The Ontario Securities Commission

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

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1.1 Notices

1.1.1 CSA Staff Notice 93-301 Derivatives Business Conduct Rule – No Overlap with Derivatives Registration Rule Comment Period

CSA STAFF NOTICE 93-301

DERIVATIVES BUSINESS CONDUCT RULE – NO OVERLAP WITH DERIVATIVES REGISTRATION RULE COMMENT PERIOD

June 15, 2017

On April 4, 2017, the Canadian Securities Administrators (the **CSA** or **we**) published for comment Proposed National Instrument 93-101 *Derivatives: Business Conduct* and Proposed Companion Policy 93-101 *Derivatives: Business Conduct* (collectively, the **Business Conduct Rule**). The comment period for the Business Conduct Rule will close on September 1, 2017.

We are also in the process of developing a proposed registration regime for derivatives dealers, derivatives advisers and potentially other derivatives market participants. We initially expected to publish Proposed National Instrument 93-102 *Derivatives: Registration* and a related companion policy (collectively, the **Registration Rule**) for comment during the consultation period for the Business Conduct Rule.

However, the Registration Rule is now scheduled to be published after September 1, 2017. The Business Conduct Rule comment period will thus no longer overlap with the Registration Rule comment period. We expect comments relating to the Business Conduct Rule to be sent in by the deadline date of September 1, 2017.

Once the Registration Rule is published, we will consider further comments on the Business Conduct Rule that may arise as a consequence of your review of the Registration Rule. These comments will be due by the expiry of the comment period for the Registration Rule.

Questions

Please refer your questions to any of the following:

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1.1.2 CSA Staff Notice 51-350 Extension of Consultation Period – CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA Staff Notice 51-350
Extension of Consultation Period

CSA Consultation Paper 51-404
Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

June 22, 2017

On April 6, 2017 the Canadian Securities Administrators (**CSA** or **we**) published for comment CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* (the **Consultation Paper**). The Consultation Paper sought input on areas of securities legislation applicable to non-investment fund reporting issuers that could benefit from a reduction of undue regulatory burden, without compromising investor protection or the efficiency of the capital market.

The comment period is scheduled to close on July 7, 2017. We have received feedback from several stakeholders that it would be beneficial for stakeholders to have additional time to review the Consultation Paper and prepare comments. We therefore are extending the comment period from July 7, 2017 to July 28, 2017.

Questions

If you have any comments or questions, please contact any of the CSA staff listed below.

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1.2 Notices of Hearing

1.2.1 Home Capital Group Inc. et al. – ss. 127(1), 127.1

IN THE MATTER OF
HOME CAPITAL GROUP INC.,
GERALD SOLOWAY,
ROBERT MORTON and
MARTIN REID

NOTICE OF HEARING
(Sections 127(1) and 127.1 of the Securities Act)

TAKE NOTICE that the Ontario Securities Commission (the "**Commission**") will hold a hearing pursuant to subsections 127(1) and 127.1 of the *Securities Act*, RSO, c S.5 (the "**Act**"), at the offices of the Commission at 20 Queen Street West, 17th floor, Toronto, commencing on August 9, 2017 at 10:00 a.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the Settlement Agreement dated June 14, 2017 between Staff of the Commission and Home Capital Group Inc., Gerald Soloway, Robert Morton and Martin Reid;

BY REASON OF the allegations set out in the Statement of Allegations of Staff, dated April 19, 2017;

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by a representative at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceedings;

AND TAKE FURTHER NOTICE that the Notice of Hearing is also available in French on request, participation may be in either French or English and participants must notify the Secretary's Office in writing as soon as possible, and in any event, at least thirty (30) days before a hearing if the participant is requesting a proceeding to be conducted wholly or partly in French; and

ET AVIS EST ÉGALEMENT DONNÉ PAR LA PRÉSENTE que l'avis d'audience est disponible en français sur demande, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Bureau du secrétaire par écrit le plus tôt possible et, dans tous les cas, au moins trente (30) jours avant l'audience si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

DATED at Toronto this 14th day of June, 2017.

"Grace Knakowski"
Secretary to the Commission

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 Nixon Lau et al. – ss. 127, 127.1

IN THE MATTER OF
NIXON LAU,
INCOME STRATEGIX HOLDINGS LTD.,
INCOME STRATEGIX L.P.,
INCOME STRATEGIX A-CLASS L.P. and
INCOME STRATEGIX I-CLASS L.P.

NOTICE OF HEARING
(Sections 127 and 127.1 of the Securities Act, RSO 1990, c S.5)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5 at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto, Ontario, commencing on June 26, 2017 at 9:00 a.m., or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the Settlement Agreement dated June 13, 2017, between Staff of the Commission and Nixon Lau, Income Strategix Holdings Ltd., Income Strategix L.P., Income Strategix A-Class L.P. and Income Strategix I-Class L.P.;

BY REASON of the allegations set out in the Statement of Allegations of Staff of the Commission dated June 15, 2017, and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by a representative at the hearing; and

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of the party and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 16th day of June, 2017.

"Grace Knakowski"

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

AND

IN THE MATTER OF
NIXON LAU,
INCOME STRATEGIX HOLDINGS LTD.,
INCOME STRATEGIX L.P.,
INCOME STRATEGIX A-CLASS L.P. and
INCOME STRATEGIX I-CLASS L.P.

STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission ("Staff") make the following allegations:

A. Overview

1. Between July 2007 and September 2012, the Respondents Nixon Lau ("Lau") and Income Strategix Holdings Ltd. ("Income Strategix") engaged in the business of trading, and acted as a dealer in respect of, securities of investment funds being the Respondents Income Strategix L.P., Income Strategix A-Class L.P., and Income Strategix I-Class L.P. (collectively, the "Income Strategix Funds") without being registered in a category that permits such activity, and sold securities of the Income Strategix Funds through illegal distributions to investors in Ontario. As well, Lau and Income Strategix acted as the investment fund manager and portfolio manager of the Income Strategix Funds without being registered as was required in the circumstances with the requirement to register as an investment fund manager coming into place on September 28, 2009. This conduct was contrary to subsections 25(1), 25(3), 25(4), and 53(1) of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "Act") (and, if applicable, their predecessor section).

2. Lau and Income Strategix also engaged in conduct that they knew or reasonably ought to have known perpetrated a fraud contrary to clause 126.1(1)(b) of the Act (and its predecessor section). Among other things:

   a. by at least 2010, Lau and Income Strategix paid distributions or reported an accrual of distributions to investors as though the Income Strategix Funds were producing actual returns when they were not. By at least 2012, Lau and Income Strategix knew they were using funds raised from new investors to make distributions to earlier investors; and

   b. after the Income Strategix Funds stopped raising funds in September 2012, failing to provide investors a clear indication of what happened to their money or that their money had been lost, including promising some investors additional future payments should they agree to delay their request for the withdrawal of their investment.

B. The Respondents

3. Income Strategix is an Ontario corporation. Income Strategix is the general partner of the Income Strategix Funds, which are all Ontario limited partnerships (collectively, the "Income Strategix Entities").

4. Lau is a resident of Mississauga, Ontario. At all times relevant to this proceeding, Lau was the directing mind of each of the Income Strategix Entities; Lau was the sole officer and director for each of the Income Strategix Entities; Lau was the sole signing authority on all of the Income Strategix Entities' bank accounts; and, Lau was the sole individual responsible for all trading decisions, execution of trades and wire transfers in and out of the Income Strategix Entities' trading accounts.

C. Conduct without appropriate registration

5. At all times relevant to this proceeding, none of the Respondents were registered in any capacity with the Commission. Prior to the relevant period, Lau was registered as a mutual fund salesperson from June 30, 2004 to March 27, 2006.

6. Lau conceived of and set up the Income Strategix Funds.

7. Lau and Income Strategix marketed the Income Strategix Funds to the public through a number of seminars held in the Greater Toronto Area, through one-on-one or small group meetings, and through a web page that was available to and accessed by the public.

8. Lau and Income Strategix dealt directly with all of investors who invested in the Income Strategix Funds.

9. Lau and Income Strategix marketed units of the Income Strategix Funds to the public on the basis that the investments made would be professionally managed by Lau and Income Strategix, and on the basis of a stated investment policy – primarily to hedge risk with publicly traded securities, options and futures. Investors were told among other things that, as a result of the investment strategy to be used by the Income Strategix Funds, the investors would "[m]ake money in any market condition, up, down, or sideways" and would be earning superior returns.

10. Investors were told by Lau and Income Strategix, and in a limited partnership agreement entitled "The Club Charter", which Lau provided investors, that investors could redeem their investment at the net asset value per unit provided the investment was left in place for a minimum of four months. Lau and Income Strategix also told the investors that their principal investment was guaranteed.

11. In exchange for their investment in the Income Strategix Funds, Lau and Income Strategix caused the Income Strategix Funds to issue promissory notes (the "Promissory Notes") to investors at the time of their investment. Lau signed all of the Promissory Notes. The Promissory Notes promised, among other things, that the investor was guaranteed upon withdrawal the greater of their principal investment or "the market value of the Security units" the investor purchased in the Income Strategix Funds.

12. The Promissory Notes are securities as that term is defined in subsection 1(1) of the Act including, but not limited to, that set out in clauses (e), (f), and (n) under the definition of "security" in subsection 1(1) of the Act.

13. The investors' funds were pooled in the Income Strategix Funds. The Income Strategix Funds had full discretion to buy and sell investments made by the Income Strategix Funds.

14. The Income Strategix Funds investors were told by Lau and Income Strategix that their money would be professionally managed by Lau and Income Strategix rather than the investors having to make their own decisions about investing in individual securities. The Income Strategix Funds did not seek to obtain control of or become involved in the management of companies in which they invested.

15. Lau and Income Strategix received compensation as a result of selling units of the Income Strategix Funds to investors and for managing the Income Strategix Funds. Through the period up to September 2012, the efforts of Lau and Income Strategix were devoted primarily to these activities.

16. Between July 2007 and September 2012, over 70 individual or family investors invested in the Income Strategix Funds. Collectively, these investors invested approximately $5.4 million in the Income Strategix Funds.

17. From at least between July 2007 and September 2012, Lau and the Income Strategix engaged in and held themselves out to be engaged in the business of trading in securities to the public. In marketing and selling the units of Income Strategix Funds to the public, Lau and Income Strategix were acting as a dealer.

18. Lau and Income Strategix acted as the portfolio manager for the Income Strategix Funds. They provided specific advice to the Income Strategix investors and the Income Strategix Funds. Lau caused and directed all trades in the Income Strategix Entities' trading accounts. All of the investment decisions for the Income Strategix Funds were made and implemented by Lau and Income Strategix.

19. As such, Lau and Income Strategix engaged in and held themselves out to be engaged in the business of advising with respect to investing in, buying or selling securities. Among other things, the advisory activity took the form of exercising full discretion in the trading in the Income Strategix Funds trading accounts.

20. Lau and Income Strategix acted as the investment fund manager for the Income Strategix Funds. Lau and Income Strategix organized and directed the business, operations and affairs of the Income Strategix Funds. They organized the Income Strategix Funds and were responsible for their management and administration.

21. Lau and Income Strategix failed to meet any of the requirements, obligations, or duties of a dealer, adviser, or investment fund manager. Among other things, they maintained deficient and, in most instances, no books and records necessary for the proper recording of the Income Strategix Entities' business, trading, and financial transactions and financial affairs.

22. There was no exemption available to Lau or Income Strategix from the requirements of subsections 25(1), 25(3), or 25(4) of the Act or their predecessor sections.

23. Lau and Income Strategix told investors that they were going to participate in an investment club. The dealer registration exemption for a private investment club did not apply to the trades described above, because, among other things, the Income Strategix Funds had more than fifty beneficial security holders, they distributed their securities to the public, and they paid remuneration for investment management and administration advice in respect of the trades in the securities.

D. Conduct respecting illegal distributions

24. The Promissory Notes had not been previously issued.

25. No prospectus or preliminary prospectus was filed with the Commission and no receipt for them has ever been issued by the Director as required by subsection 53(1) of the Act with respect to the trades of the Promissory Notes. During the period relevant to this proceeding, the Respondents never filed a prospectus with the Commission.

26. No exemption from the requirements of section 53 of the Act was available to the Respondents.

E. Conduct that the Respondents knew or reasonably ought to have known perpetrated a fraud

27. Beginning by at least 2010, Lau and Income Strategix took steps to prevent discovery by and to not disclose to Income Strategix Funds investors that the Income Strategix Funds were losing money and were not producing actual returns, and to show the Income Strategix Funds were paying expected returns. Despite the loss in value, Lau and Income Strategix continued to pay distributions or report an accrual of distributions to investors as though the Income Strategix Funds were producing actual returns. By at least 2012, Lau and Income Strategix knew they were using funds raised from new investors to make distributions to earlier investors.

28. Among other things, depending on the nature of their investment, investors were provided monthly distributions or statements showing an increase in the value of their units when in fact the Income Strategix Funds were incurring a loss. As well, Lau and Income Strategix presented inaccurate information in this respect by way of the investors' online accounts on the Income Strategix website and in presentations Lau gave to investors at annual meetings.

29. When Lau and Income Strategix did not have enough new investor funds to make distributions to existing Income Strategix Funds investors in September 2012, Lau sent emails to investors in which Lau told investors that Ontario regulators had frozen the accounts of the Income Strategix Funds. Lau led investors to believe that the reason for the cease trade/freeze was because an investor requested a withdrawal and when Lau did not provide it, the investor complained. Emails from Lau to investors in the fall of 2013 referred to investigations being conducted by an additional regulator. Lau knew these emails were not true. Lau sent the emails to hold off investors who were seeking redemptions.

30. After the Income Strategix Funds stopped raising funds in September 2012, Lau and Income Strategix did not provide investors a clear indication of what happened to their money or that their money had been lost. When Lau and Income Strategix began to repay the investors, they promised some investors additional future payments should they agree to delay their request for the withdrawal of their investment.

31. Lau's and Income Strategix's conduct described above caused deprivation to the investors in the Income Strategix Funds. Investors invested their money and some investors chose to not redeem their investments based on the representations made by Lau and Income Strategix as set out above. From the moment of their investment, each investor's pecuniary interests were at risk from then on, and, in fact, many lost their investments.

32. At least 22 individual or family investors have not received a return of their principal investment. The amount of principal owing to these investors at the date of the Notice of Hearing is at least $1,048,803.93.

F. Liability of directors and officers

33. During the relevant period, Lau as a director and/or officer of the Income Strategix authorized, permitted or acquiesced in Income Strategix's non-compliance with Ontario securities law.

G. Conduct contrary to the public interest

34. The conduct described above was contrary to the fundamental purposes and principles of the Act found in subsections 1.1 and 2.1 of the Act. The Respondents engaged in unfair and improper practices, which harmed investors who invested in the Income Strategix Funds, and which impugned the integrity of Ontario's capital markets.

H. Breaches of Ontario Securities Law and Conduct Contrary to the Public Interest

35. The specific allegations advanced by Staff are that, by engaging in the conduct described above:

a. Lau and Income Strategix engaged in the business of, or held themselves out as engaging in the business of trading in securities, being the Promissory Notes, without being registered in accordance with Ontario securities law as a dealer, contrary to section 25(1)(a) of the Act as that section existed at the time the conduct at issue commenced in July 2007, and contrary to subsection 25(1) of the Act, as subsequently amended on September 28, 2009, and where there were no exemptions available to Lau and Income Strategix under the Act;

b. Lau and Income Strategix engaged in the business of, or held themselves out as engaging in the business of advising the Income Strategix Funds' investors and the Income Strategix Funds with respect to investing in, buying or selling securities without being registered in accordance with Ontario securities law as an adviser, contrary to clause 25(1)(c) of the Act as that section existed at the time the conduct at issue commenced in July 2007, and contrary to subsection 25(3) of the Act, as subsequently amended on September 28, 2009, and where there were no exemptions available to Lau and Income Strategix under the Act;

c. Lau and Income Strategix acted as an investment fund manager for the Income Strategix Funds without being registered in accordance with Ontario securities law as an investment fund manager, contrary to subsection 25(4) of the Act as introduced on September 28, 2009, and where there were no exemptions available to Lau and Income Strategix under the Act;

d. The trading of the Promissory Notes as set out above constituted a distribution of securities by Lau and Income Strategix in circumstances where no preliminary prospectus and prospectus were filed and receipts had not been issued for them by the Director, and where there were no exemptions available to Lau and Income Strategix under the Act, contrary to subsection 53(1) of the Act;

e. Lau and Income Strategix directly or indirectly engaged or participated in an act, practice or course of conduct relating to the Promissory Notes and the Income Strategix Funds that they knew or reasonably ought to have known perpetrated a fraud on persons purchasing the Promissory Notes to acquire an interest in the Income Strategix Funds, contrary to subsection 126.1(b) of the Act as that section existed at the time the conduct at issue commenced in July 2007, and contrary to clause 126.1(1)(b) of the Act, as subsequently amended on June 21, 2013;

f. Lau as a director and/or officer of the Income Strategix authorized, permitted or acquiesced in the Income Strategix's non-compliance with Ontario securities law as set out above, and accordingly, failed to comply with Ontario securities law contrary to section 129.2 of the Act; and

g. The Respondents' conduct was contrary to the public interest and harmful to the integrity of the capital markets on Ontario.

36. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto, June 15, 2017.

1.5 Notices from the Office of the Secretary

1.5.1 Home Capital Group Inc. et al.

FOR IMMEDIATE RELEASE
June 14, 2017

IN THE MATTER OF
HOME CAPITAL GROUP INC.,
GERALD SOLOWAY,
ROBERT MORTON and
MARTIN REID

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Home Capital Group Inc., Gerald Soloway, Robert Morton and Martin Reid in the above named matter.

The hearing will be held on August 9, 2017 at 10:00 a.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated June 14, 2017 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:

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

1.5.2 Pro-Financial Asset Management Inc. et al.

FOR IMMEDIATE RELEASE
June 15, 2017

IN THE MATTER OF
PRO-FINANCIAL ASSET MANAGEMENT INC.,
STUART MCKINNON and
JOHN FARRELL

TORONTO – The Commission issued an Order in the above named matter which provides that a pre-hearing conference is scheduled for June 28, 2017 at 9:30 a.m.

The pre-hearing conference will be held *in camera*.

A copy of the Order dated June 15, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
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1.5.3 Garth H. Drabinsky et al.

FOR IMMEDIATE RELEASE
June 16, 2017

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

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

A copy of the Reasons and Decision and the Order dated June 15, 2017 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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1.5.4 Nixon Lau et al.

FOR IMMEDIATE RELEASE
June 19, 2017

IN THE MATTER OF
NIXON LAU,
INCOME STRATEGIX HOLDINGS LTD.,
INCOME STRATEGIX L.P.,
INCOME STRATEGIX A-CLASS L.P. and
INCOME STRATEGIX I-CLASS L.P.

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Nixon Lau, Income Strategix Holdings Ltd., Income Strategix L.P., Income Strategix A-Class L.P. and Income Strategix I-Class L.P.

The hearing will be held on June 26, 2017 at 9:00 a.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated June 16, 2017 and Statement of Allegations of Staff of the Ontario Securities Commission dated June 15, 2017 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
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1.5.5 Eco Oro Minerals Corp.

FOR IMMEDIATE RELEASE
June 19, 2017

IN THE MATTER OF
ECO ORO MINERALS CORP.

AND

IN THE MATTER OF
A HEARING AND REVIEW OF
A DECISION OF THE TORONTO STOCK EXCHANGE

TORONTO – The Commission issued its Reasons for Decision in the above named matter.

A copy of the Reasons for Decision dated June 16, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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1.5.6 Home Capital Group Inc. et al.

FOR IMMEDIATE RELEASE
June 19, 2017

IN THE MATTER OF
HOME CAPITAL GROUP INC.,
GERALD SOLOWAY,
ROBERT MORTON and
MARTIN REID

TORONTO – The Commission issued an Order in the above named matter which provides that the June 26, 2017 hearing at 9:00 a.m. is vacated.

A copy of the Order dated June 19, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 BTIG, 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.

June 13, 2017

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

AND

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

AND

IN THE MATTER OF
BTIG, LLC
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction (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 (O**S**C) is the principal regulator for this Application, and

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

Interpretation

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

Representations

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

1. The Filer is a limited liability company organized under the laws of the State of Delaware. Its head office address is located at 600 Montgomery Street, 6th Floor, San Francisco, California, 94111.

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

3. The Filer is a member of a number of major U.S. securities exchanges, including NASDAQ.

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

5. The Filer is currently relying on the "international dealer exemption" under section 8.18 of NI 31-103 (the **international dealer exemption**) in the jurisdictions of Ontario, Quebec, Alberta and British Columbia.

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

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

8. 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.

9. 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.

10. 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**).

11. CSA Staff state in the Staff Notice that they do not believe there is 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.

12. 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.

13. 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 knowledge of 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.

14. Similarly, the Filer believes, based on its knowledge of 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.

15. 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 as described in the Staff Notice; and

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

“Monica Kowal”
Vice Chair
Ontario Securities Commission

“Grant Vingoe”
Vice Chair
Ontario Securities Commission

2.1.2 Sanofi

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for a 5 year relief from the prospectus and dealer registration requirement in respect of certain trades of securities in connection with employee share offerings by a French issuer – The offerings will involve the use of collective employee shareholding vehicles, each a fonds communs de placement d'entreprise (FCPE) – The filer cannot rely on the employee prospectus exemption in section 2.24 of National Instrument 45-106 Prospectus Exemptions or the plan administrator exemption in section 8.16 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations as the shares are not being offered to Canadian employees directly by the issuer but through the FCPEs – Canadian employees will receive disclosure documents – The FCPEs are subject to the supervision of the French Autorité des marchés financiers – Relief granted, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations.
National Instrument 45-102 Resale of Securities.
National Instrument 45-106 Prospectus Exemptions.

June 13, 2017

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

AND

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

AND

IN THE MATTER OF
SANOFI
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for:

1. an exemption from the prospectus requirement (the **Prospectus Relief**) so that such requirement does not apply to:

   (a) trades of:

      (i) units (the **2017 Units**) of a temporary *fonds commun de placement d'entreprise* or "FCPE", a form of collective shareholding vehicle commonly used in France for the conservation of shares held by employee-investors, named *Relais Sanofi Shares* (the **2017 Fund**); and

      (ii) units (together with the 2017 Units, the **Temporary Classic Units**, and together with the 2017 Units and the Principal Classic Units (as defined below), the **Units**) of future temporary FCPEs organized in the same manner as the 2017 Fund (together with the 2017 Fund, the **Temporary Classic Funds**),

   made under the Sanofi Group Savings Plan (the **Plan**) to or with Qualifying Employees (as defined below) resident in the Jurisdiction and the Other Offering Jurisdictions (as defined below) (collectively, the **Canadian Employees**, and Canadian Employees who subscribe for Temporary Classic Units, the **Canadian Participants**);

(b) trades of ordinary shares of the Filer (the **Shares**) by the Classic Fund to or with Canadian Participants upon the redemption of Units as requested by Canadian Participants (the term "**Classic Fund**" used herein means, prior to the Merger (as defined below), a Temporary Classic Fund and following the Merger, an FCPE named *Sanofi Shares* (the **Principal Classic Fund**)); and

2. an exemption from the dealer registration requirement (the **Registration Relief**, and together with the Prospectus Relief, the **Offering Relief**) so that such requirement does not apply to the Filer and its Local Related Entities (as defined below), the Classic Fund and Natixis Asset Management (the **Management Company**) in respect of:

   (a) trades in Units made pursuant to an Employee Offering (as defined below) to or with Canadian Employees; and

   (b) trades in Shares by the Classic Fund to or with Canadian Participants upon the redemption of Units as requested by Canadian Participants.

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

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

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

"Related entity" has the same meaning given to such term in National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) under the heading "Division 4 – Employee Executive Officer, Director and Consultant Exemptions".

Representations

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

1. The Filer is a corporation formed under the laws of France. It is not, and has no current intention of becoming, a reporting issuer under the securities legislation of any jurisdiction of Canada. The head office of the Filer is located in France and the Shares are listed on Euronext Paris and on the New York Stock Exchange (in the form of American Depositary Shares represented by American Depositary Receipts). The Filer is not in default of securities legislation of any jurisdiction of Canada.

2. The Filer carries on business in Canada through certain related entities and has established a global employee share offering under the Plan (the **2017 Employee Offering**) and expects to establish subsequent global employee share offerings following 2017 for the next four years that are substantially similar (**Subsequent Employee Offerings**, and together with the 2017 Employee Offering, the **Employee Offerings**) for Qualifying Employees and its participating related entities, including related entities that employ Canadian Employees (**Local Related Entities**, and together with the Filer and other related entities of the Filer, the **Sanofi Group**). Each Local Related Entity is a direct or indirect controlled subsidiary of the Filer and no Local Related Entity has any current intention of becoming a reporting issuer under the securities legislation of any jurisdiction of Canada. The greatest number of employees of Local Related Entities are employed in Ontario as compared to any other jurisdiction in Canada.

3. As of the date hereof, "Local Related Entities" include sanofi-aventis Canada Inc., Sanofi Pasteur Limited and Sanofi Consumer Health Inc./Sanofi Santé Grand Public Inc. For any Subsequent Employee Offering, the list of "Local Related Entities" may change.

4. Each Employee Offering will be made under the terms as set out herein and for greater certainty, all of the representations will be true for each Employee Offering other than paragraphs 3, 11 and 27 which may change (save for references to the 2017 Fund and the 2017 Employee Offering which will be varied such that they are read as references to the relevant Temporary Classic Fund and Subsequent Employee Offering, respectively).

5. As of the date hereof and after giving effect to any Employee Offering, Canadian residents do not and will not beneficially own more than 10% of the Shares (which term, for the purposes of this paragraph, is deemed to include all

Shares held by the Classic Fund on behalf of Canadian Participants) issued and outstanding, and do not and will not represent in number more than 10% of the total number of holders of the Shares as shown on the books of the Filer.

6. Each Employee Offering involves an offering of Shares to be subscribed through a Temporary Classic Fund, which will be merged with the Principal Classic Fund following completion of the Employee Offering (the **Classic Plan**), subject to the decision of the supervisory board of the FCPE and the approval of the French AMF (as defined below).

7. Only persons who are employees of an entity forming part of the Sanofi Group during the subscription period for an Employee Offering and who meet other employment criteria (the **Qualifying Employees**) will be allowed to participate in the relevant Employee Offering.

8. The 2017 Fund was established for the purpose of implementing the 2017 Employee Offering. The Principal Classic Fund was established for the purpose of implementing the Employee Offering generally. There is no current intention for any of the 2017 Fund or the Principal Classic Fund to become a reporting issuer under the securities legislation of any jurisdiction of Canada. There is no intention for any Temporary Classic Fund that will be established for the purpose of implementing Subsequent Employee Offerings to become a reporting issuer under the securities legislation of any jurisdiction of Canada.

9. The 2017 Fund and the Principal Classic Fund are FCPEs and are registered with the French Autorité des marchés financiers (the **French AMF**). It is expected that each Temporary Classic Fund established for Subsequent Employee Offerings will be a French FCPE and will be registered with, and approved by, the French AMF.

10. Under the Classic Plan, each Employee Offering will be made as follows:

    (a) Canadian Participants will subscribe for the relevant Temporary Classic Units, and the relevant Temporary Classic Fund will then subscribe for Shares on behalf of Canadian Participants using the Canadian Participants' contributions and the employer contributions from Local Related Entities that employ the Canadian Participants, as described in paragraph 10(h). The subscription price will be the Canadian dollar equivalent of the average opening price of the Shares (expressed in Euros) on Euronext Paris for the 20 trading days preceding the date of fixing of the subscription price (the **Reference Price**) by the board of directors of the Filer, or upon delegation thereof, by the chief executive officer, less a specified discount to the Reference Price.

    (b) Initially, the Shares subscribed for will be held in the relevant Temporary Classic Fund and the Canadian Participants will receive the relevant Temporary Classic Units.

    (c) Following the completion of an Employee Offering, the relevant Temporary Classic Fund will be merged with the Principal Classic Fund (subject to the approval of the supervisory board of the FCPE and the French AMF). The Temporary Classic Units held by the Canadian Participants will be replaced with units of the Principal Classic Fund (the **Principal Classic Units**) on a pro rata basis and the Shares subscribed for will be held in the Principal Classic Fund (such transaction being referred to as the **Merger**). The Filer is relying on the exemption from the prospectus requirement pursuant to section 2.11 of NI 45-106 in respect of the issuance of Principal Classic Units to Canadian Participants in connection with the Merger.

    (d) The Units will be subject to a hold period of approximately five years (the **Lock-Up Period**), subject to certain exceptions provided for under French law (such as a release on death or termination of employment).

    (e) Any dividends paid on the Shares held in the Classic Fund will be contributed to the Classic Fund and used to purchase additional Shares. To reflect this reinvestment, new Units (or fractions thereof) will be issued to the Canadian Participants.

    (f) At the end of the relevant Lock-Up Period, a Canadian Participant may:

        (i) request the redemption of his or her Units in the Classic Fund, or

        (ii) continue to hold his or her Units in the Classic Fund and request the redemption of those Units at a later date,

    in consideration for a cash payment equal to the then market value of the underlying Shares.

    (g) In the event of an early exit resulting from a Canadian Participant exercising one of the exceptions to the Lock-Up Period and meeting the applicable criteria, the Canadian Participant may request the redemption of

his or her Units in the Classic Fund in consideration for a cash payment equal to the then market value of the underlying Shares.

(h) As indicated in paragraph 10(a) above, the Local Related Entity employing a Canadian Participant will also contribute on behalf of such Canadian Participant an amount into the Classic Plan based on predetermined matching contribution rules.

11. For the 2017 Employee Offering, for each subscription of five Shares that a Canadian Participant makes into the Classic Plan, the Local Related Entity employing such Canadian Participant will contribute an additional one Share (**Matching Share**) into the Classic Plan, for the benefit of, and at no cost to, such Canadian Participant, up to a maximum of four Matching Shares. For clarity, the maximum number of Matching Shares a Local Related Entity can contribute in respect of a Canadian Participant is four additional Shares for the first 20 Shares. If a Canadian Participant subscribes for less than five Shares, he or she will not receive a Matching Share. Correspondingly, if a Canadian Participant subscribes to more than 20 Shares, he or she will not receive more than four Matching Shares. For each Subsequent Employee Offering, the matching contribution rules may change.

12. The subscription price for an Employee Offering will be known to Canadian Employees prior to the start of the applicable subscription period. Prior to the last day of the relevant subscription period, Canadian Participants may choose to revoke all or part of their subscription under the Classic Plan and thereby not participate in the relevant Employee Offering.

13. Under French law, an FCPE is a limited liability entity. The portfolio of the Classic Fund will consist almost entirely of Shares and may also include cash in respect of dividends paid on the Shares which will be reinvested in Shares and cash or cash equivalents pending investments in Shares and for the purposes of Unit redemptions.

14. The Management Company is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF as an investment manager and complies with the rules of the French AMF. To the best of the Filer's knowledge, the Management Company is not, and has no current intention of becoming, a reporting issuer under the securities legislation of any jurisdiction of Canada.

15. Only Qualifying Employees will be allowed to hold Units of the Classic Fund.

16. The Management Company's portfolio management activities in connection with an Employee Offering and the Classic Fund are limited to purchasing Shares from the Filer, selling such Shares as necessary in order to fund redemption requests and investing available cash in cash equivalents.

17. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents as provided by the rules of the Classic Fund. The Management Company's activities do not affect the underlying value of the Shares.

18. All management charges relating to the Classic Fund will be paid from the assets of the Classic Fund or by the Filer, as provided in the regulations of the Classic Fund.

19. None of the entities forming part of Sanofi Group, the Classic Fund or the Management Company is currently in default of securities legislation of any jurisdiction of Canada.

20. None of the entities forming part of the Sanofi Group, the Classic Fund, the Management Company or any of their directors, officers, employees, agents or representatives will provide investment advice to the Canadian Employees with respect to an investment in Shares or Units.

21. Shares issued pursuant to an Employee Offering will be deposited in the Classic Fund through CACEIS Bank France (the **Depositary**), a large French commercial bank subject to French banking legislation. The Depositary carries out orders to purchase, trade and sell securities in the portfolio and takes all necessary action to allow the Classic Fund to exercise the rights relating to the securities held in its portfolio.

22. Participation in an Employee Offering is voluntary, and the Canadian Employees will not be induced to participate in an Employee Offering by expectation of employment or continued employment.

23. The total amount invested by a Canadian Employee pursuant to an Employee Offering cannot exceed 25% of his or her estimated gross annual remuneration, including bonus, paid or to be paid, in the relevant year.

24. The Shares and Units are not currently listed for trading on any stock exchange in Canada and there is no intention to have the Shares or Units so listed.

25. The Unit value of the Classic Fund will be calculated and reported to the French AMF on a regular basis, based on the net assets of the Classic Fund divided by the number of Units outstanding. The value of the Units will be based on the value of the underlying Shares, but the number of Units of the Classic Fund will not correspond to the number of the underlying Shares (as dividends will be reinvested in additional Shares and increase the value of each Unit).

26. The Canadian Employees will receive an information package in the French or English language, according to their preference, which will include a summary of the terms of the relevant Employee Offering and a description of Canadian income tax consequences of subscribing for and holding Units of the Classic Fund and requesting the redemption of such Units at the end of the applicable Lock-Up Period. Canadian Participants may also consult the Filer's annual report on Form 20-F filed with the U.S. Securities and Exchange Commission as well as the French *Document de Référence* filed with the French AMF in respect of the Shares and a copy of the rules of the relevant Temporary Classic Fund and the Principal Classic Fund. The Canadian Employees will also have access to copies of the continuous disclosure materials relating to the Filer that are furnished to holders of the Shares generally. Canadian Participants will receive an initial statement of their holdings under the Classic Plan, together with an updated statement at least once per year.

27. For the 2017 Employee Offering, there are approximately 1,893 Canadian Employees resident in Canada, with the greatest number resident in Ontario (1,540), and the remainder in the Other Offering Jurisdictions who represent, in the aggregate, less than 2% of the number of employees in the Sanofi Group worldwide.

