The Ontario Securities Commission

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

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Table of Contents

Chapter 1 Notices / News Releases **953**
1.1 Notices **953**
1.1.1 CSA Staff Notice 23-321 Order Protection Rule: Market Share Threshold for the period April 1, 2018 to March 31, 2019 953
1.2 Notices of Hearing .... **(nil)**
1.3 Notices of Hearing with Related Statements of Allegations **956**
1.3.1 National Bank Financial Inc. et al. – ss. 127, 127.1 956
1.4 News Releases .... **(nil)**
1.5 Notices from the Office of the Secretary **962**
1.5.1 Quadrexx Hedge Capital Management Ltd. et al. 962
1.5.2 National Bank Financial Inc. et al. 962
1.5.3 Omega Securities Inc. 963
1.5.4 National Bank Financial Inc. et al. 963
1.5.5 Dennis L. Meharchand and Valt.X Holdings Inc. 964
1.5.6 National Bank Financial Inc. et al. 964
1.5.7 Donald Mason 965
1.6 Notices from the Office of the Secretary with Related Statements of Allegations .... **(nil)**

Chapter 2 Decisions, Orders and Rulings **967**
2.1 Decisions **967**
2.1.1 Sphere Investment Management Inc. et al. 967
2.1.2 Marret Asset Management Inc. et al. 975
2.1.3 AltaGas Ltd. 979
2.1.4 Ithaca Energy Inc. 981
2.1.5 The Toronto-Dominion Bank and TD Bank, N.A. 984
2.2 Orders **987**
2.2.1 Quadrexx Hedge Capital Management Ltd. et al. – ss. 127, 127.1 987
2.2.2 AuRico Metals Inc. – s. 1(6) of the OBCA 988
2.2.3 Kirkland Lake Gold Inc. 989
2.2.4 Paladin Energy Ltd 990
2.2.5 ClareGold Trust 993
2.2.6 EA Education Group Inc. 994
2.2.7 Omega Securities Inc. – s. 127(7) 996
2.2.8 Dennis L. Meharchand and Valt.X Holdings Inc. – s. 127(1) 996
2.2.9 Donald Mason – s. 8 997
2.2.10 Deer Horn Capital Inc. 997
2.2.11 TMX Group Limited et al. – s. 147 998
2.3 Orders with Related Settlement Agreements **1000**
2.3.1 National Bank Financial Inc. et al. – ss. 127, 127.1 1000
2.4 Rulings **1009**
2.4.1 BGC Financial LP et al. – s. 38 of the CFA and s. 6.1 of OSC Rule 91-502 Trades in Recognized Options 1009

Chapter 3 Reasons: Decisions, Orders and Rulings **1023**
3.1 OSC Decisions **1023**
3.1.1 Quadrexx Hedge Capital Management Ltd. et al. – ss. 127, 127.1 1023
3.1.2 National Bank Financial Inc. et al. – ss. 127, 127.1 1039
3.2 Director's Decisions .... **(nil)**
3.3 Court Decisions .... **(nil)**

Chapter 4 Cease Trading Orders **1041**
4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders 1041
4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders 1041
4.2.2 Outstanding Management & Insider Cease Trading Orders 1041

Chapter 5 Rules and Policies .... **(nil)**

Chapter 6 Request for Comments .... **(nil)**

Chapter 7 Insider Reporting **1043**

Chapter 9 Legislation .... **(nil)**

Chapter 11 IPOs, New Issues and Secondary Financings **1115**

Chapter 12 Registrations **1123**
12.1.1 Registrants 1123

Chapter 13 SROs, Marketplaces, Clearing Agencies and Trade Repositories **1125**
13.1 SROs .... **(nil)**
13.2 Marketplaces **1125**
13.2.1 TSX – Housekeeping Amendments to TSX Form 11 Notice of Private Placement – Notice of Housekeeping Rule Amendments to the TSX Company Manual 1125
13.2.2 Canadian Securities Exchange – Notice of Withdrawal of Proposed Amendments to Trading Rules 1126
13.3 Clearing Agencies .... **(nil)**
13.4 Trade Repositories .... **(nil)**

Chapter 25 Other Information .... **(nil)**

Index **1127**

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 CSA Staff Notice 23-321 Order Protection Rule: Market Share Threshold for the period April 1, 2018 to March 31, 2019

Canadian Securities Administrators   Autorités canadiennes en valeurs mobilières

CSA Staff Notice 23-321
Order Protection Rule: Market Share Threshold for the period April 1, 2018 to March 31, 2019

January 25, 2018

Introduction

On June 20, 2016, the Canadian Securities Administrators (the **CSA** or **we**) published a notice[1] (the **2016 Notice**) regarding the implementation of the market share threshold. This notice updates the list of protected and unprotected marketplaces published on January 30, 2017. The updated list will be in effect from April 1, 2018 to March 31, 2019. We note that there is no change from last year.

The text of this notice is available on the websites of the CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.nssc.novascotia.ca
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

Purpose

The purpose of this notice is to provide the list of marketplaces that display protected orders (**protected marketplaces**) and marketplaces whose orders will not be protected (**unprotected marketplaces**) for the purposes of National Instrument 23-101 *Trading Rules* (**NI 23-101**) and the order protection rule (**OPR**) for the period April 1, 2018 to March 31, 2019 because they do not:

(i) provide automated trading functionality as they have an intentional order processing delay, and/or

(ii) meet the market share threshold.

The market share threshold has been set at 2.5%.[2]

OPR Requirements

Section 6.1 of NI 23-101 requires marketplaces to establish, maintain and ensure compliance with policies and procedures that are reasonably designed to prevent trade-throughs of better priced protected bids and offers. Section 6.4 of NI 23-101 imposes the same requirement on marketplace participants that assume responsibility for compliance with OPR by entering directed-action orders.

---

[1] CSA Staff Notice 23-316 Order Protection Rule: Implementation of the Market Share Threshold and Amendments to Companion Policy 23-101 *Trading Rules*.

[2] CSA Staff Notice 23-316 includes a description of the calculation of the market share threshold.

Section 1.1 of NI 23-101 defines protected bids and offers as bids and offers displayed on a marketplace offering automated trading functionality, and about which information is provided to an information processor.

Section 1.1.2.1 of Companion Policy 23-101 *Trading Rules* outlines the circumstances in which a marketplace that introduced an intentional order processing delay would not be considered to be providing automated trading functionality. In those circumstances, the orders on that marketplace would not be protected.

Orders on “dark” marketplaces are not protected as they are not displayed. Therefore, orders on ICX, LiquidNet, MatchNow and Nasdaq CXD are unprotected for the purposes of OPR.[3]

List of Protected and Unprotected Marketplaces

Below we have listed the protected and unprotected marketplaces.

The orders displayed on the marketplaces listed in Table 1 below are protected because either the marketplace meets the market share threshold and/or the orders are for securities that are listed by and traded on that marketplace:

Table 1 – Marketplaces that Display Protected Orders

Marketplace	Market Share	Status	Reason Protected
CSE	6.11	Protected	Meets market share threshold
Nasdaq CXC	12.46	Protected	Meets market share threshold
Nasdaq CX2	5.16	Protected	Meets market share threshold
OMEGA	5.26	Protected	Meets market share threshold
TSX	46.23	Protected	Meets market share threshold
TSX VENTURE	13.12	Protected	Meets market share threshold
AEQUITAS Lit Book	2.00	Protected for Aequitas-listed securities only	Exchange protected for its listed securities

Orders displayed on the marketplaces listed on Table 2 below will be unprotected because either the marketplace does not provide automated trading functionality, does not meet the market share threshold or does not display orders:

Table 2 – Marketplaces whose Orders Are Unprotected

Marketplace	Market Share	Status	Reason Unprotected
AEQUITAS Neo Book	2.21	Unprotected	Does not provide automated trading functionality
ALPHA	7.16	Unprotected	Does not provide automated trading functionality
AEQUITAS Lit Book	2.00	Unprotected for securities other than Aequitas-listed securities	Does not meet market share threshold
LYNX	0.28	Unprotected	Does not meet market share threshold
ICX		Unprotected	Does not display orders
LIQUIDNET		Unprotected	Does not display orders
MATCHNOW		Unprotected	Does not display orders
Nasdaq CXD		Unprotected	Does not display orders

[3] Orders on the Aequitas Dark book will also be unprotected after this book is launched.

QUESTIONS

Please refer your questions to any of the following:

Alina Bazavan Senior Analyst, Market Regulation Ontario Securities Commission abazavan@osc.gov.on.ca	Timothy Baikie Senior Legal Counsel, Market Regulation Ontario Securities Commission tbaikie@osc.gov.on.ca
Roland Geiling Derivatives Product Analyst Direction des bourses et des OAR Autorité des marchés financiers Roland.Geiling@lautorite.qc.ca	Sasha Cekerevac Regulatory Analyst, Market Regulation Alberta Securities Commission sasha.cekerevac@asc.ca
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1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 National Bank Financial Inc. et al. – ss. 127, 127.1

FILE NO.: 2017-82

IN THE MATTER OF
NATIONAL BANK FINANCIAL INC.
(in respect of its predecessors
NATIONAL BANK FINANCIAL LTD. and
NBCN INC.)

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

PROCEEDING TYPE: Public Settlement Hearing

HEARING DATE AND TIME: Friday, January 26, 2018 at 2:30 p.m.

LOCATION: 20 Queen Street West, 17th Floor, Toronto, Ontario

PURPOSE

The purpose of this hearing is to consider whether it is in the public interest for the Commission to approve the Settlement Agreement dated January 23, 2018 between Staff of the Commission and National Bank Financial Inc. in respect of the Statement of Allegations filed by Staff of the Commission dated January 24, 2018.

REPRESENTATION

Any party to the proceeding may be represented by a representative at the hearing.

FAILURE TO ATTEND

IF A PARTY DOES NOT ATTEND, THE HEARING MAY PROCEED IN THE PARTY'S ABSENCE AND THE PARTY WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THE PROCEEDING.

FRENCH HEARING

This Notice of Hearing is also available in French on request of a party. Participation may be in either French or English. Participants must notify the Secretary's Office in writing as soon as possible if the participant is requesting a proceeding be conducted wholly or partly in French.

AVIS EN FRANÇAIS

L'avis d'audience est disponible en français sur demande d'une partie, 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 plut tôt si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

Dated at Toronto this 24th day of January, 2018

"Grace Knakowski"
Secretary to the Commission

For more information

Please visit www.osc.gov.on.ca or contact the Registrar at registrar@osc.gov.on.ca.

IN THE MATTER OF
NATIONAL BANK FINANCIAL INC.
(IN RESPECT OF ITS PREDECESSORS
NATIONAL BANK FINANCIAL LTD. and
NBCN INC.)

STATEMENT OF ALLEGATIONS
(Subsections 127(1) and (2) and Section 127.1 of the
Securities Act, RSO 1990, c S.5)

A. ORDER SOUGHT:

Staff of the Enforcement Branch of the Ontario Securities Commission ("**Enforcement Staff**") request that the Commission make an order pursuant to subsections 127(1) and (2) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5 (the "**Act**") to approve the settlement agreement dated January 23, 2018 between Commission Staff and National Bank Financial Inc. ("**NBF**").

B. FACTS:

Enforcement Staff make the following allegations of fact:

a. Overview

1. Disclosure is a cornerstone principle of securities regulation. Investors are entitled to receive appropriate product disclosure outlining the potential benefits, risks and costs of investing in an exchange traded fund ("**ETF**"). This disclosure must be provided in an accessible and timely manner so that investors can make an informed purchase decision.

2. The Ontario NB Dealers acted contrary to the public interest and contrary to their obligations as registered firms by failing to take the necessary steps to provide for timely delivery of summary disclosure documents to investors who purchased ETF securities in accordance with the terms of the applicable exemptive relief decisions (the "**Delivery Issues**"). The Delivery Issues were caused by inadequacies in the Ontario NB Dealers' systems of controls and supervision which formed part of their compliance system.

3. The Delivery Issues affected a total of 128,199 ETF purchase transactions involving 44,857 client accounts from February 5, 2015 until September 26, 2016. Of those ETF purchases, 50,972 transactions were conducted by the Ontario NB Dealers and the remaining 77,227 transactions were conducted by NBF's predecessors, National Bank Financial Inc. and National Bank Direct Brokerage Inc. (collectively, the "**Québec NB Dealers**").

4. The Autorité des marchés financiers (the "**AMF**") acted as principal regulator for the Québec NB Dealers. The AMF is commencing a parallel proceeding against NBF in respect of the Québec NB Dealers. It is anticipated that NBF will concurrently agree with Staff of the AMF to recommend settlement of an AMF enforcement proceeding on the basis of substantially the same facts, conclusion and terms as are set out in the settlement agreement.

b. The Parties

5. NBF is a corporation formed on November 1, 2017 by the amalgamation of the Ontario NB Dealers and the Québec NB Dealers pursuant to the laws of Canada, with its head office in Montreal, Québec. It is registered with the Commission as a futures commission merchant and investment dealer.

6. National Bank Financial Ltd. ("**NBF Ltd.**") was, during the material time, a corporation incorporated pursuant to the laws of Ontario, with its head office in Toronto, Ontario. It was registered with the Commission as a futures commission merchant and investment dealer. The Commission acted as its principal regulator.

7. NBCN Inc. ("**NBCN**") was, during the material time, a corporation incorporated pursuant to the laws of Ontario, with its head office in Toronto, Ontario. It was registered with the Commission as an investment dealer, and it was registered with the AMF as an investment dealer and derivatives dealer. The Commission acted as its principal regulator.

8. National Bank Financial Inc. ("**NBF Inc.**") was, during the material time, a corporation incorporated pursuant to the laws of Québec, with its head office in Montréal, Québec. It was registered with the AMF as a derivatives dealer, investment dealer and in financial planning. It was registered with the Commission as a futures commission merchant and investment dealer. The AMF acted as its principal regulator.

9. National Bank Direct Brokerage Inc. ("**NBDB**") was, during the material time, a corporation incorporated pursuant to the laws of Québec, with its head office in Montréal, Québec. It was registered with the AMF as a derivatives dealer and investment dealer. The AMF acted as its principal regulator.

10. The Ontario NB Dealers and the Québec NB Dealers (collectively, the "**NB Dealers**") acted as designated brokers and/or authorized dealers for ETFs during the material time.

c. Exemptive Relief Decisions

11. In order to deal with prospectus delivery issues arising from the distribution model used in connection with ETF securities, the Commission and the AMF granted the NB Dealers and most other dealers that act as designated brokers and/or authorized dealers for ETFs (collectively, the "**ETF Dealers**") exemptive relief from the prospectus delivery requirement under section 71 of the Act and section 29 of the Québec *Securities Act*, CQLR c. V-1.1. This exemptive relief was initially granted by way of decisions of the Commission and the AMF issued on July 19, 2013. These decisions were subject to a sunset clause and were replaced by decisions issued on August 24, 2015, under which the same exemptive relief was granted subject to very similar conditions (collectively, the "**Decisions**").

12. The Decisions were granted on the basis of representations made by the ETF Dealers, including the NB Dealers, that it was not practicable to know whether any particular purchase of ETF securities would constitute a trade in newly issued securities of an ETF (generally called "creation units") which would trigger a prospectus delivery requirement. In response to these representations, the Decisions created an alternative disclosure delivery system for the ETF industry by introducing a new summary disclosure document for ETFs (the "**Summary Document**"), and by shifting the delivery obligation to dealers acting as agent of the purchaser in an ETF transaction. The ETF Dealers were heavily involved with the creation of this regime, with the aim of ensuring that compliance with the terms and conditions of the Decisions would be practicable.

13. Pursuant to the Decisions, the ETF Dealers accepted certain conditions, including:

    (a) undertaking to deliver or send the latest Summary Document filed in respect of an ETF security by not later than midnight on the second day after the purchase of the ETF security, excluding weekends and holidays, unless the ETF Dealer had previously done so. This delivery obligation applied to each purchaser of an ETF security who was a customer and to whom a trade confirmation was required to be sent or delivered by the ETF Dealer in connection with the purchase;

    (b) having in place written policies and procedures to ensure compliance with the Decisions; and

    (c) filing a certificate on an annual basis whereby an ultimate designated person at the respective ETF Dealer would certify, to the best of the person's knowledge after making due enquiry, compliance with the terms and conditions of the applicable Decision (the "**Certification**").

14. The disclosure framework contemplated by the Decisions was codified by way of amendments to National Instrument 41-101 *General Prospectus Requirements* on December 8, 2016. As a result of these amendments, effective December 10, 2018, all dealers who act as agent of a purchaser of an ETF security will be required to deliver a Summary Document to the purchaser.

d. Delivery of Summary Documents by the NB Dealers

15. During the material time, the NB Dealers used a common back office called the Mutual Fund Dealer Operations group (the "**MFDO**") to administer delivery of the Summary Documents to purchasers of ETF securities in accordance with the Decisions. The delivery of the Summary Documents was outsourced by the NB Dealers to a third party service provider (the "**Service Provider**"). The MFDO sent instructions to the Service Provider relating to the delivery of Summary Documents (the "**Delivery Instructions**").

16. In September 2013, the NB Dealers began delivering Summary Documents to purchasers of ETF securities in accordance with the Decisions. Beginning at that time, the Delivery Instructions the MFDO provided to the Service Provider resulted in the initiation of delivery of Summary Documents to every first time purchaser of an ETF security, regardless of whether or not delivery was required by the Decisions on the basis that a trade confirmation was required to be delivered to the purchaser.

17. In late 2014, the over-delivery of Summary Documents was raised as an issue through client inquiries to the MFDO. As a result, the MFDO initiated a technical change request with the Service Provider to provide for suppression of delivery of Summary Documents where trade confirmations were not required to be delivered to the purchaser. The revised

Delivery Instructions were intended to suppress the delivery of Summary Documents that were not required under the terms of the Decisions, and to direct the delivery of only those Summary Documents required by the Decisions.

18. This change request was tested to ensure that the Service Provider was capable of properly interpreting the revised Delivery Instructions from the MFDO. The revised Delivery Instructions became operational on February 5, 2015.

e. Initial Delivery Issue

19. Although the goal of the revised Delivery Instructions was to suppress the delivery of Summary Documents for certain trades where delivery was not required, it resulted in delivery of Summary Documents being suppressed for all trades. A Summary Document was not sent or delivered as required to any customer of the NB Dealers who purchased an ETF security and received a trade confirmation in respect of that purchase from February 5, 2015 until the matter was remedied on December 22, 2015. As a result, no Summary Document was delivered as required for 120,882 ETF purchases by 41,444 separate customer accounts (the "**Initial Delivery Issue**"). Of these transactions, 49,954 purchases were made by 17,254 customer accounts of the Ontario NB Dealers.

20. The MFDO first became aware of the Initial Delivery Issue in mid-April 2015 when the Service Provider's monthly invoice showed no charge for the delivery of Summary Documents. The MFDO treated the matter as a billing issue at the outset and not as an operational issue affecting delivery of the Summary Documents, or as a regulatory compliance issue. Given its perception of the nature of the issue, the MFDO did not prioritize investigation of this Initial Delivery Issue and the situation continued over the following months.

21. In July 2015, the NB Dealers received validation from personnel at the MFDO that the controls in place for Summary Documents were running well. However, the NB Dealers were subsequently unable to locate any records in support of that validation.

22. In mid-October 2015, a personnel restructuring occurred at the MFDO and a new MFDO Interim Senior Manager was appointed. In late October, the MFDO Interim Senior Manager became aware of the Initial Delivery Issue regarding the Service Provider's invoices and initiated an investigation into the matter.

23. Senior management of the NB Dealers were apprised of the delivery problem in the second week of November 2015. The problem was investigated and a technology fix was pursued. Following internal and external testing with the Service Provider, a technology fix was implemented on December 22, 2015.

24. The NB Dealers recommenced delivery of Summary Documents to ETF purchasers on December 22, 2015. In order to remedy the Initial Delivery Issue, the NB Dealers began to identify the ETF purchasers who should have received a Summary Document. Work on remediation was undertaken with the Service Provider between December 22 and December 30, 2015. The NB Dealers provided all data files required to effect remediation to the Service Provider by December 30, 2015. The Service Provider completed all of the required remedial mailings to the affected ETF purchasers on or before January 6, 2016. Customers who received the remedial mailing were advised of the Initial Delivery Issue and were provided with a copy of the applicable Summary Document.

25. The NB Dealers first advised Staff of the Commission and the AMF of the Initial Delivery Issue on January 29, 2016, when they delivered their Certifications for 2015 as required by the Decisions. The Certifications delivered to the Commission stated that the Ontario NB Dealers "had complied with the terms and conditions of the Decisions, as applicable, during the calendar year ended December 31, 2015, except for the matters described in Appendix A attached hereto." The appendices attached to the Certifications disclosed that the Ontario NB Dealers had failed to deliver Summary Documents on a timely basis to all clients purchasing ETF securities to whom trade confirmations were required to be provided between February 5, 2015 and December 22, 2015 and who had not previously received the latest Summary Document for the purchased ETF security.

f. Subsequent Delivery Issue

26. During the course of Staff's investigation into the Initial Delivery Issue, the NB Dealers disclosed on January 13, 2017 that Summary Documents were not delivered on a timely basis for an additional 7,317 ETF purchases by 3,413 separate customer accounts between February 5, 2015 and September 26, 2016 (the "**Subsequent Delivery Issue**"). Of these transactions, 1,018 purchases were made by 552 customer accounts of the Ontario NB Dealers.

27. As a result of the Initial Delivery Issue, the NB Dealers initiated a general review of the Summary Document delivery process and a related risk control assessment, with the aim of continuing to monitor and improve the process for delivery of Summary Documents. In September 2016, the NB Dealers identified two further issues with the Summary Document delivery process:

(a) five ETF securities were inadvertently missing from the master list used to identify relevant ETF securities for the Summary Document delivery process, which resulted in 494 of the 7,317 instances of Summary Documents not being sent or delivered as required; and

(b) 35 other ETF securities were identified in the master list as being ETF securities but were then inadvertently excluded from the Summary Document delivery process, which resulted in 6,823 of the 7,317 instances of Summary Documents not being sent or delivered as required.

28. In December 2016, an additional remedial mailing was made to the affected ETF purchasers. Customers who received the remedial mailing were advised of the Subsequent Delivery Issue and were provided with a copy of the applicable Summary Document.

29. On January 31, 2017, the NB Dealers delivered their Certifications for 2016 to Staff of the Commission and the AMF as required by the Decisions. In the Certifications, the NB Dealers disclosed the Subsequent Delivery Issue and advised that Summary Documents had been sent or delivered to all of the affected purchasers.

g. Impact of Delivery Issues

30. The NB Dealers failed to ensure timely delivery of Summary Documents in accordance with the terms of the Decisions for a total of 128,199 ETF purchase transactions over a nearly 19-month period, as detailed below:

Ontario NB Dealers	**Transactions**	**Client Accounts**
NBF Ltd.	36,960	10,405
NBCN	14,012	7,401
Subtotal	**50,972**	**17,806**
Québec NB Dealers	**Transactions**	**Client Accounts**
NBF Inc.	46,456	14,043
NBDB	30,771	13,008
Subtotal	**77,227**	**27,051**
Total	**128,199**	**44,857**

31. The aggregate market value of these transactions at the time of purchase was over $2 billion. The NB Dealers earned commissions and fees of over $2.6 million in respect of these transactions as detailed below:

Ontario NB Dealers	**Market Value of Purchases**	**Commissions**
NBF Ltd.	$294,136,985.81	$917,909.92
NBCN	$376,393,269.45	$236,779.72
Subtotal	**$670,530,255.26**	**$1,154,689.64**
Québec NB Dealers	**Market Value of Purchases**	**Commissions**
NBF Inc.	$1,881,369,680.45	$1,257,982.65
NBDB	$297,085,334.15	$214,730.55
Subtotal	**$2,178,455,014.60**	**$1,472,713.20**
Total	**$2,848,985,269.86**	**$2,627,402.84**

32. As set out above, the number and value of transactions attributable to the Québec NB Dealers is proportionally higher than those attributable to the Ontario NB Dealers.

33. As a result of the Delivery Issues, investors did not receive the required product disclosure from the NB Dealers in a timely manner.

C. NON-COMPLIANCE WITH ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

Enforcement Staff allege the following non-compliance with Ontario securities law and conduct contrary to the public interest:

34. By engaging in the conduct described above, the Ontario NB Dealers failed to establish, maintain and apply policies and procedures that establish systems of controls and supervision:

    (a) sufficient to provide reasonable assurance that the Ontario NB Dealers, and the individuals acting on behalf of the Ontario NB Dealers, were in a position to provide timely delivery of Summary Documents during the material time; and

    (b) that were reasonably likely to identify and correct the Delivery Issues in a timely manner.

35. As a result, the Ontario NB Dealers did not comply with section 11.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. In addition, the failures in the Ontario NB Dealers' systems of controls and supervision associated with the Delivery Issues were contrary to the public interest.

DATED this 24th day of January 2018.

ONTARIO SECURITIES COMMISSION
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8

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Enforcement Branch
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Tel.: 416-204-8959

1.5 Notices from the Office of the Secretary

1.5.1 Quadrexx Hedge Capital Management Ltd. et al.

FOR IMMEDIATE RELEASE
January 24, 2018

QUADREXX HEDGE CAPITAL MANAGEMENT LTD.,
QUADREXX SECURED ASSETS INC.,
MIKLOS NAGY AND
TONY SANFELICE

TORONTO – The Commission issued its Reasons and Decision on Sanctions and Costs and an Order in the above noted matter.

A copy of the Reasons and Decision on Sanctions and Costs and the Order dated January 23, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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1.5.2 National Bank Financial Inc. et al.

FOR IMMEDIATE RELEASE
January 24, 2018

NATIONAL BANK FINANCIAL INC.
(in respect of its predecessors
NATIONAL BANK FINANCIAL LTD. and
NBCN INC.),
File No. 2017-82

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 dated January 23, 2018 entered into by Staff of the Commission and National Bank Financial Inc. in the above named matter.

The hearing will be held on January 26, 2018 at 2:30 p.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 January 24, 2018 and Statement of Allegations of Staff of the Ontario Securities Commission dated January 24, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.3 Omega Securities Inc.

FOR IMMEDIATE RELEASE
January 26, 2018

OMEGA SECURITIES INC.,
File No. 2017-64

TORONTO – The Commission issued an Order in the above named matter.

A copy of the Order dated January 26, 2018 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.4 National Bank Financial Inc. et al.

FOR IMMEDIATE RELEASE
January 26, 2018

NATIONAL BANK FINANCIAL INC.
(in respect of its predecessors
NATIONAL BANK FINANCIAL LTD. and
NBCN INC.),
File No. 2017-82

TORONTO – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and National Bank Financial Inc.

A copy of the Order dated January 26, 2018 and Settlement Agreement dated January 23, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.5 Dennis L. Meharchand and Valt.X Holdings Inc.

FOR IMMEDIATE RELEASE
January 29, 2018

DENNIS L. MEHARCHAND and
VALT.X HOLDINGS INC.

TORONTO – The Commission issued an Order in the above named matter.

A copy of the Order dated January 29, 2018 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.6 National Bank Financial Inc. et al.

FOR IMMEDIATE RELEASE
January 29, 2018

NATIONAL BANK FINANCIAL INC.
(in respect of its predecessors
NATIONAL BANK FINANCIAL LTD. and
NBCN INC.),
File No. 2017-82

TORONTO –The Commission issued its Oral Reasons for Approval of Settlement in the above named matter.

A copy of the Oral Reasons for Approval of Settlement dated January 26, 2018 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.7 Donald Mason

FOR IMMEDIATE RELEASE
January 29, 2018

DONALD MASON,
File No. 2018-1

TORONTO – The Commission issued an Order in the above named matter.

A copy of the Order dated January 29, 2018 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Sphere Investment Management Inc. et al.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of change of manager of a mutual fund, and a mutual fund merger – merger approval required because merger does not meet the criteria for per-approval – continuing fund has different investment objectives than terminating fund – merger not a "qualifying exchange" or a tax-deferred transaction under the Income Tax Act – manager of continuing fund is not an affiliate of the manager of the terminating funds – securityholders provided with timely and adequate disclosure regarding the merger – change of manager is not contrary to the public interest.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(a), 5.5(1)(b), 5.5(3), 5.6, 5.7, 19.1.

December 21, 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
SPHERE INVESTMENT MANAGEMENT INC.
(Sphere or the Filer)

AND

IN THE MATTER OF
SPHERE FTSE CANADA SUSTAINABLE YIELD INDEX ETF,
SPHERE FTSE US SUSTAINABLE YIELD INDEX ETF,
SPHERE FTSE EUROPE SUSTAINABLE YIELD INDEX ETF,
SPHERE FTSE ASIA SUSTAINABLE YIELD INDEX ETF,
SPHERE FTSE EMERGING MARKETS SUSTAINABLE YIELD INDEX ETF
(the Sphere ETFs)

DECISION

Background

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

(a) the mergers of Sphere FTSE US Sustainable Yield Index ETF and Sphere FTSE Asia Sustainable Yield Index ETF (the **Merging Funds**) into Sphere FTSE Canada Sustainable Yield Index ETF (the **Continuing Fund**) (each a **Merger** and collectively, the **Mergers**) under section 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (**NI 81-102**); and

(b) the change of the investment fund manager of Sphere FTSE Canada Sustainable Yield Index ETF, Sphere FTSE Europe Sustainable Yield Index ETF and Sphere FTSE Emerging Markets Sustainable Yield Index ETF from Sphere to Evolve (the **Change in Manager**) under section 5.5(1)(a) and 5.5(1)(c) of NI 81-102.

