Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | 22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8 | 22e étage, 20, rue queen ouest, Toronto ON M5H 3S8

In the Matter of Staff's Recommendation
To Suspend the Registration of
Emerge Canada Inc.

Opportunity to be Heard by the Director under
Section 31 of the *Securities Act* (Ontario), R.S.O. 1990, c. S.5, as amended

Decision

1. For the reasons set out below, following an opportunity to be heard (the **OTBH**), under section 31 of the Securities Act (Ontario) (the **Act**), it is my decision that the registrations under the Act of Emerge Canada Inc., (**Emerge Canada**) in the categories of investment fund manager, portfolio manager and exempt market dealer be suspended, and that, before that suspension takes effect, the interim terms and conditions set out in the accompanying Schedule A be imposed on each of those registrations in order to restrict Emerge Canada from conducting any registrable activities except as may be necessary for an orderly wind-down of its current business as a registered firm.

2. My decision is based on the written submissions of Mark Skuce, Senior Legal Counsel and Joyce Taylor, Senior Legal Counsel, of the Compliance and Registrant Regulation Branch (**CRR**), counsel for staff of the Ontario Securities Commission (the **OSC** or the **Commission**), and Maureen Doherty of Borden Ladner Gervais LLP, counsel for Emerge Canada.

Background

3. Staff of the OSC (**Staff**) has recommended that the registration of Emerge Canada be suspended, and that before this suspension takes effect, terms and conditions be imposed on Emerge Canada's registration requiring it to carry out an orderly wind down of its funds, on the basis that Emerge Canada has failed to comply with the working capital requirements that are applicable to it under section 12.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**). Emerge Canada currently manages two fund families that consist of 11 exchange traded funds (the **Emerge ETF Funds**) and 11 mutual funds (collectively, the **Emerge Funds**).

4. Emerge Canada has been calculating its excess working capital by including an amount (the **Related-party Receivable**) owed to it from Emerge Capital Management Inc. (**Emerge US**), a related-party incorporated in the United States. The Related-party Receivable was approximately $4.5 million as of September 30, 2022 and approximately $3.4 million as of March 31, 2023.

5. There have been two main questions at issue in this OTBH:

   (a) Has Emerge Canada failed to comply with its minimum working capital requirements in NI 31-103?

   (b) If Emerge Canada has failed to comply with its minimum working capital requirement, is a suspension of its registration the appropriate remedy?

Law and Arguments of the Parties

Suitability for Continued Registration

6. Section 28 of the Act states that:

> The Director may revoke or suspend the registration of a person or company or impose terms and conditions of registration at any time during the period of registration of the person or company if it appears to the Director,
>
> (a) that the person or company is not suitable for registration or has failed to comply with Ontario securities law; or
>
> (b) that the registration is otherwise objectionable.

7. In *Sterling Grace & Co. Ltd.,*(2014), 37 OSCB. 8298, at para 147, the Commission said:

> On its face, section 28 of the Act provides three bases for determining whether revocation or suspension of registration or imposition of terms and conditions are appropriate. The first basis is a determination that the person or company is not suitable for registration. The second is a determination that the person or company failed to comply with Ontario securities law. The third and last ground is a determination that the registration is otherwise objectionable. These three tests, if met, are separate bases for a remedy. Thus, a finding that one of these bases has been met is sufficient grounds for revocation or suspension of registration or imposition of terms and conditions, although the decision is ultimately a discretionary one.

8. Section 27 of the Act, which describes how an applicant's suitability for registration is to be determined, states that to be suitable for registration, the firm or individual must satisfy "the requirements prescribed in the regulations relating to proficiency, solvency, and integrity."

9. In Sterling Grace & Co., at para 148, the Commission indicated that an assessment of a registrant's suitability for ongoing registration under section 28 ought to be determined with reference to the same three criteria used in a suitability assessment under section 27.

10. Section 12.1 of NI 31-103 establishes minimum working capital requirements for registered firms. Subsections 12.1(1) and 12.1(2) state;

> 12.1 (1) If, at any time, the excess working capital of a registered firm, as calculated in accordance with Form 31-103F1 *Calculation of Excess Working Capital,* is less than zero, the registered firm must notify the regulator or, in Québec, the securities regulatory authority as soon as possible.
>
> (2) The excess working capital of a registered firm, as calculated in accordance with Form 31-103F1 *Calculation of Excess Working Capital,* must not be less than zero for 2 consecutive days.

The full text of Form 31-103F1 *Calculation of Excess Working Capital* is reproduced in the accompanying Schedule B.