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 Offering Relief is granted:

(a) for the 2017 Employee Offering provided that:

(i) the prospectus requirement will apply to the first trade in any Shares or Units acquired by Canadian Participants pursuant to this decision unless the following conditions are met:

(1) the issuer of the security

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

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

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

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

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

(3) the first trade is made

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

(B) to a person or company outside of Canada; and

(b) for any Subsequent Employee Offering under this decision completed within five years from the date of this decision, provided that:

(i) the representations other than those in paragraphs 3, 11 and 27 remain true and correct in respect of that Subsequent Employee Offering; and

(ii) the conditions set out in paragraph (a) above are satisfied as of the date of any distribution of a security under such Subsequent Employee Offering (varied such that any references therein to the

2017 Fund and the 2017 Employee Offering are read as references to the relevant Temporary Classic Fund and Subsequent Employee Offering, respectively).

"Tim Moseley"
Commissioner
Ontario Securities Commission

"Garnet Fenn"
Commissioner
Ontario Securities Commission

2.1.3 The North West Company Inc.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

National Instrument 62-104 Take-Over Bids, Part 6 – Exemption from the formal take-over bid requirements – An issuer wants relief so that the take-over bid thresholds are calculated based on the aggregate number of common shares outstanding, rather than for each class of common shares – The issuer is subject to foreign ownership restrictions in its governing federal legislation; the issuer implemented a dual class share structure solely for compliance with foreign ownership restrictions in the aviation industry; both classes of shares are freely tradable, have identical economic attributes and are automatically and mandatorily inter-convertible based on the shareholder's Canadian or non-Canadian status; shareholders will calculate their ownership position by combining the outstanding classes of shares for the purposes of determining whether take-over bid requirements are triggered.

National Instrument 62-104 Take-Over Bids, Part 6 – Early warning relief – An issuer wants relief so that the early warning thresholds are calculated based on the aggregate number of common shares outstanding, rather than for each class of common shares – The issuer is subject to foreign ownership restrictions in its governing federal legislation; the issuer implemented a dual class share structure solely for compliance with foreign ownership restrictions in the aviation industry; both classes of shares are freely tradable, have identical economic attributes and are automatically and mandatorily inter-convertible based on the shareholder's Canadian or non-Canadian status; shareholders will calculate their ownership position by combining the outstanding classes of shares for the purposes of determining whether early warning requirements are triggered.

National Instrument 62-104 Take-Over Bids, Part 6 – Exemption from the formal take-over bid requirements – News release relief – An issuer wants relief so that the threshold triggering the requirement on an acquiror to file a news release during a take-over bid or an issuer bid is calculated based on the aggregate number of common shares outstanding, rather than for each class of common shares – The issuer is subject to foreign ownership restrictions in its governing federal legislation; the issuer implemented a dual class share structure solely for compliance with foreign ownership restrictions in the aviation industry; both classes of shares are freely tradable, have identical economic attributes and are automatically and mandatorily inter-convertible based on the shareholder's Canadian or non-Canadian status; acquirors will calculate their ownership position by combining the outstanding classes of shares for the purposes of determining whether the requirement to file a news release during a take-over bid or issuer bid is triggered.

National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues, s. 11.1 – Alternative reporting relief – An issuer wants relief so that an eligible institutional investor subject to early warning requirements may rely on alternative eligibility criteria from those set forth in section 4.5 of NI 62-103 in order to benefit from the exemption contained in section 4.1 of NI 62-103 – The issuer is subject to foreign ownership restrictions in its governing federal legislation; the issuer implemented a dual class share structure solely for compliance with foreign ownership restrictions in the aviation industry; both classes of shares are freely tradable, have identical economic attributes and are automatically and mandatorily inter-convertible based on the shareholder's Canadian or non-Canadian status; eligible institutional investors will calculate their ownership position by combining the outstanding classes of common shares for the purposes of determining whether they are eligible for the reporting exemption in s. 4.1 of NI 62-103

National Instrument 51-102Continuous Disclosure Obligations, s. 13.1 – Continuous disclosure relief – An issuer wants relief so that it can provide disclosure on significant shareholders in its information circular on a combined basis, rather than for each class of common shares – The issuer is subject to foreign ownership restrictions in its governing federal legislation; the issuer implemented a dual class share structure solely for compliance with foreign ownership restrictions in the aviation industry; both classes of shares are freely tradable, have identical economic attributes and are automatically and mandatorily inter-convertible based on the shareholder's Canadian or non-Canadian status; the issuer will provide disclosure on holders of its voting securities on a combined basis in its information circular.

Applicable Legislative Provisions

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2, ss. 5.2, 5.4, 6.1.
National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues, ss. 4.1, 4.5, 11.1.
National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1.

June 14, 2017

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

AND

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

AND

IN THE MATTER OF
THE NORTH WEST COMPANY INC.
(the "Filer")

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a "**Decision Maker**") has received an application (the "**Application**") from the Filer for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that:

(a) an offeror that makes an offer to acquire outstanding variable voting shares of the Filer ("**Variable Voting Shares**") or outstanding common voting shares of the Filer ("**Common Voting Shares**", and collectively with the Variable Voting Shares, the "**Shares**"), which would constitute a take-over bid under the Legislation as a result of the securities subject to the offer to acquire, together with the offeror's securities of that class, constituting in the aggregate 20% or more of the outstanding Variable Voting Shares or Common Voting Shares, as the case may be, at the date of the offer to acquire, be exempted under section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**") from the take-over bid requirements contained in NI 62-104 (the "**TOB Rules**") (the "**TOB Relief**");

(b) an acquiror who acquires beneficial ownership of, or the power to exercise control or direction over, Variable Voting Shares or Common Voting Shares, or securities convertible into such shares, that, together with the acquiror's securities of that class, would constitute 10% or more of the outstanding Variable Voting Shares or Common Voting Shares, as the case may be, be exempted from the early warning requirements contained in the Legislation (the "**Early Warning Relief**");

(c) an acquiror who acquires, during a take-over bid or an issuer bid, beneficial ownership of, or the power to exercise control or direction over, Variable Voting Shares or Common Voting Shares, or securities convertible into such shares, that, together with the acquiror's securities of that class, would constitute 5% or more of the outstanding Variable Voting Shares or Common Voting Shares, as the case may be, be exempted from the requirement in section 5.4 of NI 62-104 to issue and file a news release (the "**News Release Relief**");

(d) an eligible institutional investor subject to the early warning requirements of the Legislation be entitled to rely on alternative eligibility criteria from those in section 4.5 of National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* ("**NI 62-103**") in order to benefit from the exemption contained in section 4.1 of NI 62-103 (the "**Alternative Monthly Reporting Criteria**"); and

(e) the Filer be entitled to rely on alternative disclosure requirements from those in Item 6.5 of Form 51-102F5 *Information Circular* ("**Form 51-102F5**") of National Instrument 51-102 *Continuous Disclosure Obligations* (the "**Alternative Disclosure Requirements**" and, collectively with the TOB Relief, the Early Warning Relief, the News Release Relief and the Alternative Monthly Reporting Criteria, the "**Exemption Sought**").

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

(a) the Manitoba 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 by the Filer in Alberta, British Columbia, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; and

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, NI 62-103, NI 62-104 and MI 11-102, including, without limitation, "**offeror**", "**offeror's securities**", "**offer to acquire**", "**acquiror**", "**acquiror's securities**", "**early warning requirements**", "**eligible institutional investor**" and "**securityholding percentage**", have the same meaning if used in this decision, unless otherwise defined herein. For the purposes of this decision, the terms below have the following meanings:

"Canadian" has the meaning ascribed to that term in the CTA;

"CTA" means the *Canada Transportation Act*; and

"TSX" means the Toronto Stock Exchange.

Representations

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

1. The Filer is a corporation governed by the *Canada Business Corporations Act*.

2. The head and registered office of the Filer is located 77 Main Street, Winnipeg, Manitoba, Canada, R3C 2R1.

3. The Filer is a reporting issuer in all of the provinces of Canada and is not in default of any requirement of the securities legislation in any jurisdiction in which it is a reporting issuer or the requirements of the TSX Company Manual.

4. The Filer is a retailer to underserved rural communities and urban neighbourhood markets in northern Canada, western Canada, rural Alaska, the South Pacific and the Caribbean.

5. As at June 13, 2017, the authorized share capital of the Filer consists of an unlimited number of common shares. As at June 13, 2017, 48,680,578 common shares of the Filer were issued and outstanding. The Filer estimates that, as at June 13, 2017, approximately 73% of the issued and outstanding common shares were owned and controlled by Canadians and approximately 27% were owned or controlled by non-Canadians.

6. On April 23, 2017, the Filer entered into an agreement to acquire North Star Air Group (the "**Acquisition**"), a regional airline based in Thunder Bay, Ontario. In connection with the Acquisition and in order to hold the licenses necessary to operate as an air carrier, the Filer is required to comply with the CTA. The applicable provisions of the CTA require that the Filer, as a corporation which will hold a domestic license (as defined in the CTA), be controlled in fact by Canadians, and prohibits non-Canadians from holding or controlling more than 25% of the Filer's voting interests.

7. The Filer does not require the consent of the Canadian Transportation Agency, the regulatory agency responsible for the application of the CTA, to the Acquisition, and the Filer is not required to notify the Canadian Transportation Agency of the Acquisition.

8. At the annual and special meeting of the Filer held on June 14, 2017, shareholders of the Filer voted to approve an amendment to the articles of the Filer to: (a) authorize the creation of a dual class share structure, comprised of the Variable Voting Shares and the Common Voting Shares; (b) convert all of the common shares of the Filer owned by Canadians to Common Voting Shares; and (c) convert all of the common shares of the Filer owned by non-Canadians to Variable Voting Shares. Following the completion of the Acquisition, the authorized share capital of the Filer will consist of an unlimited number of Variable Voting Shares and an unlimited number of Common Voting Shares.

9. The Common Voting Shares will only be able to be held, beneficially owned or controlled, directly or indirectly, by Canadians. An outstanding Common Voting Share will be converted into one Variable Voting Share, automatically and without any further act of the Filer or the holder, if such Common Voting Share becomes held, beneficially owned or controlled, directly or indirectly, by a person who is not a Canadian.

10. The Variable Voting Shares will only be able to be held, beneficially owned or controlled, directly or indirectly, by persons who are not Canadians. An outstanding Variable Voting Share will be converted into one Common Voting

Share, automatically and without any further act of the Filer or the holder, if such Variable Voting Share becomes held, beneficially owned or controlled, directly or indirectly, by a Canadian.

11. Each Common Voting Share will confer the right to one vote. Each Variable Voting Share will confer the right to one vote unless: (a) the number of Variable Voting Shares outstanding, as a percentage of the total number of all Shares of the Filer outstanding, exceeds 25% (or such higher percentage as the Governor in Council may specify by regulation); or (b) the total number of votes cast by holders of Variable Voting Shares at any meeting exceeds 25% (or such higher percentage as the Governor in Council may specify by regulation) of the total number of votes that may be cast at such meeting. If either of these thresholds would otherwise be surpassed at any time, the vote attached to each Variable Voting Share decreases proportionately such that: (a) the Variable Voting Shares, as a class, do not carry more than 25% (or such higher percentage as the Governor in Council may specify by regulation) of the aggregate votes attached to all outstanding Shares of the Filer; and (b) the total number of votes cast by holders of Variable Voting Shares at any meeting does not exceed 25% (or such higher percentage as the Governor in Council may specify by regulation) of the total number of votes that may be cast at such meeting.

12. Aside from the differences in voting rights stated above, the Variable Voting Shares and Common Voting Shares will be the same in all other respects, including with regard to the right to receive dividends and the right to receive the property and assets of the Filer in the event of dissolution, liquidation or winding up of the Filer.

13. The articles of amendment of the Filer will contain coattail provisions pursuant to which Variable Voting Shares may be converted into Common Voting Shares if an offer is made to purchase Common Voting Shares and the offer is one which is required to be made to all or substantially all the holders of Common Voting Shares. Similar coattail provisions will be contained in the terms of the Common Voting Shares and provide for the conversion of Common Voting Shares into Variable Voting Shares if an offer is made to purchase Variable Voting Shares and the offer is one which is required to be made to all or substantially all the holders of Variable Voting Shares.

14. The Variable Voting Shares and the Common Voting Shares will both be listed for trading on the TSX under the same ticker symbol, “NWC”.

15. The Filer’s dual class structure will be implemented solely to ensure compliance with the requirements of the CTA.

16. An investor will not control or choose which class of Shares it acquires and holds. There will be no unique features of either class of Shares which an existing or potential investor can choose to acquire, exercise or dispose of. The class of Shares ultimately available to an investor will be solely a function of the investor’s Canadian or non-Canadian status. Moreover, if after having acquired Shares, a holder’s Canadian or non-Canadian status changes, the Shares will convert accordingly and automatically.

17. The Variable Voting Shares will not be considered “restricted voting securities” or “restricted voting shares” for the purposes of the Legislation.

18. The TOB Rules and early warning requirements apply to the acquisition of securities of a class. Because of the anticipated significantly smaller public float of the Variable Voting Shares (compared to the public float of Common Voting Shares), it will be more difficult for non-Canadian investors to acquire Shares in the ordinary course without the apprehension of inadvertently triggering the TOB Rules and early warning requirements, thus restricting the interest of investors in the Shares because of reasons unrelated to their investment objectives. Aggregating Variable Voting Shares and Common Voting Shares for the purpose of the TOB Rules and early warning requirements would facilitate investment in Variable Voting Shares.

Decision

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

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

(a) the Filer publicly discloses the terms of the Exemption Sought in a news release filed on SEDAR promptly following the issuance of this decision document;

(b) the Filer discloses the terms and conditions of the Exemption Sought in all of its annual information forms and management proxy circulars filed on SEDAR following the issuance of this decision document;

(c) with respect only to the TOB Relief, the Variable Voting Shares or Common Voting Shares, as the case may be, subject to the offer to acquire of an offeror, together with the Variable Voting Shares and Common Voting

Shares beneficially owned, or over which control or direction is exercised, on the date of the offer to acquire, by the offeror or by any person acting jointly or in concert with the offeror, would not constitute, at the date of the offer to acquire, in the aggregate 20% or more of the outstanding Variable Voting Shares and Common Voting Shares on a combined basis;

(d) with respect only to the Early Warning Relief, the Variable Voting Shares or Common Voting Shares, or securities convertible into such shares, as the case may be, over which the acquiror acquires beneficial ownership of, or the power to exercise control or direction over, together with the securities of the Filer beneficially owned, or over which control or direction is exercised, by the acquiror or any person acting jointly or in concert with the acquiror, would not constitute 10% or more of the outstanding Variable Voting Shares and Common Voting Shares on a combined basis;

(e) with respect only to the News Release Relief, the Variable Voting Shares or Common Voting Shares, or securities convertible into such shares, as the case may be, over which the acquiror acquires beneficial ownership of, or the power to exercise control or direction over, together with the securities of the Filer beneficially owned, or over which control or direction is exercised, by the acquiror or any person acting jointly or in concert with the acquiror, would not constitute 5% or more of the outstanding Variable Voting Shares and Common Voting Shares on a combined basis;

(f) with respect only to the Alternative Monthly Reporting Criteria, the eligible institutional investor will meet any of the eligibility criteria contained in section 4.5 of NI 62-103 by calculating its securityholding percentage using (i) a denominator comprised of all of the outstanding Variable Voting Shares and Common Voting Shares on a combined basis, and (ii) a numerator including all of the Variable Voting Shares and Common Voting Shares, as the case may be, beneficially owned or over which control or direction is exercised by the eligible institutional investor; and

(g) with respect only to the Alternative Disclosure Requirements, the Filer will meet the disclosure requirements contained in Item 6.5 of Form 51-102F5 by calculating the securityholding percentage using (i) a denominator comprised of all of the outstanding Variable Voting Shares and Common Voting Shares on a combined basis, and (ii) a numerator including all of the Variable Voting Shares and Common Voting Shares, as the case may be, beneficially owned, or over which control or direction is exercised, directly or indirectly, by any person who, to the knowledge of the Filer's directors or executive officers, beneficially owns, controls or directs, directly or indirectly, voting securities carrying 10% or more of the voting rights attached to the outstanding Variable Voting Shares and Common Voting Shares on a combined basis.

"Chris Besko"
Director
Manitoba Securities Commission

2.1.4 Vinci S.A.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Application for a 5 year relief from the prospectus and dealer registration requirement in respect of certain trades of securities in connection with employee share offerings by a French issuer – The offerings will involve the use of collective employee shareholding vehicles, each a fonds communs de placement d'entreprise (FCPE) – The filer cannot rely on the employee prospectus exemption in section 2.24 of National Instrument 45-106 Prospectus Exemptions or the plan administrator exemption in section 8.16 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations as the shares are not being offered to Canadian employees directly by the issuer but through the FCPEs – Canadian employees will receive disclosure documents – The FCPEs are subject to the supervision of the French Autorité des marchés financiers – Relief granted, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations.
National Instrument 45-102 Resale of Securities.
National Instrument 45-106 Prospectus Exemptions.

TRANSLATION

May 2, 2017

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

AND

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

AND

IN THE MATTER OF
VINCI S.A.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for:

1. an exemption from the prospectus requirement (the **Prospectus Relief**) so that such requirement does not apply to:

   (a) trades of:

      (i) units (the **2017 Units**) of a temporary *fonds commun de placement d'entreprise* or "FCPE", a form of collective shareholding vehicle commonly used in France for the conservation and custodianship of shares held by employee-investors named *Castor International Relais 2017* (the **2017 Fund**); and

      (ii) units (together with the 2017 Units, the **Temporary Classic Units**, and together with the 2017 Units and the Principal Classic Units (as defined below), the **Units**) of future temporary FCPEs organized in the same manner as the 2017 Fund (together with the 2017 Fund, the **Temporary Classic Funds**),

   made under an International Group Share Ownership Plan (the **Plan**) to or with Qualifying Employees (as defined below) resident in the Jurisdictions, British Columbia, Alberta and Saskatchewan (collectively, the

Canadian Employees, and the Canadian Employees who subscribe for Temporary Classic Units, the **Canadian Participants**);

(b) trades of ordinary shares of the Filer (the **Shares**) by the Classic Fund to or with Canadian Participants upon the redemption of Units as requested by Canadian Participants (the term "**Classic Fund**" used herein means, prior to the Merger (as defined below), a Temporary Classic Fund and, following the Merger, an FCPE named *Castor International* (the **Principal Classic Fund**)); and

2. an exemption from the dealer registration requirement (the **Registration Relief**, and together with the Prospectus Relief, the **Offering Relief**) so that such requirement does not apply to the Filer and its Local Related Entities (as defined below), the Classic Fund and Amundi Asset Management (the **Management Company**) in respect of:

(a) trades in Units made pursuant to an Employee Offering (as defined below) to or with Canadian Employees; and

(b) trades in Shares by the Classic Fund to or with Canadian Participants upon the redemption of Units as requested by Canadian Participants;

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

(a) the Autorité des marchés financiers is the principal regulator for this application;

(b) the Filer has provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System* (**Regulation 11-102**) is intended to be relied upon in British Columbia, Alberta and Saskatchewan; and

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, Regulation 11-102 and *Regulation 45-106 respecting Prospectus Exemption* 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 formed under the laws of France. It is not and has no current intention of becoming a reporting issuer under the securities legislation of any jurisdiction of Canada. The head office of the Filer is located in France and the Shares are listed on Euronext.

2. The Filer carries on business in Canada through certain related entities that employ Canadian Employees (**Local Related Entities**, and together with the Filer and other related entities of the Filer, the **Vinci Group**). Currently, the greatest number of employees of the Vinci Group in Canada reside in Québec.

3. The Filer has established a global employee share offering under the Plan (the **2017 Employee Offering**) and expects to establish subsequent global employee share offerings following 2017 for the next four years that are substantially similar (**Subsequent Employee Offerings**, and together with the 2017 Employee Offering, **Employee Offerings**) for Qualifying Employees and participating related entities of the Filer, including the Local Related Entities. Each Local Related Entity is a direct or indirect controlled subsidiary of the Filer and no Local Related Entity has any current intention of becoming a reporting issuer under the securities legislation of any jurisdiction of Canada.

4. As of the date hereof, "Local Related Entities" include B.A. Blacktop Ltd, Carmacks Enterprises Ltd, Construction DJL Inc, Agra Foundations Limited, Bermingham Construction Ltd, Freyssinet Canada Ltee, Geopac Inc, Reinforced Earth Company Ltd, Janin Atlas Inc, Asphalte Trudeau Ltee, Pavage Rolland Fortier Inc, Location Rolland Fortier Inc, Groupe Lechasseur, Eurovia Québec Grands projets, Eurovia Québec CSP, Eurovia Québec Construction, Freycan Major Projects Ltd, Eurovia Canada Inc, Coquitlam Ridge Constructors, Two Crossings Maintenance Services Ltd, Carmacks Industrial Ltd, Carmacks Maintenance Services Ltd, Pico Envirotec Inc, Vinci Infrastructure Canada Ltd, Rail Cantech Inc, Eurovin British Columbia Inc, Nuvia Canada Inc and Mobility Way Inc.

5. As of the date hereof and after giving effect to any Employee Offering, Canadian residents do not and will not beneficially own more than 10% of the Shares (which term, for the purposes of this paragraph, is deemed to include all

Shares held by the Classic Fund on behalf of Canadian Participants) issued and outstanding, and do not and will not represent in number more than 10% of the total number of holders of Shares as shown on the books of the Filer.

6. Each Employee Offering involves an offering of Shares to be acquired through a Temporary Classic Fund, which will be merged with the Principal Classic Fund following completion of the Employee Offering (the **Classic Plan**).

7. Only persons who are employees of the Vinci Group during the subscription period for an Employee Offering and who meet other employment criteria (the **Qualifying Employees**) will be allowed to participate in the relevant Employee Offering.

8. The 2017 Fund was established for the purpose of implementing the 2017 Employee Offering. The Principal Classic Fund was established for the purpose of implementing the Employee Offerings generally. There is no current intention for any Temporary Classic Fund or the Principal Classic Fund to become a reporting issuer under the securities legislation of any jurisdiction of Canada.

9. The 2017 Fund and the Principal Classic Fund are FCPEs and are registered with the Autorité des marchés financiers in France (the **French AMF**). It is expected that each Temporary Classic Fund established for Subsequent Employee Offerings will be a French FCPE and registered with, and approved by, the French AMF.

10. Under the Classic Plan, each Employee Offering will be made as follows:

    (a) Canadian Participants will subscribe for Units of the relevant Temporary Classic Fund. The Temporary Classic Fund will then subscribe for Shares on behalf of the Canadian Participants using the Canadian Participants' contributions. The subscription price will be the Canadian dollar equivalent of the average of the volume-weighted average Share price (expressed in Euros) on Euronext for the 20 trading days preceding the start of the subscription period.

    (b) Initially, the Shares will be held in the relevant Temporary Classic Fund and the Canadian Participants will receive Units of the relevant Temporary Classic Fund.

    (c) Following the completion of an Employee Offering, the relevant Temporary Classic Fund will be merged with the Principal Classic Fund (subject to the approval of the supervisory board of the FCPEs and the French AMF). The Temporary Classic Units held by the Canadian Participants will be replaced with units of the Principal Classic Fund (the **Principal Classic Units**) on a *pro rata* basis and the Shares subscribed for will be held in the Principal Classic Fund (such transaction being referred to as the **Merger**). The Filer will rely on the exemption from the prospectus requirement pursuant to section 2.11 of Regulation 45-106 in respect of the issuance of Units of the Principal Classic Fund to Canadian Participants in connection with the Merger.

    (d) The Units will be subject to a hold period of approximately three years (the **Lock-Up Period**), subject to certain exceptions provided for in the Plan and adopted for an Employee Offering in Canada (such as a release on death, disability or termination of employment).

    (e) Any dividends paid on the Shares held in the Classic Fund will be contributed to the Classic Fund and used to purchase additional Shares. To reflect this reinvestment, new Units (or fractions thereof) will be issued to the Canadian Participants.

    (f) At the end of the relevant Lock-Up Period, a Canadian Participant may (i) request the redemption of his or her Units in the Classic Fund in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares, or (ii) continue to hold his or her Units in the Classic Fund and request the redemption of those Units at a later date in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares.

    (g) In the event of an early exit resulting from a Canadian Participant exercising one of the exceptions to the Lock-Up Period and meeting the applicable criteria, the Canadian Participant may request the redemption of his or her Units in the Classic Fund in consideration for a cash payment equal to the then market value of the underlying Shares.

    (h) Subject to certain conditions being satisfied (as provided for in the Plan), the Local Related Entity employing a Canadian Participant will also contribute on behalf of such Canadian Participant additional Shares (the **Bonus Shares**) into the Classic Plan based on predetermined matching contribution rules. Bonus Shares, if not forfeited, will be delivered at the end of the Lock-Up Period. In certain events (i.e. good leavers), forfeiture of rights to receive Bonus Shares will be compensated by a cash payment.

11. For the 2017 Employee Offering, the number of Bonus Shares which a Canadian Participant is eligible to receive will be determined according to the following matching schedule:

Canadian Participant's Subscription	*Matching Ratio*
1–10 Shares	2 Bonus Shares for each Share subscribed
Next 30 Shares (i.e., the 11th to 40th Share subscribed for)	1 Bonus Share for each Share subscribed
Next 60 Shares (i.e., the 41st to 100th Share subscribed for)	1 Bonus Share for each 2 Shares subscribed
Any further Shares starting from the 101st Share subscribed for	No additional Bonus Shares

12. Under French law, an FCPE is a limited liability entity. The portfolio of the Classic Fund will consist almost entirely of Shares and may, from time to time, include cash in respect of dividends paid on the Shares which will be reinvested in Shares and cash or cash equivalents pending investments in the Shares and for the purposes of Unit redemptions.

13. The Management Company is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF to manage investments and complies with the rules of the French AMF. The Management Company is not, and has no current intention of becoming, a reporting issuer under the securities legislation of any jurisdiction of Canada.

14. The Unit value of the Classic Fund will be calculated and reported to the French AMF on a regular basis, based on the net assets of the Classic Fund divided by the number of Units outstanding. The value of the Units will be based on the value of the underlying Shares.

15. Only Qualifying Employees will be allowed to subscribe for Units of the Classic Fund.

16. The Management Company's portfolio management activities in connection with an Employee Offering and the Classic Fund are limited to subscribing for Shares from the Filer, selling such Shares as necessary in order to fund redemption requests and investing available cash in cash equivalents.

17. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents of the Classic Fund. The Management Company's activities do not affect the underlying value of the Shares. All management charges relating to the Classic Fund will be paid from the assets of the Classic Fund or by the Filer, as provided in the regulations of the Classic Fund.

18. None of the entities forming part of the Vinci Group, the Classic Fund or the Management Company or any of their respective employees, directors, officers, agents or representatives will provide investment advice to the Canadian Employees with respect to investments in the Shares or the Units.

19. Shares issued pursuant to an Employee Offering will be deposited in the Classic Fund through CACEIS Bank France (the **Depositary**), a large French commercial bank subject to French banking legislation.

20. Under French law, the Depositary must be selected by the Management Company from a limited number of companies identified on a list maintained by the French Minister of the Economy and Finance and its appointment must be approved by the French AMF. The Depositary carries out orders to purchase, trade and sell assets in the portfolio and takes all necessary action to allow the Classic Fund to exercise the rights relating to the securities held in its portfolio.

21. Participation in an Employee Offering is voluntary, and the Canadian Employees will not be induced to participate in an Employee Offering by expectation of employment or continued employment.

22. The total amount invested by a Canadian Employee pursuant to an Employee Offering cannot exceed 25% of his or her estimated gross annual compensation (excluding Bonus Shares).

23. The Shares and Units are not currently listed for trading on any stock exchange in Canada and there is no intention to have the Shares or the Units so listed.

24. None of the entities forming part of the Vinci Group, the Classic Fund or the Management Company is in default of securities legislation of any jurisdiction of Canada.

25. The Canadian Employees will receive an information package in the French or English language, according to their preference, which will include a summary of the terms of the relevant Employee Offering and a description of the relevant Canadian income tax consequences. Canadian Participants will have access to the Filer's French Document de Référence filed with the French AMF in respect of the Shares and a copy of the regulations of the relevant Temporary Classic Fund and the Principal Classic Fund. The Canadian Employees will also have access to copies of the continuous disclosure materials relating to the Filer through the Filer's public internet site. Canadian Participants will receive an initial statement of their holdings under the Classic Plan, together with an updated statement at least once per year.

26. For the 2017 Employee Offering, there are approximately 2,500 Qualifying Employees resident in Canada, with the largest number residing in Québec, and less than 2% of Qualifying Employees reside in Canada.

Decision

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

The decision of the Decision Makers under the Legislation is that the Offering Relief is granted on the following conditions:

1. with respect to the 2017 Employee Offering, the prospectus requirement will apply to the first trade in any Units or Shares acquired by Canadian Participants pursuant to this decision, unless the following conditions are met:

    a) the issuer of the security

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

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

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

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

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

    c) the first trade is made

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

        ii) to a person or company outside of Canada; and

2. with respect to any Subsequent Employee Offering under this decision completed within five years from the date of this decision, provided that the following conditions are met:

    a) the representations other than those in paragraphs 4, 11 and 26 remain true and correct with necessary adjustments in respect of the relevant Subsequent Employee Offering and Temporary Classic Fund, and

    b) the conditions set out in paragraph 1. above apply to any Subsequent Employee Offering .

"Anne Marie Ryan"
Commissioner
Ontario Securities Commission

"Robert P. Hutchinson"
Commissioner
Ontario Securities Commission

2.2 Orders

2.2.1 Can-Ameri Agri Co. Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceases 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).

June 13, 2017

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

AND

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

AND

IN THE MATTER OF
CAN-AMERI AGRI CO. INC.
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"John Hinze"
Director, Corporate Finance
British Columbia Securities Commission

2.2.2 Pro-Financial Asset Management Inc. et al.

IN THE MATTER OF
PRO-FINANCIAL ASSET MANAGEMENT INC.,
STUART MCKINNON and
JOHN FARRELL

AnneMarie Ryan, Commissioner and Chair of the Panel
Timothy Moseley, Commissioner
Mark Sandler, Commissioner

June 15, 2017

ORDER

WHEREAS on June 15, 2017, the Ontario Securities Commission (the "**Commission**") held a pre-hearing conference at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario with respect to scheduling;

ON HEARING and considering the submissions of Staff of the Commission and Mr. McKinnon on his own behalf and on behalf of Pro-Financial Asset Management, all parties appearing in person;

IT IS HEREBY ORDERED that a pre-hearing conference is scheduled for June 28, 2017 at 9:30 a.m.

"AnneMarie Ryan"

"Timothy Moseley"

"Mark Sandler"

2.2.3 Champion Exchange Limited – 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
CHAMPION EXCHANGE LIMITED
(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 having represented 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 exchangeable shares ("**Exchangeable Shares**") and an unlimited number of common shares ("**Common Shares**").

2. The Applicant has its head office at 20 Adelaide Street East, Suite 200, Toronto, Ontario, M5C 2T6.

3. Pursuant to articles of incorporation dated December 24, 2013, the Applicant was incorporated under the laws of the Province of Ontario as a wholly-owned subsidiary of Champion Iron Limited (formerly known as Mamba Minerals Limited) (the "**Parent**"), a company existing under the laws of Australia, in order to implement the Arrangement (defined below).

4. In connection with a plan of arrangement between the Parent, the Applicant and Champion Iron Mines Limited ("**CIML**"), on March 27, 2014, the Applicant's shareholder approved by special resolution a plan of arrangement (the "**Arrangement**") pursuant to which, among other things, the Parent

and the Applicant acquired all of the outstanding common shares of CIML.

5. The Arrangement was approved by the Ontario Superior Court of Justice (Commercial List) on March 28, 2014.

6. In connection with the Arrangement, the Applicant issued Exchangeable Shares to shareholders of CIML.

7. On or about January 30, 2017 (the "**Redemption Date**"), the Parent redeemed all of the remaining outstanding Exchangeable Shares of the Applicant ("**Remaining Exchangeable Shares**"). On the Redemption Date, holders of Remaining Exchangeable Shares received one ordinary share of the Parent in exchange for each Remaining Exchangeable Share (the "**Redemption**").

8. As a result of the Redemption, the Applicant has no outstanding securities, including debt securities, other than the Common Shares.

9. All of the issued and outstanding Common Shares are held by the Parent.

10. Neither the Common Shares nor the Exchangeable Shares were at any time listed on an exchange or 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.

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

12. Pursuant to the Arrangement, the Applicant became a reporting issuer, or the equivalent, in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Newfoundland and Labrador.

13. On May 24, 2017, the Applicant was granted an order that it is not a reporting issuer in Ontario pursuant to subclause 1(10)(a)(ii) of the *Securities Act* (Ontario), and is not a reporting issuer or the equivalent in any other jurisdiction of Canada in accordance with the simplified procedure set out in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications*.

AND UPON the Commission being satisfied that 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 is deemed to have ceased to be offering its securities to the public.

DATED at Toronto on this 13th day of June, 2017.

"Timothy Moseley"
Commissioner
Ontario Securities Commission

"Garnet Fenn"
Commissioner
Ontario Securities Commission

2.2.4 Garth H. Drabinsky et al. – ss. 127(1), 127(10)

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

D. Grant Vingoe, Vice-Chair and Chair of the Panel
Judith N. Robertson, Commissioner
William J. Furlong, Commissioner

June 15, 2017

ORDER
(Subsections 127(1) and 127(10) of the Securities Act, RSO 1990, c S.5)

WHEREAS on February 22, 23, 24 and April 24, 2017, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider whether it is in the public interest to make an inter-jurisdictional enforcement order against the sole remaining respondent in this proceeding, Garth H. Drabinsky ("**Drabinsky**"), pursuant to subsection 127(1) and paragraph 1 of subsection 127(10) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**");

ON READING the Amended Statement of Allegations dated February 20, 2013, the Agreed Statement of Facts dated February 10, 2017, the written closing submissions of the parties, including the accompanying books of authorities, and on hearing the submissions of representatives for the parties, and considering the documents and witness testimony admitted as evidence at the hearing;

IT IS ORDERED THAT:

1. pursuant to clauses 2 and 2.1 of subsection 127(1) of the Act, trading in any securities by Drabinsky cease permanently and the acquisition of any securities by Drabinsky is prohibited permanently, except that he may trade or acquire securities or derivatives:

    a. in any account at a registered dealer in his own name of which he has the sole beneficial interest; or

    b. in a registered retirement savings plan, registered educations savings plan, any registered retirement income funds, and/or tax-free savings account (as defined in the *Income Tax Act* (Canada)) in which only he has a beneficial ownership; and

    c. he does not own legally or beneficially more than five percent of outstanding securities of the class or series of the class in question; and

    d. he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this Order) and through accounts opened in his name only;

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

3. pursuant to clause 8 of subsection 127(1) of the Act, Drabinsky is prohibited from becoming or acting as a director or officer of any issuer permanently;

4. pursuant to clause 8.2 of subsection 127(1) of the Act, Drabinsky is prohibited from becoming or acting as a director or officer of a registrant permanently;

5. pursuant to clause 8.4 of subsection 127(1) of the Act, Drabinsky is prohibited from becoming or acting as a director or officer of an investment fund manager permanently; and

6. pursuant to clause 8.5 of subsection 127(1) of the Act, Drabinsky is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently.

