the total execution size, the minimum execution size it is willing to accept, a limit price and time in force. The recipient receives a targeted invitation indicating that there is a buyer or seller for a particular security. Trades are executed at mid-point. The minimum execution size for the targeted invitations proposed by Liquidnet is the lesser of 25,000 shares and 15% of the average daily traded volume for a particular security.

While the sender specifies the number of intended recipients for the invitation, the actual recipients of a targeted invitation are selected by Liquidnet based on their past trading history and demonstrated interest in trading a specific security.

The recipient of an invitation, if interested, may choose to negotiate on the size further or may execute the order at the minimum size specified by the sender.

Staff request for specific comments

Staff review any proposal filed with the OSC in the context of the principles and objectives of the current regulatory framework and, more broadly, the OSC's statutory mandate. With respect to new, or changes to, a marketplace's proposed trading functionality, staff give consideration to their impact on the following characteristics of an efficient and effective market:[1]

1. Market liquidity
2. Transparency and price discovery
3. Fairness
4. Market integrity

1. Liquidity

Liquidnet submitted that the proposed functionality would have a positive impact on liquidity, as it would allow a marketplace participant to solicit trading interest, which may result in a trade, when there is no liquidity otherwise available on Liquidnet's market.

[1] These characteristics were outlined in Joint CSA/IIROC Consultation Paper 23-404 *Dark Pools, Dark Orders and Other Developments in market Structure in Canada*, and are based on the TMX's (then, TSE) 1997 *Report of the Special Committee on Market Fragmentation: Responding to the Challenge*.

2. Transparency and price discovery

National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) sets out the pre- and post-trade transparency requirements for equity securities.[2] The purpose of these transparency requirements is to ensure that investors have information to be able to make informed trading decisions. No pre-trade transparency is required by NI 21-101 if order information is only displayed to a marketplace's employees or persons or companies retained by the marketplace to assist in the operation of the marketplace.[3] This exception allows for the operation of marketplaces without pre-trade transparency (dark pools), in recognition of the value they bring by facilitating the execution of large orders with limited market impact costs.[4]

While a marketplace may broadcast indications of interest to attract interest in the pool, the Companion Policy to NI 21-101 indicates that, when an indication of interest contains sufficient information to be executed without further discussion between two parties (it is "actionable"), it is a firm order and the pre-trade transparency requirements of NI 21-101 would apply.[5] The purpose of this provision is to ensure that, when marketplaces show information to more than just their employees or persons or companies retained by the marketplaces to assist in their operation, they provide the same information to all participants.

Under the proposed functionality, the targeted invitations would contain sufficient information to allow them to be traded without further negotiation, which means that they are actionable and, in effect, firm orders. As indicated above, they would be subject to the pre-trade transparency requirements in NI 21-101. However, Liquidnet does not propose that information in the targeted invitations be subject to pre-trade transparency because doing so would likely result in increased market impact costs as the target invitations are for block-sized orders and would likely deter buy-side participants from sending the invitations.

Staff request specific comment on the following:

Question 1: ***Should Liquidnet receive an exemption from the pre-trade transparency requirements in NI 21-101 for block-sized orders? Should the exemption be limited to orders of buy-side participants? Are there other conditions that should apply?***

Question 2: ***If Liquidnet is granted an exemption from pre-trade transparency is the lesser of 25,000 shares and 15% of the average daily value the appropriate size?***

3. Fairness

NI 21-101 has the fair access requirements applicable to all marketplaces. It requires, among others, that a marketplace not permit unreasonable discrimination among clients, issuers and marketplace participants.[6]

As described in the Notice, buy-side participants that choose to participate in the proposed functionality are eligible to receive targeted invitations based on criteria developed by Liquidnet which are based on data reflecting their liquidity and trading history for a specific security in the previous two quarters. Staff question whether the proposal is consistent with the fair access provisions of NI 21-101 and request specific comment on this issue.

Question 3: ***Is Liquidnet's proposed functionality consistent with the application of the fair access requirements of NI 21-101?***

4. Market integrity

Market integrity relates to the level of general confidence investors and the general public have in the entire market or in a particular marketplace. The proposed functionality may protect buy-side participants from negative market impact costs that would arise from steep price movements associated with the trade of a block-sized order.

