



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
STABLEVIEW ASSET MANAGEMENT INC. and COLIN FISHER**

STATEMENT OF ALLEGATIONS

(Section 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c S.5)

A. OVERVIEW

1. This proceeding centres on registrants acting as a portfolio manager (**PM**) and investment fund manager (**IFM**) who flagrantly disregarded investment restrictions when managing client money. The registrants advised clients that certain investment parameters and restrictions designed to limit risk would be respected in the registrants' discretionary management of client funds. The registrants then ignored these restrictions and increasingly invested client monies in a thinly-traded penny stock company that was suffering from a deteriorating financial position. In order to prop up this penny stock company, the registrants continued to gamble client money on it, repeatedly throwing good money after bad in a vicious cycle of ever-increasing risks and losses for the investors. The registrants did not tell clients about these investments or their deleterious effect on the restrictions set out in the registrants' agreements with clients. Nor did the registrants tell clients about the corporate registrant's receipt of "consulting" fees from the penny stock company. Through their actions, the registrants exposed clients to risks not contemplated by them and clients have been harmed. The registrants' actions were fraudulent.

2. Stableview Asset Management Inc. (**Stableview**) and its principal and directing mind, Colin Fisher (**Fisher**) managed and advised two investment funds that were distributed to Stableview's separately managed account (**SMA**) clients.

3. Stableview advised its SMA clients that their portfolios would be diversified and that Stableview would follow certain investment parameters and restrictions including limits on investments in private debt. For most SMA clients, this limit was set at 10% of the client's holdings.

4. From 2016 to 2019, Fisher caused Stableview's investment funds to become increasingly concentrated in the private debt of a penny stock company, Clarocity Corporation (**Clarocity**), formerly known as Zaio Corporation. Prior to and while these investments were made, Clarocity's financial position was substantially deteriorating to the knowledge of Fisher. Moreover, Stableview received compensation from Clarocity for "consulting services" including cash payments totalling \$105,000, Clarocity common stock, and a \$150,000 Clarocity debenture which it sold to two of the funds it managed. None of this was disclosed to investors. Fisher is the sole owner of Stableview, and Fisher benefitted from Stableview's misconduct.

5. Despite Clarocity's deteriorating financial circumstances, Stableview continued to value the funds' investments in the Clarocity debentures at cost or at par. Stableview eventually sought and obtained a receiver over Clarocity's assets in June 2019. By that date, the funds held Clarocity debentures with a par value of approximately \$16.5 million compared to a valuation of the company by Clarocity's receiver in the range of \$3 million to \$4.8 million.

6. Clients received account statements that showed the number of units they held in the funds and the net asset value of those units. They were not informed of the specific investments held by the funds. As a result, they did not know that their investments were primarily concentrated in Clarocity debentures or that the value of their holdings in the fund(s) was in doubt given Clarocity's significant financial issues.

7. In 2019, Staff from the Compliance and Registrant Regulation Branch of the Ontario Securities Commission (**Commission**) conducted a compliance review of Stableview's compliance with Ontario securities law and identified numerous significant deficiencies. As a result, terms and conditions were placed on Stableview's registration that included trading and financial restrictions. In order to protect investors from further harm, in the spring of 2020, Staff from the Enforcement Branch (**Enforcement Staff**) on behalf of the Commission applied for and had a receiver appointed over Stableview and the funds' assets.

8. Clients placed their trust in Fisher and gave Stableview discretionary authority to manage their hard-earned savings. Fisher and Stableview blatantly disregarded the investment restrictions they promised to follow and knowingly breached representations they made to their clients. They

were reckless as to the consequences of their conduct. Their actions exposed clients to risks not contemplated by them and were fraudulent.

9. The setting of investment parameters is an important part of the client/registrant relationship. Registrants have a duty under securities law to respect these parameters. Registrants who flagrantly disregard investment restrictions and fail to disclose material facts to investors about their investments significantly undermine the integrity of Ontario's capital markets.

B. FACTS

10. Enforcement Staff makes the following allegations of fact:

Background

11. Stableview is registered under the *Securities Act*, R.S.O. 1990, c S.5 (the **Act**) as an IFM, PM, and exempt market dealer. Stableview was the PM for approximately 100 SMA clients.