(collectively, the "**Requested Approval**")

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 all of the provinces and territories of Canada other than the Jurisdiction (together with the Jurisdiction, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* (**NI 14-101**), MI 11-102 and NI 81-102 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:

Sphere

1. The Filer is a corporation organized under the laws of the Province of Ontario, with its head office located in Toronto, Ontario. The Filer is a wholly-owned subsidiary of Sphere Exchange Traded Funds Limited.

2. The Filer is registered as (a) an investment fund manager in Newfoundland and Labrador, Ontario and Québec, (b) a portfolio manager in Ontario and (c) a dealer in the category of exempt market dealer in Alberta, Ontario and Québec.

3. The Filer is not in default of applicable securities legislation in any of the Jurisdictions.

4. The Filer is the trustee, manager and portfolio manager of the Sphere ETFs.

5. The Filer's primary business is to act as investment fund manager and portfolio manager for the Sphere ETFs.

Sphere ETFs

6. Each of the Sphere ETFs is an exchange traded mutual fund established under the laws of the Province of Ontario.

7. Securities of the Sphere ETFs are distributed in each of the Jurisdictions under a long form prospectus and ETF summary documents each dated April 4, 2017, as amended by prospectus amendment no. 1 dated November 10, 2017, prepared in accordance with the requirements of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) and NI 81-102, as applicable.

8. Each Sphere ETF is a reporting issuer under the applicable securities legislation of each of the Jurisdictions.

9. The Sphere ETFs are subject to, among other laws and regulations, NI 81-102, National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) and National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**).

10. The Sphere ETFs are not in default of applicable securities legislation in any of the Jurisdictions.

11. State Street Trust Company Canada is the custodian for the Sphere ETFs.

Evolve

12. Evolve is a corporation incorporated under the laws of the Province of Ontario, with its head office located in Toronto, Ontario.

13. Evolve is registered (a) as an investment fund manager in Newfoundland and Labrador, Ontario and Québec and (b) a portfolio manager and commodity trading manager in Ontario.

14. Evolve is not in default of applicable securities legislation in any of the Jurisdictions.

15. Evolve is the trustee and investment fund manager of eight exchange traded funds (**ETFs**) , all of which are listed on the Toronto Stock Exchange (**TSX**) on the date hereof. Evolve's primary business is to act as investment fund manager for such ETFs.

16. CIBC Mellon Trust Company is the custodian of the Evolve ETFs.

Proposed Transaction

17. In a press release issued on November 6, 2017 and a material change report filed on November 7, 2017, Sphere announced that special meetings of unitholders of the Sphere ETFs (the **Meetings**) would be held on Monday, December 11, 2017 to approve the Change in Manager and the Mergers, as applicable.

18. The Proposed Transaction is expected to be completed before the end of December, 2017 (**Closing**), subject to receiving all necessary unitholder, regulatory and other approvals.

19. Pursuant to the Change in Manager and the Mergers, Evolve will become the manager, trustee and portfolio manager of each Sphere ETF and each Merging Fund will be merged into the Continuing Fund. In addition, the custodian of the Sphere ETFs will become CIBC Mellon Trust Company. Following Closing, unitholders of the Sphere ETFs will experience the following changes:

Changes Resulting from the Mergers and Change in Manager

Merging Funds	Continuing Fund	Summary of Changes Relevant to Sphere ETF Unitholders Resulting from the Mergers and Change in Manager
Sphere FTSE US Sustainable Yield Index ETF (net asset value as at October 27, 2017: $4,724,665.24) Sphere FTSE Asia Sustainable Yield Index ETF (net asset value as at October 27, 2017: $4,197,742.57)	Sphere FTSE Canada Sustainable Yield Index ETF (net asset value as at October 27, 2017: $13,457,222.61)	• Change in manager, trustee and investment advisor to Evolve • Change in custodian to CIBC Mellon Trust Company • Change in registrar and transfer agent to TSX Trust Company • Change in investment objectives and strategies • Change in management fee from 0.54% to 0.45% • Introduction of a fixed administration fee of 0.15% of NAV • Change in name to Evolve Canada Sustainable Yield Index ETF

Change in manager, trustee and investment advisor to Evolve

Sphere ETF	Following the Change in Manager
Sphere FTSE Canada Sustainable Yield Index ETF	• Change in manager, trustee and investment advisor to Evolve • Change in custodian to CIBC Mellon Trust Company • Change in registrar and transfer agent to TSX Trust Company • Change in management fee from 0.54% to 0.45% • Introduction of a fixed administration fee of 0.15% of NAV • Change in name to Evolve Canada Sustainable Yield Index ETF
Sphere FTSE Europe Sustainable Yield Index ETF	• Change in manager, trustee and investment advisor to Evolve • Change in custodian to CIBC Mellon Trust Company • Change in registrar and transfer agent to TSX Trust Company • Change in management fee from 0.54% to 0.50% • Introduction of a fixed administration fee of 0.15% of NAV • Change in name to Evolve Europe Sustainable Yield Index ETF
Sphere FTSE Emerging Markets Sustainable Yield Index ETF	• Change in manager, trustee and portfolio manager to Evolve • Change in custodian to CIBC Mellon Trust Company • Change in registrar and transfer agent to TSX Trust Company • Introduction of a fixed administration fee of 0.25% of NAV • Change in name to Evolve Emerging Markets Sustainable Yield Index ETF

20. As a result of the Change in Manager, all material agreements regarding the administration of the Sphere ETFs will either be amended and restated by Evolve or be terminated and Evolve will enter into new agreements or enter into an amendment to an existing agreement with the relevant service provider, as required.

21. The Sphere ETFs' Independent Review Committee (the **IRC**) has reviewed the conflicts of interests matters associated with the proposed Change in Manager and the Mergers, including the process to be followed in connection with such Change in Manager and Mergers, and after reasonable inquiry has advised Sphere that, in its determination, if implemented, the resolutions achieve a fair and reasonable result for each of the Sphere ETFs.

22. Upon completion of the Change in Manager and the Mergers, the individuals that comprise the IRC of the Sphere ETFs will cease to be members of such IRC by operation of subsections 3.10(1)(a) and (b) of NI 81-107. Immediately following completion of the Change in Manager and the Mergers, Evolve has confirmed that the new members of the IRC for the Sphere ETFs will be the same individuals that currently comprise the IRC for the Evolve ETFs, namely: Kevin Drynan (Chair), Rod McIsaac and Mark Leung.

Additional Information Regarding the Proposed Transaction

23. In addition to the press release mentioned above and the corresponding material change report, which were issued and filed on SEDAR, investors in the Sphere ETFs have been further notified of the Proposed Transaction with Evolve through amendment no. 1 to the final prospectus of the Sphere ETFs, which was filed on SEDAR on November 10, 2017.

24. Pursuant to NI 81-102, the Meetings were held on December 11, 2017. At the Meetings, unitholders of the Sphere ETFs voted and approved the Change in Manager and the Mergers

25. The Notice-and-Access Document and voting instruction forms or forms of proxy, as applicable, in respect of the Meetings (the **Meeting Materials**) describing the Change in Manager and the Mergers were sent to unitholders of the Sphere ETFs on or about November 10, 2017 and copies thereof were filed on SEDAR following the mailing in accordance with applicable securities legislation, and exemptive relief obtained by Sphere on November 4, 2016 permitting the Sphere ETFs to use Notice-and-Access to send proxy-related materials to beneficial unitholders.

26. The Meeting Materials contain a detailed description of the proposed Change in Manager and Mergers, the ETF summary documents for the Continuing Fund, information about the Merging Funds and the Continuing Fund and income tax considerations for unitholders of the Sphere ETFs. The Meeting Materials also describe the various ways in which investors can obtain a copy of the prospectus of the Continuing Fund, as well as the most recent interim and annual financial statements and management reports of fund performance for the Continuing Fund.

27. The Meeting Materials contain sufficient information regarding the business, management and operations of Evolve (including details of its officers and directors) and all information necessary to allow unitholders to make an informed decision about the Change in Manager and the Mergers. All other required information and documents necessary to comply with applicable proxy solicitation requirements of securities legislation, including the ETF summary documents for the Continuing Fund, for the Meetings have also been mailed to applicable unitholders of the Sphere ETFs.

28. The Filer, Evolve and their respective affiliates are not related parties and there are no pre-existing commercial relationships between Evolve and Sphere. Sphere and Evolve will not have any commercial relationship following Closing.

Business Reasons for Proposed Transaction

29. Sphere believes that the proposed Change in Manager and the Mergers are in the best interests of the unitholders of the applicable Sphere ETFs. The Change in Manager and the Mergers are being proposed, in part, due to the aggregate management expense ratio of the Sphere ETFs' platform currently being absorbed by Sphere, which is well above what is ordinarily charged by ETFs with similar investment objectives and strategies and taking into consideration Sphere's subsidization of operating expenses, Sphere has determined that it is no longer able to continue offering the Sphere ETFs in the long term. Accordingly, and after considering several alternatives, Sphere believes unitholders are better served by the proposed Change in Manager and Mergers.

30. Sphere, and not the Sphere ETFs, will bear all costs and expenses associated with calling and holding the Meetings and implementing the Change in Manager, including legal fees, filing fees and other expenses associated with preparing, printing and mailing applicable Meeting Materials, obtaining necessary securities regulatory approvals, filing prospectus amendments, press releases and material change reports and other costs associated with calling the Meetings and effecting the Change in Manager.

31. The Mergers will eliminate the operating and regulatory costs of operating the Merging Funds as separate ETFs, and any operating costs payable by the Merging Funds are expected to be spread over a larger asset base. Sphere also believes that unitholders of Sphere FTSE Canada Sustainable Yield Index ETF and Sphere FTSE Europe Sustainable Yield Index ETF will benefit from the proposed reduction in management fees, as described in paragraph 19 above.

32. As of November 8, 2017 Evolve had approximately $21.5 million in assets under management.

Impact of the Proposed Transaction

33. In connection with the Change in Manager, Evolve intends to change the name of certain Sphere ETFs as follows:

Sphere ETF	**Proposed Name**
Sphere FTSE Canada Sustainable Yield Index ETF	Evolve Canada Sustainable Yield Index ETF
Sphere FTSE Europe Sustainable Yield Index ETF	Evolve Europe Sustainable Yield Index ETF
Sphere FTSE Emerging Markets Sustainable Yield Index ETF	Evolve Emerging Markets Sustainable Yield Index ETF
Sphere FTSE US Sustainable Yield Index ETF	*To be merged into Evolve Canada Sustainable Yield Index ETF*
Sphere FTSE Asia Sustainable Yield Index ETF	*To be merged into Evolve Canada Sustainable Yield Index ETF*

34. In connection with the Mergers, the Merging Funds will merge into the Continuing Fund, and as a result unitholders of the Merging Funds will become unitholders of the Continuing Fund and will experience the following changes (including as a result of the Change in Manager described below): (i) the manager, trustee and portfolio manager of the Merging Funds will change from Sphere to Evolve, (ii) the custodian of the Merging Funds will change from State Street Trust Company Canada to CIBC Mellon Trust Company Canada and (iii) the transfer agent of the Merging Funds will change from State Street Trust Company Canada to TSX Trust Company. Accordingly, applicable notices of termination have been, or will be, provided to terminating service providers of the Merging Funds.

35. In connection with the Change in Manager, (i) the manager, trustee and portfolio manager of the applicable Sphere ETFs will change from Sphere to Evolve, (ii) the custodian of the applicable Sphere ETFs will change from State Street Trust Company Canada to CIBC Mellon Trust Company Canada and (iii) the transfer agent of the applicable Sphere ETFs will change from State Street Trust Company Canada to TSX Trust Company. Accordingly, applicable notices of termination have been, or will be, provided to terminating service providers of the applicable Sphere ETFs.

36. The material implications of the proposed changes to the unitholders of the Sphere ETFs are all described in the Meeting Materials.

37. There is no intention to change the officers, directors or registered individuals of Evolve.

38. The closing of the Proposed Transaction will not adversely affect Evolve's financial position or its ability to fulfill its regulatory obligations.

Additional Information with respect to the Change in Manager

39. Following the Change in Manager, the fundamental investment objectives and index constituents of Sphere FTSE Canada Sustainable Yield Index ETF, Sphere FTSE Europe Sustainable Yield Index ETF and Sphere FTSE Emerging Markets Sustainable Yield Index ETF will remain substantially the same.

40. As a result of the Change in Manager, the unitholders of the Sphere FTSE Europe Sustainable Yield Index ETF will benefit from a reduced management fee of 0.50% (from 0.54%) of the net asset value of the Sphere ETF, and unitholders of Sphere FTSE Canada Sustainable Yield Index ETF (including unitholders of the Merging Funds) will benefit from a reduced management fee of 0.45% (from 0.54%) of the net asset value of the Sphere ETF. The management fee of Sphere FTSE Emerging Markets Sustainable Yield Index ETF will remain the same.

41. Following the Change in Manager, Evolve will also introduce a fixed administration fee that will result in a cap on certain operating expenses of 0.15% of net asset value in respect of Sphere FTSE Canada Sustainable Yield Index

ETF and Sphere FTSE Europe Sustainable Yield Index ETF, and a fixed administration fee of 0.25% of net asset value of Sphere FTSE Emerging Markets Sustainable Yield Index ETF.

Additional Information with respect to the Mergers

42. The net asset value of each of the Merging Funds and the Continuing Fund is set out in paragraph 19 above.

43. Pursuant to the Mergers, unitholders of a Merging Fund will receive units of the Continuing Fund.

44. The total value of the units of the Continuing Fund offered to unitholders of the Merging Fund will have a value that is equivalent to the net asset value of the Merging Fund calculated on the effective date of the Merger (or as at the close of business on the business day that is prior to the effective date of the Merger).

45. The fundamental investment objective of each Merging Fund is not substantially similar to the investment objective of the Continuing Fund. The Meeting Materials clearly delineate the differences in investment objectives, investment strategies and other material differences between each Merging Fund and the Continuing Fund.

46. The management fee of the Continuing Fund will be less than the management fee of the Merging Funds. The Meeting Materials clearly delineate the differences in management fees and expense structures between the Merging Funds and the Continuing Fund.

47. The net asset value for each Merging Fund and the Continuing Fund is calculated on a daily basis on each day that the TSX is open for trading.

48. No redemption fee will be payable by unitholders of the Merging Funds in connection with the Mergers.

49. Prior to the effective date of the Mergers, each Merging Fund will liquidate its entire portfolio into cash such that the Continuing Fund may acquire portfolio assets that are consistent and acceptable to the portfolio manager of the Continuing Fund and consistent with the investment objectives of the Continuing Fund.

50. The Merger of Sphere FTSE US Sustainable Yield Index ETF (the T**axable Merger Terminating Fund**) into the Continuing Fund (such Merger being a **Taxable Merger**) will be effected on a taxable basis.

51. The Merger of Sphere FTSE Asia Sustainable Yield Index ETF (the **Tax-Deferred Merger Terminating Fund**) into the Continuing Fund (such Merger being a **Tax-Deferred Merger**) will be effected as a “qualifying exchange” within the meaning of section 132.2 of the *Income Tax Act* (Canada) (the **Tax Act**).

52. The redemption provisions of the Sphere ETFs and the Continuing Fund, and the Sphere ETFs following the Change in Manager, are substantially the same, including the right to redeem units for cash at a redemption price per unit equal to the lesser of: (i) 95% of the closing price for the units on the TSX on the effective day of the redemption; and (ii) the net asset value per unit on the effective day of the redemption.

53. In the opinion of Sphere, the Mergers do not constitute a material change for the Continuing Fund.

54. The Sphere ETFs have complied with Part 11 of NI 81-106 in connection with the making of the decision by the board of directors of Sphere to proceed with the Change in Manager and the Mergers.

55. Sphere is not entitled to rely upon the approval of the IRC in lieu of unitholder approval for the Mergers due to the fact that one or more conditions of section 5.6 of NI 81-102 will not be met.

56. At each Meeting, the affirmative vote of not less than a majority of the votes cast by unitholders of the applicable Sphere ETF present in person or represented by proxy at that Meeting is required for approval of the Change in Manager and/or Merger, as applicable. It is expected that the Change in Manager and the Mergers will be implemented if approved by the unitholders of the applicable Sphere ETF, regardless of whether the Change in Manager or the Mergers are approved by unitholders of the other applicable Sphere ETFs.

57. Subject to receipt of unitholder and regulatory approvals, the Change in Manager and the Mergers will occur as soon as reasonably practicable following receipt of all required unitholder and regulatory approvals, subject to the discretion of Sphere to not proceed with any one or more of the Change in Manager and the Mergers. It is currently anticipated that the Change in Manager and Mergers will occur on or before January 31, 2018.

58. Each Merging Fund will be terminated concurrently or as soon as reasonably possible following, or upon implementation of, the Merger.

Steps for the Taxable Merger

59. Prior to the effective date of the Taxable Merger, the Taxable Merger Terminating Fund will liquidate its entire portfolio into cash.

60. Prior to the Taxable Merger, the Taxable Merger Terminating Fund will distribute any net income and net realized capital gains for its current taxation year to the extent necessary to eliminate its liability for non-refundable income tax.

61. The "**Exchange Ratio**" in respect of the units of the Taxable Merger Terminating Fund will be calculated by dividing the net asset value of the units of the Taxable Merger Terminating Fund by the net asset value of the units of the Continuing Fund, in each case, as at the close of business on the business day prior to the effective date of the Taxable Merger.

62. On the effective date of the Taxable Merger, the Taxable Merger Terminating Fund will, after satisfying any outstanding liabilities, transfer all of its assets to the Continuing Fund (which will consist entirely of cash prior to the Taxable Merger) in consideration for an amount (the "**Purchase Price**") equal to the fair market value of the assets transferred to the Continuing Fund at the effective time of the Taxable Merger.

63. The Continuing Fund will satisfy the Purchase Price by issuing to the Taxable Merger Terminating Fund that number of units of the Continuing Fund (rounded down to the nearest whole unit) equal to the number of units of the Taxable Merger Terminating Fund then outstanding multiplied by the Exchange Ratio (calculated in the same manner as described in paragraph 61 above). Such issued units of the Continuing Fund will be listed on the TSX at all times while they are held by the Taxable Merger Terminating Fund.

64. Immediately thereafter, all of the units of the Taxable Merger Terminating Fund will be redeemed and the redemption price therefor will be paid by delivering the applicable number of units of the Continuing Fund to unitholders of the Taxable Merger Terminating Fund based on the number of such units of the Taxable Merger Terminating Fund then held with each unitholder of the Taxable Merger Terminating Fund receiving that number of units of the Continuing Fund (rounded down to the nearest whole unit) as is equal to the Exchange Ratio (calculated in the same manner as described in paragraph 61 above) multiplied by the number of units of the Taxable Merger Terminating Fund held by such unitholder immediately prior to the completion of the Taxable Merger. No cash in lieu of fractional units will be paid under the Taxable Merger.

65. The Taxable Merger Terminating Fund will be wound up in connection with the Taxable Merger.

66. Sphere and Evolve have analyzed the tax implications of the Mergers from the perspective of unitholders of the Merging Funds and the Continuing Fund and have concluded that it is necessary to effect the Taxable Merger on a taxable basis.

67. No commission or other fee will be charged to unitholders of the Taxable Merger Terminating Fund on the issue or exchange of securities of the Continuing Fund.

Steps for the Tax-Deferred Merger

68. Prior to the effective date of the Tax-Deferred Merger, the Tax-Deferred Merger Terminating Fund will liquidate its entire portfolio into cash.

69. Prior to the Tax-Deferred Merger, each of the Tax-Deferred Merger Terminating Fund and the Continuing Fund will distribute any net income and net realized capital gains for its current taxation year to the extent necessary to eliminate its liability for non-refundable income tax.

70. The "**Exchange Ratio**" in respect of the units of the Tax-Deferred Merger Terminating Fund will be calculated by dividing the net asset value of the units of the Tax-Deferred Merger Terminating Fund by the net asset value of the units of the Continuing Fund, in each case, as at the close of business on the business day prior to the effective date of the Tax-Deferred Merger.

71. On the effective date of the Tax-Deferred Merger, the Tax-Deferred Merger Terminating Fund will, after satisfying any outstanding liabilities, transfer all of its assets to the Continuing Fund (which will consist entirely of cash prior to the Tax-Deferred Merger) in consideration for an amount ("**Purchase Price**") equal to the fair market value of its assets transferred to Continuing Fund at the effective time of the Tax-Deferred Merger.

72. The Continuing Fund will satisfy the Purchase Price by issuing to the Tax-Deferred Merger Terminating Fund that number of units of the Continuing Fund (rounded down to the nearest whole unit) equal to the number of units of the

Tax-Deferred Merger Terminating Fund then outstanding multiplied by the applicable Exchange Ratio (calculated in the same manner as described in paragraph 70 above). Such issued units of the Continuing Fund will be listed on the TSX at all times while they are held by the Tax-Deferred Merger Terminating Fund.

73. Immediately thereafter, all of the units of the Tax-Deferred Merger Terminating Fund that are listed on the TSX will be redeemed and the redemption price therefor will be paid by delivering the applicable number of units of the Continuing Fund to unitholders of the Tax-Deferred Merger Terminating Fund based on the number of such units of the Tax-Deferred Merger Terminating Fund then held with each unitholder of the Tax-Deferred Merger Terminating Fund receiving that number of units of the Continuing Fund (rounded down to the nearest whole unit) as is equal to the Exchange Ratio (calculated in the same manner as described in paragraph 70 above) multiplied by the number of units of the Tax-Deferred Merger Terminating Fund held by such unitholder immediately prior to the completion of the Tax-Deferred Merger. No cash in lieu of fractional units will be paid under the Tax-Deferred Merger.

74. The Tax-Deferred Merger Terminating Fund and the Continuing Fund will file a joint tax election in respect of the transfer to the Continuing Fund of all of the assets of the Tax-Deferred Merger Terminating Fund.

75. The Tax-Deferred Merger Terminating Fund will be wound-up in connection with the Tax-Deferred Mergers.

76. No commission or other fee will be charged to unitholders of the Tax-Deferred Merger Terminating Fund on the issue or exchange of securities of the Continuing Fund.

General

77. In the event that any Change in Manager or Merger was not approved by unitholders of the applicable Sphere ETF, the Manager intended to terminate such remaining Sphere ETF in accordance with its respective Declaration of Trust.

78. It is expected that all of the current officers and directors of Evolve will continue on in their current capacities and that they will continue to have the requisite integrity and experience as contemplated under section 5.7(1)(a)(v) of NI 81-102. The experience and integrity of each of the members of the Evolve management team is apparent by their education and years of experience in the investment industry. Such experience and integrity has been established and accepted by the Principal Regulator through the granting of registration to such individuals and/or through the granting of receipts for the prospectuses of the Evolve ETFs.

79. The Mergers will not adversely affect Evolve's financial position or its ability to fulfill its regulatory obligations.

80. The Requested Approval will not be detrimental to the protection of investors in the Sphere ETFs or prejudice the public interest.

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 Requested Approval is granted.

"Darren McKall"
Manager
Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.2 Marret Asset Management Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – One-time transfer of portfolio securities between two pooled funds, both advised by the same portfolio adviser, to implement a merger between the funds – Funds have substantially similar investment objectives and strategies, fees and valuation policies – Costs of the merger borne by manager – Sale of securities exempt from the self-dealing prohibition in s. 13.5(2)(b)(iii), National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss.13.5(2)(b)(iii), 15.1.

November 25, 2016

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

AND

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

AND

IN THE MATTER OF
MARRET ASSET MANAGEMENT INC.
(the Filer)

AND

MARRET HIGH GRADE HEDGE FUND
(the Terminating Fund)

AND

MARRET INVESTMENT GRADE HEDGED STRATEGIES FUND
(the Continuing Fund)

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 of the principal regulator (the **Legislation**) for an exemption from subparagraph 13.5(2)(b)(iii) of National Instrument 31-103 *Registration Requirements Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), which prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase or sell a security from or to the investment portfolio of an investment fund for which a responsible person acts as an adviser, in order to effect the proposed merger (the **Merger**) of the Terminating Fund into the Continuing Fund (the **Exemption Sought**).

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 of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon.

Interpretation

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

Representations

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

The Filer

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

2. The Filer acts as manager and portfolio manager of the Terminating Fund and the Continuing Fund (collectively, the **Funds**).

3. The Filer is registered as an investment fund manager, portfolio manager and exempt market in each province of Canada, and as a commodity trading manager in Ontario.

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

The Funds

5. Each of the Terminating Fund and Continuing Fund is an open-end mutual fund trust established under the laws of Ontario. The Funds are not reporting issuers in any jurisdiction and are not subject to National Instrument 81-102 *Investment Funds*.

6. Each Fund offers its units in all provinces and territories of Canada pursuant to available prospectus exemptions in accordance with National Instrument 45-106 *Prospectus and Registration Exemptions*.

7. The Funds are not in default of securities legislation in any jurisdiction.

8. Currently, neither Fund qualifies as a "mutual fund trust" under the *Income Tax Act* (Canada) (the **Tax Act**) as neither Fund has at least 150 unitholders.

The Merger

9. The Filer wishes to merge the Terminating Fund into the Continuing Fund on or about November 30, 2016 (the **Effective Date**), subject to receipt of all regulatory, and other, approvals. The Filer has decided to effect the Merger because of the similarities in the Funds' investment portfolios and the desire to focus on one investment objective and strategy. Further, after the Merger, the Continuing Fund will have more than 150 unitholders and will therefore qualify as a "mutual fund trust" under the Tax Act.

10. Pursuant to the declaration of trust of the Terminating Fund, unitholders were provided at least 60 days' written notice of the Merger after which the Filer, in its capacity as trustee of the Terminating Fund, may effect the Merger and other related amendments.

11. There will be no change in management fees or performance fees paid by unitholders of the Terminating Fund as a result of the Merger.

12. No redemption fees, other fees or commissions will be payable by the Funds' unitholders in connection with the Merger. No sales charges will be payable in connection with the acquisition by the Continuing Fund of the Terminating Fund's investment portfolio.

13. The costs associated with the Merger will be paid by the Filer.

14. As the Funds do not qualify as "mutual fund trusts", the Merger is not eligible to be completed on a tax deferred basis and, accordingly, will be completed on a taxable basis. Unitholders of the Terminating Fund will trigger a disposition for tax purposes on the effective date of the Merger, which will trigger a taxable gain or loss depending on the adjusted cost base of each unitholder's units, but will not give rise to material adverse tax consequences for the Terminating Fund and the vast majority of its unitholders.

15. Unitholders of the Terminating Fund will be able to redeem their units at net asset value (**NAV**) at all redemption dates up to the Effective Date.

16. The investment objectives and portfolios of the Continuing Fund and the Terminating Fund are similar and both Funds primarily invest in corporate debt securities. The portfolio of assets of the Terminating Fund to be acquired by the Continuing Fund arising from the Merger will be consistent with the investment objectives of the Continuing Fund.

17. The NAV of each of the Funds is determined using substantially similar valuation principles and the Funds have similar redemption policies.

18. The following steps will be carried out to effect the Merger:

    (a) the value of the Terminating Fund's investment portfolio and other assets will be determined at the close of business on the effective date of the Merger in accordance with its declaration of trust;

    (b) any securities in the investment portfolio of the Terminating Fund which do not conform to the investment objective and strategies of the Continuing Fund will be sold in the market for cash;

    (c) the Continuing Fund will acquire the portfolio assets and other assets of the Terminating Fund in exchange for units of the Continuing Fund;

    (d) the Continuing Fund will not assume the liabilities of the Terminating Fund and the Terminating Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the date of the Merger;

    (e) the units of the Continuing Fund received by the Terminating Fund will have an aggregate NAV equal to the value of the Terminating Fund's portfolio assets and other assets that the Continuing Fund is acquiring, which units will be issued at the applicable NAV per security as of the close of business on the effective date of the Merger;

    (f) if necessary, the Terminating Fund will distribute a sufficient amount of its income and capital gains, if any, to ensure that the Terminating Fund will not be liable for income tax under Part I of the Tax Act, other than alternative minimum tax, for its current taxation year. Currently, it is expected that there will not be any distributions from the Terminating Fund;

    (g) immediately thereafter, the units of the Continuing Fund received by the Terminating Fund will be distributed to unitholders of the Terminating Fund on a dollar-for-dollar basis in exchange for their respective equivalent class of units in the Terminating Fund; and

    (h) as soon as reasonably possible following the Merger, the Terminating Fund will be wound up.

19. Although the Funds are not subject to National Instrument 81-107 *Independent Review Committee for Investment Funds*, the Filer presented the Merger to the independent review committee (**IRC**) that it has established with respect to the Funds. The IRC has approved the Merger after concluding that it would achieve a fair and reasonable result for each Fund.

20. The board of directors of the Filer has determined that the Merger is in the best interests of the Funds and has approved the Merger, subject to obtaining the Exemption Sought.

21. The assets of the Funds will be valued in accordance with the valuation policies and procedures outlined in the declaration of trust of each Fund, and, at this value, the assets of the Terminating Fund will subsequently be exchanged for units of the Continuing Fund as described above.

22. The transfer of the assets of the Terminating Fund to the Continuing Fund will not adversely impact the liquidity of the Continuing Fund.