Submission of comments

Comments on the Notice should be in writing and submitted by December 26, 2016 to:

2 Sections 7.1 and 7.2 of NI 21-101.
3 Subsection 7.1(2) of NI 21-101.
4 Market impact costs occur when the execution of an order moves the price of that security above the target price for a buy order or below the target price for a sell order. When information is leaked about a large order before it is executed, these costs can increase significantly.
5 Subsection 5.1(3) of 21-101CP.
6 Section 5.1 of NI 21-101.

Market Regulation Branch
Ontario Securities Commission
20 Queen St. West, 22nd Floor
Toronto, ON
M5H 3S9
marketregulation@osc.gov.on.ca

and to:

Mr. Thomas Scully
General Counsel
Liquidnet Canada Inc.
498 Seventh Avenue
New York, NY 10018
tscully@liquidnet.com

13.2.2 Liquidnet Canada Inc. – Targeted invitation functionality for trading of equity securities – Notice of Proposed Change and Request for Comments

Liquidnet Canada, Inc.
79 Wellington Street West – Suite 2403
TD South Tower
Toronto, ON M5K 1K2
P: 877 660 6553
F: 416 504 8923

LIQUIDNET CANADA

NOTICE OF PROPOSED CHANGES AND REQUEST FOR COMMENT

Liquidnet Canada is publishing this Notice of Proposed Changes in accordance with the "Process for the Review and Approval of the Information Contained in Form 21-101F2 and the Exhibits Thereto." Market participants are invited to provide the Commission with comment on the proposed changes.

Comment on the proposed changes should be in writing and submitted by December 26, 2016 to

Market Regulation Branch
Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Fax : (416) 595-8940
marketregulation@osc.gov.on.ca

and

Thomas Scully
General Counsel
Liquidnet Canada Inc.
498 Seventh Avenue
New York, NY 10018
tscully@liquidnet.com

Comments received will be made public on the OSC website. Upon completion of the Review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

Any questions regarding the information below should be addressed to:

Peter Coffey
Head of Liquidnet Canada & Chief Compliance Officer
Liquidnet Canada Inc.
79 Wellington Street West - Suite 2403
TD South Tower
Toronto, ON M5K 1K2
pcoffey@liquidnet.com

Liquidnet Canada proposes to introduce the following change to the Liquidnet Canada trading system:

1. Targeted invitation functionality for trading of equity securities

A. Description of the proposed change

Liquidnet Canada is proposing to provide Canadian institutional clients with access to targeted invitation functionality for trading equity securities on the Liquidnet Canada ATS (for Canadian equities) and affiliated trading systems operated by its foreign affiliates (for non-Canadian equities).

Background

Liquidnet Canada and its global affiliates operate block crossing systems for institutional investors in 44 countries around the world. A review of available historical average trade volume and trade value statistics across leading Canadian exchanges and marketplaces demonstrates that Liquidnet Canada − with an average negotiated trade size of 65,000 shares[1] − is focused on block executions between institutional investors. These are the most efficient types of executions and provide the largest cost savings to long-term investors. As an extension of Liquidnet's existing negotiation functionality, our global affiliates have implemented targeted invitations in 42 other markets worldwide, including the United States and twenty-six (26) markets in Europe. In our other regions, the average trade size for executions resulting from targeted invitations is significantly larger than the average trade size for negotiated executions. Because it is consistent with Liquidnet Canada's block-trading focus, and will provide institutional investors with an additional tool for accessing large-in-scale liquidity, while mitigating market impact and information leakage, Liquidnet Canada wishes to enable Canadian Members to participate in this functionality, as described more fully below.

Existing negotiation functionality

Members can interact with Liquidnet Canada by transmitting non-binding indications, which means that a further affirmative action must be taken by the trader before an executed trade can occur. For Members that elect to participate in Liquidnet's negotiation functionality, Liquidnet transmits indications received from the Member to Liquidnet's indication matching engine. When a trader at a Member firm (a "trader") has an indication in Liquidnet that is transmitted to Liquidnet's indication matching engine, and there is at least one other trader with a matching indication on the opposite side (a "contra-party" or "contra"), Liquidnet notifies the first trader and any contra. A matching indication (or "match") is one that is in the same equity and instrument type and where both the trader and the contra are within each other's minimum tolerance quantities.

Liquidnet negotiations are anonymous one-to-one negotiations through which traders submit bids and offers to each other. The first bid or offer in a negotiation is submitted when one trader sends an invitation. Subsequent bids and offers may be submitted as counter-bids or counter-offers in the negotiation. An execution occurs when one trader's proposal is accepted by the contra.