"D. Grant Vingoe"

"Judith N. Robertson"

"William J. Furlong"

2.2.5 Home Capital Group Inc. et al.

IN THE MATTER OF
HOME CAPITAL GROUP INC.,
GERALD SOLOWAY,
ROBERT MORTON and
MARTIN REID

D. Grant Vingoe, Vice-Chair and Chair of the Panel

June 19, 2017

ORDER

WHEREAS a Notice of Hearing was issued on June 14, 2017, setting a public settlement hearing for August 9, 2017 at 10:00 a.m.;

IT IS ORDERED THAT the June 26, 2017 hearing at 9:00 a.m. is vacated.

"D. Grant Vingoe"

2.2.6 Enssolutions Group Inc. – s. 144

Headnote

Application by an issuer for a revocation of a cease trade order issued by the Commission – cease trade order issued because the issuer had failed to file certain continuous disclosure materials required by Ontario securities law – defaults subsequently remedied by bringing continuous disclosure filings up-to-date - cease trade order revoked.

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
ENSSOLUTIONS GROUP INC.
(the Applicant)

ORDER
(Section 144)

WHEREAS the Director of the Ontario Securities Commission (the "**Commission**") issued a temporary cease trade order dated May 8, 2015 under paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, and a permanent cease trade order dated May 20, 2015 under paragraph 2 of subsection 127(1) of the Act (together, the "**Ontario Cease Trade Order**") ordering that all trading in the securities of the Applicant cease until the Ontario Cease Trade Order is revoked by the Director;

AND WHEREAS the Ontario Cease Trade Order was made on the basis that the Applicant was in default of certain filing requirements under Ontario securities law as described in the Ontario Cease Trade Order;

AND WHEREAS the Applicant has applied to the Commission pursuant to section 144 of the Act for a revocation of the Ontario Cease Trade Order;

AND UPON the Applicant representing to the Commission that:

1. The Applicant was incorporated as Chrysalis Capital V Corporation pursuant to the *Canada Business Corporations Act* on February 8, 2007. Chrysalis Capital V Corporation was a "capital pool company" pursuant to the policies of the TSX Venture Exchange (the "**TSXV**"). In order to effect its "qualifying transaction" pursuant to the policies of the TSXV, on October, 30, 2008, a wholly-owned subsidiary of Chrysalis Capital V Corporation amalgamated with Enssolutions Ltd. by virtue of a "three-cornered" amalgamation. As a result, Enssolutions Ltd. became a wholly-owned

subsidiary of Chrysalis Capital V Corporation. Chrysalis Capital V Corporation subsequently changed its name to Enssolutions Group Inc.

2. The Applicant's authorized capital consists of an unlimited number of common shares and an unlimited number of preferred shares, issuable in series. The issued and outstanding capital of the Applicant is 95,835,366 common shares. There are no preferred shares issued or outstanding.

3. The Applicant is a reporting issuer in the provinces of Ontario, Alberta and British Columbia (the "**Reporting Jurisdictions**"). The Applicant is not a reporting issuer in any other jurisdiction in Canada.

4. The Applicant's common shares are listed for trading on the NEX Board of the TSXV under the symbol "ENV.H". The TSXV halted trading of the Applicant's shares on May 8, 2015. The Applicant's common shares are also quoted for trading on the OTC Pink marketplace in the United States of America under the symbol "NSLSF". The Applicant's securities are not listed or quoted on any other exchange or market in Canada or elsewhere 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.

5. The Ontario Cease Trade Order was issued as a result of the Applicant's failure to file audited annual financial statements for the year ended December 31, 2014, management's discussion and analysis ("**MD&A**") relating to the audited annual financial statements for the year ended December 31, 2014 and certificates of the foregoing filings (collectively, the "**Required Documents**") as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* ("**NI 52-109**").

6. The Applicant is also subject to similar cease trade orders issued by the British Columbia Securities Commission on May 11, 2015 (the "**BC CTO**"), and by the Alberta Securities Commission on August 28, 2015 (the "**AB CTO**"), for failure to file the Required Documents and certain other documents. The Applicant is concurrently applying for revocations of the BC CTO and AB CTO.

7. From the date of the Ontario Cease Trade Order up to and including May 31, 2017, the Applicant accumulated debt in the amount of U.S. $2,550,000 (the "**Shareholder Loans**") to David C. Lincoln (the "**Major Shareholder**"), a shareholder, officer, director and creditor of the Applicant, under certain lines of credit and certain interest-bearing promissory notes issued by the Applicant to the Major Shareholder (the "**Promissory Notes**"). The Applicant used the majority of the advances made under the Shareholder Loan during this period to bring its continuous disclosure record up to date and to meet its operational and administrative expenses. The Major Shareholder is a U.S. resident and an "accredited investor" pursuant to Rule 501(a) of Regulation D under the United States Securities Act of 1933, as amended. The Applicant is of the view that the funds advanced to the Applicant under the Shareholder Loan which were evidenced by the Promissory Notes may have constituted the distribution of a security by the Applicant in contravention of the Ontario Cease Trade Order.

8. Except as provided in paragraph 7 above, there have been no changes in the number of the Applicant's securities, including debt securities, issued and outstanding since the date of the Ontario Cease Trade Order.

9. On November 4, 2015, the Applicant filed the Required Documents with the Commission.

10. On December 10, 2015, the Applicant filed interim financial statements, MD&A and corresponding certificates as to interim filings as required by NI 52-109 for the three-month period ended March 31, 2015, the three and six-month periods ended June 30, 2015 and the three and nine-month periods ended September 30, 2015.

11. On April 29, 2016, the Applicant filed audited annual financial statements for the year ended December 31, 2015, MD&A relating to the audited annual financial statements for the year ended December 31, 2015 and certificates of the foregoing filings as required by NI 52-109.

12. On May 19, 2016, the Applicant filed interim financial statements, MD&A – Quarterly Highlights and corresponding certificates as to interim filings as required by NI 52-109 for the three-month period ended March 31, 2016. On June 14, 2016, the Applicant refiled interim financial statements, MD&A – Quarterly Highlights and corresponding certificates as to interim filings as required by NI 52-109 for the three-month period ended March 31, 2016.

13. On August 26, 2016, the Applicant filed interim financial statements, MD&A – Quarterly Highlights and corresponding certificates as to interim filings as required by NI 52-109 for the three and six-month periods ended June 30, 2016.

14. On November 18, 2016, the Applicant filed interim financial statements, MD&A – Quarterly Highlights and corresponding certificates as to interim filings as required by NI 52-109 for the three and nine-month periods ended September 30, 2016.

15. On March 24, 2017, the Applicant refiled the MD&A and corresponding certificates as required

by NI 52-109 relating to the audited annual financial statements for the year ended December 31, 2015.

16. On April 21, 2017, the Applicant filed audited annual financial statements for the year ended December 31, 2016, MD&A relating to the audited annual financial statements for the year ended December 31, 2016 and certificates of the foregoing filings as required by NI 52-109.

17. On January 20, 2016, the Applicant held its annual and special meeting of shareholders (the "**January Shareholders Meeting**") for the year ended December 31, 2014. A management's information circular dated December 16, 2015 was filed and sent to shareholders. At the January Shareholders Meeting, the following matters were presented and approved:

    (a) John W. Allen, James C. Griffths, David C. Lincoln and Mark A. Young were elected as directors for the ensuing year.

    (b) Farber Hass Hurley LLP, Certified Public Accountants, was appointed auditors of the Applicant for the ensuing year.

    (c) The proposed consolidation of all of the Applicant's issued and outstanding common shares on the basis of a ratio within the range of one post-consolidation common share for every five pre-consolidation common shares to one post-consolidation common share for every 50 pre-consolidation common shares (the "**Consolidation**"), with the ratio to be selected and implemented by the Applicant's board of directors, if at all, at any time prior to December 31, 2016, was approved. The Consolidation was not effected by the Applicant.

    (d) The Applicant's 10% rolling stock option plan was approved.

18. On May 26, 2016, the Applicant held its annual and special meeting of shareholders (the "**May Shareholders Meeting**") for the year ended December 31, 2015. A management's information circular dated April 22, 2016 was filed and sent to shareholders. At the May Shareholders Meeting, the following matters were presented and approved:

    (a) John W. Allen, James C. Griffiths, David C. Lincoln, Cornelia H. V. Molson and Mark A. Young were elected as directors for the ensuing year.

    (b) Farber Hass Hurley LLP, Certified Public Accountants, was appointed auditors of the Applicant for the ensuing year.

    (c) The Applicant's 10% rolling stock option plan was approved.

19. On May 17, 2017, the Applicant held its annual and special meeting of shareholders (the "**2017 Shareholders Meeting**") for the year ended December 31, 2016. A management's information circular dated April 17, 2017 was filed and sent to shareholders. At the 2017 Shareholders Meeting, the following matters were presented and approved:

    (a) John W. Allen, James C. Griffiths, David C. Lincoln, Cornelia H. Molson, James D. Staudohar and Mark A. Young were elected as directors for the ensuing year.

    (b) Farber Hass Hurley LLP, Certified Public Accountants, was appointed auditors of the Applicant for the ensuing year.

    (c) The proposed consolidation of all of the Applicant's issued and outstanding common shares on the basis of a ratio within the range of one post-consolidation common share for every five pre-consolidation common shares to one post-consolidation common share for every 25 pre-consolidation common shares (the "**Renewed Consolidation**"), with the ratio to be selected and implemented by the Applicant's board of directors, if at all, at any time prior to December 31, 2017, was approved. The Renewed Consolidation has not been effected by the Applicant and remains subject to receipt of all necessary regulatory approvals, including approval of the TSXV and the revocation of the Ontario Cease Trade Order.

    (d) The Applicant's 10% rolling stock option plan was approved.

20. The Applicant has also issued and filed on SEDAR certain clarifying press releases as requested by the Commission with respect to its officers and directors, and the potential sale of its U.S. subsidiary.

21. As a result, the Applicant has filed all outstanding continuous disclosure documents that are required to be filed under Ontario securities law.

22. Subject to paragraph 7 above, the Applicant has not contravened the Ontario Cease Trade Order. The Consolidation and Renewed Consolidation may have been acts in furtherance of a trade in contravention the Ontario Cease Trade Order.

23. The Applicant has paid all outstanding activity, participation and late filing fees that are required to be paid.

24. The Applicant's SEDAR profile and SEDI issuer profile supplement are current and accurate.

25. The Applicant's current directors are John W. Allen, James C. Griffths, David C. Lincoln, Cornelia H. V. Molson, James D. Staudohar and Mark A. Young. The Applicant's current officers are James D. Staudohar (President and Chief Executive Officer), Charles Mathews (Chief Financial Officer), Mark A. Young (Chairman) and David C. Lincoln (Vice-Chairman).

26. To the knowledge of the directors and management of the Applicant, as of the date hereof, David C. Lincoln who currently serves as a director of the Applicant beneficially owns or exercises control or direction over 79,217,033 Common Shares representing 82.7% of the Common Shares of the Issuer and is the only shareholder of the Applicant who beneficially owns, directly or indirectly, or exercises control or direction over Common Shares carrying more than 10% of the voting rights attaching to the Common Shares of the Applicant.

27. The Applicant is not considering nor is it involved in any discussions related to a reverse take-over, merger, amalgamation or other form of combination or transaction similar to any of the foregoing.

28. Upon the issuance of this revocation order, the Applicant will issue a news release announcing the revocation of the Ontario Cease Trade Order. The Applicant will concurrently file the news release and a material change report regarding the revocation of the Ontario Cease Trade Order on SEDAR.

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

AND UPON the Director being satisfied that it would not be prejudicial to the public interest to revoke the Ontario Cease Trade Order;

IT IS ORDERED, pursuant to section 144 of the Act, that the Ontario Cease Trade Order is hereby revoked.

DATED at Toronto this 19th day of June, 2017.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

2.2.7 Immunotec inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceases 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).

[TRANSLATION]

June 8, 2017

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

AND

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

AND

IN THE MATTER OF
IMMUNOTEC INC.
(the Filer)

ORDER

Background

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

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

(a) the Autorité des marchés financiers is the principal regulator for this application,

(b) the Filer has provided notice that subsection 4C.5(1) of *Regulation 11-102 respecting Passport System* (Regulation 11-102) is intended to be relied upon in British Columbia and Alberta, and

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, Regulation 11-102 and *Regulation 14-501Q respecting definitions* have the same meaning if used in this order, unless otherwise defined.

Representations

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

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

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

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

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

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

Order

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

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

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

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Garth H. Drabinsky et al. – ss. 127(1), 127(10)

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

REASONS AND DECISION
(Subsections 127(1) and 127(10) of the Securities Act, RSO 1990, c S.5)

Citation: Re Drabinsky, 2017 ONSEC 22
Date: 2017-06-15

Hearing:	February 22-24 and April 24, 2017		
Decision:	June 15, 2017		
Panel:	D. Grant Vingoe	–	Vice-Chair and Chair of the Panel
	Judith N. Robertson	–	Commissioner
	William J. Furlong	–	Commissioner
Appearances:	Pamela Foy Alexandra Matushenko Thomas Ng	–	For Staff of the Ontario Securities Commission
	Richard H. Shekter Nazanin Eisazadeh	–	For Garth H. Drabinsky

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REASONS AND DECISION

I. OVERVIEW

[1] This matter arises from a Notice of Hearing and Amended Statement of Allegations, each issued by the Ontario Securities Commission (the **Commission**) in respect of Garth H. Drabinsky, Myron I. Gottlieb and Gordon Eckstein on February 20, 2013. These proceedings were commenced in an earlier form in July 2001 and were periodically adjourned because of the ongoing criminal proceedings that were concluded against Mr. Eckstein in February 2007 and against Mr. Drabinsky and Mr. Gottlieb in March 2009. The Commission's proceedings against Mr. Gottlieb and Mr. Eckstein were subsequently resolved through settlements. Mr. Drabinsky is the sole respondent remaining in this proceeding.

[2] Staff of the Commission seeks an inter-jurisdictional enforcement order imposing restrictions on Mr. Drabinsky based upon his criminal convictions by the Ontario Superior Court of Justice. Because Mr. Drabinsky's offences arose from a transaction, business or course of conduct related to securities, Staff relies on paragraph 1 of the inter-jurisdictional enforcement provision found in subsection 127(10) of the *Securities Act*, RSO 1990, c S.5 (the **Act**). The hearing to determine whether such an order should be made was held on February 22, 23 and 24 and April 24, 2017.

[3] Staff requests that the Commission issue protective and preventative sanctions that fully and permanently remove Mr. Drabinsky from participation in Ontario's capital markets. Staff argues that it is not in the public interest to allow Mr. Drabinsky's participation in Ontario's capital markets, as he was a senior director and officer of a public company who abused his positions of trust by carrying out a large-scale fraud. Staff submits that to order otherwise would undermine the proper functioning of, and public confidence in, the capital markets.

[4] Mr. Drabinsky acknowledges that some sanctions under the Act are appropriate, but submits that Staff's proposed sanctions are improperly punitive and would prevent him from working in his chosen occupation, as a creative producer in the entertainment industry. He proposes that the sanctions be varied to allow carve-outs, which he submits would allow for his continued work as a creative producer and facilitate his tax and estate planning, but would still provide public protection.

[5] Mr. Drabinsky called a number of witnesses to speak about his contributions to society through creative endeavors, his expressions of remorse and regret and their views on the likelihood that Mr. Drabinsky will reoffend. Staff did not call any witnesses.

[6] We ultimately agree to the imposition of Staff's requested sanctions, with the exception that we endorse Mr. Drabinsky's proposed carve-outs from the securities acquisition and trading bans. In addition, although a respondent is always able to seek a variation of an Order issued by the Commission, we deny Mr. Drabinsky's request for a specific provision to allow him to return in four years to modify his carve-outs.

[7] These are our reasons and decision in this matter.

II. THE AGREED STATEMENT OF FACTS

[8] Staff of the Commission and Mr. Drabinsky entered into an Agreed Statement of Facts on February 10, 2017 for the purposes of this proceeding (the **Agreed Statement of Facts**). We set out in full these undisputed facts and adopt them for the purposes of these Reasons, with only slight changes in definitions. The following paragraphs 1 through 21 are taken directly from the Agreed Statement of Facts:

1. On March 25, 2009, Mr. Drabinsky was found guilty in the Ontario Superior Court of Justice of two counts of criminal fraud over $5,000 and one count of forgery in connection with misrepresentations made in the financial statements of Livent Inc. (**Livent**) and its predecessor companies while he was a director and officer of these companies. The findings respecting forgery were encompassed in the second of the two fraud counts and, accordingly, on the basis of the principle in Kienapple v The Queen, the forgery count was stayed.

2. The convictions against Mr. Drabinsky involved material misrepresentations in the financial statements used to promote the initial public offering of Livent on the Toronto Stock Exchange (the **IPO**).

3. The convictions against Mr. Drabinsky also involved material misrepresentations made in financial statements that Livent issued after it became a public company.

4. Pursuant to his conviction, Mr. Drabinsky received a sentence of 4 years of incarceration for misrepresentations related to the IPO, and 7 years for misrepresentations related to post-IPO period, to be served concurrently.

5. Mr. Drabinsky appealed his conviction and sentence. On September 13, 2011, the Ontario Court of Appeal upheld the convictions, but reduced Mr. Drabinsky's sentences to a total of 4 years and 5 years, each sentence to be served concurrently.

6. Mr. Drabinsky sought leave from the Supreme Court of Canada to appeal the ruling of the Ontario Court of Appeal, but his application was dismissed without reasons on March 29, 2012. Mr. Drabinsky completed serving his sentence in September 2016.

I. The Respondent

A. Garth H. Drabinsky

7. Mr. Drabinsky held various director and officer positions with Livent. From May 17, 1993 until June 12, 1998, Mr. Drabinsky was Chairman of the Board of Directors and Chief Executive Officer of Livent. On June 12, 1998, Mr. Drabinsky transitioned from these positions to become Vice-Chairman of the Board of Directors and Chief Creative Director, holding both of these titles until November 18, 1998.

8. Prior to the IPO, Mr. Drabinsky held various positions in Livent's privately held predecessor entities, including positions as General Partner of MyGar Partnership, an Ontario general partnership, as Director of MyGar Realty Inc., an Ontario corporation, and as Chairman and Chief Executive Officer of Live Entertainment of Canada Inc. (**LECI**), an Ontario corporation.

II. Background

B. Livent's Predecessor Entities and IPO

9. Prior to May 1993, Mr. Drabinsky and Mr. Gottlieb operated and controlled several entities involved in the live entertainment business, including LECI, MyGar Partnership, and MyGar Realty Inc.

10. On or about May 7, 1993, Livent conducted its IPO (under the name of LECI, its immediate corporate predecessor) and acquired all the assets of MyGar Partnership and all the outstanding shares of MyGar Realty Inc. in the course of the offering. Livent's shares were subsequently listed for trading on the Toronto Stock Exchange and the company became a reporting issuer in Ontario.

C. Fraud Allegations, Bankruptcy and Cease-Trading

11. In the summer of 1998, new management took control of Livent pursuant to an investment agreement, and learned of allegations that the company's prior financial statements contained misrepresentations.

12. On August 10, 1998, Livent issued a news release and filed a material change report pursuant to the Act, publicly announcing that an internal investigation had revealed serious irregularities in the company's financial records. The announcement stated that it was virtually certain that Livent's financial results for 1996 and 1997 and the first quarter of 1998 would need to be restated.

13. On February 6, 2001, shares of Livent were cease traded by the Commission in response to the company's failure to file the financial statements required by the Act.

D. Commission Proceedings, Adjournment and Criminal Proceedings

14. On July 3, 2001, Staff issued a Notice of Hearing and Statement of Allegations against Mr. Drabinsky, Mr. Gottlieb (General Partner of MyGar Partnership, a Director of MyGar Realty Inc., a Director, President and Chief Operating Officer of LECI), Mr. Eckstein (Vice-President, Finance and Administration of MyGar Partnership and LECI; later Vice-President, Finance and Administration at Livent from May 17, 1993 through November 13, 1996, and then Senior Vice-President, Finance and Administration) and Livent's Chief Operating Officer, Robert Topol, in relation to their conduct as directors and officers of Livent.

15. Subsequently, Mr. Drabinsky gave an undertaking to the Director of the Enforcement Branch of the Commission that, pending the conclusion of the proceedings, he would not apply to become a registrant, an employee of a registrant, or act in certain officer or director positions of a reporting issuer without the express written consent of the Director or an Order of the Commission.

16. On October 22, 2002, the Royal Canadian Mounted Police charged Mr. Drabinsky, Mr. Gottlieb, Mr. Eckstein and Mr. Topol with multiple counts of criminal fraud, and the Commission proceedings against the respondents were adjourned *sine die* on November 15, 2002 pending resolution of the criminal charges.

17. On May 5, 2008, the criminal trial against Mr. Drabinsky and Mr. Gottlieb commenced in Superior Court before Madam Justice Benotto sitting alone. On March 25, 2009, Mr. Drabinsky and Mr. Gottlieb were found guilty of violating Sections 380(1)(a) and 368(1)(b) of the *Criminal Code* of Canada.

III. Findings of the Superior Court against Mr. Drabinsky

18. As set forth in the decision of the Superior Court, Mr. Drabinsky and Mr. Gottlieb raised over $500 million from the capital markets between 1993 and 1998, signing and presenting company financial statements to investors during this period. As detailed in the decisions, the financial statements included two types of fraudulent misrepresentations: one in relation to the financial statements of Livent's predecessor entities (the **MyGar Entities**) which were included in the Prospectus when Livent held its IPO, and the other in relation to the financial statements of Livent after the IPO, which were publicly filed. The final financial statements containing the misrepresentations were signed by Mr. Drabinsky and Mr. Gottlieb and were distributed to the Audit Committee and subsequently to the Board of Directors.

19. Livent raised funds from capital markets repeatedly during the post-IPO period, including the following offerings itemized in the Superior Court's decision:

Date of Offering	Offering	Approximate Funds Raised ($ million)
September 20, 1993	Special Warrants Private Placement	$20
February 3, 1995	Subordinated Convertible Notes Offering	$15
February 3, 1995	Personal Shares of Mr. Drabinsky and Mr. Gottlieb	$17
April 2, 1996	U.S. Public Offering	$43
July 29, 1996	Subordinated Convertible Debentures	$12
December 4, 1996	CIBC Credit Facility (loan agreement)	$50
December 10, 1996	Senior Secured Debentures	$73
May 8, 1997	Secondary Public Offering	$28
October 16, 1997	Senior Notes Offering	$173
June 12, 1998	Private Placement: Lynx Ventures	$29
June 23, 1998	Private Placement: Southam	$18
June 23, 1998	Private Placement: Great Pacific	$1
June 23, 1998	Private Placement: Allen & Co.	$1

IV. Conduct Contrary to the Public Interest

20. The conviction of Mr. Drabinsky for fraud involving financial statements distributed pursuant to the Act constitutes a basis pursuant to section 127(10) of the Act for an order in the public interest under section 127(1) of the Act.

21. In addition, by engaging in the conduct described above, Mr. Drabinsky acted in a manner contrary to the public interest, and an order is warranted pursuant to section 127(1) of the Act.

[9] The Agreed Statement of Facts also provides that Staff and Mr. Drabinsky each reserved the right to refer to and read from the criminal decisions and other documents contained in the Joint Documents Brief during the course of the evidence. Mr. Drabinsky also reserved the right to adduce further evidence during the course of the sanctions hearing. Staff and Mr. Drabinsky each reserved the right to make such other submissions concerning the above as they may advise and the Commission may permit. Staff and Mr. Drabinsky adhered to these understandings during the hearing.

[10] Staff submits and Mr. Drabinsky agrees that Mr. Drabinsky's criminal convictions satisfies the requirements for the issuance of an order pursuant to subsections 127(1) and (10) of the Act. The Panel agrees.

[11] Mr. Drabinsky also agrees that sanctions should be ordered against him in this matter, but he differs with Staff on the scope of such sanctions.

III. ORDER SOUGHT BY THE PARTIES

A. Staff

[12] Staff requests that the following order be issued with respect to Mr. Drabinsky, namely, that:

a. pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Mr. Drabinsky cease permanently;

b. pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Mr. Drabinsky is prohibited permanently;

c. pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Mr. Drabinsky permanently;

d. pursuant to clause 8 of subsection 127(1) of the Act, Mr. Drabinsky be prohibited from becoming or acting as a director or officer of any issuer permanently;

e. pursuant to clause 8.2 of subsection 127(1) of the Act, Mr. Drabinsky be prohibited from becoming or acting as a director or officer of a registrant permanently;

f. pursuant to clause 8.4 of subsection 127(1) of the Act, Mr. Drabinsky be prohibited from becoming or acting as a director or officer of an investment fund manager permanently; and

g. pursuant to clause 8.5 of subsection 127(1) of the Act, Mr. Drabinsky be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently.

B. Mr. Drabinsky

[13] Attached as Schedule A to these Reasons is the form of the draft order proposed by Mr. Drabinsky.

1. Director, Officer and Promoter Bans

[14] Staff submits that a permanent ban on acting as a director or officer of any issuer, whether or not a reporting issuer, is appropriate, as set out in subparagraph (d) of Staff's above proposed order.

[15] Mr. Drabinsky submits that a prohibition with regard to his assuming these roles at a reporting issuer – essentially issuers whose securities are publicly traded in Ontario – and at a registrant or investment manager, is appropriate. However, Mr. Drabinsky proposes carve-outs to provide an exemption for holding such positions at non-reporting issuers, permitting Mr. Drabinsky to perform "Permitted Activities" for "Permitted Non-Public Issuers."

[16] Mr. Drabinsky defines "Permitted Activities" as creative and marketing activities in relation to the development, production or exploitation stages of projects in television, motion pictures, live concerts, or the dramatic or musical theatre that:

a. do not involve the preparation and final approval by Mr. Drabinsky of financial statements;

b. do not involve soliciting investments or raising funds from investors; but for greater certainty, Mr. Drabinsky may communicate with investors or potential investors any information related to the creative or marketing aspects of the production of projects, including associated costs, budgets and timelines related thereto;

c. do not involve authority to execute contracts, sign cheques, make final financial decisions, or control any bank accounts or other financial assets of the Permitted Non-Public Issuer;

d. do not involve providing instructions or direction to any legal or financial advisors of the Permitted Non-Public Issuer, provided that providing input, advice and/or making recommendations to the Board, CEO or CFO of the Permitted Non-Public Issuer, or to legal and financial advisors of the Permitted Non-Public Issuer,

regarding the creative and marketing services, potential contracts and proposed budgets for any project, does not constitute providing instructions or directions within the meaning of this paragraph; and

e. do not involve making recommendations to, participating in any discussions with, or attempting in any way to influence, management or the board of, the Permitted Non-Public Issuer in relation to its compliance with its obligations under Ontario securities law.

[17] Mr. Drabinsky proposes to define "Permitted Non-Public Issuers", as any non-reporting issuer, including limited partnerships, in which:

a. the issuer has only distributed securities to persons or companies described in subsections 2.42(2)(a), (b), (c), (d), (g) and (h) of National Instrument 45-106 – essentially directors, officers and control persons of the issuer and affiliates, and related family members, and existing security holders of the issuer, and investors who are Permitted Clients, as defined in National Instrument 31-103 – consisting of certain classes of sophisticated investors, including, among others, individuals who beneficially own financial assets having a net realizable value before taxes, of greater than $5 million;

b. the issuer's securities, other than non-convertible debt securities, are owned by not more than 50 persons or companies, not including employees and former employees of the issuer or its affiliates; and

c. a copy of the Order resulting from this proceeding is provided to the directors, officers and security holders of the Permitted Non-Public Issuers prior to the issuer entering into any agreement to retain Mr. Drabinsky's services, and a copy of such Order is provided to any individuals who propose to subsequently acquire securities in the issuer.

[18] Mr. Drabinsky also seeks to have this exception apply to the ban from being a promoter set out in subparagraph (g) of Staff's proposed order. For the purposes of these Reasons, we will refer to these proposed exceptions collectively as the "**Creative Services Exception**".

[19] Mr. Drabinsky agrees to the registrant bans set out in subparagraph (g) of Staff's proposed order.

[20] Mr. Drabinsky also proposes an additional exception to permit him to be an officer or director of certain family companies to enable him to engage in tax and estate planning. Specifically, a carve-out was proposed to permit him:

> To act as a director or officer of an issuer where all the securities of the issuer are owned by one or more of Mr. Drabinsky, his spouse and their children and any issue thereof, his two brothers (together, his **Immediate Family**), or a family trust the beneficiaries are members of his Immediate Family, and to trade in, distribute or acquire securities of such an issuer only among members of his Immediate Family, provided that the name of the issuer is provided to Staff and the issuer does not seek to raise capital for the issuer except from Mr. Drabinsky and his Immediate Family and/or through ordinary course borrowing on usual commercial terms.

[21] For the purposes of these Reasons, we refer to this as the "**Family Company Exception**."

[22] Mr. Drabinsky also submits that the order issued in this proceeding should include a provision permitting him to apply to the Commission for a variation of the terms and restrictions applicable to the Creative Services Exception and the Family Company Exception, but no earlier than four years from the date of the Order.

2. Acquisition and Trading Bans

[23] With regard to Staff's proposed prohibition on acquisition and trading securities in subparagraphs (a) and (b) of Staff's above proposed order, Mr. Drabinsky seeks to have the order limited to a 10-year term and submits that it is appropriate to provide an exception to enable him to trade or acquire securities or derivatives:

a. in any account at a registered dealer in his own name of which he has the sole beneficial interest; or

b. in a registered retirement savings plan, registered educational savings plan, any registered retirement income funds, and/or tax-free savings account (as defined in the *Income Tax Act* (Canada)) in which he has a beneficial interest;

c. provided he does not own legally or beneficially more than 5 percent of the outstanding securities of the class or series of the class in question; and

d. through a registered dealer (which dealer must be given a copy of the Order resulting from this proceeding) and through accounts opened in his name only.

[24] For the purposes of these Reasons, we will refer to these exceptions as the "**Trading Account Exception**" and the exception in subparagraph (b) above, specifically, as the "**Tax Advantaged Account Exception**."

IV. ISSUES

[25] Given that the parties agree, and the Panel has determined, that sanctions are warranted, the main issue for this Panel to resolve is what sanctions are necessary to protect Ontario investors and the integrity of Ontario's capital markets. In so doing, this Panel must consider a number of sub-issues, including:

a. How should the Panel apply the considerations of specific and general deterrence, given the magnitude of Mr. Drabinsky's frauds on the one hand and, on the other hand, the considerable passage of time and the fact that he has already been the recipient of substantial sanctions through his criminal convictions and incarceration?

b. Do the proposed director, officer and promoter bans prevent Mr. Drabinsky from earning a living, including in his current role as a creative producer?

c. What consideration, if any, should be given to Mr. Drabinsky's estate planning and tax-optimization strategies in the crafting of sanctions?

d. Are Mr. Drabinsky's requested carve-outs appropriate and do they sufficiently allow for the protection of investors and the capital markets? Could the Commission ensure that the proposed carve-outs are so limited that there would not be any adverse consequences to the capital markets in Ontario? How, over time, could the Commission ensure that the carve-outs would not be used as vehicles for public investment in Ontario?

V. PUBLIC INTEREST ORDERS UNDER THE ACT

[26] Staff submits, and we agree, that when exercising its public interest jurisdiction under section 127, the Commission must consider the twin purposes of the Act. These purposes, set out in section 1.1 of the Act, are:

a. to protect investors from unfair, improper or fraudulent practices; and

b. to foster fair and efficient capital markets and confidence in capital markets.

[27] In pursuing these purposes, the Commission must also have regard for the fundamental principles described in subsection 2.1(2) of the Act. That section provides that two of the primary means for achieving the purposes of the Act are:

a. restrictions on fraudulent and unfair market practices and procedures; and

b. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[28] In making an order in the public interest under section 127 of the Act, the Commission's jurisdiction should be exercised in a protective and preventative manner. As expressed in the Commission's decision in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-11:

> [T]he role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of the capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.

[29] The Supreme Court of Canada has endorsed this approach to section 127 of the Act:[1]

> The role of the [Commission] under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.

[30] In determining the nature and duration of sanctions, the Commission has considered a number of factors, including:[2]

a. the seriousness of the allegations;

b. the respondent's experience in the marketplace;

c. the level of a respondent's activity in the marketplace;

d. whether or not there has been a recognition of the seriousness of the improprieties;

e. whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets;

f. any mitigating factors;

g. whether the violations are isolated or recurrent;

h. the size of any profit made or loss avoided from the illegal conduct;

i. the size of any financial sanctions or voluntary payment when considering other factors;

j. the effect any sanction might have on the livelihood of a respondent;

k. the restraint any sanctions may have on the ability of a respondent to participate without check in the capital markets;

l. the reputation and prestige of the respondent;

m. the shame or financial pain that any sanction would reasonably cause to the respondent; and

n. the remorse of the respondent.