23. The Filer believes that the Merger is in the best interests of unitholders of the Funds for the following reasons:

    (a) the Merger will result in a more streamlined and simplified product line-up that is easier for investors to understand;

    (b) the Merger will eliminate similar fund offerings across product line ups, reducing duplication and redundancy;

(c) the Merger will allow the Continuing Fund to qualify as a "mutual fund trust" under the Tax Act, which will benefit all its investors;

(d) following the Merger, the Continuing Fund will have more assets, thereby allowing for increased portfolio diversification opportunities and a smaller proportion of assets to be set aside for fund redemptions; and

(e) the Continuing Fund will benefit from its larger profile in the marketplace.

24. The desired end result of the Merger could be achieved by each unitholder redeeming his or her units of the Terminating Fund and using the proceeds to purchase units of the Continuing Fund. Executing the trades in this manner would result in negative consequences to the Terminating Fund and the Continuing Fund through the incurrence of unnecessary brokerage charges relating to the sale and repurchase of portfolio securities.

25. The portfolio securities and other assets of the Terminating Fund will be transferred from the Terminating Fund to the Continuing Fund in accordance with the steps described above. Because the transfer of portfolio securities and assets will take place at a value determined by common valuation procedures and the issue of units will be based upon the relative net asset value of the portfolio securities and other assets received by the Continuing Fund, and notice and redemption rights have been provided to unitholders, it is the Filer's submission that any potential conflict of interest has been adequately addressed and as a result there is no conflict of interest for the Filer in effecting the Merger.

26. The sale of the assets of the Terminating Fund to the Continuing Fund, and the corresponding purchase of such assets by the Continuing Fund, as a step in the Merger may be considered a purchase or sale of securities, knowingly caused by a registered adviser that manages the investment portfolios of both Funds, from the Terminating Fund to, or by the Continuing Fund from, an investment fund for which a "responsible person" acts as an adviser, contrary to subparagraph 13.5(2)(b)(iii) of NI 31-103.

27. Unless the Exemption Sought is granted, the Filer would be prohibited from knowingly causing the securities of the Terminating Fund to be transferred to the Continuing Fund in connection with the Merger.

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.

"Darren McKall"
Manager, Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.3 AltaGas Ltd.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards (NI 52-107), s. 5.1 – the Filer requests relief from the requirements under section 3.2 of NI 52-107 that financial statements be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises to permit the Filer to prepare its financial statements in accordance with U.S. GAAP.

Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards, s. 5.1.

Citation: Re AltaGas Ltd., 2018 ABASC 14

January 26, 2018

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

AND

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

AND

IN THE MATTER OF
ALTAGAS LTD.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation (the **Legislation**) of the Jurisdictions exempting the Filer (the **Exemption Sought**) from the requirements under section 3.2 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (**NI 52-107**) that financial statements (a) be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises and (b) disclose an unreserved statement of compliance with IFRS in the case of annual financial statements and an unreserved statement of compliance with IAS 34 in the case of an interim financial report.

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (**Passport Jurisdictions**); and

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

Interpretation

In this decision:

(a) unless otherwise defined herein, terms defined in National Instrument 14-101 *Definitions*, MI 11-102 or NI 52-107 have the same meaning; and

(b) "activities subject to rate regulation" has the meaning ascribed in the Handbook.

Representations

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

1. The Filer is a corporation formed by amalgamation under the laws of Canada on July 1, 2010. The head office of the Filer is in Calgary, Alberta.

2. The Filer is a reporting issuer in each Jurisdiction and Passport Jurisdiction.

3. The Filer represents that it is not in default of securities legislation in any jurisdiction in Canada.

4. The Filer has "activities subject to rate regulation".

5. The Filer is not an SEC Issuer. Were the Filer an SEC Issuer, it would be permitted by section 3.7 of NI 52-107 to file its financial statements prepared in accordance with U.S. GAAP.

6. By order cited as *Re AltaGas Ltd.*, 2014 ABASC 61, the Filer was granted substantially similar exemptive relief by the Decision Maker on February 19, 2014 (the **Existing Relief**) and continues to prepare its financial statements in accordance with U.S. GAAP on that basis.

7. The Existing Relief will expire not later than January 1, 2019.

8. The International Accounting Standards Board (**IASB**) continues to work on a project focusing on accounting specific to activities subject to rate regulation. It is not yet known when this project will be completed or whether IFRS will include a specific standard that is mandatory for entities with activities subject to rate regulation.

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:

(a) the Existing Relief is revoked;

(b) the Exemption Sought is granted to the Filer in respect of the Filer's financial statements required to be filed on or after the date of this decision, provided that the Filer prepares those financial statements in accordance with U.S. GAAP; and

(c) the Exemption Sought will terminate in respect of the Filer on the earliest of the following:

(i) January 1, 2024;

(ii) if the Filer ceases to have activities subject to rate regulation, the first day of the Filer's financial year that commences after the Filer ceases to have activities subject to rate regulation; and

(iii) the effective date prescribed by the IASB for the mandatory application of a standard within IFRS specific to entities with activities subject to rate regulation.

For the Commission:

Stan Magidson"
Chair & CEO

"Tom Cotter"
Vice-Chair

2.1.4 Ithaca Energy Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – issuer deemed to be no longer 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).

Citation: Re Ithaca Energy Inc., 2018 ABASC 15

January 26, 2018

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

AND

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

AND

**IN THE MATTER OF
ITHACA ENERGY 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 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 Alberta 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 British Columbia, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador (the **Passport Jurisdictions**); 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 National Instrument 14-101 *Definitions* or MI 11-102 have the same meaning if used in this order, unless otherwise defined herein.

Representations

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

General

1. The Filer is incorporated under the *Business Corporations Act* (Alberta).

2. The Filer's head office is located in Aberdeen, United Kingdom and the Filer's registered office is located in Calgary, Alberta.

3. The Filer is a holding company and its subsidiaries have interests in certain United Kingdom continental shelf oil and gas assets. The Filer has no active business interests in Canada and is progressing re-domiciling and/or continuing itself into a jurisdiction outside of Canada.

4. The Filer is a reporting issuer under the laws of each of the Jurisdictions and Passport Jurisdictions and is not in default of its obligations under the securities laws of any of the jurisdictions.

5. Following the acquisition of all the issued common shares (the **Common Shares**) in the capital of the Filer by DKL Investments Limited (**DKL**) in the second quarter of 2017 by way of a takeover bid and subsequent compulsory acquisition (the **Acquisition**), all of the Common Shares are now beneficially owned by DKL, a private company incorporated under the laws of Jersey that is a wholly-owned subsidiary of Delek Group Ltd., a company incorporated in Israel which is listed and traded on the Tel Aviv Stock Exchange under the ticker symbol DLEKG.

6. Since becoming a wholly-owned subsidiary of DKL, the Filer has taken no steps to actively create a market for its securities in Canada. Furthermore, the Filer has no current intention to seek financing by way of a distribution of securities into Canada but may in the future consider a distribution of securities into Canada pursuant to certain prospectus exemptions.

7. The Filer is not eligible to use the simplified procedure under National Policy 11-206 *Process for Cease to Be a Reporting Issuer Applications* as the Notes (as defined below) are traded on a

marketplace as defined National Instrument 21-101 *Marketplace Operation* (**NI 21-101**).

8. In news releases dated 31 May 2017 and 2 June 2017 which related to the Acquisition, the Filer disclosed its intention to apply to cease to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer.

9. On 13 November 2017, the Filer released its management discussion and analysis for the three and nine months ended 30 September 2017, in which the Filer disclosed that it applied for an order to cease to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer.

Equity Securities

10. Following the Acquisition, the Common Shares were delisted from the Toronto Stock Exchange and the AIM market of the London Stock Exchange on 7 June 2017.

11. Since 7 June 2017, the Filer has had no publicly traded equity securities in Canada or in another country on a marketplace as defined in NI 21-101 or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

12. In connection with the Acquisition, all of the Filer's outstanding options to acquire Common Shares were either exercised, surrendered or cancelled as a result of which the Filer now has no options to acquire Common Shares outstanding.

13. The Filer has no securities outstanding which are convertible into Common Shares.

Debt Securities

14. On 2 July 2014, the Filer completed an offering (the **Notes Offering**) of US$300-million aggregate principal amount of senior unsecured notes due 1 July 2019 (the **Notes**).

15. The Notes were issued pursuant to the terms of a trust indenture dated 3 July 2014 as supplemented from time to time (the **Trust Indenture**) and are guaranteed on a senior subordinated basis by certain of the Filer's subsidiaries.

16. As of 10 January 2018 the Filer continues to have US$300-million aggregate principal amount of Notes outstanding.

17. The Notes do not constitute voting or equity securities in the capital of the Filer and are not convertible into voting or equity securities.

18. In connection with the Notes Offering, the Notes were listed on the Luxembourg Stock Exchange (**LUXSE**) to enable holders of the Notes to obtain certain tax treatment in respect of their investments.

19. The Notes remain listed on the LUXSE and are the only securities of the Filer which are listed. To the knowledge of the Filer, the LUXSE does not maintain any records relating to the beneficial holders of the Notes and, although the Notes are eligible for trading, there has been no trading activity on the LUXSE since listing. The Filer understands that the Notes are solely traded over the counter between major corporate banks on behalf of institutional investors in accordance with the terms of the Trust Indenture.

20. At the time of closing of the Notes Offering, allocations were made to approximately 65 institutions worldwide. Two Canadian institutions received allocations amounting to approximately 5% of the total Notes Offering. In response to additional inquiries by the Filer, the Joint Bookrunner provided information regarding its trading activity in the Notes into and out of Canada for each calendar year since the Notes were issued. Since the issuance of the Notes, the Joint Bookrunner's in-house trading data indicates that it executed only two trades in the Notes with Canadian institutions, with both such trades occurring in 2014. The Joint Bookrunner accounted for approximately 63%, 40%, 19% and 60% of the volume traded in the Notes in 2014, 2015, 2016 and the first three quarters of 2017, respectively.

21. Neither the Filer nor any other person or company maintains or is required to maintain a register of beneficial holders of the Notes. Accordingly, it is only possible to make limited enquiries in order to obtain information regarding the beneficial ownership of the Notes held by residents in Canada and in total worldwide.

22. In March 2017, the Filer approached the holders of the Notes to solicit consents in connection with DKL's acquisition of a controlling interest in the Filer (the **Consent Solicitation**) through Global Bondholder Services Corporation (**GBSC**), who acted as tabulation and information agent in connection with the Consent Solicitation. GBSC, through information obtained from the Notes trustee, was able to identify the custodians of the bonds but not the underlying beneficial interest holders. GBSC did not identify any Canadian institutional custodians as registered holders, nor did it receive any information to suggest that there were underlying beneficial owners that were Canadian institutional investors.

23. In a further effort to try to establish whether any Canadians beneficially own any Notes,

    (a) the Filer contacted the custodians of the Notes (being 22 custodians in total, none

of which were Canadian) in August 2017 (the **Initial Request**) asking that they disclose to the Filer whether they hold Notes on behalf of any Canadian institutions;

(b) the Filer informed such custodians that it was soliciting responses to enable it to provide certain confirmations in connection with a Canadian securities exemption application, and indicated that if it did not receive a response by an indicated deadline, the Filer would assume for all intents and purposes that the relevant custodian was not in custody of any Notes on behalf of any Canadian institutions;

(c) one custodian responded to the Initial Request stating that it did not hold any Notes on behalf of any Canadian institutions;

(d) the Filer subsequently contacted the custodians that did not respond to the Initial Request (the **Subsequent Request**);

(e) two custodians responded to the Subsequent Request, each stating that it did not hold any Notes on behalf of any Canadian institutions.

24. Based on the enquiries described above and the information obtained as a result of such enquiries, to the best of the knowledge and belief of the Filer, the outstanding securities of the Filer, including debt securities, are not owned, directly or indirectly, by any securityholders in Canada.

25. The terms of the Trust Indenture do not require the Filer to maintain its status as a reporting issuer.

26. The terms of the Trust Indenture require the Filer to provide holders of the Notes with certain information about the Filer, including annual and quarterly reports containing specified financial information such as an audited consolidated balance sheet and audited consolidated income statements and statements of cash flow, material developments, complete notes to such financial statements and the report of the independent auditors on the financial statements (the **Relevant Reports**).

27. The Filer is required to make the Relevant Reports publicly available for so long as the Notes remain listed on the LUXSE, irrespective of its status as a reporting issuer in Canada. The Trust Indenture prescribes that the Relevant Reports must be:

(a) provided by the Filer to the Notes trustee; and

(b) made available either on the Filer's website or made publicly available through substantially comparable means such as Bloomberg or another private electronic information service.

Furthermore, the Filer is obliged to hold a conference call or provide live streaming access to a presentation in which holders of the Notes are given an opportunity to discuss the operations of the Filer in respect of the relevant period.

Decision

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 decision.

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

"Denise Weeres"
Manager, Legal
Corporate Finance
Alberta Securities Commission

2.1.5 The Toronto-Dominion Bank and TD Bank, N.A.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption from registration and prospectus requirements – Foreign bank wants to offer certificates of deposit to Canadian residents – The applicant is a foreign bank subject to a comprehensive scheme of regulation and supervision in its home jurisdiction comparable to Canadian regulatory requirements governing Schedule I and II banks, including its proposed deposit taking activities with Canadian residents; the applicant's Canadian deposit holders will be covered by the deposit insurance scheme in its home jurisdiction.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 74(1), 25, 53.

TRANSLATION

January 15, 2018

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUÉBEC AND ONTARIO

AND

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

AND

IN THE MATTER OF
THE TORONTO-DOMINION BANK AND
TD BANK, N.A.
(the Filers)

DECISION

Background

The securities regulatory authority or regulator in each of Québec and Ontario (the Dual Exemption Decision Maker) has received an application from TD Bank, N.A. for a decision under the securities legislation of those jurisdictions (the Dual Legislation) for an exemption for TD Bank, N.A. from the registration requirement and prospectus requirement in respect of deposit-taking activities of TD Bank, N.A. with Canadian residents (the Dual Exemption);

In addition, the securities regulatory authority or regulator in Québec (the Passport Decision Maker) has received an application from The Toronto-Dominion Bank (TD) for a decision under the securities legislation of Québec (the Passport Legislation) for an exemption for TD from the registration requirement in respect of the marketing and administrative activities of TD in furtherance of the deposit-taking activities of TD Bank, N.A. with Canadian residents (the Passport Exemption).

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 Filers have provided notice that subsection 4.7(1) of *Regulation 11-102 respecting Passport System* (Regulation 11-102) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut; and

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

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

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

(b) the Filers have provided notice that subsection 4.7(1) of R 11-102 is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions* and Regulation 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 Filers:

1. TD is a Schedule I Bank under the *Bank Act* (Canada) (Bank Act). It is subject to extensive governance expectations and regulatory oversight by, in particular, the Office of the Superintendent of Financial Institutions (OSFI). The head office of TD is located in Toronto, Ontario.

2. TD Bank, N.A., an indirect wholly-owned subsidiary of TD, is chartered as a national bank under the United States *National Bank Act* (National Bank Act). The head office of TD Bank, N.A. is located in Wilmington, Delaware, U.S.A.

3. TD Bank, N.A. carries on the business of banking in the United States. It offers a broad array of retail, small business and commercial banking products and services to more than nine million customers through its network of more than 1,200 locations throughout the Northeast and Mid-Atlantic United States, the District of Columbia, the Carolinas and Florida.

4. Considering that TD Bank, N.A. is chartered as a national bank under the National Bank Act, it is subject to regulation, examination and supervision by its chartering agency, the United States Office of the Comptroller of Currency (OCC). TD Bank, N.A. is also a member of the U.S. Federal Reserve System and subject to the regulatory oversight of the United States Federal Reserve Board (FRB), subject to certain limits, and, with respect to U.S. federal consumer financial laws, the United States Consumer Financial Protection Bureau (CFPB). Each of the OCC, FRB and CFPB is a regulatory authority created under the federal laws of the United States.

5. The OCC has been granted extensive discretionary authority to assist it with the fulfillment of its supervisory and enforcement obligations. The OCC exercises such authority for the purpose of conducting periodic examinations of TD Bank, N.A.'s compliance with various regulatory requirements. With respect to compliance with U.S. federal consumer financial laws, the CFPB has exclusive supervisory authority, including examination authority, and primary enforcement authority over TD Bank, N.A.

6. TD Bank, N.A. is subject to continual, ongoing bank supervision and examination by the OCC, which is the primary federal regulator of TD Bank, N.A. TD Bank, N.A. is required to file periodic reports with the OCC, FRB and CFPB concerning its activities and financial condition and it must obtain the approval of the OCC before entering into certain transactions, such as mergers with, or acquisitions of, other financial institutions.

7. As a result, TD Bank, N.A. is subject to a comprehensive scheme of regulation and supervision in the United States which the Filers believe is comparable to the regulatory framework governing Schedule I and II banks pursuant to the Bank Act and the supervisory responsibilities of OSFI.

8. In addition, the American dollar deposit-taking checking and savings accounts issued by TD Bank, N.A. (US Deposits) are insured by the United States Federal Deposit Insurance Corporation (FDIC) under the United States Federal Deposit Insurance Act, as amended, and the regulations promulgated thereunder, for up to US$250,000 at this time for each depositor (deposits owned by the same depositor may be combined for purposes of calculating this limit). The FDIC deposit insurance is guaranteed by the United States Treasury Department.

9. The Dual Exemption Decision Makers have previously granted relief to TD Bank, N.A. in respect of the offering of U.S. dollar denominated personal chequing accounts, negotiable order withdrawal accounts, savings accounts and certificates of deposit pursuant to an MRRS decision document dated July 27, 2006 (Previous Decision). TD Bank, N.A. proposes to expand the types of deposit products that may be offered from those contemplated by the Previous Decision.

10. TD Bank, N.A. markets the US Deposits in the United States. In addition to the current solicitation of personal deposits pursuant to the Previous Decision from residents of the jurisdictions, TD Bank, N.A. wishes to further solicit US Deposits from residents of the jurisdictions, including individuals, corporations and other entities. The US Deposits may also be marketed in Canada by TD to Canadian residents, including through TD's Canadian bank branches and through TD's internet sites.

11. In addition, TD employees may, to the extent permitted by the Bank Act, engage from time to time in certain clerical steps to facilitate the opening of the US Deposits in the United States by Canadian residents. It is currently anticipated that these clerical steps would be operational and administrative in nature and may include, for example, providing account documentation to Canadian residents who wish to open a US Deposit and providing information relating to such Canadian resident to TD Bank, N.A. to facilitate a discussion between TD Bank, N.A. and the Canadian resident, and, as agent of TD Bank, N.A., collecting information regarding and verifying the identity of Canadian residents who open US Deposits with TD Bank, N.A.

12. To the extent permitted by the Bank Act, TD may also in the future, engage in additional referral activities and may take a more proactive role in TD Bank N.A.'s relationship with its customers (Referral Arrangements). Any compensation received by TD or paid by TD to its employees in connection with such Referral Arrangements would be in accordance with TD's bank policies and practices and would be disclosed to the Canadian resident (including the Referral Arrangement and the method of calculating any fees arising from such Referral Arrangement) prior to the opening of a US Deposit.

13. The offering of the US Deposits by TD Bank, N.A. to Canadian residents constitutes a distribution of securities within the meaning of the terms "security" and "dealer" under the Dual Legislation. As a result, TD Bank, N.A. will be subject to the

registration requirement and prospectus requirement.

14. Although TD Bank, N.A. is an indirect wholly-owned subsidiary of TD and is engaged in the business of banking in the United States, it is not a Schedule I, II or III bank for purposes of the Bank Act. As a result, the Canadian bank exemptions under the Dual Legislation are not available to TD Bank, N.A. in these circumstances.

15. The US Deposits are, and will be, issued in compliance with applicable U.S. law, including applicable anti-money laundering and consumer protection legislation.

16. The US Deposits that are offered to Canadian residents do not contravene any federal or provincial deposit-taking legislation or any provision of the Bank Act.

17. The US Deposits that are offered to residents of Canada are subject to the same regulation and oversight by the OCC, FRB and CFPB as US Deposits that are offered to residents of the United States.

18. Other than in compliance with Canadian securities laws, TD Bank, N.A. will not trade in any securities other than US Deposits with or on behalf of persons or companies who are resident in Canada.

19. The Filers are not in default of securities legislation in any jurisdiction.

20. TD has not applied for the Passport Exemption in Ontario because it is exempt from the registration requirement pursuant to subsection 35.1(1) of the *Securities Act* (Ontario). As a result, TD will not be receiving a decision about the Passport Exemption from the securities regulatory authority or regulator in Ontario.

Decision

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

The decision of the Dual Exemption Decision Makers under the Dual Legislation is that the Dual Exemption is granted, provided that at the relevant time activities are engaged in:

(a) TD continues to be subject to regulation, examination and supervision by OSFI;

(b) TD Bank, N.A. continues to be subject to regulation, examination and supervision by the OCC and/or the FRB;

(c) the US Deposits are insured by the FDIC up to the applicable coverage limits under the FDIC rules, regardless of the residence or citizenship of the holder of a US Deposit;

(d) the details of the FDIC insurance coverage in respect of the US Deposits are disclosed to each prospective holder of a US Deposit prior to the opening of the US Deposit; and

(e) prior to the opening of the US Deposit or the making of an initial deposit therein, TD or TD Bank, N.A. informs the Canadian resident of any Referral Arrangements between TD Bank, N.A. and TD relating to the US Deposits, including the method of calculating the fees received by TD, if any, arising from such Referral Arrangement.

The decision of the Passport Decision Maker under the Passport Legislation is that the Passport Exemption is granted, provided that at the relevant time activities are engaged in:

(a) TD continues to be subject to regulation, examination and supervision by OSFI;

(b) TD Bank, N.A. continues to be subject to regulation, examination and supervision by the OCC and/or the FRB;

(c) the US Deposits are insured by the FDIC up to the applicable coverage limits under the FDIC rules, regardless of the residence or citizenship of the holder of a US Deposit;

(d) the details of the FDIC insurance coverage in respect of the US Deposits are disclosed to each prospective holder of a US Deposit prior to the opening of the US Deposit; and

(e) prior to the opening of the US Deposit or the making of an initial deposit therein, TD or TD Bank, N.A. informs the Canadian resident of any Referral Arrangements between TD Bank, N.A. and TD relating to the US Deposits, including the method of calculating the fees received by TD, if any, arising from such Referral Arrangement.

"Gilles Leclerc"
Superintendent des marches de valeurs

2.2 Orders

2.2.1 Quadrexx Hedge Capital Management Ltd. et al. – ss. 127, 127.1

IN THE MATTER OF
QUADREXX HEDGE CAPITAL MANAGEMENT LTD.,
QUADREXX SECURED ASSETS INC.,
MIKLOS NAGY and
TONY SANFELICE

Timothy Moseley, Vice-Chair and Chair of the Panel
Philip Anisman, Commissioner
AnneMarie Ryan, Commissioner

January 23, 2018

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

WHEREAS on October 24, 25 and 26, 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 the sanctions and costs that the Commission should impose on the respondents as a result of the findings in the Commission's Reasons and Decision on the merits, issued on February 6, 2017;

ON READING the materials filed by, and on hearing the submissions of, the respondents and the representatives for Staff of the Commission;

IT IS ORDERED THAT:

1. Pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**), Miklos Nagy (**Nagy**), Tony Sanfelice (**Sanfelice**), Quadrexx Hedge Capital Management Inc. (**QHCM**) and Quadrexx Secured Assets Inc. (**QSA**) are prohibited permanently from trading in or acquiring any securities;

2. Pursuant to paragraph 3 of subsection 127(1) of the Act, all exemptions contained in Ontario securities law shall not apply to Nagy, Sanfelice, QHCM and QSA, permanently;

3. Pursuant to paragraphs 7 and 8 of subsection 127(1) of the Act, Nagy and Sanfelice shall resign all positions they hold as an officer or director of any issuers no later than 30 days after the date of this Order and thereafter are prohibited permanently from becoming or acting as a director or officer of any issuer;

4. Pursuant to paragraphs 8.1, 8.2, 8.3 and 8.4 of subsection 127(1) of the Act, Nagy and Sanfelice shall resign from any positions they hold as an officer or director of a registrant, including an investment fund manager, and are prohibited permanently from becoming or acting as a director or officer of a registrant, including an investment fund manager;

5. Pursuant to paragraph 8.5 of subsection 127(1) of the Act, Nagy, Sanfelice and QHCM are prohibited permanently from becoming or acting as a registrant, as an investment fund manager, or as a promoter;

6. Pursuant to paragraph 9 of subsection 127(1) of the Act:

   a. Nagy and Sanfelice shall each pay to the Commission an administrative penalty of $600,000.00; and

   b. QHCM shall pay to the Commission an administrative penalty of $300,000.00;

7. Pursuant to paragraph 10 of subsection 127(1) of the Act:

   a. Nagy shall disgorge to the Commission $482,660.67;

   b. Sanfelice shall disgorge to the Commission $323,382.28; and

   c. Nagy and Sanfelice shall jointly and severally disgorge to the Commission $2,495,277.00;

8. Each of the payments required by paragraphs 6 and 7 of this Order is designated for allocation or use by the Commission in accordance with subparagraph 3.4(2)(b)(i) or (ii) of the Act; and

9. Pursuant to section 127.1 of the Act:

   a. Nagy and Sanfelice shall jointly and severally pay the Commission costs of $300,000.00;

   b. Nagy, Sanfelice and QHCM shall jointly and severally pay the Commission costs of $150,000.00; and

   c. Nagy, Sanfelice and QSA shall jointly and severally pay the Commission costs of $100,000.00.

"Timothy Moseley"

"Philip Anisman"

"AnneMarie Ryan"

2.2.2 AuRico Metals Inc. – 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).

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF
AURICO METALS INC.
(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 subsection 1(1) of the OBCA, and has an authorized capital consisting of an unlimited number of common shares (the "**Common Shares**"), of which 162,624,099 Common Shares are issued and outstanding as of the date hereof.

2. The Applicant has its head office at 1 University Avenue, Suite 1500, Toronto, Ontario, M5J 2P1.

3. Effective January 8, 2018, in accordance with a plan of arrangement under section 182 of the OBCA (the "**Arrangement**"), AuRico Metals Inc. ("**Old AuRico**"), a predecessor by amalgamation of the Applicant, became a wholly-owned subsidiary of Centerra Ontario Holdings Inc. (the "**Purchaser**"), itself a wholly-owned subsidiary of Centerra Gold Inc. ("**Centerra**"). Immediately following the Arrangement, Old AuRico amalgamated with the Purchaser, with the amalgamated company using the name "AuRico Metals Inc.".

4. The Arrangement was approved by shareholders of Old AuRico at a special meeting of shareholders of Old AuRico held on December 22, 2017.

5. The Arrangement was approved by a final court order of the Ontario Superior Court of Justice (Commercial List) on January 5, 2018.

6. The Common Shares, which traded under the symbol "AMI" on the Toronto Stock Exchange, were de-listed effective at the close of trading on January 9, 2018.

7. The Applicant has no outstanding securities, including debt securities, other than the Common Shares.

8. As of the date of this decision, all of the outstanding Common Shares are beneficially owned, directly or indirectly, by Centerra.

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

10. On January 19, 2018, the Applicant was granted an order pursuant to subclause 1(10)(a)(ii) of the *Securities Act* (Ontario) that it is not a reporting issuer in 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*.

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

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

AND UPON the Commission being satisfied that to grant this order 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 19th day of January, 2018

"Mark J. Sandler"
Commissioner
Ontario Securities Commission

"Anne Marie Ryan"
Commissioner
Ontario Securities Commission

2.2.3 Kirkland Lake Gold Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

January 23, 2018

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

AND

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

AND

IN THE MATTER OF
KIRKLAND LAKE GOLD INC.
(the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"Sonny Randhawa"
Deputy Director
Corporate Finance Branch

2.2.4 Paladin Energy Ltd

Headnote

Section 144 of the Securities Act (Ontario) – application for partial revocation of a failure-to-file cease trade order – issuer cease traded due to failure to file certain continuous disclosure documents required by Ontario securities law – issuer has applied for a variation of the cease trade order to permit the issuer to proceed with a deed of company arrangement under the Corporations Act 2001 (Australia) – partial revocation granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127, 144.
National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions.

IN THE MATTER OF
PALADIN ENERGY LTD
(the Issuer)

PARTIAL REVOCATION ORDER
Under the securities legislation of Ontario (the Legislation)

Background

1. Paladin Energy Ltd (the **Issuer**) is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the Ontario Securities Commission (the **Principal Regulator**) on October 4, 2017.

2. The Issuer has applied to the Principal Regulator for a partial revocation order of the FFCTO.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* or in National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (**NP 11-207**) have the same meaning if used in this order, unless otherwise defined.