11. The maintenance of working capital by a registrant is a fundamental requirement of the registration regime. In *Re Pro-Financial Asset Management Inc.*, (2017), 40 OSCB 3903, at para. 170, the Commission stated as follows (with its footnotes omitted):

> Previous decisions of Directors of the Commission have held that the working capital requirement is a fundamental feature of the registrant regulation regime as solvency is one of the three pillars of suitability for registration and that all registrants are required to meet the capital requirements of the Act. As stated by the Director in his decision in *Pente Investment Management Ltd., Re* (2006), 29 O.S.C.B. 6795 (Ont. Securities Comm.) ("*Pente*"):
>
> Maintaining minimum free capital is a serious regulatory obligation placed on registrants. This requirement helps to protect investors from insolvency and fosters confidence in Ontario's capital markets.
>
> (*Pente*, para 10)

Staff contends that Emerge Canada's failure to comply with its working capital obligations under section 12.1 of NI 31-103 is a breach of securities laws that calls into question its continued suitability for registration.

Issue #1 - Has Emerge Canada failed to comply with its minimum working capital requirements in NI 31-103?

12. By virtue of its registration as an investment fund manager, Emerge Canada is required under section 12.1(1), (2) and (3) to use a minimum capital of $100,000 for the purposes of its calculation of excess working capital in accordance with Form 31-103F1 *Calculation of Excess Working Capital*.

Categorization of Related-Party Receivable as a current asset

13. In its September 30, 2022 Form 31-103F1, Emerge Canada categorized the Related-party Receivable of $4,503,782 from Emerge US, in Line 1 of the Form, as a current asset. In order for the Related-party Receivable to be included as a current asset it must meet the definition of a current asset. "Current asset" is defined in paragraph 66 of the International Accounting Standard 1 Presentation of Financials Statements as follows:

> An entity shall classify an asset as current when
>
> (a) it expects to realise the asset, or intends to sell or consume it, in its normal operating cycle;
>
> (b) it holds the asset primarily for the purpose of trading;
>
> (c) it expects to realise the asset within twelve months after the reporting period; or
>
> (d) the asset is cash or a cash equivalent (as defined in IAS 7) unless the asset is restricted from being exchanged or used to settle a liability for at least twelve months after the reporting period
>
> An entity shall classify all other assets as non-current.

(Affidavit of David Tong, Accountant in CRR ,sworn on January 31, 2023, at para.17)

14. In the case of Emerge Canada's Form 31-103F1, the relevant part of the above definition of a current asset is paragraph (c) —whether Emerge Canada expects to realize the Related-party Receivable within twelve months after the reporting period.

15. Staff contends that Emerge Canada is not able to consider the Related-party Receivable as a current asset because it is unable to realize this asset within twelve months after the reporting period because it is dependent upon the ability of Emerge US to pay the receivable, which has remained in dispute since Staff reviewed the September 30, 2022 unaudited financial statements of Emerge US.

16. The Related-party Receivable was $136,360 in December 31, 2019, grew to approximately $1.7 million by December 31, 2021, and then increased to approximately $4.5 million by September 30, 2022.

17. Emerge Canada's financial statements for years ended December 31, 2020 and 2021, which were audited by its former auditor, BDO Canada LLP included the Related-party Receivable as a current asset without reservation in these audited financial statements. Based on this prior classification and in reliance on the audit of BDO Canada LLP, Emerge Canada has continued to treat the receivable as it did in prior years. However, in doing so, Emerge Canada has apparently, not considered the material change in the amount of the receivable in 2022 and 2023. There was a 155% change in the amount of the Related-party Receivable from December 2021 to September 2022 and a 93.4% change from December 2021 to March 2023.

18. I do not accept Emerge Canada's assertion that since the Related-party Receivable was included as a current asset in the last audited financial statements as at December 31, 2021, it could, on this basis, continue to include it as a current asset in subsequent unaudited financial statements. I don't find this reliance reasonable considering the material increases in the Related-party Receivable.

19. Emerge Canada made the demand that Emerge US pay the Related-party Receivable in December 2022. As of the date of this decision, Emerge US has not paid the receivable in full. Some deductions have been taken to offset the total; according to the March 31, 2023 unaudited balance sheet of Emerge Canada that it submitted to Staff on April 10, 2023, the Related-party Receivable was approximately $3.4 million.

20. In any event, whether the Related-party Receivable has been correctly classified by Emerge Canada as a current asset in Line 1 of its Form 31-103F1, Line 2 of the Form requires any current asset that is "not readily convertible into cash" be excluded when calculating excess working capital in accordance with the Form.