[31] The Supreme Court of Canada has held that it is appropriate for the Commission to consider general deterrence in making orders in the public interest that are both protective and preventative. The Court emphasized that deterrence may be specific to the individual or general to discourage or hinder like behaviour in others. In both cases, "deterrence is prospective in orientation and aims at preventing future conduct."[3]

VI. ANALYSIS

A. Staff Submits the Sanctions are Appropriate without Exceptions

[32] In applying the sanctioning factors in this case, Staff emphasizes that Mr. Drabinsky was convicted of a large-scale fraud at Livent, where he was one of a small group of senior officers and its directing mind. In the words of the trial judge, Mr. Drabinsky, together with Mr. Gottlieb, "presided over a corporation whose corporate culture was one of dishonesty". Mr. Drabinsky "was the main person in charge" and played the most central role in the fraud. The conduct was not isolated since Mr. Drabinsky allowed the misrepresentations in the financial statements to be stated and repeated in 20 financial statements that he knew did not represent the true picture of the company.

[33] Staff asserts that Mr. Drabinsky's misconduct supported the status and lifestyle that he led as a successful, prominent and powerful international entrepreneur, with the most senior roles at Livent for which he was very well-compensated. In applying the Commission's sanctioning factors, Staff submits that in these respects he profited from his misconduct.

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1 *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, [2001] 2 SCR 132 at para 43.

2 *Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 at 7746; *Erikson v Ontario (Securities Commission)* (2003), 26 OSCB 1622 (Div Ct) at para 58; *Re MCJC Holdings Inc.* (2002), 25 OSCB 1133 at 1136).

3 *Re Cartaway Resources Corp*, 2004 SCC 26 at para 52.

[34] Although the collapse of Livent cannot be squarely attributed to the fraud, the Court of Appeal found that "evidence clearly justified the inference of significant economic harm to investors…" Staff asserts that there is also non-economic harm to public confidence in the integrity of the market when business leaders engage in fraudulent activity, which occurred in this case. As stated by Madam Justice Benotto in her Reasons for Sentence:[4]

> Corporate fraud such as this results in tangible losses to employees, creditors and investors. It also results in less tangible, but equally significant loss to society. It fosters cynicism. It erodes public confidence in the financial markets.

[35] Staff submits that Mr. Drabinsky has been able, and will be able to continue, to earn a living even if he is constrained by the order Staff is seeking, just as he has been able to do under the parole conditions and undertakings to the Commission to which he has been subject. Staff submits that his ability to earn a living is apparent from the compensation arrangements in the Teatro Proscenium Limited Partnership (**Teatro LP**) structure put into place for the current theatrical production in which Mr. Drabinsky is involved and for future projects,[5] as described in the testimony of Richard Stursberg.[6] The evidence shows that Mr. Drabinsky could also participate in other aspects of the entertainment industry as a consultant or employee, including productions where the sources of funding need not include public investors. These opportunities were described in evidence provided by Norman Bacal[7] and Mr. Stursberg.

[36] Staff submits that the full range of restrictions in its proposed order are necessary to provide specific and general deterrence to Mr. Drabinsky and those involved in the public markets who may commit financial frauds. Staff asserts that complete bans send a strong message that both criminal and regulatory consequences will result from such abuses of public trust. The consequences of a criminal conviction, while severe, are not sufficient in this case. Separate consequences under the securities regulatory regime are required to give effect to the Commission's mandate to protect investors and promote the integrity of the market. The Commission's role is not penal in nature, but protective of investors and the markets, and distinct from the functions performed by the criminal courts.

[37] Staff asserts that despite the Agreed Statement of Facts and Mr. Drabinsky's counsel's statements, the absence of more direct acknowledgements of wrongdoing show that Mr. Drabinsky has not acknowledged the seriousness of his misconduct and is still trying to reduce his level of responsibility.

[38] Staff asserts that despite the character evidence to the effect that Mr. Drabinsky has, in private conversations, expressed remorse concerning his misconduct, and although uncontested that the sources of such evidence honestly believed what they said on this topic, little weight should be given to such statements. Staff asserts that most of these statements of remorse or regret primarily focused on the personal consequences to Mr. Drabinsky. This evidence includes only limited statements of regret regarding the effects on investors and the integrity of the capital markets.

[39] Staff asserts that we should discount evidence of Mr. Drabinsky's reputation arising from his creative talents, asserting that he is at least as well known for having directed a major fraud.

[40] Staff also submits that there should be complete acquisition and trading bans on the basis that Mr. Drabinsky participated in capital-raising activities that were in furtherance of trades where investors relied on fraudulent financial statements.

[41] Staff argued that, in previous cases involving criminal fraud convictions, including in *Re Black* (2015), 38 OSCB 204 (***Re Black***), the Commission imposed permanent bans on being in a position of trust or authority as a participant in the capital markets.

B. Mr. Drabinsky's Submissions in Support of Carve-Outs

[42] Mr. Drabinsky's counsel made certain general submissions concerning sanctions in this case.

[43] He submitted that Mr. Drabinsky came "to this proceeding in full recognition of the magnitude of his transgressions and their harmful impact."

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4 *R v Drabinsky* (2009), 246 CCC (3d) 214 (Ont SCJ) at para 53.

5 In 2014, Teatro LP was established to finance theatrical productions, with Mr. Drabinsky acting as creative producer. All of Teatro LP's financial controls rest with its General Partner, Teatro Proscenium Inc. (**Teatro Inc.**). Mr. Drabinsky provides services to Teatro LP through Ambassador Entertainment Inc. (**Ambassador**), which receives consulting fees and future contingent and/or royalty payments, and then pays Mr. Drabinsky a salary.

6 Mr. Stursberg is the current CEO of Teatro Inc. He was formerly the head of English language services at the CBC, and the CEO of Telefilm Canada and Chairman of the Board of the Canadian Television Fund, now the Canadian Media Fund.

7 Mr. Bacal is one of the trustees of Ambassador Trust, which owns and controls Ambassador, and whose trust beneficiaries are members of Mr. Drabinsky's immediate family, but do not include Mr. Drabinsky.

[44] He asserted that Mr. Drabinsky's period of incarceration, together with the restrictions he is willing to abide by, "appropriately reflect the consideration of general deterrence. A strong message has been sent to the capital markets already."

[45] Counsel stated that Mr. Drabinsky has complied with the restrictions to which he has been subject as a result of undertakings to the Commission and parole conditions over a very extended period, which reflects a reduced risk of future misconduct. As a result, counsel argued that prospective sanctions to ensure specific deterrence are not required.

[46] Drawing from criminal sentencing principles, and consistent with the non-punitive, protective mandate of the Commission, counsel stated that the Commission should consider the least onerous order that fulfills its mandate.

[47] Mr. Drabinsky also submits that this case was sufficiently distinct that the general bans in the case of *Re Black* should not be viewed as persuasive precedent. *Re Black* involved both a fraud conviction as well as a count of obstruction of justice and Mr. Black failed to acknowledge wrongdoing and accept responsibility throughout the proceeding. In addition, Mr. Black objected to the imposition of any sanctions.

[48] Mr. Drabinsky's counsel also made the following overarching submissions:

a. Mr. Drabinsky has been convicted of fraud for conduct that occurred between 19 and 24 years ago;

b. Mr. Drabinsky was sentenced to 5 years of imprisonment. The Ontario Court of Appeal expressly stated this sentence satisfied the requirements of denunciation and general deterrence, which are the key factors in sentencing persons who, as officers and directors of public companies, use their positions to engage in large-scale frauds;

c. Mr. Drabinsky will never be able to work as a creative producer again if all of the sanctions proposed by Staff are imposed;

d. Mr. Drabinsky served 17 months in jail and completed the balance of his sentence on probation successfully, including many months on day parole, where evenings were spent in a half-way house;

e. For over 16 years, Mr. Drabinsky has complied with stringent restrictions imposed by virtue of a voluntary undertaking provided to the Commission;

f. Actual evidence of blameless conduct over the last 19 years demonstrates that Mr. Drabinsky poses no risk of reoffending. In addition, he has fully acknowledged his conviction, accepts the factual findings of the courts, the harm that his conduct caused and is genuinely remorseful;

g. It is widely acknowledged that Mr. Drabinsky has unique and valuable talents as a creative producer from which the entertainment industry in Canada and abroad can continue to benefit;

h. The investors in [Teatro LP] will be adversely affected if Mr. Drabinsky is not able to continue working as a creative producer by virtue of the imposition of all of the sanctions proposed by Staff;

i. Many people presently involved in the current production, both on stage and behind the scenes, at least half of whom are Canadian, will ultimately lose the opportunity to work on any future contemplated productions, not only to the detriment of those directly involved in the current production, but also those who could, and hoped to, be involved in the productions currently in various stages of development;

j. Mr. Drabinsky has proposed a permanent reporting issuer director and officer ban, a promoter ban (coupled with specific carve-outs), along with other significant restrictions. His proposal reasonably and adequately protects the public interest, serves the principle of general and specific deterrence, and sufficiently protects the capital markets; and

k. Where fully informed and sophisticated accredited investors wish to invest, that is evidence in itself that the public interest does not demand absolute bans involving an issuer.

[49] In addition, as to the application of the sanctioning factors, Mr. Drabinsky's counsel argued that we should consider the following circumstances:

a. Mr. Drabinsky has never declared bankruptcy and he has settled all civil claims against him;

b. Staff adduced no evidence to contradict the honestly held views of the many respected individuals who testified or provided letters as to the extent of Mr. Drabinsky's remorse; and

c. Mr. Drabinsky cannot function in his only manner of making a living, as a creative producer, unless he can interact with investors in the manner proposed. The proposed conditions "guarantee a complete 'separation of the financial from the creative'."

C. Are the Proposed Carve-Outs in the Public Interest?

[50] Mr. Drabinsky was responsible for one of the most significant Canadian financial frauds in recent decades.

[51] The purposes of the Commission's sanctions are protective and not punitive. We have to ensure that the sanctions are broad enough to protect investors and the integrity of the markets. Participation in the capital markets is not a right, but a privilege. We do not have a crystal ball and cannot predict whether a person will engage in future misconduct. We must instead view sanctions through the lens of the misconduct that person carried out.

[52] Mr. Drabinsky accepts that an order is appropriate under subsections 127(1) and 127(10) of the Act, subject to the carve-outs that he proposes. Our task is therefore fundamentally to assess whether these carve-outs water down the sanctions in a manner and degree that fail to protect investors and the integrity of the markets. In doing so, we need to consider whether these carve-outs are consistent with the application of the Commission's sanctioning factors.

[53] Given the magnitude of the frauds committed by Mr. Drabinsky, we give limited weight to the issues of recognition of wrongdoing, the absence of which is an aggravating factor, and remorse, a mitigating factor. The statements about Mr. Drabinsky's emotional state, as reported to us by the live witnesses and in the form of letters sent on his behalf, are of interest but are not very specific. They concern the effect of convictions and incarceration on Mr. Drabinsky and those close to him, but fail to directly address the impact of his activities on Livent investors and the integrity of Canadian capital markets.

[54] The director and officer carve-outs proposed by Mr. Drabinsky include highly tailored provisions inviting us to speculate how they could or could not potentially be used as a foundation for future misconduct. The nature of these carve-outs invites us to engage in a bespoke predictive analysis to help Mr. Drabinsky achieve his business and personal tax and estate planning objectives. In that regard, we accept the evidence from Mr. Drabinsky's personal accountant, Irving Feldman, that the Tax Advantaged Account Exception and the Family Company Exception would help Mr. Drabinsky optimize his and his family's tax position under current tax rules. We also accept Mr. Bacal's evidence that Mr. Drabinsky earns a salary as a consultant and that he has received compensation in the form of advances related to his current production, with the prospect of substantial income if it and other productions prove successful, although this is inherently uncertain.

[55] With the Family Company Exception, we are not being asked to permit Mr. Drabinsky's continued involvement with specific, existing entities, but rather to permit a class exemption for his involvement with all entities established in the future meeting defined characteristics. We are being asked to contemplate changes in these restrictions after four years, presumably to address the possibility of modifying these restrictions if tax laws or Mr. Drabinsky's personal planning circumstances should change.

[56] These provisions could be likened in their objectives to contractual restrictions in key executive employment agreements or in debt instruments where the parties are seeking to negotiate protections for all the reasonably foreseeable circumstances that may affect their interests and for which they need protection. If Mr. Drabinsky's proposal in this matter was a contractual offer, he would be asserting private interests in maximizing his potential to accumulate wealth through carve-outs and we would be protecting the public interest in respect of the circumstances that we need to take into account that may affect investors or touch on the capital markets.

[57] We reject the proposition that we should engage in an adjudicative process akin to a negotiation, where we have to parse every carve-out proposed by a respondent and assess whether it is justified as minimally intrusive when taking into account the respondent's tax and estate planning and other personal objectives. We accept that Mr. Drabinsky's right to earn a living is an appropriate and necessary sanctioning consideration, but we do not accept that we need to consider how best to shelter his income from tax or to build or pass on wealth to his beneficiaries. Such a process, if it is to occur at all, would be best conducted through settlement negotiations with Staff.

[58] Mr. Drabinsky's counsel, near the end of the hearing, proposed that consideration of these issues be transformed into a quasi-settlement process, suggesting that, rather than making a conclusive order, we could establish certain principles and then set Staff to the task of negotiating the details and the form of an order with Mr. Drabinsky. The time for that is past and Staff is within its prerogatives to refuse to engage in such a process.

[59] If we were to consider the detailed proposed carve-outs for the reasons suggested by Mr. Drabinsky, it would open up the sanctions phase of this proceeding, and others were this principle to be more widely accepted, to additional complexity and days of considering the impact of highly tailored sanctions on respondents. The efficiency of hearings would be harmed and the public would bear the direct and indirect costs of delays and the deployment of resources to these matters. Expert testimony would likely be required on both sides. This type of analysis is not part of the Commission's mandate and not contemplated in the sanctioning factors.

1. Director, Officer and Promoter Bans

[60] We are not satisfied that Mr. Drabinsky's proposed specific director, officer and promoter carve-outs are, in fact, protective of the public.

[61] With regard to the Creative Services Exception, Mr. Drabinsky is essentially asking us to endorse alternative definitions of "director" and "officer" from those set out in the Act. Among other matters, we are being asked to endorse certain types of interactions with investors that we are told would not involve soliciting investments or Mr. Drabinsky being held out as the person in charge of the issuer. We cannot know how these communications will be delivered or received. We cannot know if the intended restrictions will be carefully observed in practice, or with a wink and a nod suggesting that people should invest because Mr. Drabinsky is calling the shots. Currently, Mr. Drabinsky works in a structure that includes an experienced and apparently independent management team, some of whom testified at the hearing. We do not know, however, whether the individuals exercising management and governance responsibilities within this structure in the future will have the integrity, capabilities and engagement to make these restrictions work in the spirit of keeping Mr. Drabinsky out of the capital markets and financial decision-making.

[62] The proposed carve-outs could operate in such a manner that Mr. Drabinsky could, in reality, take all the restricted financial actions and then have them rubber-stamped by others. The restrictions may be adhered to in form and not in substance, eviscerating the protective intent of the sanctions and creating enforcement challenges. We also foresee that the formulation of these restrictions incorporated in a Commission order could invite an overly formalistic analysis and disagreements as to interpretation.

[63] It is a highly fact-based inquiry whether someone is an officer, director or promoter or is soliciting investment, where conduct rather than mere titles or corporate resolutions conferring authority needs to be considered. It would be unwise and inappropriate for us to prejudge the effect and sustainability of these proposals, in the absence of specific facts, and to preclear activities based on the high-level statements set out in the proposed carve-outs.

[64] If we accept carve-outs that permit certain limited activities described at a high level, it would lead us to consider as part of the Commission's protective mandate whether to impose some type of review or monitoring by Staff or perhaps an outside monitor appointed by the Commission. These proposed detailed carve-outs are problematic without a means of verification. However, such ongoing monitoring would impose an undue burden on Staff and treat Mr. Drabinsky very differently than respondents in other enforcement proceedings involving fraudulent conduct. Our order should be final and should not include subjective elements requiring ongoing supervision or use definitions that differ from the Act and the Commission's rules.

[65] Staff does not assert in this hearing that Mr. Drabinsky's present activities involve being an officer, director or promoter of an entity, and we do not have evidence before us to establish whether he is acting in such capacities. The evidence shows that he is using his talents in a current theatrical production at this very time, indicating that he is not being prevented from earning a living by the existing restrictions.

[66] We also are not satisfied that the Commission's protective purpose would be achieved by the proposed restriction of serving as director, officer or promoter to only entities in the definition of "Permitted Non-Public Issuers". We note that the fraud orchestrated by Mr. Drabinsky began with the MyGar Entities, which were private companies. Frauds occurring in the exempt market and with Permitted Clients must also be deterred. Creating an allowance for outside investors in exempt market activities fails to recognize the importance of the exempt markets in today's securities regulatory environment and the fact that Mr. Drabinsky's fraud originated with such entities.

[67] In the case of the Family Company Exception, such an entity could become a Permitted Client and invest, or even control, the Permitted Non-Public Issuer. Mr. Drabinsky could still assert that he falls within the Creative Services Exception even if he was the sole director and officer and controlling shareholder of an entity that was the controlling shareholder of a Permitted Non-Public Issuer. In this respect, the proposed restrictions are incomplete and inconsistent with the Commission's protective goals since Mr. Drabinsky should not be permitted to control entities operating in the capital markets, including the exempt markets. This example shows the danger of trying to anticipate all the ways in which such carve-outs may operate to circumvent the intended outcome of protecting the capital markets.

[68] Such an entity could also conceivably participate in the securities markets outside of Ontario and become the equivalent of a reporting issuer in other jurisdictions, potentially harming investors and bringing Canadian capital markets into disrepute should we allow this to occur. Again, the proposed restrictions do not take into account even reasonably foreseeable circumstances, let alone unanticipated, unintended consequences.

[69] Allowing for carve-outs with potential loopholes that would allow Mr. Drabinsky's participation in the capital markets, of the kind that we have described, would not fulfill the Commission's protective mandate. In addition, the existence of such loopholes affects general deterrence by creating a complex set of restrictions that, on close scrutiny, are open to evasion.

[70] The Commission's protective mandate requires consideration of whether public protection is required to ensure honest and responsible conduct by market participants. Despite the passage of time since the underlying offences, it is only recently that, after a period of incarceration, Mr. Drabinsky is now in a position in which investor funds may be utilized in the course of his creative endeavours. Although there is no evidence of inappropriate conduct on his part since the lifting of his parole restrictions, the Commission is nonetheless required in this case to adopt protective measures. This Panel has no crystal ball. We acknowledge that Mr. Drabinsky agrees to the imposition of sanctions, leaving the scope of carve-outs as the substantial issue in this proceeding. We find that it is conceivable that the opportunity to restart his career could create pressures to circumvent the letter or spirit of these carve-outs.

[71] Although we do not predict this misconduct, we need to protect against it. On this point, we consider, in particular, the seriousness of Mr. Drabinsky's past misconduct. Protective steps are consistent with the Commission's precedents and with the Commission's duty to maintain high standards of fitness and business conduct to ensure honest and responsible conduct by market participants. We emphasize that we have no reason to believe that Mr. Drabinsky has any intention to reoffend in the future and we take at face value that Mr. Drabinsky accepts the consequences of his misconduct. However, we find that allowing for the requested carve-outs to the director, officer and promoter bans would not ultimately be in the public interest.

[72] Given the manner in which we address the carve-outs and the absence of additional submissions regarding the availability of exemptions, we have determined to grant the prohibition on securities law exemptions applying to Mr. Drabinsky, as requested by Staff in paragraph (c) of their proposed Order.

[73] For these reasons, we reject all the director, officer and promoter carve-outs proposed by Mr. Drabinsky and we agree with Staff's proposed permanent bans.

2. Acquisition and Trading Bans

[74] Mr. Drabinsky's conduct underlying his convictions related to trading in securities through the effect of fraudulent financial statements used in capital-raising transactions, rather than market manipulation or other misconduct effected through the use of brokerage accounts. As in *Re Black*, we do not believe that a protective purpose is served by prohibiting routine personal investments through tax-advantaged or other accounts maintained at a registered dealer. On this point, we accept the carve-outs to the acquisition and trading bans proposed by Mr. Drabinsky, as set out in paragraph (b) of Schedule A to these Reasons.

VII. CONCLUSION

[75] The public interest requires that we order the permanent bans requested by Staff that are designed to prevent Mr. Drabinsky from acting in a position of trust and authority for entities that may participate in the capital markets. These sanctions follow from the need to deter Mr. Drabinsky and others from the misconduct reflected in his criminal convictions. Since Mr. Drabinsky's misconduct had a limited connection to trading in securities through brokerage accounts, we have accepted Mr. Drabinsky's submissions on this point, imposing limited acquisition and trading bans.

Dated at Toronto this 15th day of June, 2017.

"D. Grant Vingoe"

"Judith N. Robertson"

"William J. Furlong"

SCHEDULE A – Order Proposed by Mr. Drabinsky

IT IS HEREBY ORDERED THAT:

(a) pursuant to clause 6 of subsection 127(1) of the Act, Mr. Drabinsky is reprimanded;

(b) pursuant to clauses 2 and 2.1 of subsection 127(1) of the Act, Mr. Drabinsky is prohibited from trading or acquiring any securities or derivatives for 10 years, except that during that period he may trade or acquire securities or derivatives:

i. in any account at a registered dealer in his own name of which he has the sole beneficial interest; or

ii. in a registered retirement savings plan, registered educations savings plan, any registered retirement income funds, and/or tax-free savings account (as defined in the *Income Tax Act* (Canada)) in which only he has a beneficial ownership;

iii. he does not own legally or beneficially more than five percent of outstanding securities of the class or series of the class in question; and

iv. he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this Order) and through accounts opened in his name only;

(c) pursuant to clause 8 of subsection 127(1) of the Act, Mr. Drabinsky is permanently prohibited from becoming or acting as a director or officer of a reporting issuer or an affiliate of a reporting issuer;

(d) pursuant to clause 8 and 8.5 of subsection 127(1) of the Act, and subject to the exception in paragraph (iii) below, Mr. Drabinsky is permanently prohibited from becoming or acting as a director or officer of an issuer that is not a reporting issuer, or a promoter. For greater certainty, this prohibition against acting as a director or officer of an issuer, or a promoter, does not preclude Mr. Drabinsky from performing "Permitted Activities" for "Permitted Non-Public Issuers", as defined below:

i. Permitted Activities are defined as providing creative and marketing services in relation to the development, production or exploitation stages of projects in television, motion pictures, live concerts, or the dramatic or musical theatre that:

1. do not involve the preparation and final approval by Mr. Drabinsky of financial statements;

2. do not involve soliciting investments or raising funds from investors; but, for greater certainty, Mr. Drabinsky may communicate with investors or potential investors any information related to the creative or marketing aspects of the production of projects including associated costs, budgets and timelines related thereto;

3. do not involve authority to execute contracts, sign cheques, make final financial decisions, or control any bank accounts or other financial assets of the Permitted Non-Public Issuer;

4. do not involve providing instructions or direction to any legal or financial advisors of the Permitted Non-Public Issuer; provided that providing input, advice and/or making recommendations to the Board, CEO or CFO of the Permitted Non-Public Issuer, or to legal and financial advisors of the Permitted Non-Public Issuer, regarding the creative and marketing services, potential contracts, and proposed budgets for any project, does not constitute providing instructions or directions within the meaning of this paragraph; and

5. do not involve making recommendations to, participating in any discussions with, or attempting in any way to influence, management or the board of, the Permitted Non-Public Issuer in relation to its compliance with its obligations under Ontario securities law.

ii. Permitted Non-Public Issuers are defined as any issuer that is not a reporting issuer, including limited partnerships, in which:

1. the issuer has only distributed securities to persons or companies described in Sections 2.4(2)(a), (b), (c), (d), (g), (h) of National Instrument 45-106 or to an investor who is a "permitted client" as defined in National Instrument 31-103;

2. the issuer's securities, other than non-convertible debt securities, are owned by not more than 50 persons or companies, not including employees and former employees of the issuer or its affiliates; and

3. a copy of this Order is provided to the directors, officers and security holders of the Permitted Non-Public Issuer prior to the Permitted Non-Public Issuer entering into any agreement to retain Mr. Drabinsky's services, and a copy of this Order is provided to any individuals who propose to subsequently acquire securities in the Permitted Non-Public Issuer.

iii. Notwithstanding the provisions of this Order, Mr. Drabinsky is permitted to act as a director or officer of an issuer where all of the securities of the issuer are owned by one or more of Mr. Drabinsky, his spouse and their children and any issue thereof, his two brothers (together, his "Immediate Family"), or a family trust the beneficiaries of which are members of his Immediate Family, and to trade in, distribute or acquire securities of such an issuer only among members of his Immediate Family, provided that the name of the issuer is provided to Staff and the issuer does not seek or raise capital for the issuer except from Mr. Drabinsky and his Immediate Family and/or through ordinary course borrowing on usual commercial terms.

(e) pursuant to clauses 8.2 and 8.5 of subsection 127(1) of the Act, Mr. Drabinsky is permanently prohibited from becoming or acting as a registrant or a director or officer of a registrant;

(f) pursuant to clauses 8.4 and 8.5 of subsection 127(1) of the Act, Mr. Drabinsky is permanently prohibited from becoming or acting as an investment fund manager or as a director or officer of an investment fund manager; and

(g) Mr. Drabinsky shall be at liberty to seek leave of the Commission no sooner than 4 years from the date of the entry of this Order to vary the terms of this Order with reference to the terms and restrictions contained in paragraph (d) herein.

3.1.2 Eco Oro Minerals Corp. – ss. 8(3), 21.7, 127(1)

IN THE MATTER OF
ECO ORO MINERALS CORP.

AND

IN THE MATTER OF
A HEARING AND REVIEW OF
A DECISION OF THE TORONTO STOCK EXCHANGE

REASONS FOR DECISION
(Sections 8(3), 21.7 and 127(1) of the Securities Act, RSO 1990, c S.5)

Citation: *Re Eco Oro Minerals Corp.*, 2017 ONSEC 23
Date: 2017-06-16

Hearing:	April 19, 20 and 21, 2017		
Decision:	June 16, 2017		
Panel:	D. Grant Vingoe Monica Kowal Frances Kordyback	– 	Chair of the Panel and Vice-Chair Vice-Chair Commissioner
Appearances:	Markus Koehnen Melanie Harmer Paul Davis Allison Vale	–	For Courtenay Wolfe and Harrington Global Opportunities Fund Ltd., Applicants
	Linda Fuerst Orestes Pasparakis Dana Carson	–	For Eco Oro Minerals Corp., Respondent
	Linda Plumpton James Gotowiec	–	For the Toronto Stock Exchange
	Wendy Berman Lara Jackson John M. Picone	–	For Trexs Investments, LLC, Intervenor
	Teresa M. Tomchak	–	For Amber Capital LP and Paulson & Co. Inc., Intervenors
	Pamela Foy Alexandra Matushenko Naizam Kanji Jason Koskela Robert Galea Jordan Lavi	–	For Staff of the Commission

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REASONS FOR DECISION

I. OVERVIEW

[1] In April 2017, the Ontario Securities Commission heard an application for a hearing and review of a decision of the Toronto Stock Exchange (the **TSX**) pursuant to section 21.7 of the *Securities Act*, RSO 1990, c S.5 (the **Act**). The TSX's decision conditionally approved the issuance of common shares of Eco Oro Minerals Corp. (**Eco Oro**) to four recipients (each a **New Share Recipient**) shortly before an Eco Oro shareholders' meeting that was requisitioned by the Applicants, Harrington Global Opportunities Fund Ltd. (**Harrington**) and Courtenay Wolfe. In addition, the Applicants sought relief pursuant to the Commission's public interest jurisdiction under section 127 of the Act.

[2] In March 2017, the TSX conditionally approved the issuance of Eco Oro shares on a partial conversion of unsecured convertible notes equal to approximately 10% of the outstanding common shares, without requiring prior shareholder approval of the issuance (the **TSX Decision**). The TSX Decision approved the issuance of the shares (the **New Shares**) on an accelerated basis, enabling Eco Oro and the New Share Recipients to close the transaction without prior notice to the marketplace, including the Applicants.

[3] The absence of a pause between the public announcement of the issuance of the New Shares and the closing deprived the Applicants of an opportunity to register their objections with the TSX and prevented the matter from being considered and potentially reviewed by the Commission prior to the closing of the transaction.

[4] The conversion was effected pursuant to an exclusive right of Eco Oro, and not the holders, to convert the notes. Since the issuance resulted from a partial conversion of the notes, no additional funds were obtained by Eco Oro and it was uncontested that none of the restrictions affecting Eco Oro in the notes were diminished in any way.

[5] The closing occurred a mere eight days prior to the record date for the Eco Oro shareholders' meeting requisitioned by the Applicants. Apart from the Executive Chairman of the Eco Oro Board, Anna Stylianides, the New Shares were only issued to three shareholders who, immediately prior to the issuance, were solicited by Eco Oro's management to execute support letters in favour of management's direction for Eco Oro. These three shareholders provided support letters.

[6] The TSX Decision approved the transaction and permitted an unannounced, accelerated closing without the TSX's prior awareness that: (i) a proxy contest was underway; (ii) a meeting requisitioned by dissident shareholders was imminent and the record date was only days away; and (iii) support letters were solicited by management and provided by the New Share Recipients other than Ms. Stylianides.

[7] The Applicants brought their application before the Commission for a hearing and review of the TSX Decision, or in the alternative, for the Commission to exercise its public interest jurisdiction in respect of the New Shares (the **Hearing and Review Application**). In particular, the Applicants sought an order setting aside the TSX Decision and directing that disinterested shareholder approval of the issuance of the New Shares be required as soon as practicable and, if no such approval is obtained, that the Eco Oro Board and the New Share Recipients take all necessary steps to reverse the issuance of the New Shares.

[8] After hearing the Hearing and Review Application, including submissions by the Applicants, Eco Oro, the TSX, Staff of the Commission and three Eco Oro shareholders who received the New Shares and were granted leave to intervene in the Hearing and Review Application, the Commission issued an Order setting aside the TSX Decision on April 23, 2017 (the **Commission's Decision**), which is attached as Schedule A.

[9] The Commission's Decision also ordered Eco Oro to seek, at a meeting of shareholders, approval of the issuance of the New Shares to the New Share Recipients to the extent that Eco Oro and a New Share Recipient have not otherwise reversed the issuance of that recipient's New Shares. The shareholder approval required to be sought by Eco Oro was ordered to be calculated in accordance with the TSX Company Manual (the **Manual**) and the resolution was required to ask shareholders to either: (i) ratify the issuance of the New Shares; or (ii) instruct the Eco Oro Board to take all necessary steps to reverse the issuance of the New Shares. If the shareholders vote to instruct the Eco Oro Board to take all necessary steps to reverse the issuance of the New Shares, the Board was ordered to forthwith implement those instructions. Pursuant to the Commission's Decision, unless and until the shareholders of Eco Oro ratify the issuance of the New Shares, the New Shares are cease traded under subsection 127(1) of the Act, and Eco Oro and the Chair of any Eco Oro shareholder meeting shall not consider the New Shares to be issued and outstanding for the purposes of voting at the Annual General and Special Meeting of Shareholders scheduled for April 25, 2017, and any adjournment thereof, and at any other meeting of shareholders of Eco Oro.

[10] These are the reasons for the Commission's Decision.

II. MAIN ISSUES

[11] The first issue before this Panel is whether the TSX Decision should be considered *de novo*, substituting the Commission's own judgment for that of the TSX through a hearing and review. On this issue, we find that there are fundamental concerns with the TSX Decision and a hearing *de novo* is warranted.

[12] Upon deciding that the TSX Decision should be considered *de novo*, the Panel is required to undertake a full consideration of Eco Oro's application for approval of the issuance. This requires a fresh consideration as to whether the issuance of the New Shares materially affected control of Eco Oro, such that shareholder approval was required for purposes of sections 603 or 604(a)(i) of the Manual, as a precondition to the issuance of the New Shares. We find that the issuance materially affected control of Eco Oro and that a shareholder vote was required to determine whether the transaction was supported by Eco Oro's shareholders.

[13] In light of the accelerated closing of the issuance of the New Shares without shareholder approval, it falls to this Panel to fashion a decision within our jurisdiction that, while being appropriately limited in scope, gives effect to the requirement of a shareholder vote, despite the fact that the New Shares have already been issued. Doing so requires a discussion of public interest considerations at issue in this case and an analysis of the Commission's jurisdiction to render the Commission's Decision.

[14] Finally, we must address the Applicants' alternative grounds for relief, that the Commission make an order under its public interest jurisdiction pursuant to section 127 of the Act.

III. BACKGROUND

A. Parties

1. Applicants

[15] The Applicants are Ms. Wolfe and Harrington. Ms. Wolfe is a resident of Ontario. She is a shareholder of Eco Oro and owns 1 million common shares, representing approximately 0.94% of the outstanding common shares of Eco Oro.[1] Ms. Wolfe first acquired shares in Eco Oro in the fall of 2016.

[16] Harrington is an investment manager with its head office in Bermuda. Harrington is a shareholder of Eco Oro and owns 9.76 million common shares, representing approximately 9.2% of the outstanding common shares of Eco Oro.[2] Like Ms. Wolfe, Harrington first acquired shares in Eco Oro in the fall of 2016.

2. Respondent

[17] The Respondent, Eco Oro, is a precious metals exploration and development company historically focused on the Angostura gold-silver deposit located in northeastern Colombia. Since 2016, Eco Oro's principal remaining asset is its pending international arbitration claim against Colombia (the **Arbitration**), which dispute arose over Colombian state measures that Eco Oro maintains has deprived it of Eco Oro's rights with regard to the Angostura gold-silver deposit and destroyed the value of its investments in the Colombian mining sector.

[18] Eco Oro is incorporated under the laws of British Columbia and is a reporting issuer in British Columbia, Ontario, Alberta and Nova Scotia. Eco Oro's shares are traded on the TSX.

3. The TSX

[19] The TSX is a stock exchange recognized by the Commission under section 21 of the Act.

[20] The TSX regulates certain conduct of listed issuers through its applicable by-laws, rules, regulations, policies, interpretations and practices.

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1 All share amounts and percentages are described based on the circumstances prevailing before the issuance of the New Shares, unless otherwise noted.

2 Figures are as indicated in Harrington's Form 62-103F1 dated March 17, 2017.

4. Intervenors

[21] Three corporations were granted leave to intervene in the Hearing and Review Application: Amber Capital LP (**Amber**), Paulson & Co. Inc. (**Paulson**) and Trexs Investments, LLC (**Trexs**).