12. Stableview managed and advised the following two funds that were distributed to its SMA clients:

- a. Stableview Progressive Growth Fund (the **Progressive Fund**); and
- b. Stableview Yield & Growth Fund (the **Yield Fund**) (collectively the **Pooled Funds**).

13. All investment decisions for the Pooled Funds were made by Fisher, who is Stableview's sole director and officer, and is registered under the Act as its sole Advising Representative, sole Dealing Representative, Chief Compliance Officer and Ultimate Designated Person. Fisher was the directing mind of Stableview and made all decisions on its behalf.

14. Stableview also managed a third fund, the Insight Fund LP (the **Insight Fund**) that was made available to high net worth clients outside of Stableview's SMA client base and was distributed to approximately 7 clients.

15. The Pooled Funds were formed and pooled in July 2016. The features of each fund, including restrictions on their investment activities, were set out in a legal constating document the Respondents called a “regulation”, with each fund having its own regulation (collectively, the **Regulations**). The Pooled Funds are both unit trusts with Stableview acting as the trustee. Following their creation, the Pooled Funds were distributed to Stableview’s SMA clients as part of its discretionary portfolio management of the assets of those clients. As of November 30, 2018, the Pooled Funds had 102 investors.

16. After the creation of the Pooled Funds, Stableview primarily invested SMA client monies in one or more of the Pooled Funds for which Stableview received a management fee.

17. From August 2016 to June 30, 2019, Fisher caused the Pooled Funds to become increasingly over-concentrated in Clarocity debt, by acquiring over \$16.5 million in Clarocity debentures. Clarocity operated at a loss over this entire period. At all relevant times, Fisher and Stableview knew of Clarocity’s poor financial performance.

18. While Fisher was investing SMA client monies (and subsequently the Pooled Funds’ monies) in Clarocity, he caused Stableview to enter into fee arrangements with Clarocity. Stableview entered into two agreements with Clarocity. The first agreement dated January 25, 2016, and subsequently amended, involved Stableview entering into a debt facility that Stableview was to coordinate for Clarocity, with funds to be supplied by, among other sources, Stableview’s SMA clients (the **Debt Coordination Agreement**).

19. The second agreement was a financial advisory and consulting agreement made effective as of March 28, 2016 (the **Fiscal Advisory/Consulting Agreement**). Under this agreement, Stableview was to assist Clarocity in reorganizing its capital structure.

20. Stableview received the following compensation from Clarocity (collectively, the **Clarocity Compensation**):

- a. **Debentures:** Stableview received a \$150,000 debenture under the terms of the Debt Coordination Agreement.

- b. **Common Shares:** Stableview received 1.36 million common shares of Clarocity under the Fiscal Advisory/Consulting Agreement as compensation for assisting Clarocity to reorganize its capital structure.
- c. **Cash:** Stableview received \$105,000 under the terms of the Debt Coordination Agreement, paid in 6 quarterly payments of \$17,500 each.

21. As Clarocity's financial condition continued to deteriorate, Stableview sought the appointment of a receiver over the business and affairs of Clarocity. On June 11, 2019, a receiver was appointed over Clarocity.

22. According to the first report of Clarocity's receiver, the total indebtedness owing by Clarocity to debenture holders was \$23.7 million, including interest (the **First Report**) (over \$16.5 million of which was owed to the Pooled Funds). The three Stableview funds were the largest of the debenture holders, holding in aggregate approximately 90% of the total outstanding indebtedness owed by Clarocity to the debenture holders.

23. According to the First Report, the estimated liquidation value of Clarocity was in the range of \$3 to \$4.8 million. The First Report also stated that debenture holders would suffer a significant shortfall in the range of \$20 to \$22 million.

24. As part of the receivership, Stableview negotiated a transaction with Clarocity's receiver and iLookabout Corp. (**iLookabout**), another penny stock company, in which iLookabout acquired all assets of Clarocity for a purchase price in the amount of the indebtedness owed by Clarocity to iLookabout and the debenture holders payable in common shares, warrants and convertible debentures of iLookabout (the **iLookabout Transaction**). Following the court's approval of the iLookabout Transaction, the Pooled Funds received an interest in iLookabout encompassing 18,947,182 common shares, 15,652,000 warrants and a \$7,166,971 convertible debenture.