21. My finding below that the Related-party receivable is "not readily convertible into cash", for the purposes of Line 2 of Form 31-103F1 makes it unnecessary for me to reach a conclusion on whether the Related-party Receivable has been correctly classified by Emerge Canada as a current asset in Line 1 of its Form 31-103F1 filings.

Is the Related-party Receivable readily convertible into cash?

22. The phrase "readily convertible into cash" is not defined in the Act. I accept that the determination of what assets satisfy the test of readily convertible into cash will depend upon the nature of the asset, the relevant circumstances and professional judgement. At the same time, however, in the absence of the phrase being assigned a specific meaning in NI 31-103, I interpret the term in a manner consistent with the ordinary, common sense meaning of the word "readily" and the financial solvency and liquidity objectives underlying the minimum working capital requirements of section 12.1 of NI 31-103.

23. The Concise Canadian Oxford Dictionary includes the following relevant definition for the word "readily": Easily, promptly; without difficulty.

24. In advance of introducing NI 31-103, the Canadian Securities Administrators described the purpose and importance of the capital requirements:

    We regulate a firm's solvency by imposing capital and insurance requirements. The requirement to

maintain a minimum level of capital is one of the tools that a regulator uses to monitor its market participants. The capital formula, as a regulatory tool, enables the regulator to achieve the following objectives:

- provide protection against insolvency due to liabilities exceeding the realizable value of assets
- provide protection to client assets and minimize disruption to clients
- ensure liquidity of a firm
- allow the regulators sufficient time to intervene to facilitate an orderly wind down, if necessary
- serve as a signal to the regulator that the market participant may have potential problems
- help in the assessment of the integrity of market participants and their fitness for registration.

(Canadian Securities Administrators, Notice and Request for Comment: Proposed National Instrument 31-103 *Registration Requirements*, Proposed Companion Policy 31-103CP *Registration Requirements*, Proposed Amendments to Multilateral Instrument 33-109 *Registration Information*, (2007) 30 OSCB (Supp-2), at p. 11)

25. Ms. Lisa Lake Langley is the Chief Executive Officer and Chief Compliance Officer for Emerge Canada. She is registered under the Act as the ultimate designated person and chief compliance officer of Emerge Canada; and as an advising representative and dealing representative for Emerge Canada. She is also President of Emerge US. In these circumstances, she should have intimate knowledge of the financial status and holdings of Emerge Canada and Emerge US.

26. Throughout Emerge Canada's submissions, Ms. Langley has indicated that Emerge US needs to raise funds in order to pay the receivable to Emerge Canada. Ms. Langley and Emerge US have made repeated attempts to raise funds, but to date no transaction has been completed that would fully discharge the Related-party receivable.

27. The submissions of counsel for Emerge Canada and Staff have identified various so far unsuccessful attempts by Emerge US to raise the funds it needs to pay Emerge Canada the amount it owes. The attempts include the following:

(a) The potential sale of a stake in Emerge US to a venture capital company.

(b) On December 30, 2022, counsel for Emerge Canada informed Staff that Emerge US obtained a revolving line of credit for a maximum amount of US $6 million from Universal Funding Group, a US based lending entity.

(c) On February 23, 2023, in a Supplementary Affidavit, Ms. Langley stated that a new financial arrangement was established. This arrangement is a loan by way of short-term bonds being transferred from a United Kingdom institutional investor, United General OpCo Ltd, to Emerge US in the amount of US$5 Million. Upon its receipt of the bonds, Ms. Langley had stated that Emerge US "will redeem [the bonds] immediately to cash," and Emerge US will use the proceeds to repay the Related-party Receivable.

(d) On March 17, 2023, Emerge Canada and Emerge US entered into a Term Loan Agreement for US$5 million from the United General OpCo Ltd. Emerge Canada advised that pursuant to the terms of the Term Loan Agreement on March 21, 2023, Emerge Canada will request monies to be

advanced.

(e) Pursuant to the Term Loan Agreement, instead of receiving cash, Emerge US received a transfer of Antigua Barbuda government bonds. The bonds were available to Emerge US for trading as of April 11, 2023. Since the receipt of the bonds, Emerge US has been attempting to sell the bonds. The bonds are traded over-the-counter and Emerge US needs to locate an institutional buyer.