(a) Amber

[22] Amber is an international investment fund manager that manages a group of funds, including Amber Global Opportunities Master Fund Ltd. and Amber Latin America LLC. Amber owns 20,348,508 common shares of Eco Oro, representing approximately 19.11% of its outstanding common shares. Amber previously had two representatives on the Eco Oro Board, but has not had any representation for over a year.

[23] Amber first acquired shares in Eco Oro in September 2009. In March 2011, Amber became an insider of Eco Oro, bringing its shareholdings to approximately 18% following a number of separate acquisitions.

[24] In 2015, Eco Oro approached Amber to seek funding for its ongoing operations. In order to help finance Eco Oro, Amber participated in two private placements, pursuant to which Amber received common shares of Eco Oro. As of the second private placement in August 2015, Amber had invested over US $50 million in Eco Oro and, at the time, owned approximately 25 million common shares, representing approximately 26.6% of Eco Oro's then-outstanding common shares.[3]

[25] In 2016, Eco Oro approached Amber seeking further funding for the Arbitration. Amber agreed to support Eco Oro in pursuing the Arbitration and entered into a subscription agreement in September 2016.

(b) Paulson

[26] Paulson is an investment management firm that manages investment funds and real estate private equity funds. Paulson is a shareholder of Eco Oro and owns 12,177,835 common shares, representing approximately 11.44% of Eco Oro's outstanding common shares. Paulson has never had representation on Eco Oro's Board.

[27] Paulson first acquired shares in Eco Oro in 2011, at which time it became an insider of Eco Oro, with an ownership interest of approximately 10.49%.

[28] In 2015, Eco Oro approached Paulson to seek funding for its ongoing operations. In order to help finance Eco Oro, Paulson participated in various private placements. As a result of such transactions, Paulson had invested approximately US $34 million in Eco Oro and, at the time, owned approximately 12 million common shares of Eco Oro, representing approximately 11.47% of Eco Oro's then-outstanding common shares.

[29] In 2016, Eco Oro approached Paulson seeking further funding for the Arbitration. Like Amber, Paulson agreed to support Eco Oro in pursuing the Arbitration and entered into a subscription agreement in September 2016.

(c) Trexs

[30] Trexs is a Delaware limited liability company managed by Tenor Capital Management Company LP and Tenor International and Commercial Arbitration Fund LP (together, **Tenor**). Tenor is an investment manager for funds that focus on investments in companies pursuing international treaty and commercial arbitration claims. Trexs was incorporated for the purpose of making an investment in Eco Oro.

[31] Trexs owns 10,608,225 common shares of Eco Oro, representing approximately 9.96% of its outstanding common shares. David Kay, founder, partner and portfolio manager of Tenor, is currently a member of the Eco Oro Board.

[32] In April 2016, Eco Oro contacted Tenor to seek funding for the Arbitration. This was the first time that Tenor had any contact with Eco Oro. On July 21, 2016, Trexs entered into an investment agreement with Eco Oro for a US $14 million investment (the **Investment Agreement**).

B. Events Leading up to the Investment Agreement

[33] In May 2016, following several weeks of negotiations, Eco Oro and Tenor executed a non-binding term sheet that provided for a US $14 million investment by Tenor in exchange for common shares and a convertible note.

[3] Amber's ownership percentage was reduced due to a divestiture of shares at some point prior to the execution of its subscription agreement with Eco Oro, discussed below.

[34] During these negotiations, Eco Oro realized that further financing was required for the Arbitration in addition to Trexs's US $14 million investment. Tenor was unwilling to finalize its investment without assurances that Eco Oro would have sufficient funding to complete the Arbitration. As a result, Eco Oro approached some of its existing shareholders, including Amber and Paulson, to obtain additional investments. These shareholders agreed to an aggregate investment of approximately US $4 million.

C. The Investment Agreement

[35] The Investment Agreement entered into between Eco Oro and Trexs in July 2016 provided Eco Oro with an investment of US $14 million, to be used by Eco Oro to fund the Arbitration. In exchange for Trexs's investment, Eco Oro was to issue to Trexs common shares and an unsecured convertible note. The Investment Agreement contemplated that the investment be made in two tranches.

[36] The TSX approved both **Tranche 1** and **Tranche 2** of the private placement, subject to shareholder approval for the issuance of common shares under Tranche 2, described in more detail below.

1. Tranche 1

[37] Under Tranche 1, Eco Oro was to issue 10,608,225 common shares to Trexs, representing just under 10% of Eco Oro's then-outstanding common shares, in exchange for a US $3 million investment. Tranche 1 closed concurrently with the execution of the Investment Agreement.

2. Tranche 2

[38] Under Tranche 2, in exchange for a US $11 million investment, Eco Oro was to issue to Trexs an unsecured convertible note in the principal amount of US $7 million (the **Trexs Note**) as well as either:

a. 84,590,427 common shares, representing 40% of Eco Oro's then-outstanding common shares; or

b. secured contingent value rights (**CVRs**), entitling Trexs to 51% of the gross proceeds of the Arbitration.

[39] The issuance of the common shares would be subject to shareholder approval. In the event that shareholder approval was not obtained for the share issuance, Tranche 2 would proceed with the alternative issuance of the CVRs.

3. Other Terms of the Investment Agreement

[40] The Investment Agreement provided for the right of existing Eco Oro shareholders to participate in Tranche 2 on a *pro rata* basis up to 49.9% of the total investment (the **Participation Right**), with this right available to certain shareholders at the sole discretion of the Eco Oro Board. The Participation Right was subsequently offered to five shareholders (the **Participating Shareholders**), whose identities were not publicly disclosed at the time of their selection but who include Amber, Paulson and Ms. Stylianides.

[41] The Investment Agreement required Eco Oro to cause to be appointed one nominee of Trexs to the Eco Oro Board. Mr. Kay was appointed to the Board as Trexs's nominee, effective in July 2016.

D. Events after the Closing of Tranche 1

[42] On July 22, 2016, Eco Oro issued a press release announcing the Investment Agreement. On August 2, 2016, a material change report reflecting this event was filed on the System for Electronic Document Analysis and Retrieval (**SEDAR**).

[43] On September 13, 2016, Eco Oro issued a management information circular in respect of a special shareholders' meeting for the purpose of obtaining disinterested shareholder approval for the issuance of common shares to Trexs and the Participating Shareholders pursuant to Tranche 2 (the **2016 Meeting**). The circular indicated that there were five Participating Shareholders, three of whom were insiders of Eco Oro and another two of whom were not identified. The 2016 Meeting was set to be held on October 13, 2016.

[44] Over the next two weeks, the Participating Shareholders entered into separate agreements with Eco Oro regarding their respective Tranche 2 investments.

[45] On September 28, 2016, Eco Oro sought TSX approval of the Tranche 2 investments. The revised terms of Tranche 2 were as follows:

a. with respect to Trexs, a US $11 million investment in the form of the Trexs Note and either:

1. 139,410,688 common shares (subject to shareholder approval); or

2. CVRs entitling Trexs to 51% of the gross proceeds of the Arbitration (failing shareholder approval);

b. with respect to the Participating Shareholders, an investment of approximately US $4.3 million in the form of unsecured convertible notes in the aggregate principal amount of approximately US $2.7 million (the **Participating Shareholder Notes**) and either:

1. 54,496,905 common shares (subject to shareholder approval); or

2. CVRs entitling the Participating Shareholders to an aggregate of 19.93% of the gross proceeds of the Arbitration (failing shareholder approval).

[46] On October 1, 2016, in response to the management circular, two shareholders of Eco Oro (the **Concerned Shareholders**), who are not the same as the Applicants, sent formal complaints to the British Columbia Securities Commission (the **BC Securities Commission**), this Commission and the TSX outlining their concerns regarding the Investment Agreement and disclosures. The shareholders requested that Eco Oro:

a. amend the circular to disclose the identities of the Participating Shareholders;

b. disclose the terms of the CVRs; and

c. delay the 2016 Meeting.

[47] On October 7, 2016, Eco Oro issued a responding press release. In accordance with the request of the Concerned Shareholders, Eco Oro provided additional information in respect of the 2016 Meeting and adjourned the 2016 Meeting to November 3, 2016, to give additional time to shareholders to consider the new information in the press release. In particular, the press release revealed the identities of three of the Participating Shareholders (Amber, Paulson and Ms. Stylianides) and announced the public filing of the form of the CVR certificate.

[48] The 2016 Meeting was ultimately held on November 3, 2016. Disinterested shareholders voted against the issuance of common shares under Tranche 2. Less than half of all common shares of Eco Oro were eligible to be voted as disinterested shareholders, and just over half of those eligible shares were voted.

[49] The day after the 2016 Meeting, the Concerned Shareholders issued a press release announcing that they requested that the BC Securities Commission exercise its public interest discretion to prevent the issuance of the CVRs, unless prior disinterested shareholder approval is obtained.

[50] On November 9, 2016, Eco Oro closed Tranche 2 by issuing the Trexs Note and the Participating Shareholder Notes (together, the **Notes**) and the CVRs to Trexs and the Participating Shareholders, in return for gross proceeds of approximately US $15 million. This Tranche 2 transaction proceeded without shareholder approval.

E. Events after the Closing of Tranche 2

[51] In December 2016, once Eco Oro had received the additional financing resulting from Tranche 2, it filed a Request for Arbitration against Colombia with the World Bank's International Centre for Settlement of Investment Disputes.

[52] A few weeks after the 2016 Meeting, the Concerned Shareholders filed an oppression claim in the Supreme Court of British Columbia seeking an order that the Investment Agreement and the issuance of the Notes and CVRs be cancelled. This claim remained outstanding as of the time of the Hearing and Review Application.

F. The Proxy Contest

1. Applicants Requisition a Shareholder Meeting and Management Solicits Support Letters

[53] On February 10, 2017, the Applicants formally requisitioned the Eco Oro Board to call a shareholder meeting (the **Meeting**) for the purpose of reconstituting the Board by electing six new independent directors.

[54] On February 27, 2017, the Applicants issued a press release noting the "overwhelming support received to date for the reconstitution of the board of directors of the Company." On February 28, 2017, Eco Oro issued a press release announcing that it had filed a complaint with the BC Securities Commission regarding statements made by the

Applicants and stating that "the Board believes that close to a majority of Eco Oro shareholders support the current Board and management team."

[55] On February 27 and 28, 2017, following the announcement of the Meeting requisition, Trexs, Amber and Paulson each signed a letter of support, indicating their support for the existing Eco Oro Board and its approach with respect to the Arbitration. In the letters, Trexs, Amber and Paulson all stated that their support was not a binding commitment with Eco Oro, as follows:

> This letter of support is not, and is not intended to be, construed as an agreement, commitment, arrangement or understanding between Eco Oro and [Trexs, Amber and Paulson] and, for greater certainty, [Trexs, Amber and Paulson] and Eco Oro are not acting jointly or in concert.

[56] One of the unidentified Participating Shareholders declined to sign a support letter, but nonetheless indicated an intention to vote in favour of the current Board.

[57] On March 2, 2017, Eco Oro issued another press release, announcing that it had set April 25, 2017 as the date of the Meeting, which would constitute its annual general meeting of shareholders and a special meeting, and set March 24, 2017 as the record date (the **Record Date**) for determining the shareholders entitled to vote at the Meeting.

2. Eco Oro's Partial Conversion of the Notes and Issuance of the New Shares

[58] In February 2017, Eco Oro approached Trexs regarding Eco Oro's plan to convert all or part of the Trexs Note. Trexs was initially opposed to the conversion but, after a number of discussions with Eco Oro, ultimately acquiesced to Eco Oro effecting a partial conversion. According to Eco Oro, Trexs indicated that it would prefer that the conversion occur prior to the Record Date.

[59] On February 27, 2017, Eco Oro sent a letter to the TSX requesting its expedited approval of the issuance of approximately 6 million common shares by way of partial conversion of the Trexs Note. Three days later, on March 2, 2017, the TSX conditionally approved the issuance of up to 6.5 million common shares to Trexs.

[60] On March 8, 2017, after Eco Oro advised Amber and Paulson that a portion of their Participating Shareholder Notes would be converted, Eco Oro submitted a revised request to the TSX to approve an increase in the number of shares to be issued to a total of 10.6 million common shares, constituting the New Shares, to Trexs, Amber, Paulson and Ms. Stylianides (*i.e.*, the New Share Recipients).

[61] Two days later, on March 10, 2017, pursuant to the TSX Decision, the TSX conditionally approved the issuance of the New Shares without requiring a vote of Eco Oro shareholders. In its cover letter to Eco Oro's counsel, the TSX stated: "We confirm your advice that the transaction will not materially affect control of the Company." At the time of the conditional approval, the TSX was not aware of the fact that the Applicants had requisitioned the Meeting or of any of the related press releases. Eco Oro also did not issue a press release announcing the conditional approval and the pending transaction.

[62] On March 16, 2017, Eco Oro completed the partial conversion, which reduced its indebtedness under the Notes by approximately US $4.7 million through the issuance of the New Shares to the New Share Recipients. Following the partial conversion, as reflected in the TSX Memo to File regarding Eco Oro dated April 3, 2017 (the **TSX Memo**), the shareholdings of the New Share Recipients were as follows:

New Share Recipient	New Shares Issued	Holdings	
		Before New Shares	After New Shares
Trexs	7,747,508	9.96%	15.7%
Amber	1,655,150	19.11%	18.8%
Paulson	1,162,126	11.44%	11.4%
Ms. Stylianides	35,216	0.23%	0.3%

[63] On the same day, after the closing had occurred, Eco Oro issued a press release announcing these issuances and partial debt reduction.

G. Events after the Issuance of the New Shares

[64] On March 22, 2017, the Applicants filed a petition (the **Petition**) with the Supreme Court of British Columbia seeking an order that the issuance of the New Shares be set aside and cancelled or, in the alternative, that the New Shares not be voted at the Meeting.

[65] According to the Petition, the combined shareholdings of the Applicants, including a purchase of common shares of Eco Oro by Harrington earlier in the month, is 9.54%, after the issuance of the New Shares.

[66] On March 27, 2017, the Applicants brought the Hearing and Review Application before the Commission, seeking to set aside the TSX Decision.

IV. PRELIMINARY ISSUES

A. Applicants' Standing

[67] Subsection 21.7(1) of the Act permits a person or company directly affected by a decision of a recognized exchange to apply to the Commission for a hearing and review of the decision.

[68] The Applicants were conducting a proxy contest for control of Eco Oro's Board, with the Record Date for the Meeting falling within a few days of the issuance of the New Shares. The Applicants were clearly affected by the TSX Decision on the basis that the conditional approval and accelerated closing could affect their ability to exercise their rights as shareholders to seek a change in the Eco Oro Board and thereby the corporate direction of Eco Oro. They meet the threshold for standing under section 21.7 of the Act.

[69] Section 127 of the Act does not permit an affected party such as the Applicants to pursue relief as of right. Standing to make such an application is reserved to Staff. The Applicants in this proceeding are seeking relief under sections 21.7 and 127 of the Act concurrently in connection with important matters involving shareholder democracy inherently affecting the public interest by which they are materially affected. They are granted standing pursuant to section 127.

B. Motions for Leave to Intervene

[70] On April 3, 2017, Trexs, Amber and Paulson filed written submissions for respective motions for leave to intervene in the Hearing and Review Application with full standing, including the right to adduce evidence and make submissions. These motions were heard by means of a written hearing pursuant to Rule 11.4 of the Commission's *Rules of Procedure* (2014), 37 OSCB 4168 (the **Commission's Rules**) and subsection 5.1(1) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22 (the **SPPA**). Eco Oro consented to the granting of these motions and Staff and the TSX took no position on these motions.

[71] On April 7, 2017, we granted these motions on the basis that these shareholders have a substantial interest in the outcome of the Hearing and Review Application since the relief sought could affect their ownership interests in the New Shares and their respective right to vote the New Shares at the Meeting. In these respects, their interests are of comparable significance to those of Eco Oro and the Applicants.

C. Confidentiality Order

[72] At the outset of the hearing, Eco Oro filed a letter requesting redactions to a portion of the materials filed. The Panel requested that written submissions be made on the issue within a week of the conclusion of the hearing. Accordingly, Eco Oro filed written motion materials to have certain information asserted to be confidential redacted from the materials filed in connection with the Hearing and Review Application pursuant to subsection 9(1)(b) of the SPPA and Rule 5.2 of the Commission's Rules.

[73] The redactions sought fell into two categories. The first were names of individuals where issues of personal security, and therefore of privacy, were raised. The second related to the identity of certain persons on an exhibit entitled "List of Key Parties" for purposes of certain of the operative documents governing the relationships between the New Share Recipients and Eco Oro, which Eco Oro has not publicly disclosed and which is considered by Eco Oro to constitute sensitive commercial information. Staff and the TSX took no position on the requested redactions. The Applicants objected to the redaction of the List of Key Parties, asserting that this is material information that has been utilized for certain purposes in the ongoing proxy contest and thus redactions are not in the public interest.

[74] On May 9, 2017, we granted Eco Oro's motion in full, declaring such information to be confidential, and ordered the requested redactions without prejudice and without limitation to the obligations of the parties to comply with any disclosure obligations pursuant to Ontario securities law.

[75] In addition to our determination that confidentiality is warranted on the grounds specified above, we also concluded that this information is not material to the issues under consideration in this proceeding and can be redacted without affecting the public's ability to understand the issues addressed in these Reasons.

V. ANALYSIS OF MAIN ISSUES

A. The Commission Should Consider the TSX Decision *De Novo*

1. Introduction

[76] Subsection 21.7(2) of the Act provides that a hearing and review of the decision of a recognized exchange follows the same procedure as a hearing and review of a Director's decision under subsection 8(3) of the Act.

[77] In other words, this is the same procedure that is available at the instance of an affected person or company, whereby the Commission can review the administrative actions of its senior staff: the Executive Director, Commission Directors (typically in charge of Commission branches) and deputy directors and other senior staff acting pursuant to delegated authority from the Commission.

[78] Using a similar structure of oversight for decisions of recognized exchanges reflects the fact that the Commission relies on exchanges to perform regulatory functions in a manner that is consistent with the mandate of the Commission. This mandate requires the Commission to:

a. provide protection to investors from unfair, improper or fraudulent practices; and

b. foster fair and efficient capital markets and confidence in capital markets.

[79] The Commission's reasons in *Re Canada Malting Co.* (1986), 9 OSCB 3566 (***Canada Malting***) and in cases that have followed have narrowed the basis on which the Commission will substitute its own judgment for that of the TSX through a hearing and review. This reluctance to substitute a different judgment is based on the expertise of the exchange in considering such applications and "the care with which the TS[X]'s filing committee approaches its responsibilities" (*Canada Malting* at 3589).

[80] The Panel in *Canada Malting* identified five possible grounds on which the Commission might interfere with a decision of the TSX:

a. the TSX proceeded on some incorrect principles;

b. the TSX erred in law;

c. the TSX overlooked material evidence;

d. new and compelling evidence was presented to the Commission that was not presented to the TSX; and

e. the TSX's perception of the public interest conflicts with that of the Commission.

(*Canada Malting* at 3587)

[81] The primary issue, both at the core of the Hearing and Review Application and that the TSX Decision had to address, is whether the issuance of the New Shares materially affected control of Eco Oro, such that the TSX should have required security holder approval for purposes of sections 603 or 604(a)(i) of the Manual as a precondition to the issuance of the New Shares.

[82] The TSX's consideration of other provisions of the Manual and their application to the transaction are not at issue here. In particular, the TSX considered subsection 604(a)(ii), which applies to transactions that provide consideration to insiders of 10% or greater of the market capitalization of the listed issuer during any six-month period and that were not negotiated at arm's length. The TSX also considered the application of section 607 relating to private placements and the shareholder approval required under that section for transactions where certain dilution and pricing thresholds are triggered.

[83] Subsection 604(a)(i) of the Manual provides that the TSX generally requires shareholder approval of a share issuance if the transaction "materially affects control of the listed issuer." In addition to specific requirements in the Manual for shareholder approval of share issuances, section 603 of the Manual provides that the TSX has the discretion to impose conditions on transactions, such as a condition that shareholder approval be received prior to closing a share issuance.

In exercising its discretion, the TSX is required under section 603 to consider the effect of the transaction on the quality of the TSX marketplace based on a number of factors, including the material effect on control of the listed issuer. The application of both of these provisions therefore turns on the interpretation of "materially affect control."

[84] "Materially affect control" is defined in Part I of the Manual as:

> [T]he ability of any security holder or combination of security holders acting together to influence the outcome of a vote of security holders, including the ability to block significant transactions. Such an ability will be affected by the circumstances of a particular case, including the presence or absence of other large security holdings, the pattern of voting behaviour by other holders at previous security holder meetings and the distribution of the voting securities. A transaction that results, or could result, in a new holding of more than 20% of the voting securities by one security holder or combination of security holders acting together will be considered to materially affect control, unless the circumstances indicate otherwise. Transactions resulting in a new holding of less than 20% of the voting securities may also materially affect control, depending on the circumstances outlined above.

[85] Each of the grounds identified in *Canada Malting* supports our intervention in this matter and our consideration of the evidence in its entirety without deference to the TSX Decision. The grounds for intervention arise from two fundamental concerns with the TSX Decision. The first is the absence of consideration by the TSX of the relevant circumstances (*i.e.*, the proxy contest, the requisitioned shareholder Meeting, the impending Record Date and the support letters solicited by Eco Oro and obtained from each of the New Share Recipients, other than the member of executive management, immediately prior to the share issuance). This engages the third and fourth *Canada Malting* grounds for intervention in that, in part, the TSX overlooked material evidence and, in part, new and compelling evidence was presented to the Commission that was not presented to the TSX.

[86] The second fundamental concern relates to the TSX's interpretation of "materially affect control" so as to prevent consideration of the effect of the share issuance on a specific pending shareholder vote. This engages the first, second and fifth *Canada Malting* grounds for intervention in that the TSX proceeded on an incorrect principle, erred in law and perceived the public interest in a manner that conflicts with the Commission's view of the public interest.

2. The TSX did not Consider the Proxy Contest

[87] We turn first to the absence of consideration by the TSX of the proxy contest, the impending Record Date and shareholder Meeting requisitioned by the Applicants and the presentation to the Commission of new and compelling evidence that was not presented to the TSX.

[88] The TSX Memo from the manager responsible for the TSX Decision (the **Manager**), dated April 3, 2017, included in the TSX's Record, is replete with references to the TSX's awareness of the pending requisitioned Meeting and ongoing proxy contest. The TSX Memo states that it reflects the reasons for the TSX Decision. On the first day of the hearing, this understanding of the TSX Memo was contradicted by an affidavit sworn by the Manager that same day and in submissions of the TSX to the effect that the Manager was unaware of these circumstances at the time of the TSX Decision.

[89] This contextual information clearly goes to the potential exercise of discretion by the TSX, regardless of the outcome of the resulting analysis. These were undoubtedly circumstances that needed to be considered but that did not factor into the TSX Decision and that, for the Manager, provided new and potentially compelling evidence put to us at the hearing. The Manager admitted that he was either unaware of the information about the requisitioned Meeting or he failed to absorb it.

[90] The Manager's affidavit does not indicate how this new information would have affected the TSX's analysis and decision in that regard. The TSX's counsel's submission that the decision would have been the same lacks an evidentiary basis and was no more than a stated conclusion after the issue had been joined by the TSX's defense of its decision. The TSX's position, as expressed by its counsel, that the TSX Decision would have been the same had the circumstances of the proxy contest been considered is therefore not a decision of the TSX before this Panel for review and cannot attract deference of the Commission.

[91] In this regard, it is perhaps not surprising that the Manager did not receive or alternatively absorb this information since none of these facts were disclosed in writing to the TSX pursuant to the application for approval in Eco Oro's Form 11 – *Notice of Private Placement* (**Form 11**). In fact, conclusory statements were made by Eco Oro's counsel and relied upon by the Manager that the transaction would not materially affect control and that there were no other relevant circumstances to be considered.

[92] Eco Oro's revised Form 11, dated March 8, 2017, states, in response to Question 11: "Could the placement potentially result in a material affect [*sic*] in control?", "No." Question 12 calls for: "Any significant information regarding the proposed private placement not disclosed above." Eco Oro's response only notes that the placement involved a partial conversion of convertible notes and that a replacement note would be issued.

[93] At the end of the Form 11, Eco Oro's Chief Executive Officer certifies the following:

> The undersigned, a director or senior officer of the issuer duly authorized by the issuer's board of directors, certifies that this notice is complete and accurate. This notice contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it is made.

[94] By correspondence from the Manager to Eco Oro's counsel, dated March 2, 2017, the Manager stated: "We confirm your advice that the transaction will not materially affect control of the Company." Eco Oro's counsel did not dispute this conclusion nor did they provide any further explanation or commentary that would expand upon or modify this assertion. They did not disclose the material circumstances noted above in Eco Oro's Form 11 or in other written correspondence. If this information was disclosed orally, the Manager tells us that he did not absorb it. The written record before the TSX was not amended to include this material information.

[95] One of the conditions to the approval in the TSX's Decision required confirmation that there was "no voting trust or similar agreement" affecting the manner in which Trexs would vote its shares. Eco Oro's counsel provided this narrow confirmation.

[96] It is imperative for the fair and efficient functioning of capital markets and public confidence in those markets that regulators and self-regulatory organizations (**SROs**) exercising regulatory responsibilities are provided with complete information relevant to the matters at issue by market participants and their counsel. Since these matters may subsequently be reviewed by the Commission, it is also important that these material facts, and how they are assessed, be included in the written materials exchanged between the TSX and the listed company seeking approval. Material facts should not be left as unverifiable discussions, as this poses an increased risk of information being overlooked or not absorbed by the decision maker.

[97] The TSX did not consider the context of the surrounding proxy contest because Eco Oro did not inform the TSX as such in its Form 11. Since we were informed at the hearing that the Manager was unaware of the proxy contest at the time of the TSX Decision, it follows that the TSX did not consult the public filings involving Eco Oro on its SEDAR profile prior to the TSX Decision, despite those public filings being later referenced in the TSX Memo.

[98] Eco Oro's application was treated as routine because the TSX was unaware of the far-from-routine circumstances.

[99] In addition, we were provided with evidence regarding support letters solicited by Eco Oro and executed by the three Intervenors (Trexs, Amber and Paulson). Although not binding voting commitments on their face, the effect and timing of those letters, which were unknown to the Manager and which, in the context of the other evidence that the TSX failed to consider, provide material evidence and, to the Manager, new and potentially compelling evidence that needed to be considered at the time of the TSX Decision.

[100] Information regarding these support letters should have been disclosed to the TSX in response to Questions 11 and/or 12 in Eco Oro's Form 11 or, if not in these responses, as a more complete written response in Eco Oro's counsel's confirmation that there was no voting trust or agreement in place affecting the shares to be issued to Trexs, in order to make such confirmation complete in what should be a candid application process with the TSX.

[101] All of this new evidence is also highly relevant to the TSX's decision about whether to require, as a condition of its approval of the share issuance without a shareholder vote, a public announcement and delay in the closing for a limited period of time. This was so much as admitted in an e-mail sent by the Manager's supervisor in light of the Applicants' complaints to the TSX.

[102] Specifically, after the TSX conditionally approved the transaction and received a complaint from the Applicants, the Manager inquired of his supervisor whether he should ask Eco Oro to comment on the complaint. His supervisor commented on the conditional approval as follows:

> [I]f we are in a position to conditionally approve, we should make the company press release when the[y] get [conditional approval] and then wait at least five business days to close and indicate the closing date.

[103] The Manager responded by stating:

> Already conditionally approved, and already closed – they only press released on closing.

[104] Counsel for the TSX at the hearing agreed that this aspect of the TSX Decision should have been handled differently. In response to a question from the Panel about whether it would have been preferable to have a delay before closing, the TSX's counsel responded by stating:

> In an ideal world there would have been. And I think we see from [the Manager's Supervisor's] e-mail that knowing the facts, that's the manner in which they would have proceeded.

[105] This is a significant concession by the TSX that, in circumstances such as these, the TSX should have exercised its discretion to allow a pause to permit objections to be raised and to be potentially addressed by the Commission so as to help ensure that the status quo is maintained until the processes permitting objections to be considered can unfold.

[106] The circumstances surrounding this share issuance (namely the proxy contest, the requisitioned shareholder Meeting, the impending Record Date and the solicitation by Eco Oro of support from Amber, Paulson and Trexs in advance of the share issuance), were, in part, overlooked by the TSX and, in part, presented to this Panel as new evidence that we find compelling *in toto*.

[107] The standard for "new and compelling" evidence applied by this Commission in *Re Northern Securities Inc.* (2013), 37 OSCB 161 at para 28 is stated as follows:

> The Commission has taken a restrained approach in exercising its discretion to allow new and compelling evidence to be tendered. … Further, the Commission addressed [in *Re Hahn Investment Stewards & Co* (2009), 32 OSCB 8683 at paras 197–98] what is meant by "new and compelling evidence":
>
> > Absent, compelling evidence to the contrary, we are of the view that in the circumstances of this case, *"new" means information that was not known to the party purporting to introduce it as new at the time of the SROs decision.* …
> >
> > In our view, that information would be considered *"compelling" if it would have changed the SRO's decision, had it been known at the time of the decision.*
>
> [emphasis in original]

[108] The first part of this formulation, "new" evidence, is certainly established in this case since the Manager either did not know the information or did not absorb it. The second part of the test, "compelling" evidence, is more difficult to determine if it is considered to relate to the particular decision maker at the TSX, namely, the Manager.

[109] Applying the standard for "new and compelling" evidence in this case requires us to consider what a reasonable decision maker would have determined following an appropriate process. This consideration demonstrates the interrelationship of the *Canada Malting* factors and highlights the overlap between consideration of these factors, on the one hand, and the analysis inherent in a *de novo* review of the TSX Decision, on the other. Our consideration of the new evidence leads us to the conclusion that such evidence is sufficiently compelling in totality such that the TSX should have reached different conclusions on Eco Oro's application. In other words, this evidence would have changed the TSX's Decision had the TSX acted reasonably in accordance with its rules.

[110] Our reasons for reaching this conclusion are coextensive with our analysis of the other *Canada Malting* factors and the analysis resulting from our *de novo* review of the TSX Decision.

[111] We note that counsel for the TSX asserted at the hearing that the TSX Decision would have remained unchanged had the TSX known of the new evidence. We find it insufficient to seek to rely on a mere conclusory assertion of counsel in the absence of a more persuasive analysis as to why this would be the case. Giving effect to such an assertion is prone to *ex post facto* reasoning rather than a clear assessment based on the circumstances that actually prevailed at the time of the decision.

[112] In addition, at a minimum, we know that with what the TSX subsequently learned or absorbed, a pause before closing would have been its preferred course of action.

3. The TSX's Interpretation of "Materially Affect Control"

[113] The second fundamental concern relates to the TSX's interpretation of the definition of "materially affect control," which draws a distinction between permanent and transient effects on control and which considers only permanent effects to be relevant to the definition.

[114] The contemporaneous notes of the Manager's analysis show that he limited his analysis to whether a new 20% shareholder was created or whether a voting trust among shareholders holding 20% was put into effect.

[115] Since the Manager was unaware of the proxy contest, he could not have engaged in a factual analysis in relation to the pending Meeting in light of the other facts and circumstances, including the support letters. If he had known of those circumstances, and exclusively applied a concept of "enduring control" as submitted by the TSX's counsel, he would have misapplied the standards set out in the rule.

[116] The TSX's counsel's oral submissions during the hearing continued this approach, expressly submitting that consideration of the effect of a share issuance on a transient vote at an upcoming meeting is inappropriate.

[117] The TSX's counsel, in describing the TSX's considerations regarding whether a placement materially affects control, submitted that:

> And the fact that when [the TSX is] looking, the factors it's considering – the distribution of voting securities, the possibility of a new holding of 20 percent, it's looking not at idiosyncratic meetings. It is not looking at one-off voting situations. It is looking at the concept of enduring control. That's what these factors go to. That's the lens through which TSX is viewing "materially affects control."

[118] The effect of the TSX's submissions is that a company's management, in the midst of a proxy contest with a group of its shareholders, can have knowledge through its proxy solicitor of where the vote stands for the election of a dissident slate and then issue enough shares to hand-picked investors who have indicated that they support management's direction and that the resulting transactions should not be viewed as affecting control. Instead, the TSX's approach would be limited to some abstract consideration of voting blocks, discounting knowledge of where the vote stands for a pending meeting involving a proxy contest. The definition on its face, however, relates to "a vote" and is case-specific, permitting the consideration of both an imminent meeting and the overall balance of voting power more generally for meetings in the future.

[119] The TSX itself, in its summary of comments on amendments to Part VI of the Manual published in January 2004 (*Request for Comments – Amendments to Parts V, VI and VII of the Toronto Stock Exchange Company Manual in Respect of Non-Exempt Issuers, Changes in Structure of Issuers' Capital and Delisting Procedures* (2004), 270 OSCB 249), responded to a comment regarding the definition of material effect on control that it should be strictly limited to the ability to consistently influence control rather than allowing for a de facto case-specific analysis (at 319):

> We agree that an objective assessment of the security holder's ability to consistently influence significant transaction or decisions would be preferable, however, we believe that there are factors which must be considered that are particular to each transaction and each issuer which may lead to a different determination depending on the fact pattern.

[120] Precluding consideration of the effect of a share issuance on a transient vote at an upcoming meeting, on the basis that it is an inappropriate interpretation of the definition, is an approach that was rejected by the TSX itself in addressing comments on this very subject. On that basis, we find that the TSX proceeded on incorrect principles in conditionally approving the issuance without shareholder approval and allowing its accelerated closing.

[121] To the extent that the TSX has commenced interpreting this definition in a manner that denies the ability to consider the facts and circumstances that may arise in relation to a pending vote for directors, it is denying itself the flexibility that it stated to commentators that it intended to preserve and apply. In light of the prior public comment process, any such change in interpretation raises fundamental public interest questions that would require further rule-making by the TSX to be effective.