Existing H2O/auto-execution functionality

Liquidnet also offers functionality for the automated execution of non-displayed orders at the mid-price between the highest displayed bid and lowest displayed offer in the market. These orders include Liquidnet algo orders created by Members, customers or the Liquidnet trading desk, and other automated orders created by Members, including LN auto-ex orders.[2] "Liquidity partners" (LPs), e.g., brokers, participate in this auto-execution functionality by transmitting immediate-or-cancel (IOC) orders to Liquidnet for execution. LPs do not have access to the Liquidnet desktop application and do not interact with the Liquidnet negotiation system.

Overview of the proposed targeted invitation functionality

When a natural, block-size match is not available in the Liquidnet Canada ATS, targeted invitations functionality enables buy-side Member firms to selectively widen their search for trading opportunities and draw otherwise latent, block-size liquidity to the marketplace by anonymously sending a targeted notification to one or more buy-side participants who have shown recent contra interest in trading a particular symbol, e.g., the participant had an opposite-side indication or execution in Liquidnet within a prior time period specified by the Member (referred to herein as a "look-back period"). Since targeted invitation notifications are objectively limited to Members who have demonstrated such contra-interest during a defined look-back period, information leakage, and associated market impact, is minimized.[3]

1 For Q3 2016

2 A Liquidnet algo order employs a strategy to execute an order according to Member-specified parameters, e.g., limit price. Liquidnet auto-ex orders can access the Liquidnet negotiation and H2O functionality, but cannot access external venues.

3 For US equities, during the period March 14, 2016 through Sept. 30, 2016, for targeted invitations where there has been at least one eligible recipient, there has been an average of 2.7 recipients per targeted invitation sent.

A targeted invitation has a notification component and, if there is at least one qualifying recipient for the targeted invitation (as described below), results in a firm order (a "targeted invitation order") available for auto-execution via Liquidnet H2O functionality and an indication available for matching in the Liquidnet negotiation system (as described above). The targeted invitation order can execute against buy-side contra orders regardless of whether the contra was actually a recipient of the targeted invitation notification.

Targeted invitations functionality is an optional feature. Members, i.e., buy-side institutions, must affirmatively opt-in to be eligible to receive targeted invitations and send two-way targeted invitations (as defined below). Members who opt-in understand that they must meet objective eligibility requirements. To qualify for any quarter, a Member must meet either of the following conditions (or set of conditions):

- Average daily liquidity of USD $100M or more provided to Liquidnet during either of the two prior quarters
- Positive action rate (PAR) above a specified percentage during either of the two prior quarters.[4]

A Member who meets either of these conditions is referred to herein as a "Qualifying Member". As discussed in more detail below, only Qualifying Members can receive targeted invitations.

While a detailed description of targeted invitations functionality is provided below, we wish to highlight the following important characteristics:

- The proposed minimum order size for targeted invitations for Canadian equities is the lesser of 25,000 shares and 15% ADV. Similar minimum sizes apply for other markets.
- Targeted invitations functionality is currently available in 42 of the 44 markets where Liquidnet trades and participating Member firms have traded more than US$2.6 billion in global notional value to date. More than 400 global Member firms are enabled for targeted invitations; each of these firms has affirmatively opted in to participate in targeted invitations functionality.

One-way and two-way targeted invitations

There are two types of targeted invitations:

- Two-way targeted invitations
- One-way targeted invitations.

In a two-way targeted invitation, the sender receives certain information regarding the actions of the recipients. More particularly, the sender of a two-way targeted invitation is notified when a recipient indicates interest and requests more time and, if a sender elects to have his or her two-way targeted invitation order automatically cancelled when all recipients have dismissed the targeted invitation notification, the sender can determine that all of the targeted invitation notifications sent by the sender have been dismissed by any recipients. The sender of a two-way targeted invitation is also notified if there are no qualifying recipients.

One-way targeted invitations are an optional parameter associated with algo orders and LN auto-ex orders (discussed above) by which a trader creating such an order may authorize Liquidnet to send a targeted invitation on the trader's behalf. In a one-way targeted invitation, the sender does not receive information regarding the actions of the recipients.

Qualifying Members

As noted above, only Qualifying Members can receive targeted invitations. Qualifying Members also can send two-way targeted invitations and one-way targeted invitations. Members that are not Qualifying Members cannot receive targeted invitations, and can send one-way targeted invitations, but not two-way targeted invitations.