28. Emerge Canada submits that the International Accounting Standard 7 statements of cash flows provides that cash equivalents must be readily convertible to a known amount of cash and not be subject to a significant risk of a change in value. This standard provides that cash equivalents would have a short maturity of three months or less. Since the Related-party Receivable is not a cash equivalent, Emerge Canada contends that the timeframe in this instance for Emerge Canada to readily convert the asset to cash is between 3 and 12 months.

29. Emerge Canada does not currently have an auditor, nor does it have audited financial statements for its financial year ending December 31, 2022. For its calculation of its excess working capital, using its most recently submitted Form 31-103F1, as of September 30, 2022, it has not provided any evidence from an audit firm to support its characterization of the Related-party Receivable as a current asset, in Line 1-- or its decision to not exclude the Related-party Receivable as a current asset not readily convertible to cash, in accordance with Line 2.

30. From December, 2022 to the present, Ms. Langley has advised Staff of various attempts to raise the funds needed to pay the Related-party Receivable, but so far none of them have been completed. While there is no definition or timeline relating to the phrase "not readily convertible to cash," given the timeline that Emerge US has taken to raise the necessary funds to discharge the Related-party Receivable, I find that the timeline for the Related-party Receivable to be considered "readily convertible to cash" has been exceeded, and therefore this asset must be excluded in Emerge Canada's calculation of "excess working capital" in accordance with Form 31-103F1.

Is Emerge Canada working capital deficient?

31. Emerge Canada's September 30, 2022 Form 31-103F1 identified its excess working capital as being $12,819, in Line 13. If the Related-party Receivable, which as of September 30, 2022 was $4,503,782, had not been included in this amount — either on the basis that it was not a current asset or even if it was a current asset, it was not readily convertible to cash — this would have translated into an excess working capital deficit of ($4,490,963), in Line 13. (Staff's January 31, 2023 submission, at paras 31, 32, and 33).

32. On April 10, 2023 and May 10, 2023, Emerge Canada provided unaudited financial statements as of March 31, 2023 and Form 31-103F1 working capital calculation as of March 31, 2023. In their Form 31-103 F1, Emerge Canada identified itself as having an excess working capital deficiency of $1,466,863. Their calculated deficiency did not exclude the Related-party Receivable under Line 2 of the Form and did not reflected a 100% market risk reduction under Line 9 for the value of the 1.5 Million DIGau tokens held in the investment account.

33. Staff contends that the Line 9 market risk reduction for the DIGau tokens is 100%, pursuant to Schedule 1 of Form 31-103F1. Schedule 1 states that the market risk reduction for all other securities that are not otherwise described in Schedule 1 is 100%. This position is further supported by the following guidance published by the Canadian Securities Administrators on February 22, 2023, in CSA Staff Notice 21-232 *Crypto Asset Trading Platforms: Pre-Registration Undertakings – Changes to Enhance Canadian Investor Protection:*

> For the purpose of the minimum excess working capital requirement applicable to registered firms, CSA staff will expect a 100% reduction on all crypto assets which are not offset by a corresponding current liability, such as crypto assets held for the clients as collateral to guarantee obligations under crypto contracts.
>
> This will result in the exclusion of all the crypto assets held by the Crypto Asset Trading Platforms from the excess working capital calculation (Form 31-103F1).
>
> This provision is based on the fact that most crypto assets are speculative in nature and that their value is highly volatile. As a new class of assets, crypto assets have limited investment history which indicates that they may lose substantial, if not all, their value in a very short period. Crypto Asset Trading Platforms must consider those risk elements when calculating their excess working capital to ensure their solvency.

34. I agree with Staff that, Emerge Canada must reduce the value of the DIGau tokens held in the investment account by 100% to account for the market risk, based on the instructions in Schedule 1, which is also supported by the guidance in CSA Staff Notice 21-232.

Findings on Issue #1

35. Based on the foregoing, I find that Emerge Canada is working capital deficient and has failed to comply with, and remains in non-compliance with its minimum working capital requirements in section 12.1 of NI 31-103 and, consequently, has breached, and remains in breach, of Ontario securities law.

Issue #2 - If Emerge Canada has failed to comply with the minimum working capital requirement, is a suspension of its registration the appropriate remedy?

36. Staff contends that firms without sufficient working capital cannot be permitted to continue to operate for extended periods of time, without placing investors at risk and diminishing public confidence in Ontario's capital markets.

37. Staff submits that Emerge Canada's registration being suspended is an appropriate remedy for its non-compliance with its minimum working capital requirements in section 12.1 of NI 31-103 as it has no apparent reasonable prospect of bringing itself into compliance.