[122] The Commission's recognition of the TSX as an exchange is reflected in the detailed Exchange Recognition Order issued by the Commission pursuant to section 21 of the Act (*Re TMX Group Limited* (2015), 38 OSCB 4335). The TSX's failure to engage in such a prior public comment process is inconsistent with the terms of the Exchange Recognition Order regarding public interest rule-making. The TSX erred in law by applying a "revised" definition of the material effect on control that was not adopted pursuant to its rule-making process. For a further discussion of the Commission's oversight of TSX rule-making, see Part V(D)(2) of these Reasons, below.

[123] The narrowing of this definition to prevent consideration of the effect on a pending vote during a proxy contest is also inconsistent with our view of the public interest and therefore engages the fifth of the Canada Malting grounds for intervention.

[124] In *Re HudBay Minerals Inc.* (2009), 32 OSCB 3733 at para 110 (***HudBay***), the Commission cited *Re Trizec Equities Ltd.* (1984), 7 OSCB 2034 at 2040 in explaining the important policy reason underlying the Commission's ability to retain its discretion to intervene in the public interest:

> We believe that the public will support the role of self-regulatory organizations provided that the standards applied by the self-regulatory organizations are or can be made the subject of an appeal to the Securities Commission, the government appointed overseer of the operation of self-regulatory organizations, on the basis that the Commission's perception of the public interest of a particular case should prevail.

[125] In our view, the public interest requires an evaluation of whether an issuance of shares by a listed issuer is for the purpose of entrenching management in the face of a proxy contest, thwarting the justified expectations of shareholders trusting in a system that appropriately promotes shareholder democracy and board accountability.

4. The TSX's Process

[126] The degree of deference called for in *Canada Malting* is premised on the assumption of careful consideration by the filing committee of the TSX.

[127] The appropriateness of the TSX process when considering whether a share issuance by a listed issuer requires shareholder approval under the TSX's rules was considered in *HudBay*. In that case, the Commission reviewed the decision of the TSX to approve the issuance of shares by a listed issuer, HudBay Minerals Inc. (**HudBay**), to Lundin Mining Corporation (**Lundin**) shareholders pursuant to a plan of arrangement without approval of HudBay's shareholders. As a result of the transaction, Lundin would become a wholly-owned subsidiary of HudBay, and the shareholders of HudBay and the former shareholders of Lundin would each control approximately 50% of the shares of the continuing company. HudBay was paying a substantial premium for the Lundin shares based on the exchange ratio and market prices at the time of the transaction's announcement.

[128] A HudBay shareholder, Jaguar Financial Corporation (**Jaguar**), objected to the TSX decision. Jaguar, who acquired shares after the announced transaction but before the issuance of the TSX decision, asserted that the transaction involved a material change in control and that the TSX should have exercised its discretion under sections 603 or 604 of the Manual to require a HudBay shareholder vote. The TSX staff recommended that shareholder approval not be required since no new control person would result from the transaction and did not recommend the exercise of discretion to require a vote. The TSX's Filing Committee conditionally approved the listing of the additional shares, subject to ordinary conditions.

[129] HudBay subsequently purchased Lundin shares representing just under 20% of Lundin shares outstanding after giving effect to the private placement at a substantial premium. Because of their objections to these transactions, HudBay's shareholders then requisitioned a shareholders' meeting seeking to replace the board. HudBay scheduled this meeting to be held one day after the Lundin shareholders' meeting seeking approval of the arrangement. The requisitioning shareholders also commenced an oppression action in the Ontario Superior Court of Justice seeking a vote on the arrangement transaction and to elect a new board.

[130] In *HudBay*, the Commission ultimately conducted a *de novo* hearing due to the insufficiency of reasons for the TSX's decision. The Panel required a shareholder vote since the quality of the marketplace would be significantly and adversely affected if shareholders were treated unfairly by not submitting the transaction to a vote of HudBay shareholders.

[131] Notwithstanding that the TSX's reasons were found to be insufficient in *HudBay*, the Commission found the process undertaken by the TSX to be appropriate and described it in the following terms:

> The TSX made an administrative decision whether to accept the Additional HudBay Common Shares for listing and whether to impose conditions on that acceptance. In doing so, it had an obligation to identify and consider all the facts and circumstances relevant to that decision. The TSX did that through the correspondence it received from HudBay, Lundin, Jaguar and the other objecting shareholders and through its review of that correspondence. In our view, the TSX had no obligation to meet with Jaguar or the other objecting shareholders to discuss their views or to provide them an opportunity to make oral submissions. Nonetheless, the TSX gave Jaguar and the

> other objecting shareholders a reasonable opportunity to make their views known to the TSX and those views and submissions were before the Filing Committee when it made its decision.
>
> (*HudBay* at para 138)

[132] The Commission went on to say:

> While the TSX must be careful to ascertain that it has all the relevant facts, it does not generally have an obligation to conduct an investigation or carry out due diligence when it is considering the exercise of its discretion under a provision of the TSX Manual. The process followed by the Filing Committee in considering the complaints and submissions of Jaguar and the other objecting shareholders of HudBay was appropriate in the circumstances.
>
> (*HudBay* at para 139)

[133] In the case of the Eco Oro application, unlike in *HudBay*, there are material circumstances that were not considered by the Manager since there was an insufficient process to ascertain the relevant facts. No evidence was presented that, prior to the TSX Decision, this matter was elevated to more senior levels within the TSX to further consider the appropriate exercise of the TSX's discretion.

[134] Requiring more complete application materials from Eco Oro and its counsel, in the context of the adverse shareholder vote in 2016, and a scan of recent public filings relating to the issuer on SEDAR by the TSX would not unduly affect the efficiency of the TSX's processes — the concern expressed by the Alberta Securities Commission in *Re Hemostemix Inc.*, 2017 ABASC 14.

[135] The process followed in the case of the Eco Oro application did not unfold in a manner that allowed for complainants to be advised of the share issuance before the transaction closed and to be afforded the opportunity to raise concerns with the TSX. The TSX could therefore make no additional inquiries correcting earlier deficiencies before it made its decision, unlike in the case of *Re TerraNova Partners LP*, 2017 BCSECCOM 76.

[136] There was no evidence that the proxy contest was raised before the TSX's Listing Committee, which would have involved additional senior exchange personnel in assessing the matter. The Manager did not know or absorb some very material facts. The application was treated as a routine matter without regard to an ongoing proxy contest. The Manager's supervisor suggested a delay in closing, but it was too late because the Manager's decision permitted an accelerated closing without a prior public announcement. The application by Eco Oro to the TSX did not highlight these material facts. This was not the kind of careful consideration that the Commission in *Canada Malting* considered to warrant a degree of deference. This was not, in the language of the *HudBay* decision, a process administered by the TSX that can be considered "appropriate in the circumstances."

5. Conclusion

[137] In light of the foregoing, we have determined to review this matter on a *de novo* basis based on the evidence adduced at the hearing.

B. The Commission's *De novo* Consideration of the TSX Decision

1. Introduction

[138] In a hearing and review conducted on a *de novo* basis, the issue we must consider in exercising our power to substitute our own judgment for that of the TSX is whether the issuance of the New Shares in the context of the pending Meeting to elect directors materially affects control of Eco Oro and thus whether shareholder approval is required. This decision depends on the shareholder approval rules set out in Part VI of the Manual.

[139] The Commission's Decision is not in any way an assessment of the merits of either side in the proxy contest or the differing views of management and the Applicants of the corporate strategy that should best be followed by Eco Oro. Despite the efforts of counsel to advance arguments as to whether Eco Oro management or the Applicants were genuinely pursuing the best interests of the company, we are not engaged in an assessment of whether conduct is oppressive to shareholders or whether a board of directors has conducted itself in accordance with the standards set out in governing corporate statutes, including the business judgment rule.

[140] This decision is not based on corporate law considerations. Our role is to ensure that listing standards, which are required to be approved by the Commission as consistent with the public interest, are properly administered. It has

always been recognized that listing standards for companies given the imprimatur of exchange listing go beyond the requirements of corporate law.

2. Analysis

[141] At the 2016 Meeting, at which a larger share issuance was considered, the disinterested shareholders present in person or by proxy voted down the issuance of the shares under Tranche 2. As noted in the TSX Memo, minority shareholders, other than the Applicants, also wrote to the TSX to request, among other things, that the TSX require shareholder approval of the CVRs in addition to the share issuances submitted for approval. In such a context, issuances to interested shareholders in a future vote should be carefully scrutinized and warrants a review by the TSX of the recent public filings relating to the issuer on SEDAR, which review may raise issues that necessitate further inquiry by the TSX.

[142] In connection with the requisitioned Meeting, each side, in competing press releases, claimed that they were close to winning the vote. Based on this record, a share issuance to Trexs of approximately 5.74% could reasonably tip the balance in favour of management.

[143] The evidence establishes that the shares were not issued until the support letters were obtained, most notably from Trexs, who became an insider as a result of the issuance, going from owning 9.96% to 15.7% of the issued and outstanding shares.

[144] It was urged on us that the support letters are non-binding statements of intent and therefore not relevant. However, these letters obviously have value to Eco Oro's management and should be given significance since they were obtained right before the share issuances.

[145] Although Trexs consented to the share conversion on the understanding that both Amber and Paulson would also participate in the conversion, Eco Oro did not seek listing approval of the shares to be issued to Trexs, Amber and Paulson together. Rather, Eco Oro requested TSX approval for the Trexs share conversion when it had the Trexs support letter in hand, and it waited to request TSX approval for the Amber and Paulson share conversions until it received their support letters.

[146] Expressions of support, while short of a formal voting trust agreement, are nonetheless relevant expressions of intent to support management at a specific upcoming meeting at which dissident shareholders seek to remove the board of directors. Based on the proximity in time, in the context of a proxy contest, it is reasonable to infer that the support letters were a safety measure taken by Eco Oro management prior to the issuance of the New Shares and part of an effort of Eco Oro management to influence the vote.

[147] Trexs submitted evidence that it initially resisted the conversion of the Trexs Note. It ultimately relented as a further sign of support for management, and once it decided to proceed on this basis, Trexs strongly insisted that the transaction close prior to the Record Date so it could vote its New Shares at the Meeting.

[148] The notice periods in the conversion provisions of the Notes, requiring 30 days' prior written notice of conversion, were ignored or waived, permitting an accelerated closing. The TSX's decision to permit an accelerated closing further facilitated the goal of ensuring that these votes that were aligned with Eco Oro management would be counted at the Meeting.

[149] The fact that Eco Oro desired, as a general matter, to reduce indebtedness, as reflected in the affidavit of one of the independent directors, does not alter the fact that the transactions could also have a significant tactical purpose for which the TSX's shareholder approval policy is intended to provide a counterweight. This is especially true where: (i) the Participating Shareholders have the right to the vast majority of the proceeds from the company's sole material asset; (ii) all the restrictive covenants arising from the CVRs and the Notes remain in effect with no diminution; (iii) the interest rate on the outstanding debt is nominal; (iv) no new funding was obtained as a result of the transaction; and (v) from a legal and practical standpoint, no new funding is possible without the involvement and approval of the New Share Recipients. To the extent that the balance sheet was improved by this partial conversion, it had little practical positive effect for the company.

[150] Even if the transactions are supported by the objective of an improved balance sheet, there was no compelling business objective for the transaction to close prior to the Record Date that would negate the tactical motive to tip the vote in favour of management.

[151] The closing of these transactions with that timing was clearly designed to have a material effect on the Meeting. The transactions reflect the New Share Recipients' intention to support management by securing enlarged voting rights.

While the motivation of the transaction is at best a mixed one that includes a *bona fide* business purpose, the evidence of the tactical motivation underlying the timing of the New Share issuance and the accelerated closing is overwhelming.

[152] This evidence of tactical motivation, in turn, demonstrates that Eco Oro's management sought to influence the vote at the upcoming Meeting that would decide whether the Board would be removed. Since the competing press releases issued during the proxy contest show a close vote, a view that was not contradicted by the parties at the hearing, it is reasonable for us to infer that a tipping of the balance was sought and could reasonably have been accomplished if the New Shares could be voted. The TSX's rules require a vote to consider whether this effect on control is supported by the shareholders overall, not just by management and certain handpicked shareholders.

[153] Even if the effect on control was not so apparent, in the context of a close vote on a board election such as this, the TSX should generally exercise its discretion to require a vote to promote the fair treatment of shareholders and the quality and integrity of Ontario capital markets, an approach that is consistent with the Commission's decision in *HudBay*.

[154] Whether management is pursuing the best course of action for Eco Oro or whether the Eco Oro Board should be reconstituted is for the shareholders to decide without management's ability to manipulate the vote. Allowing such conduct would directly affect the integrity of Ontario capital markets contrary to the Commission's mandate and the public interest.

3. Conclusion

[155] For the reasons set out above, we set aside the TSX Decision to approve the transaction without a shareholder vote and to permit an accelerated closing prior to the Record Date.

C. Terms and Conditions of the Commission's Decision

1. Introduction

[156] Subsection 8(3) of the Act authorizes the Commission, if it does not confirm the decision of the exchange upon a hearing and review, "to make such other decision as the Commission considers proper."

[157] For Eco Oro to fail to reverse the transaction, if the shareholders were to vote against the New Share issuance, would be to deny shareholders the consequences of their vote to which they are entitled under TSX rules. It would reward Eco Oro for its less than forthcoming disclosure when seeking TSX approval and would fail to provide redress for an inadequate TSX process. Accordingly, and for the reasons set out herein, we decided that a shareholder vote on the issuance of New Shares is required under TSX rules.

[158] We are therefore required to fashion appropriate terms and conditions in the Commission's Decision, so as to give effect to the requirement of a shareholder vote on the issuance of the New Shares, despite the fact that they have already been issued.

[159] Since the New Shares have already been issued, the usual consequence of a negative shareholder vote, namely the aborting of the transaction, is not available. The only way to give effect to the requirement of a shareholder vote in the present case is to provide appropriate consequences if Eco Oro shareholders vote against the New Share issuance. Such consequences necessarily affect not only Eco Oro but the Intervenors as well.

[160] Beyond making the general submission that no meaningful remedy is available under subsection 8(3) of the Act in the present circumstances, the Respondent and the Intervenors made no submissions on the specific question of appropriate terms and conditions in a decision under subsection 8(3) if we were to require a shareholder vote.

[161] The Respondent's and Intervenors' submissions on remedies focus exclusively on the lack of the Commission's jurisdiction to grant a remedy under subsection 8(3) of the Act, due to the transaction having closed, and the availability and appropriateness of a remedy under section 127 of the Act. The question of jurisdiction is considered below in Part V(D) of these Reasons.

[162] In the context of the appropriateness of an order under section 127, Trexs argues that the Commission, in exercising its public interest jurisdiction, must consider the impact of its decision on potentially affected parties, market practice and the interests of market participants. The Commission must weigh and balance a variety of factors, such as transaction and regulatory certainty, the fair treatment of affected shareholders and other companies and individuals and any harm to capital markets from such intervention.

[163] While advanced by Trexs in the context of a section 127 analysis, these factors are also relevant in the context of a subsection 8(3) decision and have largely been considered under the *Canada Malting* analysis above. The factor that remains to be addressed is the impact of a decision on the Intervenors.

[164] Amber and Paulson, again in the context of a section 127 analysis but nonetheless relevant to a subsection 8(3) discussion, referred to *Re MI Developments Inc.* (2009), 32 OSCB 126 (***MI Developments***), in which the Commission noted at paragraph 127:

> The general principle that we apply is to issue the least intrusive order that is sufficient in the circumstances to accomplish our regulatory objectives.

[165] Amber and Paulson emphasize the manifest unfairness of any order of the Commission that would harm their interests, absent any wrongdoing on their part. At paragraph 5 of their written submissions, they argue:

> It would be extraordinary and manifestly unfair for the Commission to prejudicially interfere with the vested rights of long-term, innocent, independent investors in Eco Oro pursuant to the exercise of its public interest jurisdiction.

[166] For the reasons set out below, we reject the submissions of the Respondent and the Intervenors, and impose three terms and conditions in the Commission's Decision to require a shareholder vote on the New Share issuance. These terms and conditions are designed to give practical and legal effect to the Commission's Decision, despite the transaction having already closed. We have determined that these terms and conditions are as minimally intrusive to the Intervenors' interests as is reasonably possible in these circumstances and not unduly burdensome to Eco Oro. We consider each of these terms and conditions in turn.

2. Analysis

(a) Requirement of a Shareholder Vote to Approve or Reverse the Share Issuance

[167] Reversing transactions, even at the direction of shareholders, cannot be undertaken lightly. In cases such as this where the share issuance in question has closed, the Panel must consider whether there are considerations relating to the affected parties or the public interest more generally that outweigh the benefit conferred on the Applicants by rendering a meaningful decision to require a shareholder vote on the issuance of the New Shares.

[168] Staff's submissions include a number of factors for the Panel's consideration relating to the opportunity of an applicant to have objected in advance of the closing of a transaction, the ability of affected parties to make submissions and the practicability of the reversal. These submissions were of assistance in formulating the non-exhaustive list of relevant factors below.

[169] If shareholder approval is required for a transaction that has already closed and the shareholders, when given the opportunity, vote against it and direct the issuer to take the necessary steps to reverse the transaction, the factors we consider to be relevant in determining whether it is in the public interest to order that a completed transaction be reversed on the basis of such shareholder instruction include:

a. whether the issuer afforded those that it knew were likely to object to the share issuance an opportunity to raise their objections to the decision maker, in this case the TSX, in advance of the transaction closing, including by means of a press release sufficiently in advance of closing;

b. whether those directly affected by the reversal of the transaction entered into the transaction knowing of the likelihood of objections;

c. whether those directly affected by the reversal of the transaction had an opportunity to be heard and/or make submissions; and

d. whether it is impractical for the transaction to be reversed in the circumstances.

[170] In this case, Eco Oro knew that shareholders had previously objected to the TSX's approval of the issuance of the CVRs without shareholder approval in 2016 and could reasonably expect shareholders, in the context of the proxy contest, to raise objections to the TSX's approval of the issuance of the New Shares without shareholder approval. Nonetheless, Eco Oro deliberately chose to close the New Share issuance without a prior public announcement and without time for the Applicants or other shareholders to effectively communicate their objections to the TSX or the Commission.

[171] Trexs, Amber and Paulson were granted full standing to participate in the Hearing and Review Application, and their views were fully presented. They object to any reversal of the New Share issuance. They submit that a reversal would have a disproportionate and inequitable effect on them and their investors, especially in circumstances where the Applicants do not allege that these investors have breached Ontario securities laws or engaged in any wrongful conduct. They argue that it would be punitive because the rights attaching to their New Shares have already accrued to them, having paid fair value for those rights on behalf of their own investors.

[172] No argument of hardship or impracticability was advanced by the Intervenors – only an argument of entitlement based on the transaction having closed.

[173] We reject the argument that a regulatory requirement of a shareholder vote on a new share issuance can be flouted, absent illegal conduct of the recipients of the shares issued, simply because the new share issuance has closed. To endorse the position of the Intervenors would be to prioritize their commercial interests ahead of the interests of the Applicants and other Eco Oro shareholders, in a fairly conducted vote on the composition of Eco Oro's Board and the future direction of the company, and ahead of the public interest, in compliance with capital markets regulation. The impact of a reversal of the New Share issuance on the Intervenors, if the shareholders of Eco Oro so direct, is not so profound so as to outweigh the Applicants' interest or the public interest.

[174] The Notes held by the Intervenors and the other New Share Recipient, Ms. Stylianides, were convertible at the option of Eco Oro and not the holders.

[175] The New Share Recipients, at the time that Eco Oro approached them with the proposed conversion and issuance of the New Shares, knew of the proxy contest, having been solicited to sign support letters. They could have reasonably expected that management's decision to convert their Notes would be subject to TSX and Commission scrutiny, and possible intervention, when in close proximity in time to a shareholder meeting at which a board of directors faced potential removal. The New Share Recipients can also be reasonably expected to be aware that the TSX, and the Commission upon a review of a TSX decision, has discretion to require shareholder approval in appropriate circumstances.

[176] Different considerations would come into play if the Notes were convertible solely at the option of holders who had acquired the notes in the past without a proxy contest in contemplation. In those different circumstances, holders could more reasonably assert that they did not receive reasonable notice of possible regulatory intervention that would prevent their right to vote.

[177] Here, however, with a proxy contest underway and the conversion right lying with the issuer's management, the holders can reasonably be expected to be aware of the possibility that if a transaction were to have an effect on control, management's actions may well be subject to regulatory review and possible intervention by the TSX or the Commission.

[178] A potential reversal of a transaction in this case would not involve a return of proceeds to the subscribers who provided capital through such issuance for a compelling corporate purpose since no new proceeds were obtained. In this case, if the shareholders vote down the transaction and the Eco Oro Board takes the necessary steps to reverse the issuance of the New Shares and restore the original amount of the Notes, the practical effect on Eco Oro and the New Share Recipients is minimal.

[179] There were no persuasive submissions that the reversal of the New Share issuance is impracticable or imposes any particular hardship that the Panel ought to take into consideration. A reversal of the New Share issuance only requires that the convertible Notes be restored to their original amounts, with interest accrued on the original amounts at the nominal rate in effect.

[180] In *Re Geosam Investments Limited,* 2009 BCSECCOM 695 (***Geosam***), the BC Securities Commission required the issuer to deposit an amount equal to the private placement proceeds in trust pursuant to a temporary hearing pending a hearing and review of the decision of the TSX Venture Exchange (the **TSX-V**) to allow for a practical reversal of the transaction. In the present case, since no new funds were provided as a result of the partial conversion, a reversal of the transaction, if the issuance is voted down by the shareholders, is not the empty remedy feared by the Panel of the BC Securities Commission in *Geosam*.

[181] Indeed, Eco Oro could consider effecting these issuances again in the future in a manner that does not materially affect control of Eco Oro.

[182] Any complexity in such a reversal is outweighed by the public interest in that it does not take away the right to have an appropriate vote of shareholders on the composition of Eco Oro's Board and the future direction of the company.

[183] For the reasons set out above, we impose a term and condition in the Commission's Decision that requires Eco Oro to not only seek shareholder approval of the issuance of the New Shares but to do so by asking shareholders to either ratify the issuance of the New Shares or instruct Eco Oro's Board to reverse the issuance of the New Shares. If the shareholders are to vote to instruct Eco Oro's Board to reverse the issuance, we require the Eco Oro Board to implement those instructions.

[184] We find it appropriate to provide commercial flexibility to Eco Oro and the Intervenors to reach an agreement to avoid a shareholder vote by reversing the New Share issuance, in whole or in part, of their own volition. The Commission's Decision reflects this in an exclusion from the requirement to seek shareholder approval of the issuance of the New Shares, which exclusion is available to the extent that Eco Oro and a New Share Recipient reverse the issuance.

(b) Requirement that the Intervenors not Trade the New Shares Pending the Shareholder Vote

[185] The terms and conditions in the Commission's Decision include a cease trade order (the **Cease Trade Order**) that the New Shares not be traded unless and until the shareholders of Eco Oro ratify the issuance of the New Shares. While we refer in these Reasons to the Cease Trade Order as a term and condition that gives practical effect to our decision under subsection 8(3) of the Act to require a shareholder vote, the Cease Trade Order is issued under subsection 127(1).

[186] The Cease Trade Order addresses the risk of a New Share Recipient frustrating a share reversal by transferring the New Shares in advance of a shareholder vote on the New Share issuance.

[187] The Intervenors object to the Cease Trade Order, arguing that it is inappropriate in the circumstances given the prejudicial impact and consequences to them and their investors. They also submit that an order cease trading the New Shares issued to them is disproportionate and unfair. As a cease trade order is an extraordinary remedy, the party requesting the order has a heavy onus to provide sufficient evidence to support the issuance of such an order in the public interest, which onus they submit the Applicants have not met.

[188] We reject these submissions on the basis that, in the present case, the Cease Trade Order is necessary to prevent circumvention of the Commission's Decision under subsection 8(3) of the Act to require a shareholder vote on the New Share issuance.

[189] First, by preventing transfers of the New Shares to persons who were not intervenors at the hearing, the Cease Trade Order avoids the risk of intervening share transfers rendering the reversal of the New Share issuance, which is not impractical today, impractical at a future date.

[190] Secondly, the Cease Trade Order is necessary to prevent the Commission's Decision to require a shareholder vote from being circumvented by a transfer of the New Shares to others who were not intervenors at the hearing and who might seek to vote the New Shares in a manner that affects the vote at the pending Meeting or a later meeting to approve the issuance of the New Shares. A share transfer with these purposes is contrary to the public interest, calling into question the integrity of the meeting process and the effect of the TSX's shareholder approval rule.

(c) Requirement that Eco Oro not Consider the New Shares Outstanding for Purposes of Voting Pending the Shareholder Vote

[191] The Commission's Decision contains a further term and condition in the form of an order that Eco Oro, and the Chair of any Eco Oro shareholder meeting, not consider the New Shares to be issued and outstanding for the purposes of voting on any matter, unless and until the shareholders vote to approve their issuance.

[192] This term and condition addresses the imperative that Eco Oro shareholders are entitled to have an appropriate vote on the issuance of the New Shares, where the outcome of that vote may subsequently determine the composition of Eco Oro's Board and the future direction of the company. For Eco Oro to hold a fairly conducted vote on the New Share issuance, it cannot consider the New Shares to be issued and outstanding.

[193] The Intervenors strenuously object to both the appropriateness of this term and condition and the jurisdiction of the Panel to impose it as part of the Commission's Decision. We turn first to their objections based on inappropriateness, and we address jurisdiction below.

[194] The Intervenors object to this term and condition as inappropriate in the circumstances given the prejudicial impact and consequences to them and their investors. We reject this argument. This term and condition is designed to deprive Eco Oro's management of the benefit of having issued the New Shares without a required shareholder vote on their issuance.

[195] This term and condition is required in this case since the Respondent and the Intervenors at the hearing were unwilling to express a view in response to a question from the Panel as to whether, if we were to reverse the TSX Decision, the New Shares would be voted at the shareholders' meeting two days later.

[196] The necessity for this term and condition would not have arisen had there been a pause to elevate the issue of shareholder approval at the TSX before the transaction closed. If, following consideration of the proxy contest and the surrounding circumstances, shareholder approval had been required as a condition of the issuance of the New Shares, the New Shares could not have been voted at the requisitioned Meeting.

[197] Such a state of affairs ought to be respected pending the shareholder vote on the issuance of the New Shares. Absent a voluntary commitment at the hearing by the Intervenors to respect the requirement of a shareholder vote and not vote their New Shares, if we were to decide that such approval is required, this term and condition is required to ensure compliance. It ensures that shareholders of Eco Oro have a fairly conducted vote on the issuance of the New Shares, where the outcome of that vote may later determine the composition of Eco Oro's Board and the future direction of the company.

3. Conclusion

[198] For the reasons set out above, the three terms and conditions in the Commission's Decision (*i.e.*: (i) the requirement for a shareholder vote to approve or reverse the transaction; (ii) the requirement that the Intervenors not trade the New Shares pending the shareholder vote; and (iii) the requirement that Eco Oro not consider the New Shares outstanding for the purposes of voting pending the shareholder vote) are necessary and appropriate in order to give practical and legal effect to the Commission's Decision and to ensure that the public interest in the integrity of the vote and compliance with law is respected.

D. Jurisdiction to Render the Commission's Decision

1. Introduction

[199] Eco Oro and the Intervenors argue that the Commission lacks the authority under subsection 8(3) of the Act to render a decision purporting to "unscramble the egg" by including the first and third of the three terms and conditions discussed above, namely:

a. the requirement that Eco Oro take the necessary steps to reverse the issuance of the New Shares if the shareholders so direct; and

b. the requirement that Eco Oro not consider the New Shares to be issued and outstanding for the purposes of a shareholder vote pending the outcome of a shareholder vote on the issuance of the New Shares.

[200] Central to the question of the Commission's jurisdiction to include these two terms and conditions in the Commission's Decision is the scope of the authority conferred upon the Commission under subsection 8(3) of the Act, which authorizes the Commission, upon a hearing and review, to "by order confirm the decision under review or make such other decision as the Commission considers proper."

[201] The authority conferred by the phrase "such other decision as the Commission considers proper" is not unlimited; it is circumscribed by the purposes of the Act and the specific context of the TSX decision under review and must be exercised in light of the Commission's mandate to protect investors from unfair practices and to foster confidence in our capital markets.

2. The Commission is not Restricted under Subsection 8(3) of the Act to What the TSX Can Decide

[202] More particularly, the Respondent and the Intervenors argue that we can do no more than the TSX can do itself since we stand in its shoes in a *de novo* hearing and review.

[203] This argument, in our view, fails to consider that the application for a hearing and review arises because the regulatory functions exercised by the TSX stem from the Commission's recognition of the TSX as an exchange.

[204] The Commission's recognition of the TSX involves the TSX performing regulatory functions in a manner that the Commission has established is consistent with its mandate.

[205] To give effect to the Commission's duty to ensure that regulatory decisions by exchanges are consistent with the purposes of the Act, subsection 8(3) confers upon the Commission the authority, upon an application for a hearing and

review, "by order to confirm the decision under review or make such other decisions as the Commission considers proper."

[206] As such, our authority is necessarily broader than that of the TSX, and the Commission is not limited by the TSX's power to suspend trading or delist a company.

[207] The Commission's authority under subsection 8(3) of the Act must be interpreted in light of the Commission's recognition of the TSX as an exchange, which supports a considerably broader authority of the Commission, as compared to that of the TSX, to make decisions and issue orders affecting other persons in accordance with the Act.

[208] This necessarily broader authority arises from the critical role that the TSX, other recognized exchanges and SROs, fulfills in each aspect of the Commission's mandate that is not applicable to most private enterprises.

[209] The Commission's latitude in making orders affecting recognized exchanges is reinforced by the Commission's comprehensive oversight of recognized exchanges, including paragraphs (a) and (e) of subsection 21(5) of the Act, which empowers the Commission, if it considers it in the public interest, to make any decision with respect to the manner in which a recognized exchange carries on business or with respect to any policy or practice of a recognized exchange:

> 21.(5) The Commission may, if it considers it in the public interest, make any decision with respect to,
>
> (a) the manner in which a recognized exchange carries on business;
>
> (b) the trading of securities or derivatives on or through the facilities of a recognized exchange;
>
> (c) any security or derivative listed or posted for trading on a recognized exchange;
>
> (d) issuers, whose securities are listed or posted for trading on a recognized exchange, to ensure that they comply with Ontario securities law; or
>
> (e) any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized exchange.
>
> [emphasis added]

[210] As discussed above at paragraph [122] of these Reasons, the Commission's oversight of the TSX is also reflected in the detailed Exchange Recognition Order issued by the Commission, which grants and continues the recognition of the TSX as an exchange, pursuant to section 21 of the Act. Schedule 10 to the Exchange Recognition Order provides the process for review and approval of any TSX rules and policies (other than rules of an administrative nature) that have an impact on the exchange's market structure, members, issuers, investors or the capital markets, which are known as "Public Interest Rules." Public Interest Rules include policies relating to listed companies, and they are subject to: (i) public comment, and (ii) review and approval by the Commission. When reviewing rules, the Commission considers the public interest and the Commission's mandate as set out in section 1.1 of the Act. This review and approval authority extends to the TSX's rules that were applied in rendering the TSX Decision.

[211] We reject the submissions of the Respondent and the Intervenors that the Commission, in making a decision under subsection 8(3) of the Act, is limited to what the TSX could have required in a decision to approve or reject the issuance of the New Shares.

3. Principle of Statutory Interpretation: Implied Exclusion

[212] Terms and conditions are an established means for the Commission to craft relief under the Act that is adapted to specific statutory and public interest concerns and balances the interests of participants in the capital markets, including issuers and investors.

[213] Eco Oro and the Intervenors argue that the Commission lacks the authority to impose the terms and conditions in question as part of the Commission's Decision based on the legal maxim of statutory interpretation, *expressio unius est exclusio alterius*: to express one thing is to exclude another. They cite Professor R. Sullivan from Ruth Sullivan, *Sullivan on The Construction of Statutes*, 6th ed (Toronto: LexisNexis Canada, 2014) at para 8.90:

> An implied exclusion argument lies whenever there is reason to believe that if the legislature had meant to include a particular thing within its legislation, it would have referred to that thing expressly. Because of this expectation, the legislature's failure to mention the thing becomes grounds for inferring that it was deliberately excluded. … As Laskin J.A. succinctly put it, "legislative exclusion can be implied when an express reference is expected but absent". The force of the implication depends on the strength and legitimacy of the expectation of express reference.

[214] Based on this principle of statutory interpretation, Eco Oro and the Intervenors argue that prohibiting Eco Oro from counting the New Shares, if the Meeting proceeds, and requiring Eco Oro to take steps to reverse the transaction, if the shareholders so direct, involve powers that are reserved to the Ontario Superior Court of Justice under section 128 of the Act and therefore unavailable to the Commission. They argue that for the Commission to restrain voting rights or to reverse a transaction, the Commission must apply to the court under subsection 128(1) of the Act for a declaration that a person or company has not complied with or is not complying with securities law and seek an order prohibiting the exercise of voting rights and cancelling or rescinding the transaction.

[215] The relevant portion of subsection 128(3) of the Act, regarding the remedial powers of the court, reads as follows:

> 128(3) If the court makes a declaration under subsection (1), the court may, despite the imposition of any penalty under section 122 and despite any order made by the Commission under section 127, make any order that the court considers appropriate against the person or company, including, without limiting the generality of the foregoing, one or more of the following orders:
>
> …
>
> 4. An order rescinding any transaction entered into by the person or company relating to trading in securities including the issuance of securities.
>
> 5. An order requiring the issuance, cancellation, purchase, exchange or disposition of any securities by the person or company.
>
> 6. An order prohibiting the voting or exercise of any other right attaching to securities by the person or company.

[216] We have considered whether the implied exclusion argument is persuasive. The force of the implication to be drawn from the omission depends on the strength and legitimacy of the expectation of express reference, which, in turn, is tied in the present case to the degree of the comparability of subsection 8(3) with section 128 of the Act.

[217] The argument advanced by Eco Oro and the Intervenors gives insufficient regard to the difference between a hearing and review proceeding and the nature of a decision in the present case, on the one hand, and the nature of proceedings and orders under section 128 of the Act, on the other.