Members that do not opt in to targeted invitations cannot receive targeted invitations and can only send one-way targeted invitations. By opting in to targeted invitations, a Member opts in to Liquidnet accessing the Member's indication, invitation and execution data to determine the Member's qualification to receive a targeted invitation, as described below. Any opt in to targeted invitations applies to all regions where this functionality is available, unless otherwise instructed by a Member.

[4] Positive action rate is a measure of how often a Member positively responds to trade opportunities on the Liquidnet system.

Description of two-way targeted invitation functionality

Through the Liquidnet desktop application, a trader at a Qualifying Member firm can send a two-way targeted invitation notification relating to a specific stock to other Qualifying Members.

A two-way targeted invitation has a notification component, and, if there is at least one qualifying recipient for the targeted invitation (as described below), results in a firm order available for auto-execution in Liquidnet (a "targeted invitation order") and an indication available for matching in the Liquidnet negotiation system. A targeted invitation order can execute against contra-side orders within the Liquidnet negotiation and auto-execution systems in the same manner as other algo orders executing within the Liquidnet system, subject to the following exceptions:

- The notification component of the targeted invitation notifies qualifying recipients about the presence of the order
- Two-way targeted invitation orders cannot execute against orders from brokers.

Setting criteria for who can receive a targeted invitation notification

When creating a two-way targeted invitation, a trader must designate a look-back period. A trader can select the current trading day as the look-back period or the current trading day plus any of the following periods: 1, 5, 10, 15, 20, 30, 45, 60, or 90 prior trading days.

By default, a targeted invitation notification is sent to traders at Qualifying Members where the recipient trader meets any of the following criteria:

- ***Opposite-side indication in Liquidnet***. Liquidnet received an opposite-side indication from the recipient at any time during the look-back period, where the available quantity was at least the minimum matching and negotiation size for the applicable market. For example, for Canadian equities, the minimum matching and negotiation size is the least of 5,000 shares, 5% of ADV and CAD$ 100,000, meaning that a qualifying recipient must have transmitted an opposite-indication of at least that size to Liquidnet during the selected look-back period to receive a targeted invitation in a given symbol.
- ***Opposite-side indication placed away***. The recipient has or had an opposite-side indication in its order management system (OMS) at any time during the look-back period where the quantity placed at other brokers is or was at least the minimum matching and negotiation size for the applicable region.
- ***Opposite-side execution in Liquidnet***. The recipient executed in Liquidnet with anyone at any time during the look-back period, where the recipient executed on the opposite-side to the sender's order (for example, the recipient executed a buy order and the sender's targeted invitation is for a sell order) and the recipient's execution quantity was at least the minimum matching and negotiation size for the applicable region.
- ***Executed against sender***. The recipient executed in Liquidnet against the sender at any time during the look-back period, where the execution quantity was at least the minimum matching and negotiation size for the applicable region.
- ***Invited the sender***. The recipient sent the sender a negotiation invitation or targeted invitation notification at any time during the current trading day.

All targeting criteria are applied for the specific stock. The foregoing is subject to the exceptions described below.

Traders with same-side indications

A trader is not eligible to receive a targeted invitation notification in a symbol if the trader had at least one same-side indication in the symbol (a) in the same trading period as its most recent opposite-side indication or (b) in a more recent trading period than its most recent opposite-side indication.

Setting alternate criteria for who can receive a targeted invitation notification

By default, among the other criteria noted above, a targeted invitation notification is sent to traders at Qualifying Members where the recipient trader has (i) executed against the sender of the targeted invitation in that symbol during the look-back period or (ii) sent a negotiation invitation or a targeted invitation notification in that symbol at any time during the current trading day. Through the desktop application, a trader can further specify that a two-way targeted invitation notification will only be sent to recipients that meet either or both of those criteria.

Targeted invitations not available where a match exists

A trader can only create a two-way targeted invitation based on an unmatched indication. A trader cannot create a two-way targeted invitation or receive a targeted invitation notification on a stock where the trader has a matched indication in the Liquidnet negotiation system.

Hours of availability

A trader can only create a targeted invitation during the regular trading hours of the primary listing market for the applicable country.

Order details for a targeted invitation

For any targeted invitation, a sending trader must specify the following:

- ***Quantity***. The quantity of a two-way targeted invitation defaults to the trader's working quantity on the indication. Quantity cannot be greater than the working quantity on the indication and cannot be less than the minimum execution size noted in the bullet below.