38. Staff raised the working capital deficiency with Emerge Canada on December 16, 2022, and estimates that Emerge Canada knew or ought to have known that it was working capital deficient in September, 2022 and was likely deficient at some point prior to September 30, 2022.

39. Emerge Canada's audited financial statements for its fiscal year ended December 31, 2021, included the following going concern statement:

> **The Company's ability to continue as a going concern is dependent upon its ability to obtain adequate financing and the Company achieving a profitable level of operations to provide it with sufficient funds to operate the business and maintain minimum regulatory capital requirements**. If the Company is unable to obtain additional funding and obtain profitable levels of operations, the Company may be unable to continue to realize on its assets in the normal course and to discharges its liabilities in the normal course of business. (*Emphasis added*).

40. The Board of Directors of Emerge Canada authorized issuing its audited financial statements on July 28, 2022. Considering this, Emerge Canada should have known that it would required additional capital to operate its business and maintain regulatory working capital.

41. The standard used for financial reporting is fair representation of financial position and financial performance. Part 15 of International Accounting Standards 1 provides:

> "financial statements shall present fairly the financial position, financial performance and cash flows of an entity. Fair presentation requires the faithful representation of the effect of transactions, other events, and condition in accordance with the definitions and recognition criteria for assets, liabilities, income and expenses set out in the Conceptual Framework for Financial Reporting…."

42. Staff estimates that Emerge Canada has been working capital deficient from at least September 2022.

43. Emerge Canada has failed to file its annual audited financial statements for its fiscal year ended December 31, 2022, which were required to be filed by March 31, 2023. Since April 6, 2023, the Emerge Funds are subject to a cease trade order for failing to file both their audited annual financial statements and the management report of fund performance for the year ended December 31, 2022. As a result, investors in the Emerge Funds are not able to access their investments; although the funds are still capable of being actively managed.

44. Emerge Canada submits that suspending the firm and requiring the wind-up of the Emerge ETFs is overly punitive and is unwarranted in the circumstances. Winding up the Emerge ETFs would not be in the best interest of the unitholders because Emerge Canada owes a receivable of approximately $5.5 million to the Emerge Ark ETFs and Emerge Canada is not able to pay the receivable it owes to the Emerge Ark ETFs until Emerge US pays the Related-Party Receivable in full. Also, forcing a sale of the assets of the funds may occur at liquidation values.

45. Emerge Canada further contends that suspension is not warranted because it is a relatively new registrant and it fills a unique niche in the ETF market. It is North America's first all-women investment team managing innovative and socially responsible investment strategies. Also, the forced liquidation of the Emerge ETFs could have reputational damage not only to Emerge Canada but to other small ETF providers and ETFs in general. In addition, the current market for obtaining financing is difficult.

Alternative Terms and Conditions

46. I requested that Staff and Emerge Canada provide terms and conditions that I could consider as an alternative to suspending Emerge Canada's registration.

47. Emerge Canada proposed monitoring terms and conditions.

48. Staff contends that monitoring terms and conditions are typically applied after working capital deficiencies are cured and the registrant has met it regulatory obligations. They are not applied to facilitate on-going working capital deficiency breaches.

49. Staff submits that alternative terms and conditions to permit more than a wind-down of its operations would be equivalent to exempting Emerge Canada from its legal requirements by substituting lesser ones without an exemptive relief application and without the benefit of the analysis of the exemptive relief application process.

50. Staff submits that any terms and conditions other than the wind-down terms and conditions originally proposed by Staff would amount to "shoring up" an otherwise objectionable registrant.

51. In my request for alternative terms and conditions to consider, I had suggested some minimum terms and conditions with specific actions to be taken and requested that other possible terms and conditions be provided for my consideration. Emerge Canada did not provide specific dates by which the suggested actions would be completed or proposed any other terms and conditions.

Findings on Issue #2

52. Maintenance of working capital is a fundamental requirement of registration. Proficiency, solvency, and integrity are the three cornerstone principles to consider in assessing suitability for registration. Therefore, I agree with Staff that registrants without sufficient working capital cannot be permitted to continue to operate for extended periods of time, without placing investors at risk and diminishing public confidence in Ontario's capital markets.

53. In these circumstances, I am satisfied that suspension of registration is an appropriate remedy to address non-compliance by Emerge Canada with its working capital requirements and that an additional finding of otherwise objectional is not necessary.

54. I find that Emerge Canada has been provided ample opportunity to remedy its working capital deficiency. Moreover, I am satisfied that even if the Related-party Receivable is paid in full, Emerge Canada will remain working capital deficient, unless other working capital that qualifies for inclusion in the calculation of its excess working capital in accordance with Form 31-103F1 is obtained.