Representations

3. This decision is based on the following facts represented by the Issuer:

   a. The Issuer is a company incorporated under the laws of Western Australia on September 24, 1993.

   b. The Issuer's head office is located in Perth, Australia and is currently subject to a DOCA as described below.

   c. As of the date hereof, the authorized capital of the Issuer consists of an unlimited number of common shares (the **Common Shares**) of which 1,712,843,812 are issued and outstanding.

   d. The Issuer is a reporting issuer in the Province of Ontario and is not a reporting issuer or equivalent under the securities legislation of any other jurisdiction in Canada.

   e. Since June 2016, the Issuer has been a "Designated Foreign Issuer" as such term is defined under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

   f. The Issuer was a dual Australian Stock Exchange (**ASX**) and Toronto Stock Exchange (**TSX**) listed company. Throughout 2016 and 2017, the Issuer attempted to restructure large portions of its debt that were coming due in 2017. Due to the Issuer's ongoing financial difficulties, the Common Shares were suspended from trading from the TSX on May 18, 2017. On June 12, 2017, the Issuer requested voluntary suspension in trading of its Common Shares on the ASX. On July 3, 2017, the Issuer's directors appointed KPMG as joint and several administrators of the Issuer under the *Corporations Act 2001* (Australia), and on August 10, 2017, the Issuer's Common Shares were delisted from the TSX.

   g. The FFCTO was issued on October 4, 2017, due to the failure of the Issuer to file its annual information form, audited financial statements, related management's discussion and analysis and officer certifications (the **Outstanding Filings**) for the year ended June 30, 2017. Under the *Corporations Act 2001* (Australia), companies in administration are given automatic extensions to file audited financial statements.

h. On December 8, 2017, the Issuer entered into a deed of company arrangement (**DOCA**) with its creditors to implement a capital restructuring which is intended to enable the Issuer and its subsidiaries to continue operating as a going concern and have the Issuer reinstated to list its shares on the ASX.

i. The DOCA will, among other things, be comprised of:

   i. a debt for equity swap whereby current shareholders (of which holders of approximately 8.5% of the issued and outstanding are resident in Canada of which the majority reside in Ontario) (the **Shareholders**) will transfer 98% of their Common Shares to participating creditors who hold approximately USD$678 million of the Issuer's debt as of December 31, 2017 (the **Share Exchange**);

   ii. an issue of USD$115 million of secured notes (the **Notes**); and

   iii. payment of approximately USD$60 million in cash to acquire an outstanding debt facility.

j. There are a number of conditions precedent to the implementation of the DOCA, including:

   i. Australian court approval of the Share Exchange;

   ii. the Issuer obtaining necessary relief and exemptions from the ASX and certain other Australian government bodies; and

   iii. the total amount of subscription proceeds for the Notes being held in escrow pending release upon satisfaction of all conditions precedent to the DOCA.

k. The Share Exchange was approved by an order of the Supreme Court of New South Wales on January 18, 2018 (Case number 2017/00375147).

l. Three creditors resident in Ontario (the **Ontario Creditors**) hold approximately USD$11.3 million of debt or approximately 1.7% of the total debt which will be exchanged for 34,006,260 Common Shares representing approximately 2% of the Common Shares outstanding after completion of the corporate restructuring. For the Share Exchange, the relevant parties will rely on the business combination and reorganization exemption contained in section 2.11 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**).

m. It is anticipated that the Ontario Creditors will subscribe for US$3.5 million worth of Notes representing approximately 3% of the Notes to be issued. For the Ontario Creditors' subscription of Notes, the Issuer will rely on the minimum amount invested exemption ($150,000) contained in section 2.10 of NI 45-106.

n. The Issuer will use US$60,000,000 of the proceeds received from the sale of the Notes to purchase Deutsche Bank AG, London Branch's rights and obligations under the revolving credit facility agreement with the remainder to finance the Issuer's and its subsidiaries' operations, including, without limitation, such amounts required after the closing to prepare and file the Issuer's continuous disclosure documents under applicable securities laws in Canada to bring such filings, including the Outstanding Filings, and outstanding filing fees up to date with a view to applying for a full revocation of the FFCTO.

o. The Issuer is requesting the partial revocation of the FFCTO to allow:

   i. the Ontario Creditors to receive approximately 34,006,260 Common Shares in exchange for debt in the amount of US$11.3 million pursuant to the terms of the Share Exchange; and

   ii. the Ontario Creditors to subscribe for approximately US$3.5 million worth of Notes (and collectively with the Share Exchange, the **Proposed Trades**).

p. Upon completion of the DOCA and within a reasonable amount of time, the Issuer will apply to the Principal Regulator for a full revocation of the FFCTO.

q. The proposed trading in Ontario under the DOCA of the Common Shares and Notes to the Ontario Creditors cannot be completed without a partial revocation of the FFCTO.

r. Other than the trades in the Common Shares and Notes to the Ontario Creditors pursuant to the DOCA, no further trading of securities of the Issuer will be made in the Province of Ontario unless further relief from the FFCTO is sought by the Issuer.

s. The Issuer's securities, including the Common Shares and Notes proposed to be distributed under the DOCA, will remain subject to the FFCTO until such time as the FFCTO is fully revoked.

t. The Issuer's SEDAR and SEDI profiles are up to date.

u. Except for the outstanding filings and continuous disclosure defaults since the issuance of the FFCTO, the Issuer is not in default of any requirements of the FFCTO, the Legislation, or the rules and regulations made pursuant thereto.

v. Upon implementation of the DOCA, the Issuer will issue a news release and file a material change report announcing the issuance of the Notes and this Order.

Order

4. The Principal Regulator is satisfied that a partial revocation order of the FFCTO meets the test set out in the Legislation for the Principal Regulator to make the decision.

5. The decision of the Principal Regulator under the Legislation is that the FFCTO is partially revoked solely to permit the Proposed Trades, provided that:

   a. prior to the completion of the trades of Common Shares and Notes to each of the Ontario Creditors, each participating Ontario Creditor will:

      i. receive a copy of the FFCTO;

      ii. receive a copy of this Order; and

      iii. receive written notice from the Issuer, and provide a written acknowledgement to the Issuer, that the granting of this Order does not guarantee the issuance of any full revocation orders in the future and that all of the Issuer's securities, including the Common Shares and the Notes, will remain subject to the FFCTO until it is revoked;

   b. the Issuer undertakes to make available a copy of the written acknowledgement to staff of the Principal Regulator on request;

   c. this Order will terminate on the earlier of:

      i. the completion of the trades of Common Shares and Notes to the Ontario Creditors as set out in the DOCA; and

      ii. 60 days from the date hereof.

DATED at Toronto, Ontario on this 25th day of January, 2018.

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

2.2.5 ClareGold Trust

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).

January 25, 2018

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

AND

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

AND

**IN THE MATTER OF
CLAREGOLD TRUST
(THE FILER)**

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

2.2.6 EA Education Group Inc.

Headnote

National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – Application by an issuer for a revocation of cease trade orders issued by the Commission and British Columbia Securities Commission – cease trade order issued because the issuer had failed to file certain continuous disclosure materials required – defaults subsequently remedied by bringing continuous disclosure filings up-to-date – Ontario opt-in to revocation order issued by British Columbia Securities Commission, as principal regulator.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss.127, 144.
National Policy 11-207 Failure to File Cease Trade Orders and Revocations in Multiple Jurisdictions.

Citation: 2017 BCSECCOM 383

EA EDUCATION GROUP INC.
Under the securities legislation of British Columbia and Ontario (Legislation)

REVOCATION ORDER

Background

1 EA Education Group Inc. (the Issuer) is subject to a failure-to-file cease trade order (the FFCTO) issued by the regulator in each of British Columbia (the Principal Regulator) and Ontario (each a Decision Maker) respectively on January 5, 2017.

2 The Issuer has applied to each of the Decision Makers under National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (NP 11-207) for an order revoking the FFCTOs.

3 This order is the order of the Principal Regulator and evidences the decision of the Decision Maker in Ontario.

Interpretation

4 Terms defined in National Instrument 14-101 *Definitions* or in NP 11-207 have the same meaning if used in this order, unless otherwise defined.

Representations

5 The decision is based on the following facts represented by the Issuer:

(a) The Issuer was incorporated under the *Business Corporations Act* (Ontario) on November 21, 1995.

(b) The Issuer was continued into British Columbia under the *Business Corporations Act* (British Columbia) on November 17, 2006.

(c) On February 18, 2015, the Issuer acquired all of the issued and outstanding shares of EA Education Group Inc. pursuant to a share purchase agreement dated December 19, 2014. Following the acquisition, EA Education Group Inc. became a wholly-owned subsidiary of the Issuer.

(d) The Issuer continued out of British Columbia and into the *Canada Business Corporations Act* on July 17, 2015.

(e) The Issuer is a reporting issuer in the provinces of British Columbia, Alberta and Ontario.

(f) The Issuer's authorized capital consists of an unlimited number of common shares, of which 174,256,868 common shares are issued and outstanding on a non-diluted basis.

(g) The common shares are listed on the Canadian Securities Exchange but were suspended from trading on January 6, 2017. The common shares of the Issuer remain suspended as of the date hereof. The common voting shares are not listed or quoted on any other exchange or market in Canada or elsewhere.

(h) The FFCTO was issued due to the failure of the Issuer to file with the Principal Regulator and the Decision Maker the following period disclosure as required by the *Securities Act*, R.S.B.C. 1996, c. 418:

i. annual audited financial statements for the year ended August 31, 2016;

ii. annual management's discussion and analysis for the year ended August 31, 2016; and

iii. certification of the annual filings for the year ended August 31, 2016

(the Financial Statements).

(i) The Financial Statements were not filed due to unanticipated delays in the preparation and audit of the audited annual financial statements.

(j) The Financial Statements have now been filed with the Principal Regulator and the Decision Maker.

(k) The Issuer is up to date in its continuous disclosure obligations, has paid all outstanding filing fees associated therewith and has complied with the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* regarding delivery of financial instruments.

(l) The Issuer has a viable business plan going forward which involves continuing to provide international educational service and comprehensive student housing services in Canada and China.

(m) Adequate public disclosure has been made of the business and affairs of the Issuer to protect the interests of current and future investors in the Issuer.

(n) The Issuer held its most recent annual general meeting of shareholders on October 2, 2017.

(o) The Issuer has not changed its business since the date of the FFCTO.

Order

6 Each of the Decision Makers is satisfied that the order to revoke the FFCTO meets the test set out in the Legislation for the Decision Marker to make the decision.

7 The decision of the Decision Makers under the Legislation is that the FFCTO is revoked.

8 December 22, 2017

Allan Lim, CPA, CA
Manager
Corporate Finance

2.2.7 Omega Securities Inc. – s. 127(7)

File No.: 2017-64

**IN THE MATTER OF
OMEGA SECURITIES INC**

Mark J. Sandler, Commissioner and Chair of the Panel

January 26, 2018

ORDER
Subsection 127(7) of the
Securities Act, RSO 1990, c S.5

WHEREAS on January 26, 2018, the Ontario Securities Commission conducted a hearing in writing, to consider whether to extend the temporary order of the Commission issued on November 23, 2017 in this matter (the **Temporary Order**) and extended on December 5, 2017;

ON READING the material filed by Staff of the Commission and considering Omega Securities Inc.'s consent to the making of this Order;

IT IS ORDERED THAT:

1. Pursuant to section 5.1 of the *Statutory Powers Procedure Act*, RSO 1990, c S.22 (the **SPPA**) and Rule 23(2) of the Ontario Securities Commission *Rules of Procedure and Forms* (2017), 40 OSCB 8988 (the **Rules**), the hearing be conducted in writing; and

2. Pursuant to subsection 127(7) of the *Securities Act*, RSO 1990, c S.5, the Temporary Order is extended until March 2, 2018.

"Mark J. Sandler"

2.2.8 Dennis L. Meharchand and Valt.X Holdings Inc. – s. 127(1)

File No.: 2017-4

**IN THE MATTER OF
DENNIS L. MEHARCHAND and
VALT.X HOLDINGS INC.**

Mark J. Sandler, Commissioner

January 29, 2018

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

WHEREAS on January 29, 2018, the Ontario Securities Commission held a hearing in writing to consider a scheduling request made by the representative of the respondents, and

ON READING the consent of the parties to the relief requested;

IT IS ORDERED THAT

1. Pursuant to Rule 20 of the Commission's *Rules of Procedure and Forms* (2017), 40 OSCB 8988, a confidential conference shall be held on February 5, 2018 at 10:00 a.m.; and

2. The previously scheduled confidential conference date of February 6, 2018 is vacated.

"Mark J. Sandler"

2.2.9 Donald Mason – s. 8

FILE NO.: 2018-1

**IN THE MATTER OF
DONALD MASON**

Mark J. Sandler, Chair of the Panel

January 29, 2018

ORDER
Section 8 of the *Securities Act*, RSO 1990, c S.5

WHEREAS on January 25, 2018, the Ontario Securities Commission received a request from Mr. Mason for an adjournment of the First Appearance scheduled for January 25, 2018, which was considered in writing;

ON READING the email correspondence from Mr. Mason dated January 25, 2018, and on considering that Staff and Mr. Mason agree to adjourn the First Appearance to February 6, 2018;

IT IS ORDERED THAT the First Appearance is adjourned to February 6, 2018 at 3:00 p.m.

"Mark J. Sandler"

2.2.10 Deer Horn Capital Inc.

Headnote

National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – Application by an issuer for a revocation of cease trade orders issued by the Commission and British Columbia Securities Commission – cease trade order issued because the issuer had failed to file certain continuous disclosure materials required – defaults subsequently remedied by bringing continuous disclosure filings up-to-date – Ontario opt-in to revocation order issued by British Columbia Securities Commission, as principal regulator.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127, 144.
National Policy 11-207 Failure to File Cease Trade Orders and Revocations in Multiple Jurisdictions.

Citation: 2018 BCSECCOM 36

DEER HORN CAPITAL INC.

REVOCATION ORDER
Under the securities legislation of British Columbia and Ontario (Legislation)

Background

1 Deer Horn Capital Inc. (the Issuer) is subject to a failure-to-file cease trade order (the FFCTO) issued by the regulator in each of British Columbia (the Principal Regulator) and Ontario (each a Decision Maker) respectively on January 30, 2017.

2 The Issuer has applied to each of the Decision Makers under National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (NP 11-207) for an order revoking the FFCTOs.

3 This order is the order of the Principal Regulator and evidences the decision of the Decision Maker in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* or in NP 11-207 have the same meaning if used in this order, unless otherwise defined.

Order

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

5 The decision of the Decision Makers under the Legislation is that the FFCTO is revoked.

6 January 25, 2018

"Allan Lim, CPA, CA"
Manager
Corporate Finance

TO:

Deer Hom Capital Inc.
c/o Kathleen Macinnes
K Macinnes Law Group
Suite 1100, 736 Granville Street
Vancouver BC V6Z 1G3
Email: kmacinnes@macinneslaw.com

Stock Transfer Department
AST Trust Company (Canada)
Suite 1200, 1 Toronto St.
Toronto ON M5C 2V6
Fax No.: (888) 249-6189

2.2.11 TMX Group Limited et al. – s. 147

Headnote

TMX Group Limited et al. – Relief from section 13(d) of Schedule 2, section 36(e) of Schedule 5 and section 54(e) of Schedule 7 of the Commission's order recognizing TMX Group Limited, TMX Group Inc., TSX Inc., Alpha Trading Systems Limited Partnership and Alpha Exchange Inc. as exchanges Relief from the Annual Budget Requirement provided that each of the exchanges files its annual budgets for the 2018 fiscal year no later than March 1, 2018.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 147.

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

AND

IN THE MATTER OF
TMX GROUP LIMITED
AND
TMX GROUP INC.
AND
TSX INC.
AND
ALPHA TRADING SYSTEMS LIMITED PARTNERSHIP
AND
ALPHA EXCHANGE INC.

ORDER
(Section 147 of the Act)

WHEREAS the Ontario Securities Commission (Commission) issued an amended and restated recognition order dated April 24, 2015, as varied on September 29, 2015, recognizing each of TMX Group Limited, TMX Group Inc. (TGI), TSX Inc. (TSX), Alpha Trading Systems Limited Partnership (Alpha LP), and Alpha Exchange Inc. (Alpha Exchange) as an exchange pursuant to section 21 of the Act (Exchange Recognition Order);

AND WHEREAS pursuant to Section 13(d) of Schedule 2 of the Exchange Recognition Order, each of the recognized exchanges must deliver to the Commission its annual financial budget, together with the underlying assumptions, that has been approved by its board, within 30 days after the commencement of each fiscal year;

AND WHEREAS Section 36(e) of Schedule 5 and Section 54(e) of Schedule 7, in each case, of the Exchange Recognition Order, also provide that TSX and Alpha Exchange, respectively, must deliver to the Commission their respective annual financial budget, on a non-consolidated basis, together with the underlying assumptions, that have been approved by their respective board of directors, within 30 days after the commencement of each fiscal year

(together with the requirement at Section 13(d) of Schedule 2 of the Exchange Recognition Order, the Annual Budget Requirement);

AND WHEREAS TMX Group Limited and TGI were involved in an amalgamation and the continuing or successor entity from such amalgamation will comply with the requirement of Section 13(d) of Schedule 2 of the Exchange Recognition Order;

AND WHEREAS the Commission has received an application pursuant to section 147 of the Act for an exemption from the Annual Budget Requirement to allow each of TSX, Alpha LP, and Alpha Exchange (collectively, the Exchanges) to file their respective annual financial budgets no later than March 1, 2018 (Application);

AND WHEREAS based on the Application and the representations that the Exchanges have made to the Commission, the Commission has determined that it is not prejudicial to the public interest to issue an order exempting the Exchanges from the Annual Budget Requirement;

IT IS ORDERED that, pursuant to section 147 of the Act, each of the Exchanges is exempted from the Annual Budget Requirement provided that each of the Exchanges (or any continuing or successor entity of any of such Exchange) files its annual budgets for the 2018 fiscal year no later than March 1, 2018.

DATED this 23rd day of January, 2018.

"Peter Currie"
Commissioner

"Robert P. Hutchison"
Commissioner

2.3 Orders with Related Settlement Agreements

2.3.1 National Bank Financial Inc. et al. – ss. 127, 127.1

FILE NO.: 2017-82

IN THE MATTER OF
NATIONAL BANK FINANCIAL INC.
(in respect of its predecessors
NATIONAL BANK FINANCIAL LTD. and
NBCN INC.)

Mark Sandler, Commissioner and Chair of the Panel
Robert Hutchison, Commissioner
Frances Kordyback, Commissioner

January 26, 2018

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

WHEREAS on January 26, 2018, 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 the Application made jointly by National Bank Financial Inc. ("**NBF**") and Staff of the Commission for approval of a settlement agreement dated January 23, 2018 (the "**Settlement Agreement**");

ON READING the Joint Application Record for a Settlement Hearing, including the Statement of Allegations dated January 24, 2018, the Settlement Agreement and the Consent of the parties to an Order in substantially this form, and on hearing the submissions of the representatives for both parties;

IT IS ORDERED THAT:

1. pursuant to subsection 127(1) of the Act, the Settlement Agreement is approved;

2. pursuant to subsection 127(2) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**"), the approval of the Settlement Agreement is subject to the following terms and conditions:

   a. NBF will conduct final testing and review of the Enhanced Control and Supervision Procedures and will implement any additional changes, if necessary, within 90 days of the date this Order (the "**Review Period**");

   b. NBF will submit a letter (the "**Attestation Letter**") to Staff, signed by the Ultimate Designated Person and the Chief Compliance Officer responsible for the exchange traded fund (ETF) sales business, expressing their opinion as to whether the Enhanced Control and Supervision Procedures were adequately followed, administered and enforced by NBF for the one-year period commencing from the date of implementation of the Enhanced Control and Supervision Procedures upon completion of the Review Period, and for a further one-year period commencing from the date that is one year after the implementation date;

   c. if applicable, the Attestation Letter will be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter; and

   d. NBF will submit such additional reports as may be reasonably requested by Staff for the purpose of satisfying Staff that the opinion expressed in the Attestation Letter described in subparagraphs (b) and (c) above is valid;

3. pursuant to paragraph 9 of subsection 127(1) of the Act, NBF shall pay an administrative penalty of $700,000, to be designated for allocation or for use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act; and

4. pursuant to subsection 127.1(1) of the Act, NBF shall pay $35,000 in costs to the Commission.

"Mark Sandler"

"Robert Hutchison"

"Frances Kordyback"

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

AND

IN THE MATTER OF
NATIONAL BANK FINANCIAL INC.
(IN RESPECT OF ITS PREDECESSORS
NATIONAL BANK FINANCIAL LTD. and
NBCN INC.)

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. Disclosure is a cornerstone principle of securities regulation. Investors are entitled to receive appropriate product disclosure outlining the potential benefits, risks and costs of investing in an exchange traded fund ("ETF"). This disclosure must be provided in an accessible and timely manner so that investors can make an informed purchase decision.

2. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), it is in the public interest for the Commission to make certain orders against National Bank Financial Inc. ("NBF") in respect of the conduct of its predecessors National Bank Financial Ltd. and NBCN Inc. (collectively, the "Ontario NB Dealers") as described herein.

3. The Ontario NB Dealers acted contrary to the public interest and contrary to their obligations as registered firms by failing to take the necessary steps to provide for timely delivery of summary disclosure documents to investors who purchased ETF securities in accordance with the terms of the applicable exemptive relief decisions (the "Delivery Issues"). The Delivery Issues were caused by inadequacies in the Ontario NB Dealers' systems of controls and supervision which formed part of their compliance system.

4. The Delivery Issues affected a total of 128,199 ETF purchase transactions involving 44,857 client accounts from February 5, 2015 until September 26, 2016. Of those ETF purchases, 50,972 transactions were conducted by the Ontario NB Dealers and the remaining 77,227 transactions were conducted by NBF's predecessors, National Bank Financial Inc. and National Bank Direct Brokerage Inc. (collectively, the "Québec NB Dealers").

5. The Autorité des marchés financiers (the "AMF") acted as principal regulator for the Québec NB Dealers. The AMF is commencing a parallel proceeding against NBF in respect of the Québec NB Dealers. It is anticipated that NBF will concurrently agree with Staff of the AMF to recommend settlement of the AMF enforcement proceeding on the basis of substantially the same facts, conclusion and terms as are set out in this settlement agreement.

PART II – JOINT SETTLEMENT RECOMMENDATION

6. Staff of the Commission ("Staff") recommend settlement of the proceeding (the "Proceeding") against NBF in respect of the conduct of the Ontario NB Dealers commenced by the Notice of Hearing, in accordance with the terms and conditions set out in this settlement agreement (the "Settlement Agreement"). NBF consents to the making of an order ("the Order") in the form attached as Schedule "A" to the Settlement Agreement based on the facts set out herein.

7. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, NBF agrees with the facts as set out in Part III and the conclusion in Part IV of this Settlement Agreement.

PART III – AGREED FACTS

A. The Parties

8. National Bank Financial Inc. ("NBF") is a corporation formed on November 1, 2017 by the amalgamation of the Ontario NB Dealers and the Québec NB Dealers pursuant to the laws of Canada, with its head office in Montreal, Québec. It is registered with the Commission as a futures commission merchant and investment dealer.

9. National Bank Financial Ltd. ("NBF Ltd.") was, during the material time, a corporation incorporated pursuant to the laws of Ontario, with its head office in Toronto, Ontario. It was registered with the Commission as a futures commission merchant and investment dealer. The Commission acted as its principal regulator.

10. NBCN Inc. ("NBCN") was, during the material time, a corporation incorporated pursuant to the laws of Ontario, with its head office in Toronto, Ontario. It was registered with the Commission as an investment dealer, and it was registered with the AMF as an investment dealer and derivatives dealer. The Commission acted as its principal regulator.

11. National Bank Financial Inc. ("NBF Inc.") was, during the material time, a corporation incorporated pursuant to the laws of Québec, with its head office in Montréal, Québec. It was registered with the AMF as a derivatives dealer, investment dealer and in financial planning. It was registered with the Commission as a futures commission merchant and investment dealer. The AMF acted as its principal regulator.

12. National Bank Direct Brokerage Inc. ("NBDB") was, during the material time, a corporation incorporated pursuant to the laws of Québec, with its head office in Montréal, Québec. It was registered with the AMF as a derivatives dealer and investment dealer. The AMF acted as its principal regulator.

13. The Ontario NB Dealers and the Québec NB Dealers (collectively, the "NB Dealers") acted as designated brokers and/or authorized dealers for ETFs during the material time.

B. Exemptive Relief Decisions

14. In order to deal with prospectus delivery issues arising from the distribution model used in connection with ETF securities, the Commission and the AMF granted the NB Dealers and most other dealers that act as designated brokers and/or authorized dealers for ETFs (collectively, the "ETF Dealers") exemptive relief from the prospectus delivery requirement under section 71 of the Act and section 29 of the Québec *Securities Act*, CQLR c. V-1.1. This exemptive relief was initially granted by way of decisions of the Commission and the AMF issued on July 19, 2013. These decisions were subject to a sunset clause and were replaced by decisions issued on August 24, 2015, under which the same exemptive relief was granted subject to very similar conditions (collectively, the "Decisions").

15. The Decisions were granted on the basis of representations made by the ETF Dealers, including the NB Dealers, that it was not practicable to know whether any particular purchase of ETF securities would constitute a trade in newly issued securities of an ETF (generally called "creation units") which would trigger a prospectus delivery requirement. In response to these representations, the Decisions created an alternative disclosure delivery system for the ETF industry by introducing a new summary disclosure document for ETFs (the "Summary Document"), and by shifting the delivery obligation to dealers acting as agent of the purchaser in an ETF transaction. The ETF Dealers were heavily involved with the creation of this regime, with the aim of ensuring that compliance with the terms and conditions of the Decisions would be practicable.

16. Pursuant to the Decisions, the ETF Dealers accepted certain conditions, including:

    (a) undertaking to deliver or send the latest Summary Document filed in respect of an ETF security by not later than midnight on the second day after the purchase of the ETF security, excluding weekends and holidays, unless the ETF Dealer had previously done so. This delivery obligation applied to each purchaser of an ETF security who was a customer and to whom a trade confirmation was required to be sent or delivered by the ETF Dealer in connection with the purchase;

    (b) having in place written policies and procedures to ensure compliance with the Decisions; and

    (c) filing a certificate on an annual basis whereby an ultimate designated person at the respective ETF Dealer would certify, to the best of the person's knowledge after making due enquiry, compliance with the terms and conditions of the applicable Decision (the "Certification").

17. The disclosure framework contemplated by the Decisions was codified by way of amendments to National Instrument 41-101 *General Prospectus Requirements* on December 8, 2016. As a result of these amendments, effective December 10, 2018, all dealers who act as agent of a purchaser of an ETF security will be required to deliver a Summary Document to the purchaser.

C. Delivery of Summary Documents by the NB Dealers

18. During the material time, the NB Dealers used a common back office called the Mutual Fund Dealer Operations group (the "MFDO") to administer delivery of the Summary Documents to purchasers of ETF securities in accordance with the Decisions. The delivery of the Summary Documents was outsourced by the NB Dealers to a third party service provider (the "Service Provider"). The MFDO sent instructions to the Service Provider relating to the delivery of Summary Documents (the "Delivery Instructions").

19. In September 2013, the NB Dealers began delivering Summary Documents to purchasers of ETF securities in accordance with the Decisions. Beginning at that time, the Delivery Instructions the MFDO provided to the Service Provider resulted in the initiation of delivery of Summary Documents to every first time purchaser of an ETF security,

regardless of whether or not delivery was required by the Decisions on the basis that a trade confirmation was required to be delivered to the purchaser.

20. In late 2014, the over-delivery of Summary Documents was raised as an issue through client inquiries to the MFDO. As a result, the MFDO initiated a technical change request with the Service Provider to provide for suppression of delivery of Summary Documents where trade confirmations were not required to be delivered to the purchaser. The revised Delivery Instructions were intended to suppress the delivery of Summary Documents that were not required under the terms of the Decisions, and to direct the delivery of only those Summary Documents required by the Decisions.

21. This change request was tested to ensure that the Service Provider was capable of properly interpreting the revised Delivery Instructions from the MFDO. The revised Delivery Instructions became operational on February 5, 2015.

D. Initial Delivery Issue

22. Although the goal of the revised Delivery Instructions was to suppress the delivery of Summary Documents for certain trades where delivery was not required, it resulted in delivery of Summary Documents being suppressed for all trades. A Summary Document was not sent or delivered as required to any customer of the NB Dealers who purchased an ETF security and received a trade confirmation in respect of that purchase from February 5, 2015 until the matter was remedied on December 22, 2015. As a result, no Summary Document was delivered as required for 120,882 ETF purchases by 41,444 separate customer accounts (the "Initial Delivery Issue"). Of these transactions, 49,954 purchases were made by 17,254 customer accounts of the Ontario NB Dealers.

23. The MFDO first became aware of the Initial Delivery Issue in mid-April 2015 when the Service Provider's monthly invoice showed no charge for the delivery of Summary Documents. The MFDO treated the matter as a billing issue at the outset and not as an operational issue affecting delivery of the Summary Documents, or as a regulatory compliance issue. Given its perception of the nature of the issue, the MFDO did not prioritize investigation of this Initial Delivery Issue and the situation continued over the following months.

24. In July 2015, the NB Dealers received validation from personnel at the MFDO that the controls in place for Summary Documents were running well. However, the NB Dealers were subsequently unable to locate any records in support of that validation.

25. In mid-October 2015, a personnel restructuring occurred at the MFDO and a new MFDO Interim Senior Manager was appointed. In late October, the MFDO Interim Senior Manager became aware of the Initial Delivery Issue regarding the Service Provider's invoices and initiated an investigation into the matter.

26. Senior management of the NB Dealers were apprised of the delivery problem in the second week of November 2015. The problem was investigated and a technology fix was pursued. Following internal and external testing with the Service Provider, a technology fix was implemented on December 22, 2015.