- ***Minimum execution size***. The default minimum execution size for a two-way targeted invitation order for Canadian equities is the lesser of 25,000 shares and 15% of ADV. The minimum execution size for a two-way targeted invitation order cannot be greater than the working quantity on the indication and cannot be less than this default minimum execution size.

- ***Limit price***. At the time that a two-way targeted invitation is first sent, the limit price specified by a sender must be at or above the current mid-price, in the case of a buy targeted invitation, or at or below the current mid-price, in the case of a sell targeted invitation.

- ***Maximum number of recipients***. A sender can select a maximum number of recipients for a two-way targeted invitation notification.

- ***Time-in-force***. A sender must specify a time-in-force for a two-way targeted invitation, which cannot be less than a specified minimum time period. A targeted invitation expires upon the earlier of (i) expiration of the specified time-in-force, and (ii) the end of the current trading day. A trader may cancel a two-way targeted invitation prior to the expiration of the specified time-in-force period. Expiration (or cancellation) of a two-way targeted invitation results in the expiration (or cancellation) of the applicable targeted invitation notification and order. Liquidnet may terminate a Member's participation in two-way targeted invitation functionality based on repeated cancelations.

Prioritization of recipients

Where the number of qualifying recipients exceeds the maximum number of recipients specified by the sender, Liquidnet prioritizes the recipients based on a set of prioritization rules that Liquidnet may update from time-to-time. For example, a Member that has a current indication in Liquidnet has priority over a Member that does not have a current indication in Liquidnet. Liquidnet maintains and provides to Members upon request the details regarding these prioritization rules.

Receiving a targeted invitation notification

A targeted invitation notification is notified to a qualifying recipient through the Liquidnet desktop application. The notification includes the sender's minimum execution size, but the recipient must take an action through the desktop application to view the sender's minimum execution size. A recipient is further made aware through the Liquidnet desktop application when a targeted invitation expires.

Notifications to sender and recipient concerning limit price

A recipient is notified through the desktop application if the sender's limit price is away from the mid-price (i.e., above the mid-price in the case of a targeted invitation sent by a seller or below the mid-price in the case of a targeted invitation sent by a buyer).

If the limit price of a sender of a two-way targeted invitation is away from the mid-price for a specified period, Liquidnet will provide the sender a notification to either adjust his or her limit price for the targeted invitation or cancel the targeted invitation.

Responses by recipient

A recipient has the following two options upon receipt of a targeted invitation notification:

- Notify the sender that the recipient is interested and request more time to respond to the targeted invitation
- Dismiss the notification.

If a trader dismisses a notification in a symbol, the trader cannot receive another targeted invitation notification for that symbol for the rest of that trading day, but the trader can send a targeted invitation in that symbol.

A recipient also can take any other action permitted by the trading system, including the creation of an opposite-side indication or order.

Information received by the sender regarding recipients

As noted above, a sender of a two-way targeted invitation is notified when a recipient indicates interest and requests more time. If a trader elects to have his or her two-way targeted invitation order automatically cancelled when all recipients have dismissed the targeted invitation notification, the trader can determine that all of the targeted invitation notifications sent by the sender have been dismissed by any recipients.

Description of one-way targeted invitations

Targeted invitation functionality will also be available for LN auto-ex orders and for certain types of Liquidnet algo orders. Liquidnet refers to this functionality as "one-way targeted invitations".

Liquidnet intends to introduce one-way targeted invitations through a series of releases over a period of time, subject to prior notice to participants. Liquidnet will introduce this functionality in five phases, as follows:

- Phase 1: Orders initiated by Liquidnet trading desk personnel pursuant to customer instructions (known as "high-touch" orders)
- Phase 2: Orders created directly by trading desk customers via their order management system (known as "low-touch" orders)
- Phase 3: Algo orders created through the Liquidnet desktop application
- Phase 4: Orders transmitted via an automated router on behalf of buy-side institutions who do not have the Liquidnet desktop application (currently applies to non-Canadian equities only)
- Phase 5: LN auto-ex orders.[5]

The provisions above that do not specifically reference two-way targeted invitations are also applicable to one-way targeted invitations, except as otherwise set forth below.