55. While I applaud the fact that Emerge is breaking ground as North America's first all-women investment team managing innovative and socially responsible investment strategies, it did not form any part of my decision as the regulatory requirements apply equally to all registrants, in the absence of specific exemptions.

56. Based on my findings, Emerge Canada is in breach of Ontario securities law. It continues to be working capital deficient, and there is no timeline or certainty as to when Emerge Canada will bring itself into compliance with the working capital obligations or whether Emerge Canada will have sufficient working capital if and when the Related-party Receivable is realized.

Conclusion

57. Based on the foregoing, I accept Staff's recommendation to: (a) suspend Emerge Canada's registration in the categories of investment fund manager, portfolio manager and exempt market dealer; and (b) before that suspension takes effect, to impose interim terms and conditions on the registration of Emerge Canada that restrict the registerable activities that it may conduct.

58. I have, however, in this Decision, modified, the interim terms and conditions proposed by Staff. Staff had recommended that Emerge Canada not be permitted to conduct any registerable activity except as may be necessary for an orderly wind-down of all funds currently managed by it, and that Emerge Canada act promptly to wind-down those funds in accordance with their constating documents. The terms and conditions set out in the accompanying Schedule A to this Decision, which I am imposing, contemplate the possibility of Emerge Canada, as part of the wind-down of its business as a registered firm, making prompt arrangements for another appropriately registered firm(s) to assume responsibility for the registerable activities currently being performed by Emerge Canada in respect of the funds (provided, of course, these arrangements are carried out in accordance with the constating documents of the funds and applicable laws).

59. It is my decision to impose the terms and conditions set out in the accompanying Schedule A, which I direct Staff to implement.

"Debra Foubert"

Debra Foubert, J.D.
Director, Compliance and Registrant Regulation Branch
Ontario Securities Commission

May 10, 2023

SCHEDULE A

Terms and Conditions of Registration

The registration of Emerge Canada Inc. (the **Registrant**) is subject to the terms and conditions set out below. These terms and conditions were imposed by the Director pursuant to section 28 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended.

1. The Registrant shall not conduct any registerable activity except as may be necessary for a prompt and an orderly wind-down of its current business as a registered firm.

2. Since its current business includes managing exchange traded funds and mutual funds, the Registrant shall act promptly to determine the impact of condition 1 on the continued operation of the funds managed by it, including whether a wind-down of the funds in accordance with their constating documents will be necessary.

3. The Registrant shall provide updates to the Deputy Director or Manager in the Compliance and Registrant Regulation Branch of the Ontario Securities Commission (OSC Manager) respecting its progress in addressing the above conditions in such form and at such times as may be required by the OSC Manager.

4. After the OSC Manager has informed the Registrant in writing that the OSC Manager is satisfied that the Registrant has wound down its business as a registered firm, the registration of the Registrant is suspended.

These terms and conditions of registration constitute Ontario securities law, and a failure by the Registrant to comply with these terms and conditions may result in further regulatory action against the Registrant.

SCHEDULE B

Ontario Securities Commission

Form 31-103F1

Unofficial consolidation current to 2018-06-12

This document is not an official statement of law or policy and should be used for reference purposes only.

FORM 31-103F1
CALCULATION OF EXCESS WORKING CAPITAL

Firm Name

Capital Calculation

(as at _____ with comparative figures as at _____)

	Component	Current period	Prior period
1.	Current assets		
2.	Less current assets not readily convertible into cash (e.g., prepaid expenses)		
3.	Adjusted current assets Line 1 minus line 2 =		
4.	Current liabilities		

	Component	Current period	Prior period
5.	Add 100% of non-current related party debt unless the firm and the lender have executed a subordination agreement in the form set out in Appendix B of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and the firm has delivered a copy of the agreement to the regulator or, in Québec, the securities regulatory authority. See section 12.2 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations.*		
6.	Adjusted current liabilities Line 4 plus line 5 =		
7.	Adjusted working capital Line 3 minus line 6 =		
8.	Less minimum capital		
9.	Less market risk		
10.	Less any deductible under the bonding or insurance policy required under Part 12 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* or, in Québec, for a firm registered only in that jurisdiction and solely in the category of mutual fund dealer, less the deductible under the liability insurance required under section 193 of the Québec Securities Regulation		
11.	Less Guarantees		
12.	Less unresolved differences		
13.	**Excess working capital**		

Notes:

Form 31-103F1 *Calculation of Excess Working Capital* must be prepared using the accounting principles that you use to prepare your financial statements in accordance with National Instrument 52107 *Acceptable Accounting Principles and Auditing Standards.* Section 12.1 of Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* provides further guidance in respect of these accounting principles.