27. The NB Dealers recommenced delivery of Summary Documents to ETF purchasers on December 22, 2015. In order to remedy the Initial Delivery Issue, the NB Dealers began to identify the ETF purchasers who should have received a Summary Document. Work on remediation was undertaken with the Service Provider between December 22 and December 30, 2015. The NB Dealers provided all data files required to effect remediation to the Service Provider by December 30, 2015. The Service Provider completed all of the required remedial mailings to the affected ETF purchasers on or before January 6, 2016. Customers who received the remedial mailing were advised of the Initial Delivery Issue and were provided with a copy of the applicable Summary Document.

28. The NB Dealers first advised Staff of the Commission and the AMF of the Initial Delivery Issue on January 29, 2016, when they delivered their Certifications for 2015 as required by the Decisions. The Certifications delivered to the Commission stated that the Ontario NB Dealers "had complied with the terms and conditions of the Decisions, as applicable, during the calendar year ended December 31, 2015, except for the matters described in Appendix A attached hereto." The appendices attached to the Certifications disclosed that the Ontario NB Dealers had failed to deliver Summary Documents on a timely basis to all clients purchasing ETF securities to whom trade confirmations were required to be provided between February 5, 2015 and December 22, 2015 and who had not previously received the latest Summary Document for the purchased ETF security.

E. Subsequent Delivery Issue

29. During the course of Staff's investigation into the Initial Delivery Issue, the NB Dealers disclosed on January 13, 2017 that Summary Documents were not delivered on a timely basis for an additional 7,317 ETF purchases by 3,413 separate customer accounts between February 5, 2015 and September 26, 2016 (the "Subsequent Delivery Issue"). Of these transactions, 1,018 purchases were made by 552 customer accounts of the Ontario NB Dealers.

30. As a result of the Initial Delivery Issue, the NB Dealers initiated a general review of the Summary Document delivery process and a related risk control assessment, with the aim of continuing to monitor and improve the process for delivery of Summary Documents. In September 2016, the NB Dealers identified two further issues with the Summary Document delivery process:

    (a) five ETF securities were inadvertently missing from the master list used to identify relevant ETF securities for the Summary Document delivery process, which resulted in 494 of the 7,317 instances of Summary Documents not being sent or delivered as required; and

    (b) 35 other ETF securities were identified in the master list as being ETF securities but were then inadvertently excluded from the Summary Document delivery process, which resulted in 6,823 of the 7,317 instances of Summary Documents not being sent or delivered as required.

31. In December 2016, an additional remedial mailing was made to the affected ETF purchasers. Customers who received the remedial mailing were advised of the Subsequent Delivery Issue and were provided with a copy of the applicable Summary Document.

32. On January 31, 2017, the NB Dealers delivered their Certifications for 2016 to Staff of the Commission and the AMF as required by the Decisions. In the Certifications, the NB Dealers disclosed the Subsequent Delivery Issue and advised that Summary Documents had been sent or delivered to all of the affected purchasers.

F. Impact of Delivery Issues

33. The NB Dealers failed to ensure timely delivery of Summary Documents in accordance with the terms of the Decisions for a total of 128,199 ETF purchase transactions over a nearly 19-month period, as detailed below:

Ontario NB Dealers	**Transactions**	**Client Accounts**
NBF Ltd.	36,960	10,405
NBCN	14,012	7,401
Subtotal	**50,972**	**17,806**
Québec NB Dealers	**Transactions**	**Client Accounts**
NBF Inc.	46,456	14,043
NBDB	30,771	13,008
Subtotal	**77,227**	**27,051**
Total	**128,199**	**44,857**

34. The aggregate market value of these transactions at the time of purchase was over $2 billion. The NB Dealers earned commissions and fees of over $2.6 million in respect of these transactions as detailed below:

Ontario NB Dealers	**Market Value of Purchases**	**Commissions**
NBF Ltd.	$294,136,985.81	$917,909.92
NBCN	$376,393,269.45	$236,779.72
Subtotal	**$670,530,255.26**	**$1,154,689.64**
Québec NB Dealers	**Market Value of Purchases**	**Commissions**
NBF Inc.	$1,881,369,680.45	$1,257,982.65
NBDB	$297,085,334.15	$214,730.55
Subtotal	**$2,178,455,014.60**	**$1,472,713.20**
Total	**$2,848,985,269.86**	**$2,627,402.84**

35. As set out above, the number and value of transactions attributable to the Québec NB Dealers is proportionally higher than those attributable to the Ontario NB Dealers.

36. As a result of the Delivery Issues, investors did not receive the required product disclosure from the NB Dealers in a timely manner.

G. Mitigating Factors

37. NBF requests that the settlement hearing panel consider the following mitigating circumstances. Staff do not object to the mitigating circumstances set out by NBF below.

(a) Staff do not allege, and have found no evidence of dishonest or intentional misconduct by the NB Dealers. The Delivery Issues were inadvertent breaches such that the Initial Delivery Issue was rooted in a software programming error, and the Subsequent Delivery Issue was an inadvertent exclusion of a small number of ETF securities from the Summary Document delivery process that was discovered during a general review of the Summary Document delivery process and a related risk control assessment.

(b) During Staff's investigation of the Delivery Issues, the NB Dealers provided prompt, detailed and candid cooperation to Staff.

(c) The Delivery Issues did not result in any investor losses. NBF further advises Staff that none of the NB Dealers or individuals acting on their behalf benefitted financially from the Delivery Issues.

(d) The NB Dealers delivered the Summary Documents to all of the ETF purchasers affected by the Delivery Issues as soon as practicably possible following discovery of the non-delivery. NBF advises Staff that none of the NB Dealers' clients raised any concerns or complaints with the NB Dealers about their ETF purchases or the delay in receiving the Summary Document.

(e) The NB Dealers engaged in extensive review and testing of their systems of controls and supervision, as well as Summary Document delivery. As a result, the NB Dealers have developed and implemented procedures, controls and supervisory and monitoring systems designed to prevent the re-occurrence of the Delivery Issues in the future (the "Enhanced Control and Supervision Procedures"). The NB Dealers have provided a summary of the Enhanced Control and Supervision Procedures to Staff.

(f) NBF acknowledges the seriousness of the NB Dealers' misconduct and expresses remorse.

PART IV – NON-COMPLIANCE WITH ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

38. By engaging in the conduct described above, the Ontario NB Dealers failed to establish, maintain and apply policies and procedures that establish systems of controls and supervision:

(a) sufficient to provide reasonable assurance that the Ontario NB Dealers, and the individuals acting on behalf of the Ontario NB Dealers, were in a position to provide timely delivery of Summary Documents during the material time; and

(b) that were reasonably likely to identify and correct the Delivery Issues in a timely manner.

39. As a result, the Ontario NB Dealers did not comply with section 11.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. In addition, the failures in the Ontario NB Dealers' systems of controls and supervision associated with the Delivery Issues were contrary to the public interest.

PART V – TERMS OF SETTLEMENT

40. NBF agrees to the terms of settlement set out below and consents to the Order, which provides that:

(a) pursuant to subsection 127(1) of the Act, the Settlement Agreement is approved;

(b) pursuant to subsection 127(2) of the Act, the approval of the Settlement Agreement is subject to the following terms and conditions:

i. NBF will conduct final testing and review of the Enhanced Control and Supervision Procedures and will implement any additional changes, if necessary, within 90 days of the date the Order approving the Settlement Agreement is made (the "Review Period");

ii. NBF will submit a letter (the "Attestation Letter") to Staff, signed by the Ultimate Designated Person and the Chief Compliance Officer responsible for the ETF sales business, expressing their opinion as to whether the Enhanced Control and Supervision Procedures were adequately followed, administered and enforced by NBF for the one-year period commencing from the date of implementation of the Enhanced Control and Supervision Procedures upon completion of the Review Period, and for a further one-year period commencing from the date that is one year after the implementation date;

iii. if applicable, the Attestation Letter will be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;

iv. NBF will submit such additional reports as may be reasonably requested by Staff for the purpose of satisfying Staff that the opinion expressed in the Attestation Letter described in subparagraphs (ii) and (iii) above is valid;

(c) pursuant to paragraph 9 of subsection 127(1) of the Act, NBF shall pay an administrative penalty of $700,000, to be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act; and

(d) pursuant to subsection 127.1(1) of the Act, NBF shall pay $35,000 in costs to the Commission.

41. NBF agrees to make the payments described in subparagraphs 40(c) and (d) above by separate bank drafts at the hearing before the Commission to approve this Settlement Agreement, if this Settlement Agreement is approved.

PART VI – FURTHER PROCEEDINGS

42. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against NBF under Ontario securities law based on the misconduct of the Ontario NB Dealers described in Part III of this Settlement Agreement, unless NBF fails to comply with any term in this Settlement Agreement, in which case Staff may bring proceedings under Ontario securities law against NBF that may be based on, among other things, the facts concerning the Ontario NB Dealers set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

43. NBF acknowledges that, if the Commission approves this Settlement Agreement and NBF fails to comply with any term in it, the Commission is entitled to bring any proceedings necessary to enforce compliance with the terms of the Settlement Agreement.

44. NBF waives any defences to a proceeding referenced in paragraph 42 or 43 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

45. The parties will seek approval of this Settlement Agreement at a public hearing (the "Settlement Hearing") before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with this Settlement Agreement and the Commission's *Rules of Procedure*, adopted October 31, 2017.

46. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

47. If the Commission approves this Settlement Agreement:

(a) NBF irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and

(b) neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

48. Whether or not the Commission approves this Settlement Agreement, NBF will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any

attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

49. If the Commission does not make the Order:

(a) this Settlement Agreement and all discussions and negotiations between Staff and NBF or the Ontario NB Dealers before the Settlement Hearing will be without prejudice to Staff and NBF or the NB Dealers; and

(b) Staff and NBF will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

50. The parties will keep the terms of this Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

51. This Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.

52. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated at Toronto this 23rd day of January, 2018.

NATIONAL BANK FINANCIAL INC.

"David Gray"
Witness

Per: *"Martin Gagnon"*
Martin Gagnon
Co-President & Co-Chief Executive Officer of National Bank Financial Inc.

____
Commission Staff

Per: *"Jeff Kehoe"*
Jeff Kehoe
Director, Enforcement Branch

SCHEDULE "A"

IN THE MATTER OF
NATIONAL BANK FINANCIAL INC.
(IN RESPECT OF ITS PREDECESSORS
NATIONAL BANK FINANCIAL LTD. and
NBCN INC.)

Commissioner Sandler
Commissioner Kordyback
Commissioner Hutchison

January ___, 2018

ORDER
Sections 127 and 127.1 of the
Securities Act, RSO 1990, c S.5

THIS APPLICATION, made jointly by National Bank Financial Inc. ("NBF") and Staff of the Commission for approval of a settlement agreement dated January ___, 2018 (the "Settlement Agreement"), was heard January ___, 2018 at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON READING the Statement of Allegations dated January ____, 2018, and the Settlement Agreement and on hearing the submissions of representatives of each of the parties;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;

2. pursuant to subsection 127(2) of the *Securities Act*, RSO 1990, c S.5 (the "Act"), the approval of the Settlement Agreement is subject to the following terms and conditions:

   i. NBF will conduct final testing and review of the Enhanced Control and Supervision Procedures and will implement any additional changes, if necessary, within 90 days of the date the Order approving the Settlement Agreement is made (the "Review Period");

   ii. NBF will submit a letter (the "Attestation Letter") to Staff, signed by the Ultimate Designated Person and the Chief Compliance Officer responsible for the ETF sales business, expressing their opinion as to whether the Enhanced Control and Supervision Procedures were adequately followed, administered and enforced by NBF for the one-year period commencing from the date of implementation of the Enhanced Control and Supervision Procedures upon completion of the Review Period, and for a further one-year period commencing from the date that is one year after the implementation date;

   iii. if applicable, the Attestation Letter will be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;

   iv. NBF will submit such additional reports as may be reasonably requested by Staff for the purpose of satisfying Staff that the opinion expressed in the Attestation Letter described in subparagraphs (ii) and (iii) above is valid;

3. pursuant to paragraph 9 of subsection 127(1) of the Act, NBF shall pay an administrative penalty of $700,000, to be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act; and

4. pursuant to subsection 127.1(1) of the Act, NBF shall pay $35,000 in costs to the Commission.

____
Commissioner Sandler

____
Commissioner Kordyback

____
Commissioner Hutchison

2.4 Rulings

2.4.1 BGC Financial LP et al. – s. 38 of the CFA and s. 6.1 of OSC Rule 91-502 Trades in Recognized Options

Headnote

Application to the Commission pursuant to section 38 of the Commodity Futures Act (Ontario) (CFA) for a ruling that each Applicant be exempted from the dealer registration requirement in paragraph 22(1)(a) and the prohibition against trading on non-recognized exchanges in section 33 of the CFA. Each Applicant will offer the ability to trade in commodity futures contracts and commodity futures options that trade on exchanges located outside Canada and cleared through clearing corporations located outside of Canada to certain of its clients in Ontario who meet the definition of "permitted client" in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations.

Application to the Director for an exemption, pursuant to section 6.1 of OSC Rule 91-502 Trades in Recognized Options (Rule 91-502), exempting each Applicant and its Representatives from the proficiency requirements in section 3.1 of Rule 91-502 for trades in commodity futures options on exchanges located outside Canada.

Applicable Legislative Provisions

Statutes Cited

Commodity Futures Act , R.S.O. 1990, c. C.20, as am., ss. 22, 33, 38.
Securities Act, R.S.O. 1990, c. S.5, as am.

Rule Cited

Ontario Securities Commission Rule 91-502 Trades in Recognized Options, ss. 3.1, 6.1.

Instrument Cited

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.18.

January 8, 2018

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, c. C.20, AS AMENDED
(the CFA)

AND

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

AND

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION RULE 91-502
TRADES IN RECOGNIZED OPTIONS
(Rule 91-502)

AND

IN THE MATTER OF
BGC FINANCIAL LP,
GFI SECURITIES LLC AND
AMEREX BROKERS LP.

RULING & EXEMPTION
(Section 38 of the CFA and Section 6.1 of Rule 91-502)

UPON the application (the **Application**) of BGC Financial LP, GFI Securities LLC and Amerex Brokers (collectively, the **Applicants** and each, an **Applicant**) to the Ontario Securities Commission (the **Commission**) for:

(a) a ruling of the Commission, pursuant to section 38 of the CFA, that each Applicant is not subject to the dealer registration requirements in the CFA or the trading restrictions in the CFA in connection with trades (**Futures Trades**) in Exchange-Traded Futures (as defined below) on exchanges located outside Canada (**Non-Canadian Exchanges**) where the applicable Applicant is acting as principal or agent in such trades to, from or on behalf of Permitted Clients (as defined below);

(b) a ruling of the Commission, pursuant to section 38 of the CFA, that a Permitted Client is not subject to the dealer registration requirements in the CFA or the trading restrictions in the CFA in connection with Futures Trades on Non-Canadian Exchanges, where an Applicant acts in respect of Futures Trades on behalf of the Permitted Client pursuant to the above ruling; and

(c) a decision of the Director, pursuant to section 6.1 of Rule 91-502, exempting each Applicant and their salespersons, directors, officers and employees (the **Representatives**) from section 3.1 of Rule 91-502 in connection with Futures Trades;

AND WHEREAS for the purposes of this ruling and exemption (collectively, the Decision):

(i) **"CEA"** means the U.S. *Commodity Exchange Act*;

"CFTC" means the U.S. Commodity Futures Trading Commission;

"dealer registration requirements in the CFA" means the provisions of section 22 of the CFA that prohibit a person or company from trading in Exchange-Traded Futures unless the person or company satisfies the applicable provisions of section 22 of the CFA;

"Exchange-Traded Futures" means a commodity futures contract or a commodity futures option that trades on one or more organized exchanges located outside of Canada and that is cleared through one or more clearing corporations located outside of Canada;

"FINRA" means the Financial Industry Regulatory Authority in the U.S.;

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

"NFA" means the National Futures Association in the U.S.;

"Permitted Client" means a client in Ontario that is a "permitted client" as that term is defined in section 1.1 of NI 31-103;

"SEC" means the U.S Securities and Exchange Commission;

"specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*;

"trading restrictions in the CFA" means the provisions of section 33 of the CFA that prohibit a person or company from trading in Exchange-Traded Futures unless the person or company satisfies the applicable provisions of section 33 of the CFA;

"U.S." means the United States of America; and

(ii) terms used in this Decision that are defined in the OSA, and not otherwise defined in this Decision or in the CFA, shall have the same meaning as in the OSA, unless the context otherwise requires;

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

AND UPON the Applicants having represented to the Commission and the Director as follows:

1. Each of the Applicants is a wholly-owned indirect subsidiary of BGC Financial L.P. (**BGCF**). BGCF is a registered Futures Commission Merchant (**FCM**) under the CEA subject to the regulation and oversight of the CFTC.

2. BGCF also conducts a securities business in the U.S., is a broker-dealer registered with the SEC, and is a member of FINRA.

3. BGCF relies on the international dealer exemption (the **IDE**) in section 8.18 of NI 31-103 in Ontario and is not registered under the OSA.

4. BGCF is not in default of securities legislation or commodities futures legislation in any jurisdiction in Canada or under the CFA. BGCF is in compliance in all material respects with U.S. securities and commodity futures laws.

BGC Financial LP

5. BGC Financial LP (**BGC**) is a corporation incorporated under the laws of the State of Delaware. Its head office is located in New York, New York, U.S.

6. BGC provides FCM services, which include commodity clearing and execution services to various institutional customers, including affiliates of BGC and customers of such affiliates.

7. BGC is a FCM registered with the CFTC and is a member of the NFA.

8. BGC is a direct member of all major U.S. commodity futures exchanges.

9. BGC does not conduct a securities business in the U.S., is not registered with the SEC, and is not a member of FINRA.

10. BGC does not rely on the IDE in Ontario and is not registered under the OSA or the CFA.

11. Subject to the ruling requested, BGC is not in default of securities legislation or commodities futures legislation in any jurisdiction in Canada or under the CFA. BGC is in compliance in all material respects with U.S. securities and commodity futures laws.

GFI Securities

12. GFI Securities LLC (**GFI**) is a corporation incorporated under the laws of the State of Delaware. Its head office is located in New York, New York, U.S.

13. GFI is registered as an introducing broker with the CFTC and is a member of the NFA.

14. GFI is a direct member of all major U.S. commodity futures exchanges.

15. GFI also conducts a securities business in the U.S., is registered as a broker-dealer with the SEC, and is a member of FINRA.

16. GFI relies on the IDE in section 8.18 of NI 31-103 in Ontario and is not registered under the OSA or the CFA.

17. Subject to the ruling requested, GFI is not in default of securities legislation or commodities futures legislation in any jurisdiction in Canada or under the CFA. GFI is in compliance in all material respects with U.S. securities and commodity futures laws.

Amerex Brokers LP

18. Amerex Brokers LP (**Amerex**) is a corporation incorporated under the laws of the State of Delaware. Its head office is located in Houston, Texas, U.S.

19. Amerex is registered as an introducing broker with the CFTC and is a member of the NFA.

20. Amerex is a direct member of all major U.S. commodity futures exchanges.

21. Amerex does not conduct a securities business in the U.S., is not registered with the SEC, and is not a member of FINRA.

22. Amerex does not rely on the IDE under section 8.18 of NI 31-103 in Ontario and is not registered under the OSA or the CFA.

23. Subject to the ruling requested, Amerex is not in default of securities legislation or commodities futures legislation in any jurisdiction in Canada or under the CFA. The Applicant is in compliance in all material respects with U.S. securities and commodity futures laws.

Activities

BGC Financial LP

24. Pursuant to its registrations and memberships, BGC is authorized to handle customer orders and receive and hold customer margin deposits, and otherwise act as a futures broker, in the U.S. Rules of the CFTC and NFA require BGC to maintain adequate capital levels, make and keep specified types of records relating to customer accounts and transactions, and comply with other forms of customer protection rules, including rules respecting: know-your-customer obligations, account-opening requirements, suitability requirements, anti-money laundering checks, credit checks, delivery of confirmation statements, clearing deposits and initial and maintenance margins. These rules require BGC to treat Permitted Clients materially the same as BGC's U.S. customers with respect to transactions made on U.S. exchanges. With respect to transactions made on U.S. exchanges, in order to protect customers in the event of the insolvency or financial instability, BGC is required to ensure that customer securities and monies be separately accounted for, segregated at all times from their own securities and monies (including the securities and monies of their affiliates) and custodied exclusively with such banks, trust companies, clearing organizations or other licensed futures brokers and intermediaries as may be approved for such purposes under the CEA and the rules promulgated by the CFTC thereunder (collectively, the **BGC Approved Depositories**). BGC is further required to obtain acknowledgements from any BGC Approved Depository holding customer funds or securities related to U.S.-based transactions or accounts that such funds and securities are to be separately held on behalf of such customers, with no right of set-off against the BGC's obligations or debts.

25. BGC proposes to offer certain of their Permitted Clients in Ontario the ability to trade in Exchange-Traded Futures through BGC.

26. BGC will execute and clear trades in Exchange-Traded Futures on behalf of Permitted Clients in Ontario in the same manner that it executes and clears trades on behalf of its U.S. clients, all of which are "Eligible Contract Participants" as defined in the CEA. BGC will follow the same know-your-customer, client classification and segregation of assets procedures that it follows in respect of its U.S. clients. Permitted Clients will be afforded the benefits of compliance by BGC with the statutory and other requirements of the CEA and the regulations thereunder, applicable securities regulators, self-regulatory organizations and the Exchange Act and the regulations thereunder as well as exchanges located in the U.S. Permitted Clients in Ontario will have the same contractual rights against BGC as U.S. clients of BGC.

27. BGC will not maintain an office, sales force or physical place of business in Ontario.

28. BGC will solicit trades in Exchange-Traded Futures in Ontario only from persons who qualify as Permitted Clients.

29. Permitted Clients of BGC will only be offered the ability to effect trades in Exchange-Traded Futures on Non-Canadian Exchanges.

30. Permitted Clients of BGC will be able to execute Exchange-Traded Futures orders through BGC by contacting BGC's applicable execution desks. Permitted Clients may also be able to self-execute Exchange-Traded Futures orders electronically via an independent service vendor and/or other electronic trading routing. Permitted Clients may also be able to execute Exchange-Traded Futures orders through third-party brokers and then "give up" the transaction for clearance through BGC.

31. BGC may execute a Permitted Client's order on the relevant Non-Canadian Exchange in accordance with the rules and customary practices of the exchange, or engage another broker to assist in the execution of orders. BGC will remain responsible for all executions when BGC is listed as the executing broker of record on the relevant Non-Canadian Exchange.

32. BGC may perform both execution and clearing functions for trades in Exchange-Traded Futures or may direct that a trade executed by it be cleared through a carrying broker if BGC is not a clearing member of the Non-Canadian Exchange on which the trade is executed and cleared. Alternatively, the Permitted Client of BGC will be able to direct that trades executed by BGC be cleared through clearing brokers not affiliated with BGC in any way (each a **Non-BGC Clearing Broker**).

33. If BGC performs only the execution of a Permitted Client's Exchange-Traded Futures order and "gives-up" the transaction for clearance to a Non-BGC Clearing Broker, such clearing broker will also be required to comply with the

rules of the exchanges of which it is a member and any relevant regulatory requirements, including requirements under the CFA as applicable. Each such Non-BGC Clearing Broker will represent to BGC, in an industry-standard give-up agreement, that it will perform its obligations in accordance with applicable laws, governmental, regulatory, self-regulatory, exchange and clearing house rules and the customs and usages of the exchange or clearing house on which the relevant Permitted Client's Exchange-Traded Futures order will be executed and cleared. BGC will not enter into a give-up agreement with any Non-BGC Clearing Broker located in the United States unless such clearing broker is registered with the CFTC, and is registered with, or has obtained an exemption from the dealer registration requirement from the Commission.

34. As is customary for all trades in Exchange-Traded Futures, a clearing corporation appointed by the exchange or clearing division of the exchange is substituted as a universal counterparty on all trades in Exchange-Traded Futures and Permitted Client orders that are submitted to the exchange in the name of the Non-BGC Clearing Broker or BGC or, on exchanges where BGC is not a member, in the name of another carrying broker. The Permitted Client of BGC is responsible to BGC for payment of daily mark-to-market variation margin and/or proper margin to carry open positions and BGC, the carrying broker or the Non-BGC Clearing Broker is in turn responsible to the clearing corporation/division for payment.

35. Permitted Clients that direct BGC to give up transactions in Exchange-Traded Futures for clearance and settlement by Non-BGC Clearing Brokers will execute the give-up agreements described above.

36. Permitted Clients will pay commissions for trades to BGC. In the event that BGC needs to utilize a Non-BGC Clearing Broker for clearing or execution services in relation to such trades, BGC will pay the Non-BGC Clearing Broker for such services.

GFI Securities LLC and Amerex Brokers LLC

37. Pursuant to their registrations and memberships, GFI and Amerex are authorised to act as introducing brokers in the U.S. Rules of the CFTC and NFA require GFI and Amerex to maintain adequate capital levels, make and keep specified types of records relating to customer accounts and transactions, and comply with other forms of customer protection rules, including rules respecting: know-your-customer obligations, client identification, suitability and account-opening requirements, anti-money laundering checks, dealing and handling customer order obligations including managing conflicts of interests and best execution rules. These rules require GFI and Amerex to treat Permitted Clients consistently with the applicable Applicant's U.S. customers with respect to transactions made on exchanges in the U.S. In respect of Exchange-Traded Futures, GFI and Amerex do not provide execution or clearing services and are not authorised to receive or hold client money in any jurisdiction.

38. GFI and Amerex propose to offer certain of their Permitted Clients in Ontario the ability to trade in Exchange-Traded Futures through the applicable Applicant, in their role as introducing brokers.

39. Neither GFI nor Amerex will maintain an office, sales force or physical place of business in Ontario.

40. GFI and Amerex will solicit Futures Trades in Ontario only from persons who qualify as Permitted Clients.

41. Permitted Clients of GFI and Amerex will only be offered the ability to effect Futures Trades on Non-Canadian Exchanges.

42. GFI and Amerex will introduce Futures Trades on behalf of Permitted Clients in Ontario in the same manner that the applicable Applicant introduces trades on behalf of its U.S. clients. The applicable Applicant will follow the same know-your-customer, suitability, and order handling procedures that it follows in respect of its U.S. clients. Permitted Clients will be afforded the benefits of compliance by the applicable Applicant with the statutory and other requirements of the regulators and self-regulatory organizations located in the U.S. Permitted Clients in Ontario will have the same contractual rights against the applicable Applicant as U.S. clients of the applicable Applicant.

43. Permitted Clients of GFI and Amerex will be able to execute Exchange-Traded Futures orders by contacting the applicable Applicant's client order handling desk, where orders will be transmitted to an executing broker for execution. Permitted Clients may also be able to self-execute Exchange-Traded Futures orders electronically via an independent service vendor and/or other electronic trading routing.

44. GFI and Amerex will arrange to have a Permitted Client's order executed on the relevant Non-Canadian Exchange by an executing broker registered as a FCM under the CEA in accordance with the rules and customary practices of the exchange. The Permitted Client will be a client of both the applicable Applicant and the executing broker. The applicable Applicant will remain responsible for all executions when the applicable Applicant is listed as the executing broker in the relevant give-up agreement; when the applicable Applicant is listed as the introducing broker in the

relevant give-up agreement, the executing broker will be responsible for the execution to the client. There will thus always be a registered regulated party who is responsible to the client.

45. GFI and Amerex will perform introducing (as introducing broker) functions for Futures Trades. The executing broker will act to "give-up" the transacted trades to the Permitted Client's clearing broker.

46. The clearing brokers and executing broker will also be required to comply with the rules of the exchanges of which each is a member and any relevant regulatory requirements, including requirements under the CFA, as applicable. The Permitted Client, the executing broker and the Permitted Client's clearing broker will represent to the applicable Applicant, in an industry standard give-up agreement, that each will perform its obligations in accordance with applicable laws, governmental, regulatory, self-regulatory, exchange and clearing house rules and the customs and usages of the exchange or clearing house on which the relevant Permitted Client's Exchange-Traded Futures order will be executed and cleared. The applicable Applicant will not enter into a give-up agreement with any executing broker registered as a FCM or clearing broker unless such firm is registered with the applicable regulatory bodies in the jurisdiction in which it executes Futures Trades, and is registered with, or has obtained an exemption from the dealer registration requirement from the Commission. The applicable Applicant will not enter into a give-up agreement with any clearing broker located in the U.S. unless such clearing broker is registered with the CFTC, and is registered with, or has obtained an exemption from the dealer registration requirement from the Commission.

47. As is customary for all Futures Trades, a clearing corporation appointed by the exchange or clearing division of the exchange is substituted as a universal counterparty on all trades in Exchange-Traded Futures and Permitted Client orders that are submitted to the exchange in the name of the recognized exchange member and clearing broker. The Permitted Client of the applicable Applicant is responsible to its clearing broker for payment of daily mark-to-market variation margin and/or proper margin to carry open positions and the Permitted Client's clearing broker is in turn responsible to the clearing corporation/division for payment.

48. Permitted Clients will pay commissions for trades introduced by either GFI or Amerex. The applicable Applicant will pay commissions to the executing broker and the clearing broker.