[218] A proceeding pursuant to section 128 of the Act is predicated on a breach of Ontario securities legislation. An order of rescission or prohibition on voting is available under section 128, which is found in Part XXII of the Act entitled "Enforcement" as a sanction in enforcement cases where there has been a breach of Ontario securities law. In the present case, section 128 is not engaged because the hearing and review of an exchange's decision is not an enforcement case since there has been no breach of Ontario securities law by Eco Oro, notwithstanding that the resulting actions contravene an exchange listing standard and are contrary to the public interest.

[219] The decision under subsection 8(3), which is found in Part V of the Act entitled "Administrative Proceedings, Reviews and Appeals," is a remedy to the Applicants for the TSX's error in approving the transaction without a shareholder vote and permitting an accelerated closing prior to the Record Date despite the transaction materially affecting control of Eco Oro.

[220] Unlike an order under section 128 of the Act for rescission of a transaction or a prohibition on voting, which can each stand alone as a remedy for a breach of Ontario securities law, the terms and conditions in the Commission's Decision under subsection 8(3), which refer to the issuer taking steps to reverse the transaction and prohibiting shares from being considered issued and outstanding for the purposes of a shareholder vote, are not stand-alone orders to rescind a transaction or prohibit a vote. They are terms and conditions designed to craft relief that is adapted to specific statutory and public interest concerns and that balances the interests of participants in the capital markets, including issuers and investors.

[221] There are past examples of provincial securities commissions imposing such highly tailored terms and conditions in similar circumstances. For example, in *Re Mercury Partners & Company Inc.*, 2002 BCSECCOM 173 (***Mercury***), the

BC Securities Commission required an issuer to obtain shareholder approval of a private placement and ordered terms to maintain the status quo to the greatest extent possible until the required shareholder meeting. Likewise, in *Geosam*, the BC Securities Commission temporarily stayed a decision of the TSX-V and, considering it to be in the public interest, ordered a number of terms and conditions to effect the stay and ensure its efficacy.

[222] It should also be recognized that the terms and conditions set out in the Commission's Decision do not purport, in and of themselves, to either rescind a transaction or prohibit the exercise of voting rights. The terms and conditions in the Commission's Decision address these matters by directing the issuer, the Board and the chair of its shareholder meeting to take certain actions or to refrain from certain actions to achieve an outcome in compliance with the issuer's regulatory obligations. These terms and conditions, by virtue of being included in the Commission's Decision, become part of "Ontario securities law," capable of being enforced pursuant to section 127 or 128 of the Act.

[223] The terms and conditions in the Commission's Decision that refer to the issuer taking steps to reverse the transaction and prohibiting shares from being considered issued and outstanding for the purposes of a shareholder vote are terms and conditions customized to the present case and tailored to right the wrong of the TSX Decision in a manner entirely consistent with the purposes of a hearing and review under subsection 8(3) of the Act. They are aimed at depriving Eco Oro's management of the benefit of having issued the New Shares, without shareholder consideration of the matter, by requiring that Eco Oro not consider the New Shares to be issued and outstanding for the purposes of voting on any matter pending the outcome of the shareholder vote on the issuance of the New Shares.

[224] The application of the implied exclusion principle of statutory interpretation in this case depends on the relative strength and legitimacy of the expectation of express reference in subsection 8(3) of the Act to our authority to impose terms and conditions as part of a decision made on a hearing and review of an exchange's decision. Here, those terms and conditions require an issuer to take steps, if instructed by its shareholders, to reverse a transaction, as well as prohibit an issuer from considering shares that have been issued without requisite shareholder approval to be outstanding for the purposes of a shareholder vote. In our view, the strength and legitimacy of the expectation that a specific statutory reference contemplates precise categories of tailored terms and conditions is weak: the breadth of the Commission's authority on a hearing and review of the many decisions subject to subsection 8(3) necessitates varied remedial terms and conditions to address the circumstances that may arise.

[225] While not expressly argued by the Respondent or the Intervenors, we considered the potential argument that the implied exclusion principle of statutory interpretation precludes an interpretation of subsection 8(3) of the Act that authorizes the Commission to impose terms and conditions more generally as we have in the Commission's Decision.

[226] The authority to impose terms and conditions is expressly granted in various sections of the Act, including for example:

a. subsection 1(12): An order [designating a person or company to be an insider] under subsection (10) may be made subject to such terms and conditions as the Commission may impose;

b. subsection 2.2(4): The order [to suspend trading] may be subject to such terms and conditions as the Commission may impose;

c. subsection 17(4): An order under subsection (1) or (2.1) [to disclose certain confidential information] may be subject to terms and conditions imposed by the Commission;

d. subsection 21(3): A recognition [of an exchange] under this section shall be made in writing and shall be subject to such terms and conditions as the Commission may impose;

e. subsection 21.11(4): The Commission may, by order, give its approval to a person, company or transaction, for the purposes of subsection (1) or (3) [to hold more than the prescribed percentage of the TSX], and may impose such terms and conditions on the approval as the Commission considers appropriate;

f. subsection 127(2): An order under this section [127] may be subject to such terms and conditions as the Commission may impose; and

g. section 147: Except where exemption applications are otherwise provided for in Ontario securities law, the Commission may, on the application of an interested person or company and if in the Commission's opinion it would not be prejudicial to the public interest, make an order on such terms and conditions as it may impose exempting the person or company from any requirement of Ontario securities law.

[227] These examples illustrate that express references to statutory authority to impose terms and conditions are made in contexts where the Commission is doing something more specific than making a decision, namely: making an order that a person or company do a certain thing, granting recognition to an exchange or granting an approval. The express

reference is required in these contexts to provide the Commission with the authority to craft orders, recognitions and approvals that are customized and tailored to the circumstances.

[228] The implied exclusion principle of statutory interpretation does not govern the interpretation of subsection 8(3) of the Act so as to preclude the authority of the Commission to impose terms and conditions on a decision made under that subsection. On the contrary, the authority of the Commission to craft terms and conditions in a decision made under subsection 8(3) is conferred by the reference to the authority of the Commission to "make such other decision as the Commission thinks proper" [emphasis added].

[229] In this case, an improper application of the implied exclusion principle of statutory interpretation would defeat the purposes of the Act by depriving the Applicants of any remedy at all and permitting regulatory non-compliance without appropriate consequences.

4. Purposive Interpretation

[230] The Commission should apply a purposive approach to the interpretation of the Act and, in doing so, should consider the regulatory objectives of the Act. As the Commission stated in *MI Developments* at para 77, citing *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26, the proper approach to statutory interpretation is as follows:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[231] It is a basic canon of statutory interpretation that we interpret our authority under the Act in a contextual and purposive way, considering the purpose and objectives of the Act. We must therefore interpret subsection 8(3) in light of its purpose, which is the review of an exchange's decision, and we must do so not in a vacuum, but in the context of the entire Act and the securities law regime as a whole.

[232] The Commission's jurisdiction is animated in part by both of the purposes of the Act described in section 1.1, namely "to provide protection to investors from unfair, improper or fraudulent practices" and "to foster fair and efficient capital markets and confidence in capital markets." In contradistinction, it is for the courts to punish or remedy past conduct under sections 122 and 128 of the Act, respectively (*Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission*), 2001 SCC 37 at paras 41-43).

[233] A remedy under section 128 of the Act is not available in the present case without the issuance of the Commission's Decision. If we are unable to make orders disregarding the New Shares for the vote and requiring measures to reverse the transaction if shareholders vote it down, there is no order, constituting an element of Ontario securities law, for which the Commission could apply to the court for enforcement under section 128 of the Act.

[234] If the Panel lacks authority under subsection 8(3) of the Act to impose the terms and conditions in the Commission's Decision to require a shareholder vote in the present case, there would be no remedy at all under Ontario securities law, at the Commission or before the courts, for the improper issuance of securities or for a flawed exchange process. If this were the case, the Commission's mandate could not be fulfilled – merely because a reporting issuer was less than candid with the TSX and rushed to close.

5. The Doctrine of Jurisdiction by Necessary Implication

(a) Introduction

[235] The Respondent and the Intervenors refer us to the doctrine of jurisdiction by necessary implication for the appropriate framework to analyze the question of whether the Commission has the authority, on a hearing and review of a TSX decision permitting a share issuance to close on an accelerated basis, to impose the terms and conditions described above as part of the Commission's Decision to require a shareholder vote.

[236] The Respondent and the Intervenors submit that the doctrine of jurisdiction by necessary implication leads one to conclude that the Commission does not have the authority under subsection 8(3) of the Act to impose the two terms described in paragraph [199] of these Reasons as part of the Commission's Decision.

[237] We agree that the doctrine of jurisdiction by necessary implication provides a helpful framework within which to analyze the question, but we disagree with the Respondent and the Intervenors on their conclusion.

(b) The Law

[238] In *ATCO Gas & Pipelines Ltd v Alberta (Energy & Utilities Board)*, 2006 SCC 4 (***ATCO***), the Supreme Court of Canada provided guidance on the doctrine of jurisdiction by necessary implication. The question before the Alberta Energy and Utilities Board was whether the board had jurisdiction to order ATCO to allocate a portion of proceeds from the sale of property owned by ATCO to rate-paying customers rather than to ATCO's shareholders. The board determined that it had the jurisdiction to reallocate ATCO's proposed distribution of proceeds, pursuant to the powers granted to it under its enabling statute. The Supreme Court held that there was neither explicit nor implicit legislative authority to allow the board to reallocate the proceeds of the sale.

[239] The parties referred to the following passages of the decision.

[240] At paragraph 49 of *ATCO*, the Supreme Court stated:

> The provisions at issue are found in statutes which are themselves components of a larger statutory scheme which cannot be ignored:
>
> > As the product of a rational and logical legislature, the statute is considered to form a system. Every component contributes to the meaning as a whole, and the whole gives meaning to its parts: "each legal provision should be considered in relation to other provisions, as parts of a whole" ….
> >
> > (P.-A. Côté, *The Interpretation of Legislation in Canada* (3rd ed. 2000), at p. 308)
>
> As in any statutory interpretation exercise, when determining the powers of an administrative body, courts need to examine the context that colours the words and the legislative scheme. The ultimate goal is to discover the clear intent of the legislature and the true purpose of the statute while preserving the harmony, coherence and consistency of the legislative scheme (*Bell ExpressVu* [*Ltd. Partnership v. Rex*, 2002 SCC 42], at para. 27; see also *Interpretation Act*, R.S.A. 2000, c. I-8, s. 10 (in Appendix)).

[241] The Supreme Court continued at paragraphs 50–51 of *ATCO*:

> In the same vein, it is useful to refer to the following passage from *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 S.C.R. 1722, at p. 1756:
>
> > The powers of any administrative tribunal must of course be stated in its enabling statute but they may also exist by necessary implication from the wording of the act, its structure and its purpose. Although courts must refrain from unduly broadening the powers of such regulatory authorities through judicial law-making, they must also avoid sterilizing these powers through overly technical interpretations of enabling statutes.
>
> The mandate of this Court is to determine and apply the intention of the legislature (*Bell ExpressVu*, at para. 62) without crossing the line between judicial interpretation and legislative drafting (see *R. v. McIntosh,* [1995] 1 S.C.R. 686, at para. 26; *Bristol-Myers Squibb Co.* [*v. Canada (Attorney General)*, 2005 SCC 26], at para. 174). That being said, this rule allows for the application of the "doctrine of jurisdiction by necessary implication"; the powers conferred by an enabling statute are construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature (see *Brown* [*Energy Regulation in Ontario* (loose-leaf ed.)] at p. 2-16.2; *Bell Canada*, at p. 1756). Canadian courts have in the past applied the doctrine to ensure that administrative bodies have the necessary jurisdiction to accomplish their statutory mandate:
>
> > When legislation attempts to create a comprehensive regulatory framework, the tribunal must have the powers which by practical necessity and necessary implication flow from the regulatory authority explicitly conferred upon it.

[242] At paragraph 73 of *ATCO*, the Supreme Court cited with approval a decision of the Ontario Energy Board (*Re Consumers' Gas Co.*, E.B.R.O. 410-II/411-II/412-II, March 23, 1987) that enumerated the circumstances when the doctrine of jurisdiction by necessary implication may be applied:

- [when] the jurisdiction sought is necessary to accomplish the objectives of the legislative scheme and is essential to the Board fulfilling its mandate;
- [when] the enabling act fails to explicitly grant the power to accomplish the legislative objective;
- [when] the mandate of the Board is sufficiently broad to suggest a legislative intention to implicitly confer jurisdiction;
- [when] the jurisdiction sought must not be one which the Board has dealt with through use of expressly granted powers, thereby showing an absence of necessity; and
- [when] the Legislature did not address its mind to the issue and decide against conferring the power upon the Board.

[243] It is incumbent upon us to consider the presence or absence of each of these factors in the present case.

(c) Application of the ATCO Factors

i. Is the Jurisdiction Sought Necessary to Accomplish the Objectives of the Legislative Scheme and Essential to the Commission Fulfilling its Mandate?

[244] For the reasons set out above, the jurisdiction we assert in the present case is necessary to accomplish the purposes of the Act. Whether management is pursuing the best course of action for Eco Oro or whether the Board should be reconstituted is for the shareholders to decide without management being permitted to manipulate the vote. To allow a vote to proceed that has been affected by such conduct would directly affect the integrity of Ontario capital markets, contrary to the Commission's mandate and the public interest.

[245] The public interest is served by respecting the right of shareholders of TSX-listed issuers to have a fairly conducted vote to determine the composition of their boards of directors. The issuance of the New Shares in the present case must be properly submitted to a vote of shareholders. The outcome of that vote will allow the shareholders to then consider the composition of Eco Oro's Board and the future direction of the company. Until the meeting is held, it is imperative that the status quo be maintained to the greatest extent possible and that the New Shares not be counted towards the vote on the approval of their issuance.

[246] Considered more broadly, the jurisdiction asserted in the present case, which involves a contest for control of a public company by way of a proxy contest, can be analogized to the jurisdiction of the Commission over change of control transactions effected by way of a takeover bid. Proxy contests and takeover bids provide alternative means of effecting a change of control of a public company that have very material consequences for shareholders. Issuances of shares as a defensive measure in the face of a contest for control of a public company to influence the outcome in management's favour are subject to review by the Commission. Private placements with this tactical motivation have more typically arisen in the context of takeover bids and may constitute defensive tactics contrary to the public interest and to National Policy 62-202 – *Take-Over Bids - Defensive Tactics* (**National Policy 62-202**), which provides:

> 1.1(4) … defensive tactics that may come under scrutiny if undertaken during the course of a bid, or immediately before a bid, if the board of directors has reason to believe that a bid may be imminent, include
>
> (a) the issuance … of … securities representing a significant percentage of the outstanding securities of the target company.

[247] Where a party wishes to contest such an issuance under Ontario securities law, they may seek to persuade the TSX to require shareholder approval, and if shareholder approval is not required by the TSX, to have that decision reviewed by the Commission. The Commission reviews the TSX's decision in the same manner as in this proceeding. Whether or not there is an exchange decision, a person may also seek to invoke the Commission's public interest jurisdiction under section 127 of the Act based on the underlying policies in National Policy 62-202, as the Applicants did here.

[248] If the share issuance is challenged as a defensive tactic in relation to a take-over bid, the Commission must necessarily delve into the purpose of the issuance. In *Re Hecla Mining Co.* (2016), 39 OSCB 8927, the Commission and the BC Securities Commission provided a framework for considering these matters where the first inquiry is whether the issuance is clearly not for a defensive purpose and the onus is initially on the target company in that context.

[249] When the Commission considers the public interest, whether under subsection 8(3) or section 127 of the Act, fairness to shareholders and therefore the integrity of the markets may well yield the same result in assessing a private placement designed to thwart a bid as it does in the case of an issuance designed to tip the balance in a proxy contest.

[250] Although National Policy 62-202 addresses takeover bids, the public interest in promoting fairness to shareholders clearly extends to ensuring fair contests for control whether pursued through the proxy solicitation process for contested shareholder meetings or by way of a takeover bid. In considering whether to exercise our discretion to require shareholder approval based on our view of the public interest, control transactions, regardless of form, may involve similar public interest concerns.

[251] The policy considerations underlying the fair treatment of shareholders in the Act and as reflected in National Policy 62-202 applicable to takeover bids are also applicable to proxy contests. The ability to craft terms and conditions to address inappropriate defensive tactics is necessary to fulfill the Commission's mandate to provide investor protection and to foster confidence in capital markets in connection with change of control transactions implemented through a bid or a vote.

ii. Does the Enabling Act Fail to Explicitly Grant the Power to Accomplish the Legislative Objective?

[252] The Act does not explicitly grant the Commission specific authority to impose the terms and conditions at issue, which are necessary to accomplish the legislative objectives in this Hearing and Review Application.

[253] The legislative objective is to empower the Commission to make its own proper decision, and this must, by necessary implication, include the power to give full effect to the proper decision.

iii. Is the Commission's Mandate Sufficiently Broad to Suggest a Legislative Intention to Implicitly Confer Jurisdiction?

[254] Eco Oro and the Intervenors argue that the Commission's mandate is not sufficiently broad to suggest a legislative intention to implicitly confer jurisdiction to impose the terms and conditions at issue in the Commission's Decision under subsection 8(3) of the Act.

[255] In support of this position, they point to section 128 of the Act, which sets out the circumstances in which the Commission may bring an application for declaratory relief from the Ontario Superior Court of Justice and the remedial powers of that court. They argue that, under section 128, the Commission must go to the court for remedial orders like those sought by the Applicants, which relief would affect commercial interests and property rights. We disagree.

[256] Under section 1.1 of the Act, the Commission's broad mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets. Under section 127, the Commission is empowered to make certain orders and impose terms and conditions if, in the Commission's opinion, it is in the public interest to do so.

[257] If the legislature had wanted to limit or fetter the Commission's discretion, the legislature could have said, under subsection 8(3) of the Act, that the Commission could make such other decision as the Commission considers proper, *other than a decision for relief set out in section 128*. But it did not follow this course. Rather, the Act simply allows the Commission to make the decision it considers proper on a hearing and review. While this power certainly must be limited to a decision that is proper in the context of a hearing and review, and with a consideration of the Act's purposes, the remedy cannot be empty. If the Commission finds that a TSX decision is wrong, it must be empowered to take the necessary steps to prevent that decision from harming investors or impairing confidence in the capital markets. The Commission's mandate is sufficiently broad to establish such a legislative intention to implicitly confer that jurisdiction.

iv. Is the Jurisdiction Sought One Which the Commission Has Dealt With Before Through Use of Expressly Granted Powers, Thereby Showing an Absence of Necessity?

[258] The Commission has not previously considered a situation such as the one before us, other than in a dissenting opinion in *Canada Malting*.

[259] In his dissent in *Canada Malting*, Vice-Chair Salter parted with the majority on the question of whether to confirm the TSX's decision to approve a private placement. He noted that, given that the transaction had already closed, he would have ordered that the TSX's decision be reversed and that the disinterested shareholders vote and either ratify the impugned private placement or instruct the board of directors of the listed issuer to take all necessary steps to reverse the transaction.

[260] We considered whether other securities commissions in Canada have considered the present situation and, if so, what remedies they considered to be available in these circumstances.

[261] The Applicants referred us to *Mercury*, a decision of the BC Securities Commission in which the Panel addressed a situation similar to the one before us and issued an order consistent with the Commission's Decision.

[262] In *Mercury*, the BC Securities Commission found that the TSX-V did not appropriately consider all the circumstances affecting a private placement and was unaware of certain relevant circumstances when the exchange concluded that an issuance that created the single largest shareholder of the company, with ownership of between 19% and 30% depending on certain variables, did not materially affect control of the company. The BC Securities Commission applied the *Canada Malting* factors but did so in accordance with a BC Securities Commission Policy that provided that if an exchange's decision is "reasonable and has been made in accordance with the law, the evidence and the public interest," the BC Securities Commission is generally reluctant to interfere simply because it would have come to a different conclusion in the circumstances.[4]

[263] We note that the BC Securities Commission's standard for review, while overlapping with the role this Commission performs on an application for hearing and review, is more circumscribed in its approach than that of the Commission. While affording a degree of deference to the decisions of exchanges, this Commission considers that hearings and review more readily become *de novo* hearings and not be limited to the more circumscribed grounds of an appeal.[5]

[264] In *Mercury*, the BC Securities Commission overturned the decision of the TSX-V, concluding that the exchange had not considered all the relevant circumstances. Like the case before us, the private placement in *Mercury* was already concluded. Unlike this case, $1 million of new capital was put into the company. Based on the order that Vice-Chair Salter posited in his dissent in *Canada Malting*, the BC Securities Commission issued an order that included provisions prohibiting the voting of the private placement shares and requiring the unwinding of the transaction if the shareholders voted down the issuance. The BC Securities Commission cited its broader authority to issue orders affecting an exchange, equivalent to subsection 21(5)(a) of the Act, but concluded that its order under the BC equivalent of section 21.7 of the Act was sufficient and that an additional order was unnecessary in light of the terms and conditions it imposed. The BC Securities Commission also issued orders pursuant to its public interest authority to support compliance with its terms and conditions, as we have done in this case.

[265] The BC Securities Commission in *Mercury* went on to state the following:

> In our view, it is imperative that the status quo be maintained to the greatest extent possible until the meeting is held. For example, we expect that, until the meeting, [the Company] will carry out only those activities and incur only those expenses that arise in the ordinary course of business.
>
> (*Mercury* at para 104)

[266] While the Respondent and the Intervenors correctly note that a decision of a provincial securities commission cannot provide authority for the proposition that an order is within our jurisdiction to make, we do find the decision of the BC Securities Commission in *Mercury* persuasive in demonstrating that another provincial securities commission with a similar mandate and similar legislation in a similar situation concluded that it was necessary and appropriate to issue a comparable order. Similar to the Commission's Decision, both the order contemplated by Vice-Chair Salter and the Order of the BC Securities Commission in *Mercury* involved tailored conditions directed to persons to achieve defined and narrowly constructed ends.

v. Did the Legislature Address its Mind to the Issue and Decide against Conferring the Power upon the Commission?

[267] Eco Oro and the Intervenors argued that the inclusion of powers of a court under section 128 of the Act to restrain voting rights and rescind transactions is an indication that the legislature did in fact address its mind to the issue and decide against conferring the power on the Commission.

[268] This argument, in essence, repeats the argument considered above based on the implied exclusion principle of statutory interpretation. Eco Oro and the Intervenors argue that prohibiting Eco Oro from counting the New Shares, if the meeting proceeds, and requiring Eco Oro to take steps to reverse the transaction, if the shareholders so direct, involve powers that are reserved to the courts under section 128 of the Act and therefore unavailable to the Commission.

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4 *Mercury* at para 49.

5 In many cases, the BC Securities Commission's approach and this Commission's approach will produce similar results since we both examine the *Canada Malting* factors and assess the robustness of the exchange's process in considering the degree of deference to be afforded.

[269] For the reasons set out above under Part V(D)(3) of these Reasons, "Principle of Statutory Interpretation: Implied Exclusion," we reject this argument.

[270] We are satisfied that the legislature intended to confer on the Commission flexible authority to impose carefully crafted terms and conditions in an order resulting from a hearing and review of an exchange's decision to fulfill the Commission's mandate, including terms and conditions to support a shareholder vote and potentially instruct the listed company to take measures to rescind transactions that are voted down, when required to ensure compliance with listing rules and the public interest.

(d) Broadly versus Narrowly Drawn Powers

[271] We appreciate that the doctrine of jurisdiction by necessary implication will be of less help in the case of broadly drawn powers than for narrowly drawn powers. Broadly drawn powers will necessarily be limited to only what is rationally related to the purpose of the regulatory framework. As cited in the *ATCO* decision, Professor R. Sullivan explains this principle of statutory interpretation:

> Narrowly drawn powers can be understood to include "by necessary implication" all that is needed to enable the official or agency to achieve the purpose for which the power was granted. Conversely, broadly drawn powers are understood to include only what is rationally related to the purpose of the power. In this way the scope of the power expands or contracts as needed, in keeping with the purpose.
>
> (*ATCO* at para 74, citing Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed (Markham, Ont: Butterworths, 2002) at 228)

[272] Though the Commission's powers on a hearing and review are broadly drawn, the doctrine of jurisdiction by necessary implication still assists in the current case because the terms of the Commission's Decision are rationally related to the purpose of the regulatory framework. The Commission's Decision is not an attempt to augment its powers in a way that does not fit with the purpose of the statute, as was found to be the case in *ATCO*. Rather, unlike in *ATCO*, there is evidence that the power to order the terms and conditions in the Commission's Decision is a practical necessity for the Commission to accomplish its prescribed legislated objectives. The terms and conditions in the Commission's Decision are intentionally tailored so as to give efficacy to its order to set aside the TSX Decision, and to right the wrong of the TSX Decision, in a manner entirely consistent with the broad purposes of a hearing and review under subsection 8(3) of the Act.

6. Conclusion

[273] For the reasons set out above, we conclude that the scope of the Commission's jurisdiction under the Act on a hearing and review is sufficient to enable the Panel to render the Commission's Decision.

E. Alternative Grounds for Relief Sought Further to the Commission's Public Interest Jurisdiction under Section 127 of the Act

[274] Separate and apart from the hearing and review of the TSX Decision, the Applicants ask that the Commission make an order under its broader public interest jurisdiction, pursuant to section 127 of the Act. Arguing that the issuance of the New Shares has an abusive effect on Eco Oro's minority shareholders, the Applicants seek an order under section 127 to cease trade the New Shares, or deny the use of exemptions, until Eco Oro and the New Share Recipients reverse the issuance of the New Shares.

[275] In light of our above reasons for the Commission's Decision on the hearing and review pursuant to sections 8(3) and 21.7 of the Act, it is not necessary for us to address these alternative grounds for relief in this case, and we decline to do so.

VI. CONCLUSION

[276] For all of the above reasons, the Commission's Decision sets aside the TSX Decision and orders that, at a meeting of shareholders to be held no later than September 30, 2017, Eco Oro shall seek approval of the issuance of the New Shares to the New Share Recipients to the extent that Eco Oro and a New Share Recipient have not otherwise reversed the issuance of that New Share Recipient's New Shares. If the shareholders vote to instruct the Eco Oro Board to take all necessary steps to reverse the issuance of the New Shares, the Board is ordered to forthwith implement those instructions. Pursuant to the Commission's Decision, unless and until the shareholders of Eco Oro ratify the issuance of the New Shares, the New Shares are cease traded pursuant to subsection 127(1) of the Act, and Eco Oro and the Chair of any Eco Oro shareholder meeting shall not consider the New Shares to be issued and

outstanding for the purposes of voting at the Annual General and Special Meeting of Shareholders scheduled for April 25, 2017, and any adjournment thereof, and at any other meeting of shareholders of Eco Oro.

Dated at Toronto this 16th day of June, 2017.

"D. Grant Vingoe"

"Monica Kowal"

"Frances Kordyback"

SCHEDULE 'A'

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

AND

IN THE MATTER OF
ECO ORO MINERALS CORP.

AND

IN THE MATTER OF
A HEARING AND REVIEW OF
A DECISION OF THE TORONTO STOCK EXCHANGE

ORDER
(Sections 8(3), 21.7 and 127(1) of the Securities Act)

WHEREAS:

A. On March 27, 2017, pursuant to sections 8(3), 21.7 and 127(1) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**"), Courtenay Wolfe and Harrington Global Opportunities Fund Ltd. (collectively, the "**Applicants**") filed a Notice of Application with the Ontario Securities Commission (the "**Commission**") for a hearing in respect of the issuance of 10,600,000 common shares (the "**New Shares**") of Eco Oro Minerals Corp. ("**Eco Oro**") by Eco Oro to four shareholders of Eco Oro on or about March 16, 2017, and the decision of the Toronto Stock Exchange (the "**TSX**") on March 10, 2017 (the "**TSX Decision**") to grant conditional approval for the issuance of the New Shares (the "**Application**");

B. On April 7, 2017, the Commission granted leave to intervene in the Application to three intervenors, namely Trexs Investments, LLC, Amber Capital LP and Paulson & Co. Inc. (collectively, the "**Intervenors**");

C. The Commission heard the Application on April 19, 20 and 21, 2017 and oral and written submissions were delivered by the Applicants, the TSX, Eco Oro, the Intervenors and Staff of the Commission ("**Staff**");

D. The Commission is of the opinion that the TSX Decision should be set aside and that it is in the public interest to make an order under sections 8(3) and 21.7 of the Act to require shareholder approval for the issuance of the New Shares; and

E. Since the issuance of the New Shares has closed, the Commission is of the opinion that the additional orders below are necessary and in the public interest to give effect to the Commission's decision to require such shareholder approval so that it operates, to the extent practicable, as if the issuance of New Shares had not been permitted to close prior to the date hereof;

IT IS HEREBY ORDERED THAT:

1. The TSX Decision is set aside;

2. At a meeting of shareholders to be held no later than September 30, 2017, Eco Oro shall seek approval, as described in paragraph 3 below, of the issuance of New Shares to the Intervenors and Anna Stylianides (each a "**New Share Recipient**") to the extent that Eco Oro and a New Share Recipient have not otherwise reversed the issuance of that New Share Recipient's New Shares;

3. The shareholder approval sought by Eco Oro under paragraph 2 shall be calculated in accordance with the TSX Company Manual and shall ask shareholders to either:

   (a) ratify the issuance of the New Shares; or

   (b) instruct the board of directors of Eco Oro to take all necessary steps to reverse the issuance of the New Shares;

4. If the shareholders vote to instruct the board of directors of Eco Oro to take all necessary steps to reverse the issuance of the New Shares, the board of directors of Eco Oro shall forthwith implement those instructions;

5. Unless and until the shareholders of Eco Oro ratify the issuance of the New Shares:

   (a) the New Shares are cease traded pursuant to subsection 127(1) of the Act; and

   (b) Eco Oro and the Chair of any Eco Oro shareholder meeting shall not consider the New Shares to be issued and outstanding for the purposes of voting at the Annual General and Special Meeting of Shareholders scheduled for April 25, 2017, and any adjournment thereof, and at any other meeting of shareholders of Eco Oro; and

6. If any issue arises in connection with this Order, any of the parties may apply to the Commission for further direction.

DATED at Toronto, this 23rd day of April, 2017.

"D. Grant Vingoe"

"Monica Kowal"

"Frances Kordyback"

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Enssolutions Group Inc.	05 May 2015	20 May 2015	20 May 2015	19 June 2017

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Avcorp Industries Inc.	19 June 2017	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse

THERE IS NOTHING TO REPORT THIS WEEK.

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
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
CHC Student Housing Corp.	05 May 2017	
Stompy Bot Corporation	04 May 2017	

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Chapter 7

Insider Reporting

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

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

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

Chapter 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Caldwell Balanced Fund
Caldwell Canadian Value Momentum Fund
Caldwell Income Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated June 14, 2017
NP 11-202 Preliminary Receipt dated June 16, 2017
Offering Price and Description:
Series F, Series O and Series I Units
Underwriter(s) or Distributor(s):
Caldwell Securities Ltd.
Promoter(s):
-
Project #2640739

Issuer Name:
Dynamic Money Market Class
Principal Regulator – Ontario
Type and Date:
Amendment #5 to Final Simplified Prospectus dated June 19, 2017
Received on June 19, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
GCIC Ltd.
Promoter(s):
1832 Asset Management L.P.
Project #2540701

Issuer Name:
Epoch European Equity Fund
Epoch Global Equity Class
Epoch Global Equity Fund
Epoch Global Shareholder Yield Currency Neutral Fund
Epoch Global Shareholder Yield Fund
Epoch International Equity Fund
Epoch U.S. Blue Chip Equity Currency Neutral Fund
Epoch U.S. Blue Chip Equity Fund
Epoch U.S. Large-Cap Value Class
Epoch U.S. Large-Cap Value Fund
Epoch U.S. Shareholder Yield Fund
TD Advantage Aggressive Growth Portfolio
TD Advantage Balanced Growth Portfolio
TD Advantage Balanced Income Portfolio
TD Advantage Balanced Portfolio
TD Advantage Growth Portfolio
TD Asian Growth Fund
TD Balanced Growth Fund
TD Balanced Income Fund
TD Balanced Index Fund
TD Canadian Blue Chip Dividend Fund
TD Canadian Bond Fund
TD Canadian Bond Index Fund
TD Canadian Core Plus Bond Fund
TD Canadian Corporate Bond Fund
TD Canadian Diversified Yield Fund
TD Canadian Equity Class
TD Canadian Equity Fund
TD Canadian Equity Pool
TD Canadian Equity Pool Class
TD Canadian Index Fund
TD Canadian Large-Cap Equity Fund
TD Canadian Low Volatility Class
TD Canadian Low Volatility Fund
TD Canadian Money Market Fund
TD Canadian Small-Cap Equity Class
TD Canadian Small-Cap Equity Fund
TD Canadian Value Class
TD Canadian Value Fund
TD Comfort Aggressive Growth Portfolio
TD Comfort Balanced Growth Portfolio
TD Comfort Balanced Income Portfolio
TD Comfort Balanced Portfolio
TD Comfort Conservative Income Portfolio
TD Comfort Growth Portfolio
TD Core Canadian Value Fund
TD Corporate Bond Plus Fund (formerly TD Corporate Bond Capital Yield Fund)
TD Diversified Monthly Income Fund
TD Dividend Growth Class
TD Dividend Growth Fund
TD Dividend Income Class
TD Dividend Income Fund

TD Dow Jones Industrial Average Index Fund
TD Emerging Markets Class
TD Emerging Markets Fund
TD Emerging Markets Low Volatility Fund
TD Entertainment & Communications Fund
TD European Index Fund
TD Fixed Income Pool
TD Global Bond Fund
TD Global Equity Pool
TD Global Equity Pool Class
TD Global Income Fund
TD Global Low Volatility Class
TD Global Low Volatility Fund
TD Global Risk Managed Equity Class
TD Global Risk Managed Equity Fund
TD Global Unconstrained Bond Fund
TD Health Sciences Fund
TD High Yield Bond Fund
TD Income Advantage Portfolio
TD International Growth Class
TD International Growth Fund
TD International Index Currency Neutral Fund
TD International Index Fund
TD International Stock Fund
TD Monthly Income Fund
TD Nasdaq Index Fund
TD North American Dividend Fund
TD North American Small-Cap Equity Fund
TD Precious Metals Fund
TD Premium Money Market Fund
TD Real Return Bond Fund
TD Resource Fund
TD Retirement Balanced Portfolio
TD Retirement Conservative Portfolio
TD Risk Management Pool
TD Science & Technology Fund
TD Short Term Bond Fund
TD Short Term Investment Class
TD Strategic Yield Fund
TD Tactical Monthly Income Class
TD Tactical Monthly Income Fund
TD Tactical Pool
TD Tactical Pool Class
TD Target Return Balanced Fund
TD Target Return Conservative Fund
TD U.S. Blue Chip Equity Fund
TD U.S. Corporate Bond Fund
TD U.S. Dividend Growth Fund
TD U.S. Equity Portfolio
TD U.S. Index Currency Neutral Fund
TD U.S. Index Fund
TD U.S. Low Volatility Currency Neutral Fund
TD U.S. Low Volatility Fund
TD U.S. Mid-Cap Growth Class
TD U.S. Mid-Cap Growth Fund
TD U.S. Money Market Fund
TD U.S. Monthly Income Fund
TD U.S. Monthly Income Fund – C$
TD U.S. Quantitative Equity Fund
TD U.S. Risk Managed Equity Class
TD U.S. Risk Managed Equity Fund
TD U.S. Small-Cap Equity Fund
TD Ultra Short Term Bond Fund
TD US$ Retirement Portfolio

Principal Regulator – Ontario

Type and Date:

Combined Preliminary and Pro Forma Simplified Prospectus dated June 15, 2017

NP 11-202 Preliminary Receipt dated June 16, 2017

Offering Price and Description:

Investor Series, F-Series, H-Series, D-Series, Advisor Series, T-Series, F-Series, S-Series, Private Series and O-Series

Underwriter(s) or Distributor(s):

TD Investment Services Inc. (for Investor Series units)
TD Investment Services Inc. (for Investor Series and e-Series units)
TD Waterhouse Canada Inc.
TD Waterhouse Canada Inc. (W-Series and WT-Series only)
TD Investment Services Inc. (for Investor Series)
TD Investment Services Inc. (for Investor Series and Premium Series units)

Promoter(s):

TD Asset Management Inc.