Line 5. Related-party debt – Refer to the CICA Handbook for the definition of "related party" for publicly accountable enterprises. The firm is required to deliver a copy of the executed subordination agreement to the regulator or, in Québec, the securities regulatory authority on the earlier of a) 10 days after the date the agreement is executed or b) the date an amount subordinated by the agreement is excluded from its calculation of excess working capital on Form 31-103F1 *Calculation of Excess Working Capital.* **The firm must notify the regulator or, in Québec, the securities regulatory authority, 10 days before it repays the loan (in whole or in part), or terminates the subordination agreement.** See section 12.2 of National Instrument 31-103 *Registration Requirements Exemptions and Ongoing Registrant Obligations.*

Line 8. Minimum Capital – The amount on this line must be not less than (a) $25,000 for an adviser and (b) $50,000 for a dealer. For an investment fund manager, the amount must be not less than $100,000 unless subsection 12.1(4) of National Instrument 31-103 *Registration Requirements Exemptions and Ongoing Registrant Obligations* applies.

Line 9. Market Risk – The amount on this line must be calculated according to the instructions set out in Schedule 1 to Form 31-103F1 *Calculation of Excess Working Capital.* A schedule supporting the calculation of any amounts included in Line 9 as market risk should be provided to the regulator or, in Québec, the securities regulatory authority in conjunction with the submission of Form 31-103F1 *Calculation of Excess Working Capital.*

Line 11. Guarantees – If the registered firm is guaranteeing the liability of another party, the total amount of the guarantee must be included in the capital calculation. If the amount of a guarantee is included in the firm's statement of financial position as a current liability and is reflected in line 4, do not include the amount of the guarantee on line 11.

Line 12. Unresolved differences – Any unresolved differences that could result in a loss from either firm or client assets must be included in the capital calculation. The examples below provide guidance as to how to calculate unresolved differences:

(i) If there is an unresolved difference relating to client securities, the amount to be reported on Line 12 will be equal to the fair value of the client securities that are short, plus the applicable margin rate for those securities.

(ii) If there is an unresolved difference relating to the registrant's investments, the amount to be reported on Line 12 will be equal to the fair value of the investments (securities) that are short.

(iii) If there is an unresolved difference relating to cash, the amount to be reported on Line 12 will be equal to the amount of the shortfall in cash.

Please refer to section 12.1 of Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* for further guidance on how to prepare and file Form 31-103F1 *Calculation of Excess Working Capital.*

Management Certification

Registered Firm Name: _____

We have examined the attached capital calculation and certify that the firm is in compliance with the capital requirements as at_____.

Name and Title	Signature	Date
_____	_____	_____
_____		
_____	_____	_____
_____		

Schedule 1 of Form 31-103F1 Calculation of Excess Working Capital

(calculating line 9 [market risk])

For purposes of completing this form:

(1) "Fair value" means the value of a security determined in accordance with Canadian GAAP applicable to publicly accountable enterprises.

(2) For each security whose value is included in line 1, Current Assets, multiply the fair value of the security by the margin rate for that security set out below. Add up the resulting amounts for all of the securities you hold. The total is the "market risk" to be entered on line 9.

(a) Bonds, Debentures, Treasury Bills and Notes

(i) Bonds, debentures, treasury bills and other securities of or guaranteed by the Government of Canada, of the United Kingdom, of the United States of America or of any other national foreign government (provided those foreign government securities have a current credit rating described in subparagraph (i.1)) maturing (or called for redemption):

within 1 year:	1% of fair value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year to 3 years:	1 % of fair value
over 3 years to 7 years:	2% of fair value
over 7 years to 11 years:	4% of fair value
over 11 years:	4% of fair value

(i.1) A credit rating from a designated rating organization listed below, from a DRO affiliate of an organization listed below, from a designated rating organization that is a successor credit rating organization of an organization listed below or from a DRO affiliate of such successor credit rating organization, that is the same as one of the following corresponding rating categories or that is the same as a category that replaces one of the following corresponding rating categories:

Designated Rating Organization	Long Term Debt	Short Term Debt
DBRS Limited	AAA	R-1(high)
Fitch Ratings, Inc.	AAA	F1+
Moody’s Canada Inc.	Aaa	A-1+
S&P Global Ratings Canada	AAA	A-1+