49. The Exchange-Traded Futures to be traded by Permitted Clients will include, but will not be limited to, Exchange-Traded Futures for equity index, interest rate, foreign exchange, bond, energy, agricultural and other commodity products.

50. The trading restrictions in the CFA apply unless, among other things, an Exchange-Traded Future is traded on a recognized or registered commodity futures exchange and the form of the contract is approved by the Director. To date, no Non-Canadian Exchanges have been recognized or registered under the CFA.

51. If the Applicants were registered under the CFA as "futures commission merchants", they could rely upon certain exemptions from the trading restrictions in the CFA to effect trades in Exchange-Traded Futures to be entered into on certain Non-Canadian Exchanges.

52. Section 3.1 of Rule 91-502 provides that no person shall trade as agent in, or give advice in respect of, a recognized option, as defined in section 1.1 of Rule 91-502, unless he or she has successfully completed the Canadian Options Course (which has been replaced by the Derivatives Fundamentals Course and the Options Licensing Course).

53. All Representatives who would trade in options in the U.S. have satisfied the futures and options proficiency requirements of the National Futures Association (i.e., passed the National Commodity Futures Examination (Series 3) administered by FINRA or met such other alternatives to the Series 3 examination as permitted by the National Futures Association) and are registered in the capacity of Associated Person.

AND UPON the Commission and the Director being satisfied that it would not be prejudicial to the public interest to grant the exemptions requested;

IT IS RULED, pursuant to section 38 of the CFA, that each Applicant is not subject to the dealer registration requirement set out in the CFA or the trading restrictions in the CFA in connection with trades in Exchange-Traded Futures where the applicable Applicant is acting as principal or agent in such trades to, from or on behalf of Permitted Clients provided that:

(a) each client effecting trades in Exchange-Traded Futures is a Permitted Client;

(b) in the case of BGC, if using a Non-BGC Clearing Broker, the clearing broker has represented and covenanted, and BGC has taken reasonable steps to verify, that the broker is appropriately registered or exempt from registration under the CFA;

(c) in the case of GFI and Amerex, the executing broker and clearing broker have each represented and covenanted to the applicable Applicant, and the applicable Applicant has taken reasonable steps to verify, that it is appropriately registered under the CFA, or has been granted exemptive relief from the registration requirements in the CFA, in connection with the Permitted Client effecting Futures Trades;

(d) each Applicant only introduces, executes, and/or clears, as applicable, trades in Exchange-Traded Futures for Permitted Clients on Non-Canadian Exchanges;

(e) at the time trading activity is engaged in, BGC

(i) has its head office or principal place of business in the U.S.;

(ii) is registered as a FCM with the CFTC;

(iii) is a member of the NFA; and

(iv) engages in the business of a FCM in Exchange-Traded Futures in the U.S.;

(f) at the time trading activity is engaged in, each of GFI Securities LLC and Amerex Brokers LLC

(i) has its head office or principal place of business in the U.S.;

(ii) is registered in the category of introducing broker with the CFTC;

(iii) is a member of the NFA; and

(iv) engages in the business of an introducing broker in Exchange-Traded Futures in the U.S.;

(g) each of the Applicants has provided to the Permitted Client the following disclosure in writing:

(i) a statement that the Applicant is not registered in Ontario to trade in Exchange-Traded Futures as principal or agent;

(ii) a statement that the Applicant's head office or principal place of business is located in the United States of America;

(iii) a statement that all or substantially all of the Applicant's assets may be situated outside of Canada;

(iv) a statement that there may be difficulty enforcing legal rights against the Applicant because of the above; and

(v) the name and address of the Applicant's agent for service of process in Ontario;

(h) each of the Applicants has submitted to the Commission a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as Appendix "A" hereto;

(i) the applicable Applicant notifies the Commission of any regulatory action initiated after the date of this ruling in respect of the applicable Applicant, or any predecessors or specified affiliates of the applicable Applicant, by completing and filing with the Commission Appendix "B" hereto within ten days of the commencement of such action; provided that the applicable Applicant may also satisfy this condition by filing with the Commission within ten days of the date of this Decision a notice making reference to and incorporating by reference the disclosure made by BGCF pursuant to U.S. federal securities laws that is identified in the FINRA Broker Check system, and any updates to such disclosure as may be made from time to time, and by providing notification, in a manner reasonably acceptable to the Director, of any filing of a Form BD "Regulatory Action Disclosure Reporting Page";

(j) if an Applicant does not rely on the IDE by December 31st of each year, the Applicant pays a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of OSC Rule 13-502 *Fees* as if the Applicant relied on the IDE; and

(k) by December 1st of each year, each Applicant notifies the Commission of its continued reliance on the exemption from the dealer registration requirement granted pursuant to this Decision by filing Form 13-502F4 *Capital Markets Participation Fee Calculation*; and

this Decision will terminate on the earliest of:

(i) the expiry of any transition period as may be provided by law, after the effective date of the repeal of the CFA;

(ii) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the dealer registration requirements in the CFA or the trading restrictions in the CFA; and

(iii) five years after the date of this Decision.

AND IT IS FURTHER RULED, pursuant to section 38 of the CFA, that a Permitted Client is not subject to the dealer registration requirement in the CFA or the trading restrictions in the CFA in connection with trades in Exchange-Traded Futures on Non-Canadian Exchanges where the Applicants act in connection with trades in Exchange-Traded Futures on behalf of the Permitted Clients pursuant to the above ruling.

"Grant Vingoe"
Vice Chair
Ontario Securities Commission

"Timothy Moseley"
Vice Chair
Ontario Securities Commission

IT IS THE DECISION of the Director, pursuant to section 6.1 of Rule 91-502, that section 3.1 of Rule 91-502 does not apply to each Applicants' Representatives in respect of trades in Exchange-Traded Futures, provided that:

(a) such Applicant and its Representatives maintain their respective registrations and memberships with the CFTC and NFA which permit them to trade and clear commodity futures options in the U.S.; and

(b) this Decision will terminate on the earliest of:

  (i) the expiry of any transition period as may be provided by law, after the effective date of the repeal of the CFA;

  (ii) six months, or such other transition period as may be provided by law, after the coming into force of any amendments to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the dealer registration requirements in the CFA or the trading restrictions in the CFA; and

  (iii) five years after the date of this Decision.

"Elizabeth King"
Deputy Director
Ontario Securities Commission

Dated January 23, 2018

APPENDIX "A"

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

INTERNATIONAL DEALER OR INTERNATIONAL ADVISER EXEMPTED FROM REGISTRATION UNDER THE COMMODITY FUTURES ACT, ONTARIO

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

   Name:
   E-mail address:
   Phone:
   Fax:

6. The International Firm is relying on an exemption order under section 38 or section 80 of the *Commodity Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "Relief Order"):

   ☐ Section 8.18 [*international dealer*]

   ☐ Section 8.26 [*international adviser*]

   ☐ Other [specify]:

7. Name of agent for service of process (the "Agent for Service"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator

    a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated;

    b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service;

    c. a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 30th day after the change.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _______________

____
(Signature of the International Firm or authorized signatory)

____
(Name of signatory)

____
(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _______________ [*Insert name of International Firm*] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: ____________________

____
(Signature of the Agent for Service or authorized signatory)

____
(Name of signatory)

____
(Title of signatory)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

APPENDIX "B"

NOTICE OF REGULATORY ACTION

1. Has the firm, or any predecessors or specified affiliates[1] of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes _____ No _____

If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

		Yes	No
a)	Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?	___	___
(b)	Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?	___	___
(c)	Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?	___	___
(d)	Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?	___	___
(e)	Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?	___	___
(f)	Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?	___	___
(g)	Issued an order (other than an exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?	___	___

If yes, provide the following information for each action:

Name of entity	
Type of action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

[1] In this Appendix, the term "specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*.

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliates is the subject?

Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm:
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Quadrexx Hedge Capital Management Ltd. et al. – ss. 127, 127.1

IN THE MATTER OF
QUADREXX HEDGE CAPITAL MANAGEMENT LTD.,
QUADREXX SECURED ASSETS INC.,
MIKLOS NAGY and
TONY SANFELICE

REASONS AND DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the Securities Act, RSO 1990, c S.5)

Citation: *Quadrexx Hedge Capital Management Ltd. (Re)*, 2018 ONSEC 3
Date: 2018-01-23

Hearing:	October 24-26, 2017	
Decision:	January 23, 2018	
Panel:	Timothy Moseley	Vice-Chair and Chair of the Panel
	Philip Anisman	Commissioner
	AnneMarie Ryan	Commissioner
Appearances:	Derek Ferris Michelle Vaillancourt	For Staff of the Ontario Securities Commission
	Miklos Nagy	Representing himself, Quadrexx Hedge Capital Management Ltd. and Quadrexx Secured Assets Inc.
	Tony Sanfelice	Representing himself

TABLE OF CONTENTS

I. INTRODUCTION
- A. The Three Frauds
- B. Other Contraventions
- C. Sanctions and Costs Hearing

II. SANCTIONS
- A. General Principles
- B. Disgorgement
  - 1. First Fraud: Sale of Shares to DALP at Inflated Value
    - (a) Facts
    - (b) Submissions
    - (c) Analysis
  - 2. Second Fraud: Undisclosed Use of Funds by QAM
    - (a) Facts
    - (b) Submissions
    - (c) Analysis
  - 3. Third Fraud: Misappropriation of QSA Funds
    - (a) Facts
    - (b) Submissions
    - (c) Analysis
- C. Administrative Penalties
  - 1. Introduction
  - 2. First Fraud: Sale of Shares to DALP at Inflated Value

(a) Submissions
(b) Analysis
i. Nagy and Sanfelice
ii. QHCM
3. Second Fraud: Undisclosed Use of Funds by QAM
(a) Submissions
(b) Analysis
4. Third Fraud: Misappropriation of QSA Funds
(a) Submissions
(b) Analysis
5. Amount of Appropriate Penalties
(a) Nagy and Sanfelice
(b) QHCM
D. Prohibitions on Market Participation
1. Submissions
2. Analysis
(a) Registration
(b) Trading
i. Prohibitions
ii. Carve-outs
(c) Prohibition against Acting as a Director of Officer
i. Prohibitions
ii. Carve-outs
E. Reprimands

III. COSTS

IV. ORDER

REASONS AND DECISION ON SANCTIONS AND COSTS

I. INTRODUCTION

[1] In its decision of February 6, 2017 (the **Merits Decision**),[1] the Commission found that the individual respondents, Miklos Nagy and Tony Sanfelice, and three companies that they controlled and of which they were the directing minds, had engaged in fraudulent conduct in connection with three distributions of securities, contrary to clause 126.1(1)(b) of the *Securities Act* (the **Act**).[2]

[2] The three companies included the two corporate respondents, Quadrexx Hedge Capital Management Inc. (**QHCM**) and Quadrexx Secured Assets Inc. (**QSA**). The third company, Quadrexx Asset Management Inc. (**QAM**; referred to as "Quadrexx" in the Merits Decision), filed an assignment in bankruptcy before the commencement of this proceeding.

[3] In addition to the findings of fraud, the Commission found that Nagy, Sanfelice and QAM committed several other contraventions of Ontario securities law.

A. The Three Frauds

[4] QAM was registered under the Act as an exempt market dealer and portfolio manager, and from 2011, as an investment fund manager.[3] It was entitled to sell securities in exempt distributions using offering memoranda, and was central to the three frauds.

[5] The first fraud occurred in 2009. Nagy and Sanfelice arranged for a sale of their shares of Canadian Hedge Watch Inc. (**CHW**) at an inflated value, by manipulating the valuation process relating to the acquisition. At their direction, QHCM participated in the fraud as the general partner of Diversified Assets LP (**DALP**), which acquired the shares. Also at their direction, QAM participated in the fraud by selling securities of DALP to investors to finance the acquisition and by acting as DALP's investment adviser. As a result of the fraud, DALP paid $1,000,688 more than CHW's shares were worth. Nagy and Sanfelice received $806,042.95 more than the $1,236,425.28 that their shares were worth.

[1] *Re Quadrexx Hedge Capital Management Ltd.* (2017), 40 OSCB 1308.

[2] RSO 1990, c S.5.

[3] Until September 2009, the equivalent registration category to "exempt market dealer" was "limited market dealer", and the equivalent registration category to "portfolio manager" was "investment counsel and portfolio manager".

[6] The second fraud occurred in 2011 and 2012. QAM sold its own shares, without disclosing to investors that it was using the proceeds to pay to prior investors dividends that it did not have sufficient funds to pay otherwise. By directing those activities, Nagy and Sanfelice engaged with QAM in a fraudulent course of conduct through which QAM received $2,411,880. That amount was largely lost by investors when QAM subsequently went bankrupt.

[7] The third fraud occurred late in 2012, when QAM was having business difficulties and required working capital. QAM misappropriated funds that it raised in an offering of securities by its wholly-owned subsidiary, QSA. Nagy and Sanfelice had QSA pay QAM $185,397 more than QAM was entitled to receive under the terms of QSA's offering memorandum. QSA investors lost more than half of their investments as a result of this fraud.

B. Other Contraventions

[8] The Commission found that Nagy, Sanfelice and QAM committed a number of other contraventions of Ontario securities law:

a. QAM failed to report a working capital deficiency, contrary to section 12.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) and failed to deal fairly, honestly and in good faith with its clients, contrary to subsection 2.1(1) of OSC Rule 31-505 – *Conditions of Registration*.[4]

b. As directors and officers of QAM, QHCM and QSA, Nagy and Sanfelice directed all matters pertaining to those corporations. Nagy and Sanfelice were therefore deemed, by section 129.2 of the Act, to have themselves breached the various provisions of Ontario securities law that the corporations contravened.[5]

c. Nagy and Sanfelice breached their obligations as QAM's Ultimate Designated Person (**UDP**) and Chief Compliance Officer (**CCO**) in contravention of NI 31-103, sections 5.1 and 5.2, respectively.[6]

[9] In addition to the above contraventions, the Commission found that QAM acted contrary to the public interest by causing DALP to make a loan to it indirectly through CHW to avoid the Act's prohibition against making the loan directly.[7]

C. Sanctions and Costs Hearing

[10] This hearing was convened to consider the sanctions and costs that the Commission should impose on the respondents as a result of the findings in the Merits Decision. Based on the three frauds, which are the most serious contraventions, Staff seeks orders for disgorgement of funds, administrative penalties and permanent prohibitions against the respondents continuing to participate in the capital markets in any manner. Although Staff says that all of the conduct of the respondents is relevant to a determination of sanctions for these three frauds, Staff does not seek additional sanctions for the other contraventions, because they were part of the course of conduct constituting the frauds.

[11] All parties relied on documents tendered at the merits hearing. In addition, Staff provided an affidavit supporting its request for costs, and the respondents called a witness to testify about the circumstances affecting QAM during the time of the contraventions.

[12] The respondents said that while they intend to appeal the Merits Decision, they nonetheless accept the Commission's findings for purposes of the sanctions hearing. However, they asked that the sanctions not be based on "the label" of fraud that Staff and the Commission chose to attach to their conduct,[8] but on their motives, intentions, knowledge and beliefs when they engaged in the conduct addressed in the Merits Decision.[9] To explain their motives and intentions, and to provide context for their actions, they addressed at some length their business plans for QAM and their efforts in furtherance of those plans, particularly in and after 2011. Those efforts led to registration staff of the Commission refusing to approve QAM's acquisition of another registered firm and to an undertaking from Nagy, Sanfelice and QAM to Staff that they would cease all trading in QAM securities.

[4] Merits Decision at paras 341 and 367.

[5] Merits Decision at para 391.

[6] Merits Decision at para 383.

[7] Merits Decision at para 357.

[8] Sanctions and Costs Submission of the Respondents Miklos Nagy and Tony Sanfelice, September 5, 2017, p 3 (**Respondents' Submission**).

[9] Respondents' Submission, pp 3-5, citing *Re Sabourin* (2009), 32 OSCB 2707 (***Re Sabourin***) at paras 68-71.

[13] This was also the focus of the evidence of the respondents' witness, who worked at QAM during the relevant time, but was not involved in the decisions relating to the frauds. His evidence addressed QAM's circumstances, his understanding about Nagy and Sanfelice's business plan and goals for QAM, and the purposes of various transactions QAM conducted or proposed.

[14] Although a respondent's motives and intentions are relevant to the sanctions that should be imposed, the Commission's findings of multiple frauds cannot be dismissed as mere "labels", or disregarded. Those findings reflect a determination that the respondents engaged in dishonest activity that placed investors at risk and resulted in significant losses. As a result, information about the respondents' efforts to further QAM's business plan was potentially relevant only in providing context for their actions and in assessing the seriousness of the frauds.

[15] That being said, this information did little to mitigate the seriousness of the frauds. Indeed, the respondents' submissions reinforce the finding in the Merits Decision that their conduct "throughout the transactions and events that are the subject matter of these Reasons demonstrate repeatedly their commitment to the survival of [QAM] without regard to the consequences of their actions."[10]

II. SANCTIONS

A. General Principles

[16] The Commission's authority to impose sanctions is essential to its ability to fulfill its statutory mandate to protect investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in them.[11] It is forward-looking and preventive rather than punitive or compensatory.[12]

[17] Section 127 of the Act gives the Commission broad discretion to order a wide array of sanctions to achieve these goals in the public interest and to tailor them to the specific persons and circumstances in the proceeding before it.

[18] The sanctions authorized by section 127 enable the Commission to prohibit participation in the market by persons who are likely to engage in conduct contrary to the public interest, to remediate practices that may be harmful to investors or market confidence, and to deter improper activities both specifically by a respondent and generally by others.[13]

[19] In determining appropriate sanctions, the Commission takes into account a respondent's conduct and personal circumstances, and the effect of any sanction on future activities of the respondent and of others. We therefore consider, among other things, the seriousness of the conduct, the length and level of each respondent's market activities and experience, the amount of any benefits sought or obtained, and the harm to investors. A respondent's inability to earn a livelihood or to pay a penalty may be mitigating factors.[14]

[20] Given the highly contextual nature of these various factors, sanctioning precedents, while helpful, may be of limited value when the Commission determines the appropriate mix of sanctions for a particular respondent.

B. Disgorgement

1. First Fraud: Sale of Shares to DALP at Inflated Value

(a) Facts

[21] In June 2008, QHCM established DALP, of which it was the general partner, to raise funds to invest in a private equity business. QHCM retained QAM as DALP's investment adviser and to sell the units of DALP to investors. From July 2008 to May 2009, QAM sold DALP's units in two private offerings under two offering memoranda, both of which were signed by Nagy and Sanfelice on behalf of QHCM.

[22] The first offering memorandum relating to the sale of most of DALP's units ($5 million of $5.65 million) represented that DALP intended to acquire CHW, by purchasing all of CHW's outstanding shares. Nagy and Sanfelice controlled and were the directing minds not only of QHCM and QAM, but also of DALP and CHW. They also held over 80 percent of CHW's outstanding shares.

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[10] Merits Decision at para 382.

[11] Act, s 1.1.

[12] *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 39-45.

[13] *Re Cartaway Resources Corp*., 2004 SCC 26 (***Re Cartaway***).

[14] *Re Limelight Entertainment Inc*. (2008), 31 OSCB 12030 (***Re Limelight***) at paras 21 and 52.

[23] The offering memorandum stated that the price would not exceed $2.65 million, and would be based on an independent valuation by a third party valuation firm. Under the direction of Nagy and Sanfelice, CHW retained Deloitte & Touche LLP (**Deloitte**) to prepare the valuation, which was to be completed by the end of January 2009. On January 19, 2009, Deloitte informed Sanfelice in a telephone meeting that the valuation would be substantially less than $2.65 million. Although Deloitte had not completed its valuation report, it had prepared several estimates based on a forecast provided by Nagy and Sanfelice. Deloitte's estimated value for the CHW shares at that time had a midpoint of $1,535,000.

[24] The next day, as a result of that information, Nagy and Sanfelice terminated Deloitte's engagement. They later retained another valuator to prepare the required valuation. They provided the new valuator with a revised, more aggressive forecast. In the Merits Decision, the Commission found that Nagy and Sanfelice revised the forecast "by just enough to support a valuation that they knew from their own calculations would approximate their target value of $2.65 million".[15]

[25] The second offering memorandum, which immediately followed receipt of the new valuation, said that the price for DALP's acquisition of CHW's shares would be $2,535,688. This was the midpoint of the valuation provided by the new valuator. DALP purchased the CHW shares for this amount; Nagy and Sanfelice received $1,223,035.43 and $819,432.80, respectively, for their shares.

[26] Nagy and Sanfelice prepared the revised forecast for the sole purpose of obtaining a valuation of CHW that would approximate $2.65 million. In doing so, they deceitfully caused DALP to pay a higher price for their CHW shares than DALP would have paid had Deloitte been allowed to complete and issue its valuation report. This conduct was "dishonest and deceitful and enriched Nagy and Sanfelice as the owners of more than 80% of CHW's shares at the expense of DALP and its investors."[16] The Commission concluded that Nagy, Sanfelice and QHCM thereby perpetrated a fraud on DALP investors contrary to clause 126.1(1)(b) of the Act.[17]

(b) Submissions

[27] Paragraph 127(1)10 of the Act authorizes the Commission to require a person who has not complied with Ontario securities law "to disgorge to the Commission any amounts obtained as a result of the non-compliance." Staff submitted that Nagy and Sanfelice should be required to disgorge the full amounts they received from the sale of their shares ($1,223,035.43 and $819,432.80, respectively), as those were the "amounts obtained" by them as a result of their contravention of section 126.1.

[28] We asked Staff how the "amounts obtained" should be calculated if we were to conclude instead that any disgorgement order ought to be based on the difference between the value of CHW shares and the price paid by DALP. Staff submitted that in that event, the $1,535,000 midpoint in Deloitte's valuation work immediately prior to the termination of its engagement was the best estimate supported by the evidence and should be used.

[29] The respondents argued that DALP investors were not harmed because those who purchased DALP securities under the initial offering memorandum expected that DALP would pay as much as $2.65 million for CHW shares and because the value of CHW, which is DALP's primary asset, is now greater than the amount DALP paid for CHW.

[30] Alternatively, they argued that Staff's primary submission incorrectly attributed no value to the CHW shares. They submitted that if we were to base a disgorgement order on the difference between the amount paid by DALP for CHW shares and another value, the difference would be no more than $668,909, which they calculated by applying the second valuator's methodology to the forecast that was provided to Deloitte.

(c) Analysis

[31] The respondents' argument that DALP investors were not harmed is inconsistent with the Merits Decision, in which the Commission expressly found that the respondents' dishonest conduct was at the expense of DALP and its investors. However, as the Merits Decision indicates, the CHW shares did have some value, but not the higher value that Nagy and Sanfelice obtained by preventing Deloitte from completing and issuing its valuation report and by fraudulently manipulating the second valuation.

[32] Paragraph 127(1)10 of the Act authorizes disgorgement only of "amounts obtained as a result of the non-compliance". In our view, the amount obtained as a result of Nagy and Sanfelice's non-compliance is the difference between the price they obtained on the sale of their shares and the value of the shares at the time. They must disgorge this difference.

[15] Merits Decision at para 155.
[16] Merits Decision at para 162.
[17] Merits Decision at para 163.

[33] Staff has the burden of proving that a respondent obtained some amount as a result of a contravention. However, if a respondent's illegal conduct creates difficulty in determining the amount, the risks of any such uncertainty fall on that respondent.[18] In this case, any uncertainty arising out of Nagy and Sanfelice's fraudulent termination of Deloitte's engagement before Deloitte could complete its valuation report cannot inure to the respondents' benefit.

[34] We are not persuaded by the respondents' submissions that the difference between the amount paid by DALP and the value of the CHW shares is $668,909. This amount is based on their own recalculation, without any evidence that the second valuator's valuation methodology properly applies to the materials provided to Deloitte.

[35] Although the difference in value resulting from the respondents' contravention was not quantified in the Merits Decision, it can be determined from the evidence. By January 19, 2009, the date of the telephone meeting with Nagy and Sanfelice, Deloitte had done substantial work in preparation of its valuation. At that time, Deloitte's work indicated a valuation with a midpoint of $1,535,000, subject to its request to Nagy and Sanfelice for further information.

[36] By January 19, Deloitte's valuation work was sufficiently developed to provide the basis for a disgorgement order. We find, therefore, that for purposes of determining the amount obtained by Nagy and Sanfelice as a result of their contravention of the Act, the value of the CHW shares purchased by DALP was $1,535,000.

[37] Based on DALP's purchase price of $2,535,688, Nagy and Sanfelice received $1,223,035.43 and $819,432.80, respectively, for their CHW shares. Based on a valuation of $1,535,000, the prorated amounts would have been $740,374.76 and $496,050.52, respectively. The difference between the amounts they received and should have received is the amount obtained as a result of their contravention of clause 126.1(1)(b) of the Act. Nagy, therefore, must disgorge $482,660.67 and Sanfelice must disgorge $323,382.28.

2. Second Fraud: Undisclosed Use of Funds by QAM

(a) Facts

[38] From August 2009 to March 2011, QAM issued and sold preference shares with a fixed, cumulative dividend. From March 2011 to June 2012, QAM sold a second series of preference shares (**QAM II Shares**), also with a fixed, cumulative dividend (the **QAM II Offering**). Dividends on both series of shares were payable semi-annually on June 30 and December 31, with an additional dividend payment of 0.5 percent for each month that the cumulative dividend was in arrears.

[39] By June 2011, QAM had insufficient funds to pay the dividends that were due. At Nagy and Sanfelice's direction, QAM used more than $500,000 of the $2,411,880 raised in the QAM II Offering to pay part of the June 2011 and December 2011 dividends on both series of shares.

[40] This intentional use of funds by Nagy and Sanfelice was for a purpose other than those identified in the QAM II offering memorandum. As a result, the offering memorandum conveyed what the Merits Decision described as "a thoroughly misleading picture of what investors were buying into and what was happening with their money."[19] The Commission found that the QAM II Offering and the use of the funds to pay the dividends constituted a fraudulent course of conduct and therefore a contravention of clause 126.1(1)(b) of the Act by Nagy, Sanfelice and QAM.

[41] The misuse of funds raised in the QAM II Offering was contrary to the interests of the investors and increased the risk associated with their investment. As the Commission found in the Merits Decision, this misuse deprived QAM of "the funds it needed to generate revenue through the growth and expansion of its business."[20]

(b) Submissions

[42] The undisclosed use of the funds from the QAM II Offering began with payment of the June 30, 2011 dividends. Staff submitted that Nagy and Sanfelice should be required to disgorge $2,309,880, being $2,411,880 (the amount raised from investors in the QAM II Offering after June 30, 2011) less $102,000, the total dividends paid to holders of QAM II Shares.

[43] The respondents submitted that no disgorgement order should be made. They admitted that no one would have purchased QAM II Shares if QAM had failed to pay the dividends. However, they argued that the contravention related

[18] *Re Limelight* at paras 48(b) and 53. This principle has also been adopted in British Columbia: *Poonian v British Columbia Securities Commission*, 2017 BCCA 207 at paras 139-140 (***Poonian***).

[19] Merits Decision at para 245, quoting *Re Capital Alternatives Inc.*, 2007 ABASC 482 at para 61.

[20] Merits Decision at para 249.

to their failure to disclose their use of funds to pay dividends and that there is no evidence that purchasers of QAM II Shares would not have purchased had the use of funds been disclosed.

[44] In making that submission, they also suggested that the use of those funds was not material in light of the size of the QAM II Offering and QAM's business plan. They contended, as well, that they should not have to disgorge any amount because they received no personal benefit from their fraudulent conduct, as the offering was made by QAM.

(c) Analysis

[45] The respondents' submission concerning disclosure and reliance misconceives the nature of a fraud. In view of the Commission's finding of fraud in the Merits Decision, Staff does not need to prove that investors relied on the respondents' failure to disclose their use of QAM II funds. Further, the materiality of the use that was made of the funds is implicit in the finding that QAM's offering memorandum contained a misrepresentation.[21] Accepting the respondents' submissions would therefore lead us to conclusions that are impermissibly inconsistent with the finding of fraud in the Merits Decision. Accordingly, we reject those submissions.

[46] As discussed above, the Act authorizes disgorgement of amounts obtained by the respondents as a result of their fraud. The respondents admitted in their oral submissions that Nagy and Sanfelice received an indirect benefit from the distribution in view of their positions and interests in QAM. Moreover, as the directing minds of QAM, their conduct was QAM's and vice versa. Accordingly, the funds that QAM received through the QAM II Offering were obtained by Nagy and Sanfelice. Staff need not show that the funds received by QAM were personally obtained by Nagy and Sanfelice.[22] In these circumstances, the Commission has commonly held the directing minds of an issuer that receives funds through a contravention of the Act to be jointly and severally liable for the disgorgement of those funds.[23]

[47] Disgorgement of the full amount obtained, however, is not mandatory. Paragraph 127(1)10 authorizes the Commission to require disgorgement of "any" amounts obtained as a result of a contravention. It is open to the Commission to order disgorgement of less than the full amount obtained, if circumstances warrant a reduction.[24] It is appropriate in this case to apply a reduction to reflect the amount of the dividends paid to investors in QAM II Shares. The evidence does not support any other reduction.

[48] The amount obtained as a result of Nagy's, Sanfelice's and QAM's contravention of clause 126.1(1)(b) was $2,411,880, and QAM II investors received $102,000 back as dividends. Accordingly, Nagy and Sanfelice must jointly and severally disgorge $2,309,880.