One-way targeted invitations for low-touch orders from customers

For low-touch orders, subject to the customer's consent, Liquidnet can send targeted invitation notifications to Members that are qualifying recipients. Liquidnet will apply certain default configurations for maximum number of recipients, look-back period, minimum execution size, and time-in-force for these notifications. Liquidnet may change the default maximum number of recipients and default look-back period from time-to-time.

Upon request by a Member, Liquidnet can adjust these default configurations. Any such configuration for a Member or customer applies to all one-way targeted invitations sent by the Member or customer.

One-way targeted invitations for high-touch orders from customers

For high-touch orders, subject to the customer's consent, a Liquidnet trader can elect to authorize Liquidnet to send targeted invitation notifications for a particular order. Liquidnet applies the same default configurations, and permits adjustment of configurations, as described above for one-way targeted invitations for low-touch orders from customers.

[5] As noted above, Liquidnet auto-ex orders can access the Liquidnet negotiation and H2O functionality, but cannot access external venues.

Targeted invitations for Member orders created through the desktop application

For orders created by a Member through the desktop application (whether algo or LN auto-ex orders), the Member can authorize Liquidnet to send one-way targeted invitation notifications to other Members that are qualifying recipients. Liquidnet applies the same default configurations, and permits adjustment of configurations, as described above for one-way targeted invitations for low-touch orders from customers.

Consent to sending of one-way targeted invitations

Liquidnet will not send one-way targeted invitations for a Member or customer order unless consented to by the Member or customer.

Guidelines for determining when to send a one-way targeted invitation

Liquidnet does not automatically send a one-way targeted invitation for any algo or LN auto-ex order. Instead, Liquidnet applies various guidelines concerning order size and priority in determining whether and when to send a one-way targeted invitation. These guidelines are disclosed to Members and only apply if the Member or customer has consented to Liquidnet sending a one-way targeted invitation. Liquidnet may modify these guidelines based on its review of Member and customer usage.

Cancellation of one-way targeted invitations

Liquidnet will cancel any one-way targeted invitation notifications for an order upon the occurrence of certain conditions relating to remaining order size, limit price, customer cancellation or expiration of the associated order. Expiration or cancellation of a one-way targeted invitation notification does not affect the related order.

Resending of a targeted invitation after a cancel

Liquidnet can resend a targeted invitation after a cancel.

No notifications to senders of one-way targeted invitations

A sender of a one-way targeted invitation is not notified of any of the following:

- Whether or not there are any qualifying recipients
- When a recipient indicates interest or requests more time
- When all recipients have dismissed the targeted invitation notification.

B. The expected date of implementation

It is expected that the proposed change will be implemented following the later of (i) the date that Liquidnet Canada is notified that the change is approved and (ii) the date all applicable regulatory requirements have been met.

C. Rationale for the proposed change

Liquidnet Canada is implementing the proposed functionality to provide Canadian participants with the ability to draw otherwise latent, block-size liquidity to the marketplace, while still minimizing information leakage. Institutional investors in the United States, Europe, Asia, Australia and Africa utilize this functionality to reduce trading costs for their customer orders, and Canadian participants should have the same opportunity.

D. Expected impact of the proposed change on market structure, subscribers, investors and capital markets

As proposed, targeted invitations functionality would permit notifications concerning otherwise dark orders to some, but not all, participants of the Liquidnet Canada ATS, based on objective criteria and parameters specified by the sender. Liquidnet Canada respectfully submits that the pre-trade transparency requirements of sections 7.1 and 7.3 of NI 21-101 should not apply to such targeted invitations orders for at least the following reason.

The pre-trade transparency requirements of sections 7.1 and 7.3 of NI 21-101 are intended to require display of orders that would customarily be posted on a lit marketplace, i.e., where exposure would not negatively impact the order holder. In discussing the rationale and benefits of dark pools and dark orders, the CSA has recognized that block-size orders − like those associated with targeted invitations − would typically not be placed on a lit marketplace:

> Dark Pools were introduced to enable investors to place large orders anonymously without displaying them to the public in order to minimize the market impact costs associated with placing such large orders in a visible book. This could be achieved through institutions trading large volumes among each other anonymously, or through large orders that may have otherwise traded only in the upstairs market, being entered on a marketplace where they can interact with other orders from other investors without being displayed.[6]

Consequently, we foresee no adverse impact on market structure, subscribers, investors or the capital markets because the proposed change will only help participants draw otherwise latent liquidity to the marketplace and reduce trading costs for their customer orders.