(ii) Bonds, debentures, treasury bills and other securities of or guaranteed by any jurisdiction of Canada and obligations of the International Bank for Reconstruction and Development, maturing (or called for redemption):

within 1 year:	2% of fair value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year to 3 years:	3 % of fair value
over 3 years to 7 years:	4% of fair value
over 7 years to 11 years:	5% of fair value
over 11 years:	5% of fair value

(iii) Bonds, debentures or notes (not in default) of or guaranteed by any municipal corporation in Canada or the United Kingdom maturing:

within 1 year:	3% of fair value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year to 3 years:	5 % of fair value
over 3 years to 7 years:	5% of fair value
over 7 years to 11 years:	5% of fair value
over 11 years:	5% of fair value

(iv) Other non-commercial bonds and debentures, (not in default): 10% of fair value

(v) Commercial and corporate bonds, debentures and notes (not in default) and non-negotiable and non-transferable trust company and mortgage loan company obligations registered in the registered firm's name maturing:

within 1 year:	3% of fair value
over 1 year to 3 years:	6 % of fair value
over 3 years to 7 years:	7% of fair value
over 7 years to 11 years:	10% of fair value
over 11 years:	10% of fair value

(b) Bank Paper

Deposit certificates, promissory notes or debentures issued by a Canadian chartered bank (and of Canadian chartered bank acceptances) maturing:

within 1 year:	2% of fair value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year:	apply rates for commercial and corporate bonds, debentures and notes

(c) Acceptable foreign bank paper

Deposit certificates, promissory notes or debentures issued by a foreign bank, readily negotiable and transferable and maturing:

within 1 year:	2% of fair value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year:	apply rates for commercial and corporate bonds, debentures and notes

"Acceptable Foreign Bank Paper" consists of deposit certificates or promissory notes issued by a bank other than a Canadian chartered bank with a net worth (i.e., capital plus reserves) of not less than $200,000,000.

(d) Mutual Funds

Securities of mutual funds qualified by prospectus for sale in any jurisdiction of Canada:

(i) 5% of the net asset value per security as determined in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure,* where the fund is a money market mutual fund as defined in National Instrument 81-102 *Investment Funds;* or

(ii) the margin rate determined on the same basis as for listed stocks multiplied by the net asset value per security of the fund as determined in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure.*

Securities of mutual funds qualified by prospectus for sale in the United States of America: 5% of the net asset value per security if the fund is registered as an investment company under the *Investment Company Act of 1940,* as amended from time to time, and complies with Rule 2a-7 thereof.

(e) Stocks

In this paragraph, "securities" includes rights and warrants and does not include bonds and debentures.

(i) On securities including investment fund securities, rights and warrants, listed on any exchange in Canada or the United States of America:

Long Positions – Margin Required

Securities selling at $2.00 or more – 50% of fair value

Securities selling at $1.75 to $1.99 – 60% of fair value

Securities selling at $1.50 to $1.74 – 80% of fair value

Securities selling under $1.50 – 100% of fair value

Short Positions – Credit Required

Securities selling at $2.00 or more – 150% of fair value

Securities selling at $1.50 to $1.99 – $3.00 per share

Securities selling at $0.25 to $1.49 – 200% of fair value

Securities selling at less than $0.25 – fair value plus $0.25 per share

(ii) For positions in securities that are constituent securities on a major broadly-based index of one of the following exchanges, 50% of the fair value:

(a) Australian Stock Exchange Limited

(b) Bolsa de Madrid

(c) Borsa Italiana

(d) Copenhagen Stock Exchange

(e) Euronext Amsterdam

(f) Euronext Brussels

(g) Euronext Paris S.A.

(h) Frankfurt Stock Exchange

(i) London Stock Exchange

(j) New Zealand Exchange Limited

(k) Stockholm Stock Exchange

(l) SIX Swiss Exchange

(m) The Stock Exchange of Hong Kong Limited

(n) Tokyo Stock Exchange

(f) Mortgages

(i) For a firm registered in any jurisdiction of Canada except Ontario:

(a) Insured mortgages (not in default): 6% of fair value

(b) Mortgages which are not insured (not in default): 12% of fair value.

(ii) For a firm registered in Ontario:

(a) Mortgages insured under the *National Housing Act* (Canada) (not in default): 6% of fair value

(b) Conventional first mortgages (not in default): 12% of fair value.

If you are registered in Ontario regardless of whether you are also registered in another jurisdiction of Canada, you will need to apply the margin rates set forth in (ii) above.

(g) **For all other securities –** 100% of fair value.