3. Third Fraud: Misappropriation of QSA Funds

(a) Facts

[49] QSA was incorporated in June 2011 as a wholly-owned subsidiary of QAM to provide investors with an indirect investment in a portfolio of U.S. residential mortgage-backed securities, with QAM managing QSA's assets. Units of QSA were sold to investors from August 31 to December 22, 2012, on the basis of offering memoranda that provided that QAM would receive, in total, 14 percent of the funds raised in the offering, comprising 10 percent for sales commissions and 4 percent to reimburse QAM for costs of the offering. QAM was to bear any additional costs.

[50] In October and November 2012, when QAM was having business difficulties and required working capital, Nagy and Sanfelice had QSA pay QAM $218,893, which was approximately two thirds of the $327,534 raised and $185,397 more than QAM was entitled to receive.[25] Those funds enabled QAM to maintain its working capital for an additional two months. As the respondents admitted at the merits hearing and before us, the funds from the QSA offering were the only funds available to QAM.

[51] As the Commission found in the Merits Decision, Nagy and Sanfelice were fully aware that they had "achieved mixed to very poor results and that Quadrexx was continuing to incur significant monthly operating losses".[26] The transfer was a misappropriation of the proceeds of the QSA offering and reflected an egregious failure to disclose information of which Nagy and Sanfelice were fully aware. By engaging in this course of conduct, Nagy, Sanfelice, QAM and QSA perpetrated a fraud on QSA investors, contrary to clause 126.1(1)(b) of the Act.

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[21] Merits Decision at para 241; see Act, s 1(1) "misrepresentation".

[22] *North American Financial Group Inc. v Ontario Securities Commission*, 2018 ONSC 136 (Div Ct) at para 127.

[23] See, *e.g.*, *Re Limelight* at paras 59-60; *Re Blackwood & Rose Inc.* (2014), 37 OSCB 4699 at para 53; *Phillips v Ontario Securities Commission*, 2016 ONSC 7901 (Div Ct) at paras 77-78; *Re Sabourin* at para 70.

[24] *Re Phillips* (2015), 38 OSCB 9311 (***Re Phillips***) at paras 32-36; *Poonian* at para 138.

[25] Merits Decision at paras 284, 299 and 319.

[26] Merits Decision at para 329.

(b) Submissions

[52] Staff submitted that Nagy and Sanfelice should be required to disgorge the $185,397 on a joint and several basis.

[53] The respondents argued that QAM was in dire circumstances, that it had to report a capital deficiency two months later and they were attempting to benefit QAM rather than themselves. They again argued that no disgorgement order should be made, because they received no personal benefit from the overpayment of funds to QAM, as Sanfelice received no salary from QAM during this period and Nagy received only a minimal amount. Ultimately, they submitted that Sanfelice should not be required to disgorge any amount and Nagy should be required to disgorge at most 25 percent of the overpayment, being approximately $46,000.

(c) Analysis

[54] The respondents' submissions reinforced the finding in the Merits Decision that Nagy and Sanfelice's conduct demonstrated their commitment to QAM's survival, "without regard to the consequences of their actions."[27] As with the QAM II Offering, their devotion to QAM does not mitigate the finding in the Merits Decision that they engaged in a fraudulent course of conduct. The respondents admitted in their oral submissions that Nagy and Sanfelice received an indirect benefit in view of their positions and interests in QAM. Moreover, as the directing minds of QAM and QSA, their conduct was that of QAM and QSA and vice versa. Again, Staff need not show that the funds received by QAM were personally obtained by Nagy and Sanfelice.

[55] For these reasons, the appropriate order is that Nagy and Sanfelice disgorge the amount so obtained, $185,397, on a joint and several basis.

C. Administrative Penalties

1. Introduction

[56] Disgorgement may deprive a wrongdoer of funds obtained through wrongdoing, but its deterrent effect is necessarily limited, as it may leave the wrongdoer no worse than in a "break-even" position. To achieve effective deterrence, an additional sanction may be required. An order under paragraph 127(1)9 of the Act, which authorizes the Commission to impose an administrative penalty of up to $1 million for each failure to comply with Ontario securities law, may serve this purpose.

[57] Staff requested administrative penalties for each of Nagy and Sanfelice for their contraventions of section 126.1. Focussing on the need for specific and general deterrence as central to sanctions in this case, Staff emphasized Nagy and Sanfelice's three discrete contraventions over a four-year period, involving different securities offerings, different investors and different types of conduct. Staff submitted that we should therefore impose a separate penalty for each contravention.

[58] The determination of an appropriate administrative penalty must be global, taking into account the disgorgement ordered and the fact that the respondents will be prohibited from participating in the capital markets, as discussed more fully below. Both specific and general deterrence have to be considered, recognizing that an undue emphasis on general deterrence may result in a penalty that is disproportionate and punitive.[28] An appropriate penalty will accomplish both specific and general deterrence, but the remedial emphasis required to protect the public interest will vary according to the circumstances.[29]

[59] As Staff acknowledged, determining the amount of an administrative penalty is not a science, but a matter of judgment. The Commission's precedents reflect a wide range of sanctions that vary according to the circumstances; the precedents provided by Staff had penalties from $150,000 to $1 million.[30] Because of the differences in detail and circumstances in the cited decisions, the sanctions imposed in them largely serve to suggest a possible range of penalties and a principled approach to them.

[60] We begin by addressing each contravention separately. To ensure proportionality, we then consider the monetary sanctions that are appropriate in light of all the respondents' conduct and their personal circumstances.

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27 Merits Decision at para 382.

28 *Re Cartaway* at para 64.

29 *Re Cartaway* at para 64.

30 Schedule D to Staff Submission.

2. First Fraud: Sale of Shares to DALP at Inflated Value

[61] The fraudulent conduct relating to DALP is described above, in paragraphs [21] to [26], in our discussion of disgorgement. That discussion dealt only with the amounts obtained by Nagy and Sanfelice. As the general partner of DALP, however, QHCM also participated in the fraud in contravention of clause 126.1(1)(b) of the Act. We must address its conduct, as well.

(a) Submissions

[62] Staff requested an administrative penalty of $600,000 for each of Nagy, Sanfelice and QHCM. Staff emphasized the seriousness of the respondents' fraudulent conduct with respect to DALP, Nagy and Sanfelice's overall pattern of conduct over a four-year period (including the non-fraud contraventions), the fact that they were registrants, and the fact that the distribution of DALP securities raised $5.65 million from 37 investors. Staff submitted that the requested penalties were necessary for deterrence, both specific and general.

[63] The respondents said that their reason for selling their shares in CHW was to enable Nagy and Sanfelice to concentrate on QAM's business and that sanctions should take this motivation into account. They submitted that no administrative penalty should be imposed in view of the fact that the offering memoranda for DALP securities fully disclosed their conflicts and other material matters, but that if a penalty is imposed, it should be nominal.

(b) Analysis

i. Nagy and Sanfelice

[64] Fraud is always serious. Fraudulent conduct undermines both of the Act's purposes, namely, investor protection and fair and efficient capital markets. Nagy and Sanfelice's conduct in orchestrating the DALP transaction at an inflated price is particularly egregious in view of their control of all parties to the transaction and the fact that only their personal profit, as opposed to a legitimate business purpose, motivated their conduct. In addition, as QAM's UDP and CCO, respectively, they were registrants with substantial experience in the securities industry and as such, were obligated to deal fairly, honestly and in good faith with QAM's clients, including DALP. Nagy and Sanfelice's multiple relationships with the various parties involved in the DALP transaction compounded the seriousness of their fraudulent conduct. That conduct is no less serious because of their motivation to benefit QAM or their disclosure in DALP's offering memorandum of their various positions.

[65] We must also consider the respondents' submissions with respect to Nagy's and Sanfelice's current financial circumstances. In their written submissions, they state that this proceeding and the findings on the merits have had a "devastating" impact on their careers and financial positions.

[66] They submit that Nagy can no longer be employed in the securities business, that he is having difficulty finding any work, that he has no assets left "except a computer and a 9 year old car", that he has developed high blood pressure and stress-related illnesses since 2013 and that he has lost many friends as a result of the Merits Decision.

[67] They submit that Sanfelice has had "little or no income for the past 5 years" while working at CHW, that he has lost approximately $109,000 as a creditor of QAM, that he guaranteed a $340,000 bank loan to save CHW from collapse, that he personally (with his wife) loaned approximately $270,000 to CHW in 2012 and 2013 to allow it to continue, and that he has incurred significant legal expenses in his defence in the merits hearing.[31]

[68] We have taken this information into account. However, because the respondents did not make these submissions under oath and have not adduced evidence to substantiate them, we give them limited weight. In any event, we must view them alongside the findings of fraud.

[69] The Commission has previously imposed administrative penalties ranging from $400,000 to $750,000 on persons who have directed fraudulent distributions of securities.[32] Although those decisions indicate a range of penalties, they did not involve circumstances like the DALP transaction.

[70] As explained above, we will order Nagy and Sanfelice to disgorge $806,042.95, which is no more than the amount that they improperly received as a result of their fraud. The disgorgement order alone will therefore have little, if any, deterrent effect for them or for any other person who might be inclined to engage in similar conduct. An administrative

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[31] Respondents' Submission, pp 155-160.

[32] See, *e.g.*, *Re Moncasa Capital Corp*. (2014), 37 OSCB 229 (***Re Moncasa***) at paras 32-37 ($400,000); *Re Bradon Technologies Ltd.* (2016), 39 OSCB 4907 at paras 94-96 ($500,000); *Re Al-Tar Energy Corp*. (2011), 34 OSCB 447 (***Re Al-Tar***) at paras 47-52 ($650,000 and $750,000); *Re Pogachar* (2012), 35 OSCB 6479 at paras 37-38 ($750,000).

penalty is necessary to reflect the seriousness of their fraud, and the penalty should be significant in order to achieve specific and general deterrence. However, in view of the fact that Nagy and Sanfelice must disgorge the amounts they obtained, in view of their financial circumstances, and in view of the permanent market bans to be imposed on them, the administrative penalty need not be at the upper end of the available range to achieve deterrence.

ii. *QHCM*

[71] QHCM did not obtain any funds from the sale of the CHW shares, and Staff did not request an order requiring disgorgement by it, but QHCM contravened section 126.1 through its participation as DALP's general partner, under Nagy and Sanfelice's direction. An administrative penalty should be imposed on all participants in the fraud relating to the DALP purchase.

[72] Although no evidence was adduced concerning the ownership of QHCM, it is reasonable to infer that Nagy, and possibly Sanfelice, will be affected by any penalty imposed on it. The considerations relevant to them, therefore, also apply to QHCM, although less directly.

3. Second Fraud: Undisclosed Use of Funds by QAM

(a) Submissions

[73] Staff requested administrative penalties of $500,000 for each of Nagy and Sanfelice in respect of their fraudulent conduct relating to QAM's payment of dividends, because their actions were intentional and extended over a period of nine months, from July 2011 to March 2012.

[74] The respondents' submissions largely replicated those made with respect to disgorgement; namely, that they received no personal benefit from the dividend payments; that unlike the businesses in cases cited by Staff, QAM's business was a real one; that they were attempting to further QAM's business plan; and that a failure to pay dividends would have been harmful to QAM. They submitted that there should be no administrative penalty for this fraud but alternatively, if there were one, it should be nominal and not more than $10,000.

(b) Analysis

[75] The general considerations applicable to the DALP transaction also apply to the conduct relating to the QAM II Offering, but there is a difference. We must take into account the fact that the respondents must disgorge the full amount of the funds improperly raised through the offering. Because those funds went to QAM, which is now bankrupt, the effect of the $2,309,880 disgorgement order on Nagy and Sanfelice is substantial both in its deterrent and personal financial impact.

[76] Nevertheless, Nagy and Sanfelice benefited from the funds raised in the QAM II Offering. As they were the directing minds of QAM, they had control of those funds and directed their use. In short, they "obtained" the funds as a result of their contravention of the Act. This approach is consistent with the instances in which the Commission has required the directing minds of a corporation, jointly and severally, to disgorge amounts that ended up in the pockets of their fraudulent vehicles.[33]

[77] Two decisions bear similarities to QAM's distribution of QAM II Shares and the undisclosed use of funds to pay dividends. In *Re Phillips*, the Commission imposed an administrative penalty of $700,000 on the directing mind of a registrant that raised funds without disclosing to investors that its financial condition was precarious,[34] as did QAM,[35] although the amount raised by Phillips was significantly greater than in this case.

[78] In *Re North American Financial Group Inc.*, in addition to requiring disgorgement, the Commission imposed penalties of $600,000 on the respondent registrants, who distributed securities in a real business for which they had unrealistic plans and expectations, and which subsequently declared bankruptcy. Because they used funds raised from new investors to pay earlier investors, the Commission found that they were perpetrators of a fraudulent Ponzi scheme.[36] Although the QAM II Offering was not a Ponzi scheme, the use of funds raised in the QAM II Offering to pay dividends is analogous and the general patterns and amounts raised are similar.

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[33] See, *e.g.*, *Re Limelight* at paras 59-60; *Re Blackwood & Rose Inc.* (2014), 37 OSCB 4699 at para 53; *Phillips v Ontario Securities Commission*, 2016 ONSC 7901 (Div Ct) at paras 77-78; *Re Sabourin* at para 70. The British Columbia Court of Appeal has accepted the imposition of a disgorgement remedy on the directing minds of an issuer, if the regulator considers it appropriate in the public interest; see *Poonian* at paras 121-131.

[34] *Re Phillips* at paras 64-69, affirmed 2016 ONSC 7901 (Div Ct).

[35] Merits Decision at para 235.

[36] (2014), 37 OSCB 8522 at paras 56-58 (***Re North American Financial Group***), affirmed 2018 ONSC 136 (Div Ct).

[79] These two decisions, and the aggravating factors that are discussed above with respect to the DALP transaction, and that apply here as well, might suggest an administrative penalty approaching the $500,000 requested by Staff. However, in light of the effect of our disgorgement order and the other sanctions, an administrative penalty of that amount is not necessary for specific or general deterrence. The necessary deterrence may be achieved through a less severe penalty for this fraud.

4. Third Fraud: Misappropriation of QSA Funds

(a) Submissions

[80] In respect of the fraud relating to misappropriation of QSA funds, Staff requested an administrative penalty of $300,000 for each of Nagy and Sanfelice. Staff submitted that the amount of the penalty should not be less than the $185,397 that Nagy and Sanfelice obtained through their fraudulent conduct.

[81] The respondents made essentially the same submissions with respect to this contravention as with respect to the others. They said that no other funds were available to QAM because their voluntary undertaking to Staff in June 2012 precluded QAM from raising capital through a sale of its shares and because the Commission's registration staff had refused to allow them to pursue a business plan that they believed would have been profitable. They said that their action was not motivated by an attempt to cover QAM's working capital deficiency.

(b) Analysis

[82] As with the funds raised in the QAM II Offering, the misappropriated QSA funds did not go to Nagy and Sanfelice directly. In both cases, Nagy and Sanfelice's motive was to preserve and further QAM's business. In both cases, they engaged in fraudulent conduct based on what can only be viewed as an unrealistic belief in QAM's eventual success. As stated previously, neither this motivation nor the fact that the funds from the QSA Offering were the only funds available to QAM can justify the respondents' fraudulent conduct.

[83] Once again, Nagy and Sanfelice's conduct warrants administrative penalties in addition to disgorgement.[37] Penalties that approximate the amount they obtained from the contravention of section 126.1 relating to QSA would be sufficient to achieve specific and general deterrence.[38]

5. Amount of Appropriate Penalties

(a) Nagy and Sanfelice

[84] Nagy and Sanfelice were experienced registrants who held positions of special responsibility (UDP and CCO), and who engaged in three separate and distinct frauds, in addition to other contraventions of Ontario securities law, over a four-year period.

[85] Nagy and Sanfelice allowed their pursuit of QAM's corporate goals to override legal and ethical considerations. Their manipulation of the valuation process associated with the sale of their CHW shares at an inflated value was a singularly self-interested and egregious abuse of their positions with respect to DALP and showed complete disregard for DALP's investors. Their three frauds require a significant administrative penalty in order to achieve deterrence and protect investors and the integrity of the capital market.

[86] Staff's requests for administrative penalties for each of the three fraud contraventions total $1.4 million. While we addressed disgorgement on the basis of each contravention separately, as we must do, we need not adopt a similar approach for administrative penalties. In our view, three separate penalties are not required for deterrence in this case.

[87] Having said that, because the disgorgement and the administrative penalties for the three contraventions of section 126.1 are complementary, they should be considered together. Nagy and Sanfelice are required to disgorge $2,495,277 on a joint and several basis for the QAM II and QSA contraventions; in addition, Nagy is required to disgorge $482,660.67 and Sanfelice $323,382.28 for the DALP contravention.

[88] We have taken into account these disgorgement amounts, the seriousness of Nagy and Sanfelice's recurrent contraventions, their overall conduct relating to those contraventions, their financial circumstances, and the fact that they will be subject to permanent market bans. Considering all these factors, and the need for specific and general deterrence, we conclude that an administrative penalty of $600,000 is appropriate for each of them.

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[37] See, *e.g.*, *Re Moncasa* at para 21(a) (misappropriation of $327,773.52 for personal expenses) and paras 34-37 ($400,000).

[38] *Re Al-Tar* at para 47.

[89] Nagy will therefore be required to pay to the Commission $1,082,660.67 (disgorgement of $482,660.67 and an administrative penalty of $600,000.00). Sanfelice will be required to pay $923,382.28 (disgorgement of $323,382.28 and an administrative penalty of $600,000.00). They will also be jointly and severally obligated to disgorge an additional $2,495,277. These totals are proportionate to the conduct and circumstances of Nagy and Sanfelice.

(b) QHCM

[90] Although QHCM did not obtain any funds as a result of the DALP transaction, QHCM was the vehicle through which Nagy and Sanfelice accomplished it. As DALP's general partner, QHCM was responsible for DALP's operations, which included its offering of units and the conduct of its business activities, in the course of which QHCM contravened section 126.1 of the Act by participating in Nagy and Sanfelice's fraudulent course of conduct.

[91] The characteristics of the DALP transaction that resulted in QHCM's contravention of section 126.1 need not be repeated. Suffice it to say that a significant monetary penalty is required. In view of QHCM's role in DALP, and taking into account that Nagy and Sanfelice were its directing minds and are likely to be affected by any penalty imposed on it, QHCM must pay an administrative penalty of $300,000.

D. Prohibitions on Market Participation

1. Submissions

[92] Staff requested that Nagy and Sanfelice be prohibited permanently from trading in securities, from acting as registrants, and from being involved with any issuer in a managerial capacity.

[93] The individual respondents requested limited bans for themselves, ending on December 31, 2018. They said the findings in the Merits Decision did not relate to personal trading by them, that they had been out of the market since March 2013, at least with respect to registrable activities, and that a ban for the period they proposed would therefore effectively amount to a six-year prohibition.

2. Analysis

[94] Nagy and Sanfelice's three fraud contraventions, and the other contraventions of Ontario securities law found in the Merits Decision, demonstrate a consistent pattern of disregarding investors' interests in order to further QAM's interests and their own. Such conduct would usually warrant a lifetime prohibition against participation in the capital markets, absent a reason for a lesser period or a limited exception to a complete prohibition (a "carve-out"). Staff requested such a prohibition, without carve-outs.

(a) Registration

[95] Nagy and Sanfelice were directors and officers of QAM, which was a registrant, and were themselves registrants with responsible positions and regulatory responsibilities, Nagy as QAM's UDP and Sanfelice as its CCO. Registrants are expected to be trustworthy; they have an obligation to deal honestly, fairly and in good faith with their clients. Because registrants must adhere to high standards of proficiency and integrity, and because they must meet educational requirements to ensure that they understand these obligations, the Commission has consistently held that expectations about registrants' conduct are greater than those for non-professionals.[39]

[96] Nagy and Sanfelice's involvement in the three frauds, including their directing the involvement of QAM, QHCM and QSA in those frauds, demonstrates that they lack the integrity required of registrants, and disqualifies them from registration. An order permanently prohibiting each of them from acting as a director or officer of a registrant, including an investment fund manager, and permanently prohibiting them from becoming or acting as a registrant, an investment fund manager or a promoter is appropriate.

[97] The respondents submitted that no order should be made with respect to QHCM. While Staff's written submissions did not address QHCM in this respect, as it is not currently a registrant, the Notice of Hearing did contemplate a similar order against QHCM. As DALP's general partner, QHCM participated in the fraudulent valuation of Nagy and Sanfelice's shares in the sale of CHW to DALP, under the direction of Nagy and Sanfelice, and contravened section 126.1. QHCM should also be prohibited from becoming or acting as a registrant or a promoter.

[39] Merits Decision at para 381, citing *Re Sterling Grace & Co.* (2014), 37 OSCB 8298 at para 255; see also, *e.g.*, *Re North American Financial Group* at para 38.

(b) Trading

i. Prohibitions

[98] The primary method of protecting investors and the securities market has historically been to prohibit wrongdoers from trading in or purchasing securities, and to deny them the use of the exemptions from registration that would permit them to trade or advise without being registered. Such orders apply to both professional and personal trading.

[99] We cannot accept the respondents' argument that the fraudulent conduct that contravened section 126.1 of the Act did not involve or was not related to personal trading by them. Both Nagy and Sanfelice sold their own shares in CHW to DALP at a price that was calculated on the basis of their fraudulent conduct. In addition, the valuation of CHW shares was conducted in connection with a distribution of DALP securities to investors under offering memoranda prepared at the direction of Nagy and Sanfelice. The fraud was therefore directly connected to trading in securities in which they and QAM, also under their direction, participated and from which they received a benefit.

[100] QAM's payment of dividends using funds raised in the QAM II Offering was also related to a distribution of shares and was intended to permit that distribution to occur, as the respondents admitted in their written and oral submissions. Similarly, the misappropriation of funds raised in the QSA Offering related to a distribution of securities. In both cases, Nagy and Sanfelice directed the sale of securities, and the fraudulent conduct was intended to further their personal interests.

[101] All of the respondents' fraudulent transactions involved trading in securities. There is therefore no reason for a prohibition on trading against Nagy and Sanfelice to be limited on the basis that their conduct did not involve personal trading. They should be permanently prohibited from trading or acquiring securities, and they should be permanently denied the exemptions under the Act. The same prohibitions should apply to:

a. QHCM, which as general partner authorized the distribution of DALP units by QAM and the purchase of CHW shares at a fraudulently inflated value; and

b. QSA, because it was a vehicle for the misappropriation of funds it raised.

ii. Carve-outs

[102] It is not uncommon for a person subject to a prohibition on trading and purchasing to be permitted to continue to invest in securities in personal accounts. As the respondents were self-represented and did not request a carve-out in their written submissions, we asked Staff to address this issue. In particular, we asked Staff to distinguish this case from a recent decision in which a respondent who had been criminally convicted of fraud was granted a carve-out for personal trading.[40]

[103] The burden of demonstrating a need for a carve-out of any type is on the respondent.[41] Although the respondents in this case addressed carve-outs in their oral submissions, they provided no evidence or information concerning personal investment accounts that they may hold, or with respect to the need for such carve-outs. We have concluded, therefore, that there is no basis for granting a carve-out from the prohibition on trading and acquiring securities.

[104] We agree with Staff's submission that it is open to the respondents to request a variation of the order by bringing an application under section 144 of the Act on the basis of evidence that they then bring before the Commission, which Staff will have an opportunity to address. It should be noted, however, that if we had decided to grant a trading carve-out, we would have made that carve-out conditional on payment of the administrative penalties and the amounts required to be disgorged.

(c) Prohibition against Acting as a Director of Officer

i. Prohibitions

[105] Paragraphs 127(1)7 and 8 authorize the Commission to order a person to resign a position as a director or officer and to prohibit the person from becoming or acting as a director or officer of an issuer. Staff requested such an order with respect to Nagy and Sanfelice. As the directing minds of QAM, QHCM, QSA, CHW and, indirectly, DALP, Nagy and Sanfelice directed and participated in all of the conduct found in the Merits Decision to have been contrary to Ontario securities law. An order prohibiting them from acting as a director or officer of any issuer is warranted. The question that remains is whether there should be any exception to such an order.

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[40] See *Re Drabinsky* (2017), 40 OSCB 5298.

[41] *Re MRS Sciences Inc.* (2014), 37 OSCB 5611 at para 99.

ii. Carve-outs

[106] The respondents advised that DALP has a new independent investment adviser, which replaced QAM following its bankruptcy. They requested a carve-out to permit Nagy to continue as the director and officer of QHCM and Sanfelice to remain the director and officer of CHW.

[107] In his oral submissions, Nagy said that he is the only director and officer of QHCM and that if he cannot continue in this position, DALP will effectively be deprived of its general partner, which will have the effect of penalizing its limited partners.

[108] Similarly, the respondents advised that Sanfelice is currently the only director and officer of CHW, which is DALP's major asset and remains, according to the respondents, a viable business. The respondents referred to Sanfelice's history with CHW, particularly his providing funds to assist it and his protecting its business following Staff's allegations and again following the issuance of the Merits Decision. They represented that in view of CHW's importance to DALP, DALP's new independent investment adviser refused to accept an offer by Sanfelice to resign his position with CHW and that Sanfelice continues to work at CHW under this investment adviser's supervision.[42] They said that if Sanfelice cannot continue in this position, his removal will also harm DALP's limited partners.

[109] Although the Commission's investor protection mandate would ordinarily preclude the granting of a carve-out from the prohibition against acting as directors or officers where a person has engaged in fraudulent activities, it also requires us to consider any harm that our order may cause to investors. For example, the Alberta Securities Commission has granted a carve-out from such a prohibition to enable a person to engage in activities that might benefit investors.[43] However, we require an evidentiary basis to allow us to evaluate the need for, and determine proper limits on, such a carve-out. In this case, the respondents adduced no such evidence.

[110] We received no evidence, for example, concerning QHCM's current operations, the new investment adviser's role with DALP, the nature of this adviser's supervision of Sanfelice's work for CHW, or why Sanfelice must be a director or officer of CHW to perform this work for CHW. Similarly, we heard no evidence of the views of affected investors. We might have been influenced by evidence that a majority of the DALP limited partners, after having been provided with full disclosure of the Merits Decision, voted in favour of Nagy continuing as the director and officer of QHCM and of Sanfelice continuing as the director and officer of CHW.

[111] We conclude that the respondents have not demonstrated an adequate basis for the requested carve-outs. If the respondents decide to seek an order granting such carve-outs, it is open to them to make an application under section 144 of the Act for a variation of our order.

[112] However, because of the concerns that the respondents raised with respect to a ban's effect on the limited partners of DALP, our order prohibiting Nagy and Sanfelice from acting as a director or officer will not take effect for 30 days; that is, until the time for an appeal with respect to this proceeding has expired.

E. Reprimands

[113] Staff initially requested that the Commission reprimand each of the respondents. When asked what purpose a reprimand would serve in addition to the requested monetary sanctions and preclusive orders, Staff withdrew its request, implicitly conceding that a reprimand would serve little additional purpose in this case. We agree.

III. COSTS

[114] Section 127.1 of the Act authorizes the Commission to order a respondent to pay the costs of an investigation and of the proceeding that follows it, if the respondent has been found to have contravened Ontario securities law.

[115] Staff has provided an affidavit regarding costs and disbursements, which shows Staff's costs of the investigation, prehearing activities and merits hearing. The affidavit lists staff members who participated in each phase, the hourly rates approved by the Commission for their positions, and time spent by them, shown in time dockets. The costs incurred, including disbursements for which receipts were included, totalled $1,378,689.98 for more than 7,700 hours.

[116] Staff have reduced these costs by $476,038.11 by excluding time spent by three enforcement staff members, resulting in $1,098,672.50 for approximately 5,600 hours, and by reducing the time of the remaining four by an additional $213,214.36. They do not request costs relating to this sanctions hearing. In the result, Staff's request for costs of the investigation and hearing, including disbursements, is $902,651.87.

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[42] Respondents' Submission, p 158.

[43] *Re DeLaet,* 2013 ABASC 228 at paras 28, 35 and 57-59.

[117] While this request appears reasonable in view of the length of the hearing (44 days), the complexity of the issues addressed in the hearing, Staff's success in establishing virtually all of its allegations, and the time spent by Staff, the $902,651.87 requested is more than the administrative penalties that we are imposing on Nagy and Sanfelice.

[118] Reimbursement of the Commission's costs by a respondent who contravenes Ontario securities law is reasonable in view of the fact that the Commission's budget, including its enforcement budget, is paid by fees charged to registrants, issuers and others. Nevertheless, although a respondent can expect to pay costs, a large costs award will likely be viewed by the respondent as an additional penalty. The potential for such an award may affect a respondent's willingness, and ability, to pursue a full defence.

[119] As with an administrative penalty, determining the amount of a costs award is not a science. The Commission should adopt a balanced approach that takes into account all of these considerations.

[120] Considering the length of the hearing, the complexity of the issues, Staff's success in establishing its allegations, the time spent by Staff, the financial sanctions imposed on the respondents, and the representations concerning their financial circumstances, we have determined that a costs award of $550,000 is appropriate, which amount comprises:

a. $300,000 to be paid by Nagy and Sanfelice jointly and severally;

b. $150,000 to be paid by QHCM, Nagy and Sanfelice jointly and severally; and

c. $100,000 to be paid by QSA, Nagy and Sanfelice jointly and severally.