E. Expected impact of the proposed change on Liquidnet Canada's compliance with Ontario securities law and the requirements for fair access and maintenance of a fair and orderly market

Liquidnet Canada respectfully submits that the proposed functionality is consistent with the underlying purpose of the fair access requirements. As noted in subsection 7.1(1) of Companion Policy 21-101CP, the requirements regarding access for marketplace participants "do not restrict the marketplace from maintaining reasonable standards for access" to marketplace services. And the purpose of the access requirements "is to ensure that rules, policies, procedures, and fees, as applicable, of the marketplace do not unreasonably create barriers to access to the services provided by the marketplace." Consistent with this stated purpose, targeted invitation recipients are determined based purely on reasonable and objective criteria – there are no subjective factors at play and no unreasonable barriers to participation.

A plain reading of the text of subsection 5.1(3) of NI 21-101 indicates that a marketplace may indeed implement participation criteria that result in limited access to certain products or services as long as those criteria do not result in "unreasonable discrimination" among participants or "impose any burden on competition that is not reasonably necessary and appropriate." As discussed above, the objective participation criteria proposed for targeted invitations are designed to attract latent liquidity while minimizing information leakage and associated market impact of a block-size order. In this context, these criteria do not permit unreasonable discrimination among participants or impose any unreasonable or inappropriate burdens on competition.

Consequently, we foresee no adverse impact on Liquidnet Canada's compliance with market structure, Ontario securities laws or to requirements of fair access and the maintenance of a fair and orderly market.

F. Consultations undertaken in formulating the proposed change, including internal governance process followed

Liquidnet Canada consulted with certain customers before proceeding with the proposed change. The proposed change was approved by the management of Liquidnet Canada.

G. Whether the proposed change will require subscribers and vendors to modify their own systems

The proposed change does not constitute a material change to "technology requirements regarding interfacing with or accessing the marketplace" within the meaning of Part 12.3 of NI 21-101 because subscribers and service vendors will not be required to do any significant amount of systems-related development work or testing to enable the proposed functionality or fully interact with the Liquidnet Canada ATS as a result of the proposed change. More particularly, the proposed change will not require participants or service vendors to make any changes to the way they currently interface with, service or access the Liquidnet Canada ATS from a technology perspective. The proposed functionality has already been developed and implemented in other jurisdictions, so Liquidnet Canada need only enable Canadian subscribers for this functionality in order to implement the proposed change.

H. Whether the proposed change would introduce a fee model or feature that currently exists in other markets or jurisdictions

Liquidnet Canada's affiliates in other jurisdictions have already implemented the proposed functionality in 42 other markets across the United States, Europe, Asia, Australia and Africa.

[6] Joint CSA/IIROC Position Paper 23-405, *Dark Liquidity in the Canadian Market*, November 19, 2010, at page 10768, http://www.osc.gov.on.ca/documents/en/Securities-Category2/csa_20101119_23-405_dark-liquidity.pdf (accessed May 11, 2016)(the "Position Paper").

13.3 Clearing Agencies

13.3.1 CDS – Material Amendments to CDS Procedures Relating to CDS – DTCC Payment Service – OSC Staff Notice of Request for Comment

OSC STAFF NOTICE OF REQUEST FOR COMMENT

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS PROCEDURES RELATING TO CDS – DTCC PAYMENT SERVICE

The Ontario Securities Commission is publishing for 30 day public comment material amendments to the CDS Procedures relating to CDS – DTCC Payment Service. The purpose of the proposed procedure amendments is to allow the implementation of an automated web application that changes the current process of communicating information related to entitlement payments for entities that are both DTCC members and CDS participants.

The comment period ends on January 03, 2017.

A copy of the CDS Notice is published on our website at http://www.osc.gov.on.ca.

13.3.2 CDCC – Exemption Order

THE CANADIAN DERIVATIVES CLEARING CORPORATION (CDCC)

EXEMPTION ORDER

On November 25, 2016, the Ontario Securities Commission (Commission) issued an order pursuant to section 147 of the *Securities Act* (Ontario) (Order) exempting CDCC from complying with the requirement in section 3.1 Schedule "C" of CDCC's recognition order (Recognition Order) which requires the board of directors of CDCC to provide a written report to the Commission at least annually, or as required by the Commission, describing how CDCC is meeting its public interest responsibility. CDCC has other requirements in its Recognition Order and under securities legislation that requires CDCC to operate in the public interest.

The Order is published in Chapter 2 of this Bulletin.

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