C. CONDUCT IN BREACH OF ONTARIO SECURITIES LAW

i. Fraudulent Conduct

25. By engaging in the conduct described above and below, Fisher and Stableview engaged directly or indirectly in an act, practice or course of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on their SMA clients.

26. In order to open an SMA at Stableview, clients signed a Portfolio Management Agreement and Investment Policy Statement (the **PMA & IPS**). The PMA & IPS represented to investors that their portfolio would be “diversified over multiple industry sectors” (**Diversification Representation**).

27. The PMA & IPS also contained a restriction on Stableview’s ability to invest funds in illiquid investments, referred to as “alternative investments”. The PMA & IPS described “alternative investments” as “investments in non-conventional instruments” that “would include but are not limited to such instruments as hedge funds, venture capital, commodities and private equity funds, private companies, private debt issuance.” The investments made by Stableview at Fisher’s direction in Clarocity debentures are “alternative investments” under the PMA & IPS.

28. In the alternative, even if some or all of the Clarocity debentures could be characterized as “fixed income” investments, Stableview represented to its SMA clients in the PMA & IPS that the fixed income component of the client’s portfolio would be “primarily invested in investment grade bonds as at the date of purchase” (**Fixed Income Representation**). The Clarocity debentures did not constitute investment grade bonds.

29. Pursuant to the PMA & IPS, Stableview’s authority to perform discretionary management over client funds was subject to the investment objectives, policies and restrictions contained in the client’s PMA & IPS.

30. For some long-standing clients of Fisher, the only PMA & IPS that Stableview had on file was the PMA & IPS between the client and Fisher’s predecessor employer. Those PMA & IPSs contained the same representations and restrictions as referred to above.

31. Virtually all of the PMA & IPSs on file for Stableview’s SMA clients stipulated a maximum investment in alternative investments of 10% (**10% Alternative Investment Restriction**).

32. The Pooled Funds were created in July 2016. According to the Pooled Funds’ Regulations, which constituted their legal constating documents, the intention was for the Pooled Funds to be invested “primarily in a diversified group of securities in both public and private companies which are deemed to represent solid return on equity for as minimal a risk as possible for the given return”

(Diversification Provision) and leverage was supposed to be limited to 20% (**20% Leverage Restriction**).

33. By August 2016, Fisher caused the Pooled Funds to invest more than 10% of their holdings in private debt. This caused SMA client investments in the Pooled Funds to be offside the 10% Alternative Investment Restriction. From that point onward, Fisher grossly disregarded the Diversification Representation, the 10% Alternative Investment Restriction, the Fixed Income Representation and/or the Diversification Provision in making investment decisions on behalf of the Pooled Funds.

34. According to Clarocity's publicly-filed financial statements, Clarocity had a cumulative deficit of \$91.2 million as of December 31, 2015. This cumulative deficit continued to grow during the period of the Pooled Funds' direct and indirect investments in Clarocity debentures from August 2016 to July 2019.

35. The following summarizes the Pooled Funds' investments in Clarocity debentures as a percentage of the Pooled Funds' portfolio holdings from August 31, 2016 to June 30, 2019 (prior to the Clarocity receivership and iLookabout Transaction):

Date	Progressive Fund	Yield Fund
Aug 31, 2016	13%	14%
Dec 31, 2016	22%	22%
May 31, 2017	27%	31%
Sep 30, 2017	37%	43%
Dec 31, 2017	38%	42%
July 31, 2018	44%	48%
Dec 31, 2018	70%	83%
Jun 30, 2019	67%	96%

36. SMA clients' total exposure to one issuer (Clarocity) and one sector (technology) was even greater than the percentages set out above because the Pooled Funds' held other Clarocity securities and Fisher caused some SMA clients to hold direct investments in Clarocity securities over and above their exposure to Clarocity through their investments in the Pooled Funds.

37. Following the Clarocity receivership, Fisher initiated the iLookabout Transaction, which resulted in the Pooled Funds continuing to be overconcentrated in debentures and in the securities of one issuer and one sector. As of October 31, 2019, investments in iLookabout debentures as a percentage of the Pooled Funds' portfolio holdings was 60% for the Yield Fund, and 39% for the Progressive Fund and investments in iLookabout securities (shares and debentures) as a percentage of the Pooled Fund's holdings was 95% for the Yield Fund and 62% for the Progressive Fund.