IV. ORDER

[121] For all of these reasons, the following orders are in the public interest:

a. Nagy, Sanfelice, QHCM and QSA are prohibited permanently from trading in or acquiring any securities;

b. all exemptions contained in Ontario securities law shall not apply to Nagy, Sanfelice, QHCM and QSA, permanently;

c. Nagy and Sanfelice shall resign all positions they hold as an officer or director of any issuer no later than 30 days after the date of this order and thereafter are prohibited permanently from becoming or acting as a director or officer of any issuer;

d. Nagy and Sanfelice shall resign from any positions they hold as an officer or director of a registrant, including an investment fund manager, and are prohibited permanently from becoming or acting as a director or officer of a registrant, including an investment fund manager;

e. Nagy, Sanfelice and QHCM are prohibited permanently from becoming or acting as a registrant, as an investment fund manager, or as a promoter;

f. Nagy and Sanfelice shall each pay to the Commission an administrative penalty of $600,000.00;

g. QHCM shall pay to the Commission an administrative penalty of $300,000.00;

h. Nagy shall disgorge to the Commission $482,660.67;

i. Sanfelice shall disgorge to the Commission $323,382.28;

j. Nagy and Sanfelice shall jointly and severally disgorge to the Commission $2,495,277.00;

k. each of the payments required by paragraphs (f) to (j), inclusive, of this order is designated for allocation or use by the Commission in accordance with subparagraph 3.4(2)(b)(i) or (ii) of the Act;

l. Nagy and Sanfelice shall jointly and severally pay the Commission costs of $300,000.00;

m. Nagy, Sanfelice and QHCM shall jointly and severally pay the Commission costs of $150,000.00; and

n. Nagy, Sanfelice and QSA shall jointly and severally pay the Commission costs of $100,000.00.

Dated at Toronto this 23rd day of January, 2018.

"Timothy Moseley"

"Philip Anisman"

"AnneMarie Ryan"

3.1.2 National Bank Financial Inc. et al. – ss. 127, 127.1

IN THE MATTER OF
NATIONAL BANK FINANCIAL INC.
(in respect of its predecessors
NATIONAL BANK FINANCIAL LTD. and
NBCN INC.)

ORAL REASONS FOR APPROVAL OF SETTLEMENT
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)

Citation: *National Bank Financial Inc. (Re)*, 2018 ONSEC 4

Date: 2018-01-26

File No.: 2017-82

Hearing:	January 26, 2018	
Decision:	January 26, 2018	
Panel:	Mark Sandler Robert Hutchison Frances Kordyback	Commissioner and Chair of the Panel Commissioner Commissioner
Appearances:	Cullen Price	For Staff of the Commission
	Lawrence E. Ritchie Vanessa Cotric	For National Bank Financial Inc.

ORAL REASONS FOR APPROVAL OF SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the hearing as edited and approved by the panel, to provide a public record of the oral reasons.

[1] The respondent has entered into a settlement agreement with Staff of the Commission. In this hearing, the parties submit jointly that it would be in the public interest for us to approve the settlement agreement and to issue the requested order. That order imposes terms, including but not limited to a $700,000 administrative penalty, on the respondent. After considering the evidence and the submissions presented to us, as well as existing precedents, we agree that the requested order is in the public interest. I will briefly explain why.

[2] The facts are fully set out in the settlement agreement, which is publicly available. Accordingly, it is unnecessary to set out in detail the relevant conduct. In essence, the respondent admits that its predecessor companies engaged in conduct contrary to the public interest and contrary to their obligations as registered firms by failing to take necessary steps to provide for timely delivery of summary disclosure documents to investors who purchased exchange traded fund (**ETF**) securities. The respondent's predecessors failed to act in accordance with the terms of the applicable exemptive relief decisions. In the settlement agreement, this conduct is characterized as the "**Delivery Issues**".

[3] As mitigating factors, the settlement agreement notes that there is no allegation and no evidence that the respondent or its predecessors engaged in any abusive, willful or otherwise intentional misconduct. The Delivery Issues were inadvertent and rooted in a software programming error. After the Delivery Issues were identified, steps were taken to ensure that the required summary disclosure documents were provided to investors. The respondent fully cooperated with Staff of the Commission. There is no evidence that the Delivery Issues (that is the delayed disclosure of these documents) resulted in any investor losses. Nor is there any evidence that the respondent or its predecessor companies derived any financial benefit from the failure to make timely disclosure of these documents.

[4] Nonetheless, it is important that registered firms comply with their disclosure requirements and ensure, through adequate and ongoing processes, that those requirements are fulfilled in a timely way. That did not occur here due to identified deficiencies which we understand have since been addressed. As well, we are mindful of the fact that the non-compliance was not momentary, but extended over a period of time, and that a large number of investors, both here and in Québec, did not receive timely disclosure to which they were entitled as a result.

[5] The jurisprudence establishes that parties should be encouraged to reach settlements. Settlements save valuable resources, including but not limited to hearing time, and promote timely dispositions. Staff of the Commission and

counsel for respondents are well placed to arrive at a settlement agreement that addresses the interests of both the public and the respondents. Accordingly, a hearing panel should not reject a settlement agreement lightly.

[6] In our view, the proposed agreed-upon disposition takes into consideration the appropriate aggravating and mitigating factors, most of which I have already identified in these brief reasons. As well, we take into consideration the existence of parallel proceedings in Québec involving the respondent and substantially the same facts. The settlement of that proceeding, which has been commenced before the Autorité des marchés financiers (**AMF**), is the subject of a separate application being heard today in Québec. We have taken into consideration the proposed disposition in that proceeding as well, most particularly the proposed administrative penalty in that proceeding, which cumulatively promotes, among other things, general deterrence.

[7] For these reasons, we approve the settlement agreement, including the terms contained in the proposed order. Those terms are as follows:

a. National Bank Financial Inc. ("**NBF**") will conduct final testing and review of the Enhanced Control and Supervision Procedures and will implement any additional changes, if necessary, within 90 days of the date this Order (the "**Review Period**");

b. NBF will submit a letter (the "**Attestation Letter**") to Staff, signed by the Ultimate Designated Person and the Chief Compliance Officer responsible for the ETF sales business, expressing their opinion as to whether the Enhanced Control and Supervision Procedures were adequately followed, administered and enforced by NBF for the one-year period commencing from the date of implementation of the Enhanced Control and Supervision Procedures upon completion of the Review Period, and for a further one-year period commencing from the date that is one year after the implementation date;

c. if applicable, the Attestation Letter will be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter; and

d. NBF will submit such additional reports as may be reasonably requested by Staff for the purpose of satisfying Staff that the opinion expressed in the Attestation Letter described in subparagraphs (b) and (c) above is valid.

[8] In addition, we agree with the proposed costs award in the amount of $35,000.

[9] We are grateful to counsel for their assistance in this matter.

Dated at Toronto this 26th day of January, 2018.

"Mark Sandler"

"Robert Hutchison"

"Frances Kordyback"

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Deer Horn Capital Inc.	30 January 2017	25 January 2018

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
Katanga Mining Limited	15 August 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:
CI Investment Grade Bond Fund
Principal Regulator – Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated January 26, 2018
Received on January 26, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
CI Investments Inc.
Project #2636189

Issuer Name:
BMO Advantaged Canadian Q-Model® Fund
BMO Advantaged U.S. Q-Model® Fund
BMO Canadian Q-Model® Trust
BMO U.S. Q-Model® Trust
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated January 22, 2018
NP 11-202 Preliminary Receipt dated January 25, 2018
Offering Price and Description:
Series D mutual fund units
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Promoter(s):
BMO Nesbitt Burns Inc.
Project #2721226

Issuer Name:
BMO Diversified Income Portfolio
BMO Emerging Markets Bond Fund
BMO Monthly Income Fund
BMO Global Small Cap Fund
BMO Dividend Class
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated January 29, 2018
Received on January 29, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
BMO Investments Inc.
Promoter(s):
BMO Investments Inc.
Project #2596960

Issuer Name:
Manulife Canadian Dividend Growth Class
Manulife Canadian Dividend Income Class
Manulife Canadian Focused Class
Manulife Canadian Focused Fund
Manulife Canadian Opportunities Class
Manulife Canadian Opportunities Fund
Manulife Canadian Stock Class
Manulife Canadian Stock Fund
Manulife Dividend Income Class
Manulife Dividend Income Fund
Manulife Growth Opportunities Class
Manulife Growth Opportunities Fund
Manulife Preferred Income Class
Manulife U.S. Dividend Income Class
Manulife U.S. Dividend Income Fund
Manulife U.S. Dividend Income Registered Fund
Manulife Emerging Markets Class
Manulife Global Equity Unconstrained Class
Manulife Global Equity Unconstrained Fund
Manulife Canadian Monthly Income Class
Manulife Canadian Monthly Income Fund
Manulife Canadian Opportunities Balanced Class
Manulife Canadian Opportunities Balanced Fund
Manulife Conservative Income Fund
Manulife Tactical Income Fund
Manulife Unhedged U.S. Monthly High Income Fund
Manulife U.S. Monthly High Income Fund
Manulife Yield Opportunities Fund
Manulife Dollar-Cost Averaging Fund
Manulife Money Fund
Manulife Short Term Bond Fund
Manulife Short Term Yield Class
Manulife Canadian Bond Plus Fund
Manulife Canadian Corporate Bond Fund
Manulife High Yield Bond Fund
Manulife U.S. Dollar Floating Rate Income Fund
Manulife U.S. Tactical Credit Fund
Manulife Asia Total Return Bond Fund
Manulife Emerging Markets Debt Fund
Manulife Global Tactical Credit Fund
Manulife Dividend Income Private Pool
Manulife Money Market Private Trust
Manulife U.S. Fixed Income Private Trust
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus and Amendment #3 to AIF dated January 25, 2018
Received on January 25, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
Manulife Securities Incorporated.
Manulife Securities Investment Services Inc.
Manulife Asset Management Investments Inc.
Promoter(s):
Manulife Asset Management Limited.
Project #2638012

Issuer Name:
RBC Vision Women's Leadership MSCI Canada Index ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 25, 2018
NP 11-202 Preliminary Receipt dated January 26, 2018
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
RBC Global Asset Management Inc.
Project #2721399

Issuer Name:
Barometer Disciplined Leadership Balanced Fund
Barometer Disciplined Leadership Equity Fund
Barometer Disciplined Leadership Tactical Income Growth Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated January 18, 2018
NP 11-202 Receipt dated January 23, 2018
Offering Price and Description:
Series A, F and I units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2708068

Issuer Name:
CMP 2018 Resource Limited Partnership
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated January 24, 2018
NP 11-202 Receipt dated January 26, 2018
Offering Price and Description:
Maximum: $50,000,000 – 50,000 Limited Partnership Units @ $1,000 per Unit
Minimum: $5,000,000 – 5,000 Limited Partnership Units @ $1,000 per Unit
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
Industrial Alliance Securities Inc.
Echelon Wealth Partners Inc.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Raymond James Ltd.
Promoter(s):
Goodman GP Ltd.
Project #2709790

Issuer Name:
Dividend 15 Split Corp.
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus (NI 44-101) dated January 24, 2018
NP 11-202 Receipt dated January 25, 2018
Offering Price and Description:
$103,893,900
4,971,000 Preferred Shares and 4,971,000 Class A Shares
Prices: $10.00 per Preferred Share
$10.90 per Class A Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
Industrial Alliance Securities Inc.
Echelon Wealth Partners Inc.
GMP Securities L. P.
Raymond James Ltd.
Desjardins Securities Inc.
Mackie Research Capital Corporation
Manulife Securities Incorporated
Promoter(s):
N/A
Project #2718536

Issuer Name:
Harvest Banks & Buildings Income ETF
Harvest European Leaders Income ETF
Harvest Global Resource Leaders ETF
Harvest US Bank Leaders Income ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated January 29, 2018
NP 11-202 Receipt dated January 29, 2018
Offering Price and Description:
Class A and U units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Harvest Portfolios Group Inc.
Project #2711618

Issuer Name:
Powershares Monthly Income Fund
Invesco Global High Yield Bond Fund
Invesco Canadian Bond Class
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus and amendment #3 to AIF dated January 15, 2018
NP 11-202 Receipt dated January 29, 2018
Offering Price and Description:
Series A, Series D, Series F, Series I, Series PF, Series PF4, Series PTF, Series PT4, Series T6 and Series T8)
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Invesco Canada Ltd.
Project #2636650

Issuer Name:
MRF 2018 Resource Limited Partnership
Principal Regulator – Alberta (ASC)
Type and Date:
Final Long Form Prospectus dated January 26, 2018
NP 11-202 Receipt dated January 26, 2018
Offering Price and Description:
Limited Partnership Units
$50,000,000 (maximum – 2,000,000 Units @ $25 per unit)
$5,000,000 (minimum – 200,000 Units @ $25 per unit)
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
GMP Securities L.P.
Manulife Securities Incorporated
Canaccord Genuity Corp.
Middlefield Capital Corporation
Desjardins Securities Inc.
Echelon Wealth Partners Inc.
Industrial Alliance Securities Inc.
Raymond James Ltd.
Promoter(s):
Middlefield Resource Corporation
Project #2709249

Issuer Name:
Ninepoint 2018 Flow-Through Limited Partnership
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated January 22, 2018
NP 11-202 Receipt dated January 23, 2018
Offering Price and Description:
Maximum Offering: $60,000,000 – 2,400,000 Limited Partnership Units
Minimum Offering: $5,000,000 – 200,000 Units
Price per Unit: $25
Minimum Subscription: $2,500 (100 Units)
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
TD Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
GMP Securities L.P.
Manulife Securities Incorporated
Manulife Securities Incorporated
Canaccord Genuity Corp.
Caldwell Securities Ltd.
Desjardins Securities Inc.
Echelon Wealth Partners Inc.
Industrial Alliance Securities Inc.
Promoter(s):
Ninepoint 2018 Corporation
Project #2708228

Issuer Name:
RBC $U.S. Short-Term Corporate Bond Fund
RBC $U.S. Strategic Income Bond Fund
RBC Global Bond & Currency Fund
RBC Global Equity Focus Currency Neutral Fund
RBC O'Shaughnessy U.S. Value Fund (Unhedged)
RBC QUBE Low Volatility Global Equity Currency Neutral Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated January 19, 2018
NP 11-202 Receipt dated January 23, 2018
Offering Price and Description:
Series A, Advisor Series, Series D, Series F and Series O units @ net asset value
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
Royal Mutual Funds Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #2706107

Issuer Name:
Marijuana Opportunities Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated January 16, 2018
NP 11-202 Receipt dated January 29, 2018
Offering Price and Description:
Class A units, Class F units and ETF Units @ Net Asset Value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Redwood Asset Management Inc.
Project #2610753

Issuer Name:
Sphere FTSE Canada Sustainable Yield Index ETF
Sphere FTSE Europe Sustainable Yield Index ETF
Sphere FTSE Emerging Markets Sustainable Yield Index ETF
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Long Form Prospectus dated January 16, 2018
NP 11-202 Receipt dated January 25, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2584700

Issuer Name:
The GBC American Growth Fund Inc.
The GBC Canadian Bond Fund
The GBC Canadian Growth Fund
The GBC Growth and Income Fund
The GBC International Growth Fund
The GBC Money Market Fund
Principal Regulator – Quebec
Type and Date:
Amended and restated to Final Simplified Prospectus dated January 15, 2018
NP 11-202 Receipt dated January 25, 2018
Offering Price and Description:
Class A Units and Class O Units
Underwriter(s) or Distributor(s):
Pembroke Private Wealth Management Ltd.
Promoter(s):
Pembroke Private Wealth Management Ltd.
Project #2596116

NON-INVESTMENT FUNDS

Issuer Name:
Aumento Capital VII Corporation
Principal Regulator – Ontario
Type and Date:
Preliminary CPC Prospectus (TSX-V) dated January 23, 2018
NP 11-202 Preliminary Receipt dated January 23, 2018
Offering Price and Description:
$500,000.00 – 1,000,000 Common Shares
Price: $0.50 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
–
Project #2720496

Issuer Name:
Canadian National Railway Company
Principal Regulator – Quebec
Type and Date:
Preliminary Shelf Prospectus dated January 24, 2018
NP 11-202 Preliminary Receipt dated January 25, 2018
Offering Price and Description:
CAD$6,000,000,000.00 – Debt Securities
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2721081

Issuer Name:
Canopy Growth Corporation
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 23, 2018
NP 11-202 Preliminary Receipt dated January 23, 2018
Offering Price and Description:
$200,680,000.00 – 5,800,000 Common Shares
Price: $34.60 per Common Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
Eight Capital
Beacon Securities Limited
PI Financial Corp.
Promoter(s):
–
Project #2719052

Issuer Name:
Capha Pharmaceuticals Inc. (Formerly FPS PHARMA INC.)
Type and Date:
Preliminary Long Form Prospectus dated January 25, 2018
(Preliminary) Receipted on January 25, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2721355

Issuer Name:
Commerce Acquisition Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary CPC Prospectus (TSX-V) dated January 25, 2018
NP 11-202 Preliminary Receipt dated January 25, 2018
Offering Price and Description:
Minimum of $500,000.00 – 2,500,000 Common Shares
Maximum of $1,000,000.00 – 5,000,000 Common Shares
Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Industrial Alliance securities Inc.
Promoter(s):
–
Project #2721365

Issuer Name:
Golden Predator Mining Corp.
Principal Regulator – British Columbia
Type and Date:
Amendment dated January 23, 2018 to Preliminary Short Form Prospectus dated January 22, 2018
NP 11-202 Preliminary Receipt dated January 23, 2018
Offering Price and Description:
$7,000,630.00
7,693,000 Flow-Through Units
Price: $0.91 per Flow-Through Unit
Underwriter(s) or Distributor(s):
Clarus Securities Inc.
Promoter(s):
–
Project #2720224

Issuer Name:
Indiva Limited
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 29, 2018
NP 11-202 Preliminary Receipt dated January 29, 2018
Offering Price and Description:
$13,000,050.00 – 12,381,000 Units
Price: $1.05 per Unit

Underwriter(s) or Distributor(s):
Eight Capital
PI Financial Corp.
Promoter(s):
–
Project #2722795

Issuer Name:
LXRandCo, Inc. (formerly Gibraltar Growth Corporation)
Principal Regulator – Quebec
Type and Date:
Preliminary Short Form Prospectus dated January 26, 2018
NP 11-202 Preliminary Receipt dated January 26, 2018
Offering Price and Description:
$13,125,000.00 – 2,500,000 Class B Shares
Price: $5.25 per Class B Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Desjardins Securities Inc.
Cormark Securities Inc.
Industrial Alliance Securities Inc.
Promoter(s):
–
Project #2722021

Issuer Name:
Maricann Group Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 26, 2018
NP 11-202 Preliminary Receipt dated January 29, 2018
Offering Price and Description:
20,125,000 Common Shares and 10,062,500 Warrants issuable upon deemed exercise of 20,125,000 Special Warrants
Price per Special Warrant: $2.00
Underwriter(s) or Distributor(s):
Eight Capital
Canaccord Genuity Corp.
Industrial Alliance Securities Inc.
Promoter(s):
–
Project #2722044

Issuer Name:
Nuuvera Inc. (formerly Mira IX Acquisition Corp.)
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 24, 2018
NP 11-202 Preliminary Receipt dated January 24, 2018
Offering Price and Description:
$45,000,010.00
8,181,820 Units
$5.50 per Unit
Underwriter(s) or Distributor(s):
Clarus Securities Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Promoter(s):
Lorne Abony
Ronald D. Schmeichel
Project #2719284

Issuer Name:
Scythian Biosciences Corp. (previously: Kitrinor Metals Inc.)
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 23, 2018
NP 11-202 Preliminary Receipt dated January 23, 2018
Offering Price and Description:
$12,501,525.00
672,125 Units
Price: $18.60 per Unit
Underwriter(s) or Distributor(s):
Clarus Securities Inc.
Haywood Securities Inc.
Infor Financial Inc.
Promoter(s):
–
Project #2719011

Issuer Name:
Skyscape Capital Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary CPC Prospectus (TSX-V) dated January 26, 2018
NP 11-202 Preliminary Receipt dated January 29, 2018
Offering Price and Description:
$500,000.00 – 1,000,000 Common Shares
Price: $0.50 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
–
Project #2722142

Issuer Name:
SmartCentres Real Estate Investment Trust (formerly, Smart Real Estate Investment Trust)
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated January 24, 2018
NP 11-202 Preliminary Receipt dated January 25, 2018
Offering Price and Description:
$2,000,000,000.00 – Variable Voting Units, Subscription Receipts, Warrants, Debt Securities
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2721050

Issuer Name:
Emblem Corp. (formerly Saber Capital Corp.)
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated January 29, 2018
NP 11-202 Receipt dated January 29, 2018
Offering Price and Description:
$25,000,002.00 Offering of Units (12,195,123 Units at a price of $2.05 per Unit)
– and -
$25,000,000.00 of 8.0% Convertible Unsecured Debentures due in 2021 (25,000 Debentures at a price of $1,000 per Debenture)
Underwriter(s) or Distributor(s):
Eight Capital
Canaccord Genuity Corp.
Echelon Wealth Partners Inc.
GMP Securities L.P.
Promoter(s):
–
Project #2717673

Issuer Name:
The Hydropothecary Corporation
Principal Regulator – Quebec
Type and Date:
Final Short Form Prospectus dated January 22, 2018
NP 11-202 Receipt dated January 23, 2018
Offering Price and Description:
$130,000,000.00 – 32,500,000 Units
Price: $4.00 per Unit
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
–
Project #2716375

Issuer Name:
Torex Gold Resources Inc.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated January 24, 2018
NP 11-202 Receipt dated January 24, 2018
Offering Price and Description:
$500,000,000.00 – Common Shares, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2718724

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
THERE IS NOTHING TO REPORT THIS WEEK.			

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 TSX – Housekeeping Amendments to TSX Form 11 Notice of Private Placement – Notice of Housekeeping Rule Amendments to the TSX Company Manual

TORONTO STOCK EXCHANGE

NOTICE OF HOUSEKEEPING RULE AMENDMENTS TO THE TSX COMPANY MANUAL

Introduction

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 (the "**Protocol**"), Toronto Stock Exchange ("**TSX**") has adopted, and the Ontario Securities Commission has approved, certain housekeeping amendments (the "**Amendments**") to TSX Form 11 – *Notice of Private Placement* ("**Form 11**") of the TSX Company Manual (the "**Manual**"). The Amendments are Housekeeping Rules under the Protocol and therefore have not been published for comment. The Ontario Securities Commission has not disagreed with the categorization of the Amendments as Housekeeping Rules.

Summary and Rationale for the Amendments

Pursuant to Section 607 of the Manual, an issuer is required to provide TSX with notice of a proposed private placement by completing and submitting a Form 11 to TSX. Along with any further information or documentation that may be requested by TSX, the Form 11 provides TSX with key information considered by TSX. In particular, Item 12 of Form 11 requires an issuer to disclose any significant information regarding the proposed placement not otherwise disclosed in the form. Although not explicitly set out in the existing Form 11, when responding to this question, TSX expects issuers to include any relevant significant matters including, but not limited to, any upcoming shareholders meeting for which a record date has been or is shortly expected to be determined, any pending mergers, acquisitions, take-over bids, changes to capital structure or other significant transactions, and any details regarding potential dissident shareholders and/or anticipated proxy contests. Accordingly, TSX is amending the Form 11 to clarify the type of information required to be disclosed by issuers when responding to Item 12, and to fix a typographical and grammatical error.

Text of the Amendments

For the text of the Amendments, please see the TSX website at:
http://tmx.complinet.com/en/display/display.html?rbid=2072&element_id=1138.

Effective Date

The Amendments become effective on February 1, 2018.

13.2.2 Canadian Securities Exchange – Notice of Withdrawal of Proposed Amendments to Trading Rules

CANADIAN SECURITIES EXCHANGE

NOTICE OF WITHDRAWAL OF PROPOSED AMENDMENTS TO TRADING RULES

CNSX Markets Inc. (the "CSE") is withdrawing proposed amendments to its trading rules in accordance with the Process for Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto.

Proposed changes to CSE trading rules were published for comment on March 2, 2017 (see CSE Notice 2017-005). The proposed amendments would have placed an obligation on Market Makers to fill eligible orders at the NBBO. Upon consideration of the comments received CSE has decided to withdraw the proposal.

We thank the commenters for their comments.

Questions about this Notice may be directed to:

Mark Faulkner
Vice President, Listings and Regulation
Fax: 416.572.4160
Email: Mark.Faulkner@thecse.com

Index

Alpha Exchange Inc.
Order – s. 147 ... 998

Alpha Trading Systems Limited Partnership
Order – s. 147 ... 998

AltaGas Ltd.
Decision ... 979

Amerex Brokers LP.
Ruling and Exemption – s. 38 of the CFA and s. 6.1 of OSC Rule 91-502 Trades in Recognized Options ... 1009

AuRico Metals Inc.
Order – s. 1(6) of the OBCA ... 988

BGC Financial LP
Ruling and Exemption – s. 38 of the CFA and s. 6.1 of OSC Rule 91-502 Trades in Recognized Options ... 1009

Canadian Securities Exchange
Marketplaces – Notice of Withdrawal of Proposed Amendments to Trading Rules ... 1126

ClareGold Trust
Order ... 993

CSA Staff Notice 23-321 Order Protection Rule: Market Share Threshold for the period April 1, 2018 to March 31, 2019
Notice ... 953

Deer Horn Capital Inc.
Revocation Order ... 997
Cease Trading Order ... 1041

EA Education Group Inc.
Revocation Order ... 994

GFI Securities LLC
Ruling and Exemption – s. 38 of the CFA and s. 6.1 of OSC Rule 91-502 Trades in Recognized Options ... 1009

Ithaca Energy Inc.
Decision ... 981

Katanga Mining Limited
Cease Trading Order ... 1041

Kirkland Lake Gold Inc.
Order ... 989

Marret Asset Management Inc.
Decision ... 975

Marret High Grade Hedge Fund
Decision ... 975

Marret Investment Grade Hedged Strategies Fund
Decision ... 975

Mason, Donald
Notice from the Office of the Secretary ... 965
Order – s. 8 ... 997

Meharchand, Dennis L.
Notice from the Office of the Secretary ... 964
Order – s. 127(1) ... 996

Nagy, Miklos
Notice from the Office of the Secretary ... 962
Order – ss. 127, 127.1 ... 987
Reasons and Decision on Sanctions and Costs – ss. 127, 127.1 ... 1023

National Bank Financial Inc.
Notice of Hearing with Related Statement of Allegations ... 956
Notice from the Office of the Secretary ... 962
Notice from the Office of the Secretary ... 963
Notice from the Office of the Secretary ... 964
Order with Related Settlement Agreement – s. 127, 127.1 ... 1000
Oral Reasons for Approval of Settlement – ss. 127, 127.1 ... 1039

National Bank Financial Ltd.
Notice of Hearing with Related Statement of Allegations ... 956
Notice from the Office of the Secretary ... 962
Notice from the Office of the Secretary ... 963
Notice from the Office of the Secretary ... 964
Order with Related Settlement Agreement – ss. 127, 127.1 ... 1000
Oral Reasons for Approval of Settlement – ss. 127, 127.1 ... 1039

NBCN Inc.
Notice of Hearing with Related Statement of Allegations ... 956
Notice from the Office of the Secretary ... 962
Notice from the Office of the Secretary ... 963
Notice from the Office of the Secretary ... 964
Order with Related Settlement Agreement – ss. 127, 127.1 ... 1000
Oral Reasons for Approval of Settlement – ss. 127, 127.1 ... 1039

Omega Securities Inc.
Notice from the Office of the Secretary ... 963
Order – s. 127(7) ... 996

Paladin Energy Ltd
Partial Revocation Order 990

Performance Sports Group Ltd.
Cease Trading Order 1041

Quadrexx Hedge Capital Management Ltd.
Notice from the Office of the Secretary 962
Order – ss. 127, 127.1 987
Reasons and Decision on Sanctions and Costs – ss. 127, 127.1 1023

Quadrexx Secured Assets Inc.
Notice from the Office of the Secretary 962
Order – ss. 127, 127.1 987
Reasons and Decision on Sanctions and Costs – ss. 127, 127.1 1023

Sanfelice, Tony
Notice from the Office of the Secretary 962
Order – ss. 127, 127.1 987
Reasons and Decision on Sanctions and Costs – ss. 127, 127.1 1023

Sphere FTSE Asia Sustainable Yield Index ETF
Decision 967

Sphere FTSE Canada Sustainable Yield Index ETF
Decision 967

Sphere FTSE Emerging Markets Sustainable Yield Index ETF
Decision 967

Sphere FTSE Europe Sustainable Yield Index ETF
Decision 967

Sphere FTSE US Sustainable Yield Index ETF
Decision 967

Sphere Investment Management Inc.
Decision 967

TD Bank, N.A.
Decision 984

TMX Group Inc.
Order – s. 147 998

TMX Group Limited
Order – s. 147 998

Toronto-Dominion Bank
Decision 984

TSX Inc.
Order – s. 147 998

TSX
Marketplaces – Housekeeping Amendments to TSX Form 11 Notice of Private Placement – Notice of Housekeeping Rule Amendments to the TSX Company Manual 1125

Valt.X Holdings Inc.
Notice from the Office of the Secretary 964
Order – s. 127(1) 996