



**In the Matter of Staff's Recommendation
to Suspend the Registration of
Merit Valor Capital Asset Management Corporation**

**Opportunity to be Heard by the Director
Under Section 31 of the *Securities Act* (Ontario)**

Decision

1. For the reasons outlined below, my decision is to suspend the registration of Merit Valor Capital Asset Management Corporation (**MV** or the **Registrant**) as a dealer in the category of exempt market dealer (**EMD**), effective immediately.

Background

2. By letter dated November 26, 2019, staff (**Staff**) of the Ontario Securities Commission (**OSC**) advised Richard Samuels, Ultimate Designated Person (**UDP**) of the Registrant that Staff has recommended to the Director that the firm's registration be suspended indefinitely for failure to comply with the requirements in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) to deliver audited annual financial statements and the calculation of excess working capital forms.
3. MV obtained its registration as an EMD in September of 2015. Since that time MV has been consistently late in complying with and is currently in breach of s. 12.12 of NI 31-103. For fiscal years ending 2016 and 2017, MV was late in filing its audited financial statements and Form 31-103F1 *Calculation of Excess Working Capital* (**Form 31-103F1**). As of the date of this decision, MV has failed to file its audited financial statements and Form 31-103F1 for fiscal years ending 2018 and 2019.
4. Staff has made repeated requests to MV to establish a date for when the missing audited financial statements and Form 31-103F1 will be filed to bring the firm in compliance with its regulatory obligations. MV provided a date for when the 2018 financial information would be filed and missed that date. MV provided another date and missed that date as well. It now stands that the 2018 annual audited financial statements are more than a year overdue. Through submissions, MV has requested another 90 days to submit the audited annual financial statements and Form 31-103F1 for fiscal years ending 2018 and 2019.

Law and Reasons

5. Section 28 of the *Securities Act* (Ontario) (the **Act**) provides that the Director may revoke or suspend the registration of a person or company if it appears to the Director that the person or company is not suitable for registration under the Act, or that the registration is otherwise objectionable. Subsection 27(2) of the Act enumerates the factors that the Director shall consider in determining whether a company is suitable for registration which includes proficiency, solvency and integrity.
6. Section 31 of the Act provides that before the Director makes a determination, registrants are entitled to an opportunity to be heard (**OTBH**). This OTBH was conducted in writing and written

submissions were submitted by Joyce Taylor, Legal Counsel, OSC and Richard Samuels, UDP for MV.

7. Staff submits that “the filing of annual audited financial statements and the Form 31-103F1 Calculation of Excess Working Capital by registrants is a serious regulatory obligation placed on all registrants. These filings are the principal tool used by Staff to monitor a registrant’s financial viability and capital position.”¹
8. Since MV has failed to comply with its regulatory obligations, Staff is not able to assess whether the Registrant meets its solvency requirements. Solvency is one of the factors for determining whether a person or company is suitable for registration. Therefore, without solvency the registrant is not suitable for registration.
9. Also, Staff submits that MV has brought its integrity into question by failing to follow through on commitments made to Staff and has brought its proficiency into question by failing to comply with its regulatory obligations.
10. MV submits that it is has been a small firm (1 individual in 2017 and most of 2018) for a few years, that it was developing a custom software application and that the firm was not actively dealing or underwriting any third-party exempt securities.²
11. MV further submits that due to its small size it was not able to get the appropriate response from its accountant or find a new accountant to complete the annual audited financial statements by the annual filing deadlines.
12. In support of its position to seek more time to file its annual audited financial statements and Form 31-103F1, MV provided a number of Director’s Decisions as precedent³. I did not find any of the cases to be persuasive. The registrants in those OTBHs had eventually submitted their annual audited financial statements and Form 31-103F1 which brought them back in compliance with their regulatory obligations. In MV’s case, two years of audited financial statements and Form 31-103F1s have not yet been submitted. Also, the question before the Director in those decisions was whether terms and conditions should be applied to the firms after they had submitted the required financial statements and forms. The question here is whether to suspend the registration of MV for failing to comply with its regulatory obligations.
13. However, in *Access Capital Corporation Re* (2011), 34 OSCB 8433, the rationale for not imposing terms and conditions was that the death of a parent was a contributing factor for why the annual financial statements were filed late. The Director determined that this was an extremely rare circumstance and decided not to impose terms and conditions.
14. I agree with Staff that the requirement to file annual audited financial statements and the Form 31-103F1 is a serious regulatory obligation and failing to comply with the requirements of s. 12.12 of NI 31-103 is a breach of Ontario securities law.
15. Staff was more than reasonable in attempting to work with MV to remedy its non-compliance, but time after time MV failed to follow through on its commitments. It is not clear to me whether MV intentionally disregarded Staff by failing to meet its commitments or if it was inadvertent. Therefore, I cannot determine if MV lacks integrity.

¹ Written Submissions on behalf of Staff of the Ontario Securities Commission (December 23, 2019), para 18.

² Written Submissions on behalf of Merit Valor Capital Asset Management Corporation (January 9, 2020).

³ *Access Capital Corp, Re* (2011), 34 OSCB 8433; *AIG Global Investment Corp (Canada), Re* (2008), 31 OSCB 4639; *CR Advisors Corp, Re* (2008), 31 OSCB 6269; *Enterprise Capital Management Inc, Re* (2005), 28 OSCB 9269; *Goldman Sachs Asset Management LP, Re* (2006), 29 OSCB 4349.

16. Also, I am not persuaded that MV's rationale for failing to file the annual audited financial statements and Form 31-103F1 rises to the level of an extremely rare circumstance that would warrant additional time to meet its regulatory obligations.
17. Registration is a privilege, not a right, and registrants of all sizes and stages of operations are able to meet their regulatory requirements in a timely manner.
18. My decision is that MV is not currently suitable for registration because it has breached Ontario securities laws by failing to comply with s. 12.12 of NI 31-103 and that the ongoing registration of MV is objectionable. I accept Staff's recommendation to suspend MV's registration as an EMD, effective immediately.
19. Staff had recommended an indefinite suspension for MV based in part on the submission that MV had called its integrity and proficiency into question. Since I was not able to determine if MV lacks integrity, I am unable to determine if the suspension should be indefinite. Therefore, if MV decides to re-apply for registration, then MV must be responsive to Staff's requests, demonstrate how it has remedied its non-compliance and have the 2018 and 2019 audited financial statements and Form 31-103F1 available for Staff's review. Further, MV should expect that terms and conditions to monitor the financial situation of the firm will be recommended.



Debra Foubert, J.D.
Director, Compliance and Registrant Regulation Branch
Ontario Securities Commission
Dated: January 27, 2020