Project #2640477

Issuer Name:
Fidelity Canadian Growth Company Fund
Fidelity Special Situations Fund
Fidelity U.S. Focused Stock Fund
Fidelity U.S. Dividend Fund
Fidelity Event Driven Opportunities Fund
Fidelity Emerging Markets Fund
Fidelity Europe Fund
Fidelity Global Fund
Fidelity Global Concentrated Equity Fund
Fidelity NorthStar Fund
Fidelity Global Real Estate Fund
Fidelity Global Asset Allocation Fund
Fidelity U.S. Monthly Income Fund
Fidelity U.S. Monthly Income Currency Neutral Fund
Fidelity Tactical High Income Fund
Fidelity NorthStar Balanced Fund
Fidelity Conservative Income Fund
Fidelity Balanced Portfolio
Fidelity Balanced Managed Risk Portfolio
Fidelity ClearPath 2005 Portfolio
Fidelity ClearPath 2035 Portfolio
Fidelity ClearPath 2040 Portfolio
Fidelity ClearPath Income Portfolio
Fidelity Canadian Bond Fund
Fidelity Canadian Money Market Fund
Fidelity Tactical Fixed Income Fund
Fidelity Floating Rate High Income Fund
Fidelity Floating Rate High Income Currency Neutral Fund
Fidelity Strategic Income Fund
Fidelity Strategic Income Currency Neutral Fund
Fidelity Global Bond Fund
Fidelity Global Bond Currency Neutral Fund
Fidelity Corporate Bond Fund
Principal Regulator – Ontario
Type and Date:
Amendment #5 to the Simplified Prospectus and Amendment #6 to the AIF dated June 15, 2017
Received on June 16, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Fidelity Investments Canada Limited
Promoter(s):
Fidelity Investments Canada ULC
Project #2535350

Issuer Name:
Fidelity Canadian Disciplined Equity Class
Fidelity Canadian Growth Company Class
Fidelity Greater Canada Class
Fidelity U.S. Focused Stock Currency Neutral Class
Fidelity Small Cap American Class
Fidelity U.S. All Cap Currency Neutral Class
Fidelity American Equity Class
Fidelity Event Driven Opportunities Class
Fidelity Far East Class
Fidelity International Disciplined Equity Currency Neutral Class
Fidelity NorthStar Class
Fidelity Global Concentrated Equity Class
Fidelity Insight Class
Fidelity Global Financial Services Class
Fidelity Canadian Asset Allocation Class
Fidelity Monthly Income Class
Fidelity Global Income Class Portfolio
Fidelity Balanced Class Portfolio
Fidelity Corporate Bond Class
Principal Regulator – Ontario
Type and Date:
Amendment #2 dated to Final Simplified Prospectus June 15, 2017
Received on June 16, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Fidelity Investments Canada ULC
Project #2586927

Issuer Name:
iShares Core High Quality Canadian Bond Index ETF
Principal Regulator – Ontario
Type and Date:
Amendment to the Final Long Form Prospectus #1 dated June 13,
Received on June 13, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BlackRock Asset Management Canada Limited
Promoter(s):
-
Project #2620760

Issuer Name:
iShares Core Canadian Universe Bond Index ETF
iShares Core Canadian Short Term Bond Index ETF
iShares Short Term High Quality Canadian Bond Index ETF
iShares S&P/TSX Composite High Dividend Index ETF
Principal Regulator – Ontario
Type and Date:
Amendment #2 to the Final Long Form Prospectus dated June 13, 2017
Received on June 13, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Blackrock Asset Management Canada Limited
Promoter(s):
-
Project #2587867

Issuer Name:
PowerShares 1-10 Year Laddered Investment Grade Corporate Bond Index ETF
PowerShares S&P/TSX REIT Income Index ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated June 16, 2017
NP 11-202 Preliminary Receipt dated June 19, 2017
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Invesco Canada Ltd.
Project #2641046

Issuer Name:
Sentry Canadian Resource Class
Principal Regulator – Ontario
Type and Date:
Amendment #7 to the AIF dated June 15, 2017
Received on June 15, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Sentry Investments Inc.
Promoter(s):
Sentry Investments Inc.
Project #2475733

Issuer Name:
U.S. Global Canadian Energy ETF
U.S. Global GO GOLD and Precious Metal Miners ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated June 16, 2017
NP 11-202 Preliminary Receipt dated June 19, 2017
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Galileo Global Equity Advisors Inc.
Project #2641000

Issuer Name:
AlphaNorth Growth Fund
AlphaNorth Resource Fund (formerly AlphaNorth Rollover Fund)
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated June 14, 2017
NP 11-202 Receipt dated June 19, 2017
Offering Price and Description:
Series A, B, D and F Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2627114

Issuer Name:
CI Canadian Dividend Fund
CI Canadian Investment Fund
CI Canadian Investment Corporate Class
Select Canadian Equity Managed Corporate Class
Synergy Tactical Asset Allocation Fund
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated May 31, 2017
NP 11-202 Receipt dated June 13, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Investments Inc.
Project #2494270

Issuer Name:
Brand Leaders Plus Income ETF
Energy Leaders Plus Income ETF
Global REIT Leaders Income ETF
Healthcare Leaders Income ETF
Tech Achievers Growth & Income ETF
US Buyback Leaders ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated June 14, 2017
NP 11-202 Receipt dated June 15, 2017
Offering Price and Description:
Class A Units and Class U Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Harvest Portfolios Group Inc.
Project #2625876

Issuer Name:
Canadian Equity Value Pool
Canadian Equity Value Corporate Class
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated May 31, 2017
NP 11-202 Receipt dated June 13, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Assante Capital Management Ltd.
Promoter(s):
-
Project #2493946

Issuer Name:
Dynamic Money Market Class
Principal Regulator – Ontario
Type and Date:
Amendment #4 to Final Simplified Prospectus dated June 12, 2017
NP 11-202 Receipt dated June 15, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
GCIC Ltd.
Promoter(s):
1832 Asset Management L.P.
Project #2540701

Issuer Name:
First Asset 1-5 Year Laddered Government Strip Bond Index ETF
First Asset Canadian Convertible Bond ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated June 12, 2017
NP 11-202 Receipt dated June 13, 2017
Offering Price and Description:
Common Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2625609

Issuer Name:
First Asset Resource Fund Inc.
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated June 16, 2017
NP 11-202 Receipt dated June 19, 2017
Offering Price and Description:
Class A Shares, Series 1 @ Net Asset Value
Underwriter(s) or Distributor(s):
TDK Management Fund Inc.
Promoter(s):
-
Project #2629260

Issuer Name:
Gateway Low Volatility U.S. Equity Fund
Loomis Sayles Global Diversified Corporate Bond Fund
Loomis Sayles Global Diversified Corporate Bond Class (formerly, Loomis Sayles Global Diversified Corporate Bond Tax Man
Loomis Sayles Strategic Monthly Income Fund
Natixis Strategic Balanced Registered Fund
Natixis Strategic Balanced Class (formerly, Natixis Strategic Balanced Tax Managed Fund)
Natixis Canadian Bond Fund (formerly, NexGen Canadian Bond Fund)
Natixis Canadian Bond Class (formerly, NexGen Canadian Bond Tax Managed Fund)
Natixis Canadian Cash Fund (formerly, NexGen Canadian Cash Fund)
Natixis Canadian Dividend Registered Fund (formerly, NexGen Canadian Dividend Registered Fund)
Natixis Canadian Dividend Class (formerly, NexGen Canadian Dividend Tax Managed Fund)
Natixis Canadian Preferred Share Registered Fund (formerly, NexGen Canadian Preferred Share Registered Fund)
Natixis Canadian Preferred Share Class (formerly, NexGen Canadian Preferred Share Tax Managed Fund)
Natixis Global Equity Registered Fund (formerly, NexGen Global Equity Registered Fund)
Natixis Global Equity Class (formerly, NexGen Global Equity Tax Managed Fund)
Natixis Intrinsic Balanced Registered Fund (formerly, NexGen Intrinsic Balanced Registered Fund)
NexGen Intrinsic Balanced Class (formerly, NexGen Intrinsic Balanced Tax Managed Fund)
Natixis Intrinsic Growth Registered Fund (formerly, NexGen Intrinsic Growth Registered Fund)
Natixis Intrinsic Growth Class (formelry, NexGen Intrinsic Growth Tax Managed Fund)
Natixis U.S. Dividend Plus Registered Fund (formerly, NexGen U.S. Dividend Plus Registered Fund)
Natixis U.S. Dividend Plus Class (formerly, NexGen U.S. Dividend Plus Tax Managed Fund)
Natixis U.S. Growth Registered Fund (formerly, NexGen U.S. Growth Registered Fund)
Natixis U.S. Growth Class (formerly, NexGen U.S. Growth Tax Managed Fund)
Oakmark International Natixis Registered Fund
Oakmark International Natixis Class (formerly, Oakmark International Natixis Tax Managed Fund)
Oakmark Natixis Registered Fund
Oakmark Natixis Class (formerly, Oakmark Natixis Tax Managed Fund)
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated June 9, 2017
NP 11-202 Receipt dated June 13, 2017
Offering Price and Description:
Series A, Series F, Series H, Series HF and Series I @ net asset value
Underwriter(s) or Distributor(s):
NGAM Canada LP
Promoter(s):
NGAM Canada LP
Project #2625118

Issuer Name:
Harvest Banks & Buildings Income Fund
Harvest Canadian Income & Growth Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated June 16, 2017
NP 11-202 Receipt dated June 16, 2017
Offering Price and Description:
Series A, Series D, Series F and Series R Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2627777

Issuer Name:
Horizons Canadian Dollar Currency ETF
Horizons Canadian Midstream Oil & Gas Index ETF
Horizons Cdn Insider Index ETF
Horizons Medical Marijuana Life Sciences ETF
Horizons US Dollar Currency ETF
Principal Regulator – Ontario
Type and Date:
Amended and Restated Long Form Prospectus dated June 8, 2017
NP 11-202 Receipt dated June 15, 2017
Offering Price and Description:
Class A Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Horizons ETFs Management (Canada) Inc.
Project #2586349

Issuer Name:
Horizons Cdn Select Universe Bond ETF
Principal Regulator – Ontario
Type and Date:
Amendment #2 to the Final Long Form Prospectus dated June 2, 2017
NP 11-202 Receipt dated June 14, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Horizons ETFs Management (Canada) Inc.
Project #2509599

Issuer Name:
Mackenzie Maximum Diversification All World Developed ex North America Index ETF
Mackenzie Maximum Diversification All World Developed Index ETF
Mackenzie Maximum Diversification Canada Index ETF
Mackenzie Maximum Diversification Developed Europe Index ETF
Mackenzie Maximum Diversification Emerging Markets Index ETF
Mackenzie Maximum Diversification US Index ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated June 12, 2017
NP 11-202 Receipt dated June 13, 2017
Offering Price and Description:
Units @ Net Asset Value
Underwriter(s) or Distributor(s):
none
Promoter(s):
MACKENZIE FINANCIAL CORPORATION
Project #2611625

Issuer Name:
Starlight U.S. Multi-Family (No. 1) Value-Add Fund
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated June 12, 2017
NP 11-202 Receipt dated June 13, 2017
Offering Price and Description:
Maximum: US$112,000,000.00 of
Class A Units and/or Class U Units and/or Class D Units and/or
Class E Units and/or Class F Units and/or Class H Units and/or Class C Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
National Bank Financial Inc.
Raymond James Ltd.
TD Securities Inc.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Industrial Alliance Securities Inc.
Promoter(s):
Starlight Group Property Holdings Inc.
Project #2620921

Issuer Name:
WisdomTree Yield Enhanced Canada Aggregate Bond Index ETF
WisdomTree Yield Enhanced Canada Short-Term Aggregate Bond Index ETF
WisdomTree Canada Quality Dividend Growth Index ETF
WisdomTree Emerging Markets Dividend Index ETF
WisdomTree Europe Hedged Equity Index ETF
WisdomTree International Quality Dividend Growth Index ETF
WisdomTree International Quality Dividend Growth Variably Hedged Index ETF
WisdomTree U.S. High Dividend Index ETF
WisdomTree U.S. MidCap Dividend Index ETF
WisdomTree U.S. Quality Dividend Growth Index ETF
WisdomTree U.S. Quality Dividend Growth Variably Hedged Index ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated June 14, 2017
NP 11-202 Receipt dated June 15, 2017
Offering Price and Description:
Non-Hedged Units, Hedged Units and Variably Hedged Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
WisdomTree Asset Management Canada, Inc.
Project #2620526

NON-INVESTMENT FUNDS

Issuer Name:
Bento Inc.
Principal Regulator – Ontario
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated June 15, 2017
NP 11-202 Preliminary Receipt dated June 15, 2017
Offering Price and Description:
$80,000,000.00 – * Subordinate Voting Shares
Price: $ * per Subordinate Voting Share
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
DESJARDINS SECURITIES INC.
Promoter(s):
-
Project #2632300

Issuer Name:
Brookfield Infrastructure Partners L.P.
Principal Regulator – Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated June 14, 2017
NP 11-202 Preliminary Receipt dated June 14, 2017
Offering Price and Description:
US$4,000,000,000.00 – Limited Partnership Units Class A Preferred Limited Partnership Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2639949

Issuer Name:
Brookfield Renewable Partners L.P.
Principal Regulator – Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated June 15, 2017
NP 11-202 Preliminary Receipt dated June 16, 2017
Offering Price and Description:
US$2,000,000,000.00
(1) Limited Partnership Units Preferred Limited Partnership Units
(2) Class A Preference Shares
(3) Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2640510

Issuer Name:
Brookfield Renewable Partners ULC
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated June 15, 2017
NP 11-202 Preliminary Receipt dated June 16, 2017
Offering Price and Description:
US$2,000,000,000.00

(1) Limited Partnership Units Preferred Limited Partnership Units
(2) Class A Preference Shares
(3) Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2640508

Issuer Name:
Brookfield Renewable Power Preferred Equity Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated June 15, 2017
NP 11-202 Preliminary Receipt dated June 16, 2017
Offering Price and Description:
US$2,000,000,000.00

(1) Limited Partnership Units Preferred Limited Partnership Units
(2) Class A Preference Shares
(3) Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2640509

Issuer Name:
Buzz Capital Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary CPC Prospectus dated June 9, 2017
NP 11-202 Preliminary Receipt dated June 14, 2017
Offering Price and Description:
Offering: $420,000.00 – 4,200,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Chuck Rifici
Project #2638963

Issuer Name:
Canada Goose Holdings Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 13, 2017
NP 11-202 Preliminary Receipt dated June 14, 2017
Offering Price and Description:
$* – 12,500,000 Subordinate Voting Shares
Price: $* per subordinate voting share
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
CREDIT SUISSE SECURITIES (CANADA), INC.
GOLDMAN SACHS CANADA INC.
RBC DOMINION SECURITIES INC.
Promoter(s):
-
Project #2639872

Issuer Name:
Duckworth Capital Corp.
Principal Regulator – Nova Scotia
Type and Date:
Preliminary CPC Prospectus dated June 13, 2017
NP 11-202 Preliminary Receipt dated June 15, 2017
Offering Price and Description:
$400,000.00 – 4,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
HAYWOOD SECURITIES INC.
Promoter(s):
Wade Dawe
Project #2640187

Issuer Name:
Firm Capital Mortgage Investment Corporation
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 13, 2017
NP 11-202 Preliminary Receipt dated June 13, 2017
Offering Price and Description:
$26,500,000.00 – 5.30% Convertible Unsecured Subordinated Debentures due August 31, 2024
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
CANACCORD GENUITY CORP.
NATIONAL BANK FINANCIAL INC.
RBC DOMINION SECURITIES INC.
DESJARDINS SECURITIES INC.
GMP SECURITIES L.P.
INDUSTRIAL ALLIANCE SECURITIES INC.
ECHELON WEALTH PARTNERS INC.
Promoter(s):
-
Project #2638319

Issuer Name:
Jamieson Wellness Inc.
Principal Regulator – Ontario
Type and Date:
Amended and Restated to Preliminary Long Form Prospectus dated June 13, 2017
NP 11-202 Preliminary Receipt dated June 13, 2017
Offering Price and Description:
$300,000,000.00 – * Common Shares
Price: $* per Common Share
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
CORMARK SECURITIES INC.
Promoter(s):
-
Project #2631555

Issuer Name:
Legion Metals Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated June 15, 2017
NP 11-202 Preliminary Receipt dated June 16, 2017
Offering Price and Description:
5,000,000 Common Shares for $500,000.00 (Maximum Offering)
3,000,000 Common Shares for $300,000.00 (Minimum Offering)
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Echelon Wealth Partners Inc.
Promoter(s):
Peter Smith
Project #2640724

Issuer Name:
MGX Minerals Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Prospectus dated June 13, 2017
NP 11-202 Preliminary Receipt dated June 16, 2017
Offering Price and Description:
6,253,842 Common Shares and 6,253,842 Warrants issuable upon exercise of 6,253,842 outstanding Special Warrants
Price: $0.90 per Special Warrant
Underwriter(s) or Distributor(s):
MACKIE RESEARCH CAPITAL CORPORATION
Promoter(s):
-
Project #2640933

Issuer Name:
Mundo Inc.
Principal Regulator – Ontario
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated June 16, 2017
NP 11-202 Preliminary Receipt dated June 16, 2017
Offering Price and Description:
C$* – * Common Shares
Price: C$ * per Common Share
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
CORMARK SECURITIES INC.
BMO NESBITT BURNS, INC.
RAYMOND JAMES LTD.
BEACON SECURITIES LIMITED
HAYWOOD SECURITIES INC.
PARADIGM CAPITAL INC.
Promoter(s):
Jason Theofilos
Project #2637162

Issuer Name:
Nemaska Lithium Inc.
Principal Regulator – Quebec
Type and Date:
Preliminary Short Form Prospectus dated June 16, 2017
NP 11-202 Preliminary Receipt dated June 16, 2017
Offering Price and Description:
$50,001,000.00 – 47,620,000 Common Shares
Price: $1.05 per Common Share
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
ECHELON WEALTH PARTNERS INC.
CORMARK SECURITIES INC.
EIGHT CAPITAL
CIBC WORLD MARKETS INC.
CANACCORD GENUITY CORP.
INDUSTRIAL ALLIANCE SECURITIES INC.
LAURENTIAN BANK SECURITIES INC.
Promoter(s):
-
Project #2639460

Issuer Name:
New Jersey Mining Company
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated June 13, 2017
NP 11-202 Preliminary Receipt dated June 14, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
John Swallow
Project #2639739

Issuer Name:
Northern Empire Resources Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Prospectus dated June 14, 2017
NP 11-202 Preliminary Receipt dated June 15, 2017
Offering Price and Description:
26,076,698 Common Shares issuable upon the conversion of 78,230,095 issued and outstanding Subscription Receipts
and 6,925,200 Note Units issuable upon the conversion of $5,193,900.00 of principal amount of Notes
Price: $0.75 per Subscription Receipt
Underwriter(s) or Distributor(s):
CORMARK SECURITIES INC.
GMP SECURITIES L.P.
HAYWOOD SECURITIES INC.
PI FINANCIAL CORPORATION
Promoter(s):
-
Project #2640485

Issuer Name:
Park Lawn Corporation
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 13, 2017
NP 11-202 Preliminary Receipt dated June 13, 2017
Offering Price and Description:
$70,015,000.00 – 3,685,000 Common Shares
Price: $19.00 per Common Share
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
CLARUS SECURITIES INC.
CORMARK SECURITIES INC.
ACUMEN CAPITAL FINANCE PARTNERS LIMITED
TD SECURITIES INC.
PARADIGM CAPITAL INC.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #2638273

Issuer Name:
Sherpa Holdings Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary CPC Prospectus dated June 15, 2017
NP 11-202 Preliminary Receipt dated June 15, 2017
Offering Price and Description:
$250,000.00 or 2,500,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
PI FINANCIAL CORP.
Promoter(s):
-
Project #2640722

Issuer Name:
TransCanada Corporation
Principal Regulator – Alberta
Type and Date:
Preliminary Shelf Prospectus dated June 13, 2017
NP 11-202 Preliminary Receipt dated June 13, 2017
Offering Price and Description:
$1,000,000,000.00 – * Common Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2639738

Issuer Name:
Urbanimmersive Inc.
Principal Regulator – Quebec
Type and Date:
Preliminary Shelf Prospectus dated June 15, 2017
NP 11-202 Preliminary Receipt dated June 16, 2017
Offering Price and Description:
$2,500,000.00
Common Shares
Subscription Receipts
Debt Securities
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2640491

Issuer Name:
Algoma Central Corporation
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated June 14, 2017
NP 11-202 Receipt dated June 14, 2017
Offering Price and Description:
$75,000,000.00 – 5.25% Convertible Unsecured Subordinated Debentures at a price of $1,000 per Debenture
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
GMP SECURITIES L.P.
CORMARK SECURITIES INC.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #2636796

Issuer Name:
Antibe Therapeutics Inc.
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated June 15, 2017
NP 11-202 Receipt dated June 15, 2017
Offering Price and Description:
Minimum Offering: $3,000,000.00 (30,000,000 Units)
Maximum Offering: $5,000,000.00 (50,000,000 Units)
$0.10 per Unit
Underwriter(s) or Distributor(s):
BLOOM BURTON SECURITIES INC.
DOMINICK INC.
ECHELON WEALTH PARTNERS INC.
Promoter(s):
-
Project #2630197

Issuer Name:
Bluestone Resources Inc.
Principal Regulator – British Columbia
Type and Date:
Final Short Form Prospectus dated June 15, 2017
NP 11-202 Receipt dated June 15, 2017
Offering Price and Description:
53,333,333 COMMON SHARES
(ISSUABLE UPON THE AUTOMATIC EXERCISE OF 53,333,333 ISSUED AND OUTSTANDING SUBSCRIPTION RECEIPTS)
and
2,552,716 UNITS
(EACH UNIT CONSISTING OF ONE NOTE SHARE AND ONE HALF OF ONE NOTE WARRANT
ISSUABLE UPON THE AUTOMATIC CONVERSION OF OUTSTANDING UNSECURED CONVERTIBLE NOTES IN THE AGGREGATE PRINCIPAL AMOUNT OF $3,829,075)
Underwriter(s) or Distributor(s):
CORMARK SECURITIES INC.
GMP SECURITIES L.P.
NATIONAL BANK FINANCIAL INC
HAYWOOD SECURITIES INC. .
Promoter(s):
-
Project #2637690

Issuer Name:
Cardinal Energy Ltd.
Principal Regulator – Alberta
Type and Date:
Final Short Form Prospectus dated June 14, 2017
NP 11-202 Receipt dated June 15, 2017
Offering Price and Description:
$170,005,000.00 – 30,910,000 Subscription Receipts each representing the right to receive one Common Share at a price of $5.50 per Subscription Receipt
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
GMP SECURITIES L.P.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
CORMARK SECURITIES INC.
PETERS & CO. LIMITED
TD SECURITIES INC.
Promoter(s):
-
Project #2636937

Issuer Name:
Cobalt 27 Capital Corp.
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated June 16, 2017
NP 11-202 Receipt dated June 19, 2017
Offering Price and Description:
$200,000,025.00 – 10,924,420 Shares for Cash at $9.00 per Share
and
11,297,805 Shares for the Acquisition of Cobalt at $9.00 per Share
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
CANACCORD GENUITY CORP.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
GMP SECURITIES L.P.
HAYWOOD SECURITIES INC.
CORMARK SECURITIES INC.
EIGHT CAPITAL
PI FINANCIAL CORP.
SPROTT PRIVATE WEALTH INC.
Promoter(s):
Anthony Milewski
Project #2613936

Issuer Name:
Colson Capital Corp.
Principal Regulator – Alberta
Type and Date:
Final CPC Prospectus dated June 12, 2017
NP 11-202 Receipt dated June 14, 2017
Offering Price and Description:
MINIMUM OFFERING: $300,000.00 (3,000,000 COMMON SHARES)
MAXIMUM OFFERING: $600,000.00 (6,000,000 COMMON SHARES)
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Industrial Alliance Securities Inc.
Promoter(s):
Murray Moore
Project #2619473

Issuer Name:
Crius Energy Trust
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated June 13, 2017
NP 11-202 Receipt dated June 13, 2017
Offering Price and Description:
C$110,000,100.00 – 11,224,500 Subscription Receipts each representing the right to receive one Unit
C$9.80 per Subscription Receipt
Underwriter(s) or Distributor(s):
DESJARDINS SECURITIES INC.
RBC DOMINION SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
CORMARK SECURITIES INC.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #2634792

Issuer Name:
Dream Global Real Estate Investment Trust
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated June 15, 2017
NP 11-202 Receipt dated June 16, 2017
Offering Price and Description:
$1,000,000,000.00 – Units, Subscription Receipts, Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2636486

Issuer Name:
Gibson Energy Inc.
Principal Regulator – Alberta
Type and Date:
Final Shelf Prospectus dated June 16, 2017
NP 11-202 Receipt dated June 16, 2017
Offering Price and Description:
$1,500,000,000.00 – Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2638651

Issuer Name:
Immunovaccine Inc.
Principal Regulator – Nova Scotia
Type and Date:
Final Short Form Prospectus dated June 15, 2017
NP 11-202 Receipt dated June 16, 2017
Offering Price and Description:
$10,000,000 – 7,692,308 Common Shares.
Price: $1.30 per Offered Share
Underwriter(s) or Distributor(s):
ECHELON WEALTH PARTNERS INC.
NATIONAL BANK FINANCIAL INC.
MACKIE RESEARCH CAPITAL CORPORATION
Promoter(s):
-
Project #2637829

Issuer Name:
North American Palladium Ltd.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated June 16, 2017
NP 11-202 Receipt dated June 16, 2017
Offering Price and Description:
$75,000,000.00 – COMMON SHARES, DEBT SECURITIES, SUBSCRIPTION RECEIPTS, WARRANTS, SHARE PURCHASE CONTRACTS, UNITS
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2638161

Issuer Name:
Starlight U.S. Multi-Family (No. 1) Value-Add Fund
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated June 12, 2017
NP 11-202 Receipt dated June 13, 2017
Offering Price and Description:
Maximum: US$112,000,000.00 of
Class A Units and/or Class U Units and/or Class D Units and/or
Class E Units and/or Class F Units and/or Class H Units and/or Class C Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
National Bank Financial Inc.
Raymond James Ltd.
TD Securities Inc.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Industrial Alliance Securities Inc.
Promoter(s):
Starlight Group Property Holdings Inc.
Project #2620921

Issuer Name:
TECSYS Inc.
Principal Regulator – Quebec
Type and Date:
Final Short Form Prospectus dated June 19, 2017
NP 11-202 Receipt dated June 19, 2017
Offering Price and Description:
$15,000,000.00 – 1,000,000 Common Shares
Price: $15.00 per Common Share
Underwriter(s) or Distributor(s):
CORMARK SECURITIES INC.
BEACON SECURITIES LIMITED
LAURENTIAN BANK SECURITIES INC.
Promoter(s):
-
Project #2637583

Issuer Name:
Value Capital Trust
Principal Regulator – Alberta
Type and Date:
Final CPC Prospectus dated June 15, 2017
NP 11-202 Receipt dated June 16, 2017
Offering Price and Description:
$500,000.00 – 5,000,000 Trust Units
Price: $0.10 per Trust Unit
Underwriter(s) or Distributor(s):
Echelon Wealth Partners Inc.
Promoter(s):
Nathan Smith
Project #2626737

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Heward Investment Management Inc.	From: Investment Fund Manager, Exempt Market Dealer and Portfolio Manager To: Portfolio Manager	June 14, 2017

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Canadian Securities Exchange – Amendments to Trading System Functionality & Features – Oddlot Trading – Notice of Approval

Notice 2017-011
June 14, 2017

CANADIAN SECURITIES EXCHANGE

NOTICE OF APPROVAL

AMENDMENTS TO TRADING SYSTEM FUNCTIONALITY & FEATURES – ODDLOT TRADING

INTRODUCTION

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 (the "Protocol"), CNSX Markets Inc. (“CSE”) has adopted, and the Ontario Securities Commission (OSC) has approved, significant changes to the Trading System functionality related to oddlot trading.

On May 12th, 2017, CNSX Markets Inc. (“CSE”) published Notice 2017-009 – *Amendments to Trading System Functionality & Features and Request for Comment – Oddlot Trading*. The period for public comment expired on June 12, 2017. No public comment letters were received.

DESCRIPTION OF THE AMENDMENTS

For securities with a designated market maker (MM), tradeable oddlot orders currently execute automatically against the market maker’s account at the National Best Bid or Offer (NBBO, comprised of protected market quotes). Oddlot orders on securities without a MM will seek out oddlot orders in the book, matching on an “any part” basis (as opposed to the “all-or-none” matching on other marketplaces).

Rather than individual price protection (i.e. “50 tick limit”) on oddlot orders, the trading engine will restrict oddlot trades at or in between the NBBO. Oddlot orders will trade or book at or between the NBBO, with better limit orders being repriced to the opposite side. When one or both sides of the NBBO are absent, a Single Oddlot Price (“SOP”) will be calculated, and oddlot orders will trade or book at that single price.

The full text of the amendments is available in Notice 2017-009:

http://thecse.com/en/about/publications/notices/notice-2017-009-amendments-to-trading-system-functionality-features-and

IMPLEMENTATION

The functionality will be introduced to the GTE on July 14, 2017.

Implementation date in the Trading System will be September 14, 2017.

Questions about this notice may be directed to:

Mark Faulkner, Vice President Listings & Regulation,
Mark.Faulkner@thecse.com, or 416-367-7341

13.2.2 Canadian Securities Exchange – Amendments to Trading System Functionality & Features – On-Stop Orders – Notice of Approval

Notice 2017-012
June 14, 2017

CANADIAN SECURITIES EXCHANGE

NOTICE OF APPROVAL

AMENDMENTS TO TRADING SYSTEM FUNCTIONALITY & FEATURES – ON-STOP ORDERS

INTRODUCTION

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 (the "Protocol"), CNSX Markets Inc. (“CSE”) has adopted, and the Ontario Securities Commission (OSC) has approved, significant changes to the Trading System functionality related to order types.

On May 12th, 2017, CNSX Markets Inc. (“CSE”) published Notice 2017-010 – *Amendments to Trading System Functionality & Features and Request for Comment – On-Stop Orders*. The period for public comment expired on June 12, 2017. No public comment letters were received.

DESCRIPTION OF THE AMENDMENTS

On-Stop orders are limit or market orders that are inactive and undisplayed until the market price (National Last Sale Price) hits or passes through a specified trigger price. The orders may be entered with a fixed trigger price, or a trailing price, offset from the last sale price.

On-Stops are an existing order type previously available on the CSE and currently in use on other marketplaces.

The full text of the amendments is available in Notice 2017-010:

http://thecse.com/en/about/publications/notices/notice-2017-010-amendments-to-trading-system-functionality-features-and

IMPLEMENTATION

The functionality will be introduced to the GTE on July 14, 2017.

Implementation date in the Trading System will be September 14, 2017.

Questions about this notice may be directed to:

Mark Faulkner, Vice President Listings & Regulation,
Mark.Faulkner@thecse.com, or 416-367-7341

Chapter 25

Other Information

25.1 Approvals

25.1.1 RBC Global Asset Management Inc. – s. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be established and managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

April 18, 2017

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, Ontario
M5H 4E3

Attention: Lynn McGrade / Sienne Lam

Dear Sirs/Mesdames:

Re: RBC Global Asset Management Inc. (the Applicant)

Application under clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario) for approval to act as trustee

Application No. 2017/0075

Further to your application dated February 10, 2017 (the **Application**) filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that the assets of Phillips, Hager & North Custom Universe Provincial Spread Overlay Fund, and any other current or future mutual fund trusts that the Applicant has established and manages, or may establish and manage, from time to time, the securities of which are or will be offered pursuant to prospectus exemptions, are or will be held in the custody of a trust company incorporated and licensed or registered under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II or III of the *Bank Act* (Canada) or a qualified affiliate of such bank or trust company, the Ontario Securities Commission (the **Commission**) makes the following order:

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of Phillips, Hager & North Custom Universe Provincial Spread Overlay Fund and any other mutual fund trusts that are or may be established and managed by the Applicant from time to time, the securities of which are or will be offered pursuant to prospectus exemptions.

Yours truly,

"Janet Leiper"
Commissioner

"Garnet Fenn"
Commissioner

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