38. The Pooled Funds' over-concentrations in Clarocity debentures arose as a result of:

- a. Fisher causing the Pooled Fund to continuously over-invest in Clarocity debentures from August 2016 to August 2018;
- b. Fisher directing the Yield Fund, in August 2018, to purchase \$75,000 of the \$150,000 Clarocity debenture Stableview received as compensation from Clarocity when the Yield Fund's concentration in Clarocity debentures was already at 48%; and
- c. Fisher causing the Progressive Fund, in March and July 2019, to purchase units in the Yield Fund (a fund that was almost entirely comprised of Clarocity debentures by that time) for \$1,742,000 in order to bring needed cash into the illiquid Yield Fund to reduce its use of margin in its margin account at an investment dealer when the Progressive Fund's concentration in Clarocity debentures was already at 66%. These transactions increased the Progressive Fund's concentration in Clarocity debentures to 76%.

39. Fisher also blatantly disregarded the 20% Leverage Restriction when making investment decisions on behalf of the Pooled Funds. As of the end of 2017, the Yield Fund and Progressive

Fund leverage ratios were double and triple the 20% limit. The following summarizes leverage as a percentage of the Pooled Funds' net assets as of the end of 2017 to the end of 2018:

Date	Yield Fund	Progressive Fund
Dec 31, 2017	64%	45%
July 31, 2018	78%	45%
Dec 31, 2018 ¹	45%	26%

40. In addition, from December 2019 to February 2020, Fisher caused the Progressive Fund to make loans of approximately \$45,000 and \$117,000 to the Insight Fund and the Yield Fund respectively either to cover their negative cash balances that arose from the payment of invoices, including the payment of monthly management fees to Stableview or to allow them to pay such invoices (**Inter-Fund Loans**).

41. In causing the transactions referred to in paragraphs 33 and 40 above to occur, the Respondents blatantly disregarded and breached the Diversification Representation, the 10% Alternative Investment Restriction, the Fixed Income Representation, the Diversification Provision, and/or the 20% Leverage Restriction.

42. The Respondents failed to disclose the facts referred to in paragraphs 33 to 41 above to SMA clients, which facts, individually and/or collectively constituted material facts. Other material facts the Respondents omitted to disclose to SMA clients included:

- a. Stableview's receipt of the Clarocity Compensation²; and
- b. Clarocity's financial difficulties, which eventually led Stableview to seek the appointment of a receiver over Clarocity's assets.

¹ On August 7, 2018, the Pooled Funds' custodian (an investment dealer) restricted Stableview's margin accounts to redemptions only. By the end of 2018, the Pooled Funds' leverage ratios reflected the custodian's externally-imposed leverage restriction but were still considerably offside the 20% Leverage Restriction.

² While the PMA and IPS contained some boilerplate disclosure that the PM may receive fees from providing financial advisory services to corporations whose securities are purchased for the investment account, no details of the Clarocity Compensation were disclosed to SMA clients.

43. This conduct put investors' pecuniary interests at risk.

44. By engaging in the conduct described above, Fisher and Stableview knowingly contravened representations they made to investors and restrictions contained in the Pooled Funds' legal constating documents, failed to disclose material facts to clients and/or put their own interests or the interests of one fund ahead of the interest of another fund. They were reckless as to the consequences of their conduct. Their conduct exposed investors to risks not contemplated by them by the terms of their PMA and IPS agreement with Stableview. Their conduct was fraudulent.

ii. Breach of Subsection 44(2) of the Act

45. Through their conduct described at paragraphs 33 to 42 above, Fisher and Stableview made untrue statements about matters that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship and/or omitted information necessary to prevent statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the Act.

iii. Breaches of Duties and Obligations as Registrants

46. At all material times, Fisher and Stableview were registrants. The conduct described above not only constituted fraud but also resulted in numerous breaches of the Respondents' duties and obligations as registrants as set out in Part D below.

iv. Fisher Authorized and Acquiesced in Stableview's Misconduct

47. At all material times, Fisher was the sole directing mind of Stableview and authorized and directed the conduct of Stableview described above and is responsible for Stableview's breaches of Ontario securities law pursuant to section 129.2 of the Act.

D. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

48. Enforcement Staff alleges the following breaches of Ontario securities law and/or conduct contrary to the public interest as a result of the conduct described above:

- a. Fisher and Stableview directly or indirectly engaged in or participated in acts, practices, or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to subsection 126.1(1)(b) of the Act;
- b. Fisher and Stableview made untrue statements about matters that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship and/or omitted information necessary to prevent statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the Act;
- c. Stableview (as PM) breached its duty to identify, respond and disclose material conflicts of interest as required by subsection 32(1) of the Act and section 13.4 and 14.2 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* in relation to its receipt of the Clarocity Compensation and by causing the Yield Fund to purchase a \$75,000 Clarocity debenture owned by Stableview;
- d. Stableview (as PM) breached its obligations pursuant to section 14.2 of NI 31-103 to deliver to the holders of the SMAs all information that a reasonable investor would consider important about their relationship with Stableview, which, under the circumstances, would include a description of the conflict of interest created by Stableview' receipt of the Clarocity Compensation and the Yield Fund's purchase of a \$75,000 Clarocity debenture owned by Stableview;
- e. Stableview (as PM) and Fisher (as Advising Representative) failed to fulfill the obligation to make suitable investments for the Pooled Funds and the holders of the SMAs as set out in section 13.3 of NI 31-103;
- f. Stableview (as PM) and Fisher (as Advising Representative and Dealing Representative) breached the duties owed to the Pooled Funds and the holders of the SMAs to deal with them fairly, honestly and in good faith as set out in section 2.1 of OSC Rule 31-505 – *Conditions of Registration (Rule 31-505)*;

- g. Stableview (as IFM) breached the duties owed to the Pooled Funds to act honestly, in good faith and in the best interests of the Pooled Funds, and to exercise the degree of care, diligence, and skill that a reasonably prudent person would exercise in the circumstances as required by section 116 of the Act;
- h. Stableview (as PM) breached the prohibition against knowingly causing an investment portfolio managed by it to purchase a security from a responsible person (i.e., Stableview and Fisher) as set out in subsection 13.5(2)(b)(i) of NI 31-103 when it caused the Yield Fund to purchase a \$75,000 Clarocity debenture from Stableview;
- i. With regard to the Inter-Fund Loans, Stableview (as IFM) breached the prohibition against inter-fund loans as set out in section 111 of the Act and failed to file the required report documenting the Inter-Fund Loans as required by section 117 of the Act;
- j. Fisher (as Ultimate Designated Person) breached the duties prescribed by s. 5.1 of NI 31-103, including promoting compliance with securities legislation;
- k. Fisher (as Chief Compliance Officer) breached the duties prescribed by s. 5.2 of NI 31-103, including monitoring and assessing compliance with securities legislation;
- l. Fisher (as the officer and director of Stableview) authorized, permitted or acquiesced in Stableview's breaches of the obligations and duties above and is thereby liable for these breaches under section 129.2 of the Act; and
- m. Fisher and Stableview have engaged in conduct that is contrary to the public interest.

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

E. ORDER SOUGHT

50. Enforcement Staff request that the Commission make the following orders:

- a. that the registration of the Respondents under Ontario securities law be terminated, or be suspended or restricted for such period as is specified by the Commission pursuant to paragraph 1 of subsection 127(1) of the Act;
- b. that trading in any securities or derivatives by the Respondents cease permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1) of the Act;
- c. that the Respondents be prohibited from acquiring any securities permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
- d. that any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1) of the Act;
- e. that the Respondents be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
- f. that Fisher resign one or more positions that he holds as a director or officer of any issuer or registrant pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;
- g. that Fisher be prohibited from becoming or acting as a director or officer of any issuer or registrant, pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act;
- h. that the Respondents be prohibited from becoming or acting as a registrant or promoter permanently or for such period as is specified by the Commission, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
- i. that the Respondents each pay an administrative penalty of not more than \$1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1)(9) of the Act;

- j. that the Respondents disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1)(10) of the Act;
- k. that the Respondents pay costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and,
- l. such other order as the Commission considers appropriate in the public interest.

DATED this 16th day of December, 2020

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