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1.1.1 OSC Staff Notice 33-749 Compliance and Registrant Regulation – Annual Summary Report for Dealers, Advisers and Investment Fund Managers

OSC Staff Notice 33-749 *Compliance and Registrant Regulation – Annual Summary Report for Dealers, Advisers and Investment Fund Managers* is reproduced on the following separately numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

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ONTARIO SECURITIES COMMISSION

Annual Summary Report for Dealers, Advisers and Investment Fund Managers

Compliance and Registrant Regulation

OSC Staff Notice 33-749

August 23, 2018

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Director's message

The Ontario Securities Commission (**OSC**, the **Commission**) expects strong compliance by registered firms and individuals (collectively, **registrants**) and articulates its expectations through its oversight, guidance and outreach. To assist registrants with meeting these regulatory expectations, we have redesigned one of our main outreach tools, the Annual Report for Dealers, Advisers and Investment Fund Managers (**Annual Report**). Our aim is to create a versatile report for registrants to reference when developing, implementing and maintaining an effective compliance system.

A key change to this year's Annual Report is the grouping of deficiencies by topic instead of registration category. Since firms are often registered in multiple categories and because deficiencies can apply equally across categories, we think registrants will find it beneficial to focus on deficiencies by topic. Also, relevant regulatory resources have been organized into dedicated sections for ease of reference. We continue to include topic specific guidance to help registrants understand how to comply with both the explicit regulatory requirements and the spirit of the requirements. For example, we have included a sample flowchart to assist firms with evaluating compliance with section 5.6 of National Instrument 81-105 *Mutual Fund Sales Practices* (**NI 81-105**). Finally, we provide summaries of the Director's Decisions since these decisions evidence the compliance–enforcement continuum. We hope that registrants find this report informative and use it as a self-assessment tool.

Over the past year, the Compliance and Registrant Regulation (**CRR**) staff have been proactively meeting with registrants, completing reviews, approving registration applications, evaluating developments in the financial technology space and working on policy projects. You will find much of this work detailed in this report. One point that I would like to emphasize is that, when conducting our reviews, we continue to focus on evaluating the effectiveness of a registrant's compliance system. Part 11 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) and accompanying guidance provides the framework for establishing an effective compliance system. To meet this obligation, registrants should continually monitor, test and revise their compliance system to keep up-to-date with the evolution of their business practices, products and risks. When assessing how a registrant

maintains the effectiveness of its compliance system, CRR staff find it useful to review the Chief Compliance Officer's (**CCO**) annual report to the board of directors or similar governance body. A well written report documents how the firm proactively evaluated the effectiveness of its compliance system and explains how the firm addressed, or intends to address, any identified weaknesses in the compliance system.

Looking forward, our compliance reviews will focus on the following areas:

- section 5.6 of NI 81-105 which governs the provision of promotional items and business promotion activities,
- conflicts of interest created by compensation practices,
- firms that participated in the 'Registration as the First Compliance Review' program and have been in operation for greater than one year,
- assessing the accuracy of responses from firms completing the 2018 Risk Assessment Questionnaire (**RAQ**), a tool that is issued every two years that gathers information about our registrants' operations, and
- high risk registrants identified through the 2018 RAQ process.

In addition to this report, we continue to provide useful tools to assist registrants in strengthening their compliance function. Our Registrant Outreach program includes educational seminars and we update the **Topical Guide for Registrants** periodically. This tool provides links to guidance for over 100 topic areas.

The CRR Branch encourages continuous and open lines of communication with registrants. We invite registrants to discuss regulatory policy, compliance practices and matters impacting their business models with us, so do not hesitate to call or email us. Our contact information is included at the end of this report.

We look forward to engaging with our registrants in the upcoming year.

Debra Foubert
Director, Compliance and
Registrant Regulation

Introduction

Who we are

The CRR Branch of the OSC is responsible for regulating firms and individuals who are in the business of trading in, or advising on, securities or commodity futures and firms that manage investment funds in Ontario. The OSC's mandate is to:

- provide protection to investors from unfair, improper or fraudulent practices,
- foster fair and efficient capital markets, and
- contribute to the stability of the financial system by making and monitoring compliance with rules governing the securities industry in Ontario.

CRR's activities are integral to the OSC's goal of being an effective and responsive securities regulator.

The purpose of this report

This Annual Report prepared by staff of the CRR Branch is designed to assist registrants with information on the following:

- **Education and registration outreach**
  Part 1 of this report provides links and information to the registration and ongoing educational resources and outreach opportunities available to current and prospective registrants.

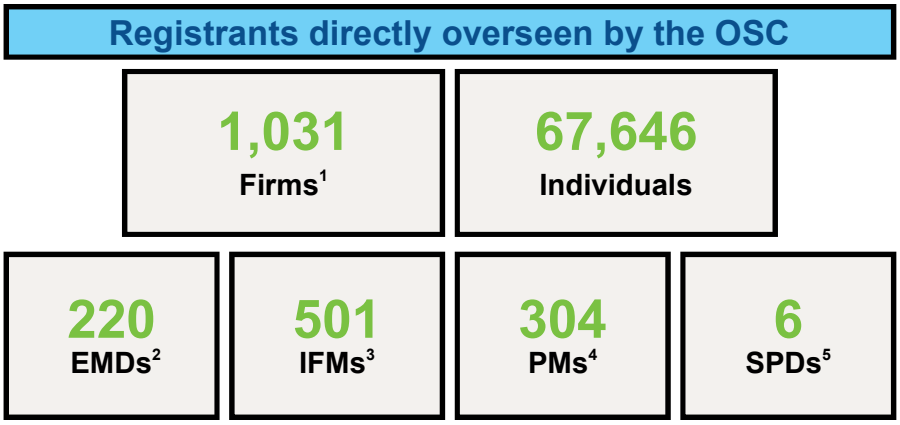
- **Regulatory oversight activities and guidance**
  Part 2 of this report should be used by registrants as a self-assessment tool to strengthen compliance with Ontario securities law and, as appropriate, to make changes to enhance their systems of compliance, internal controls, and supervision.

- **Impact of upcoming policy initiatives**
  Part 3 of this report provides insights into some of the new and proposed rules and other regulatory initiatives that may impact a registrant's operations.

- **Regulatory conduct activities**
  Part 4 of this report is intended to enhance a registrant's understanding of our expectations and our interpretation of regulatory requirements. This section also provides insight into the types of regulatory actions the CRR Branch may take to address non-compliance.

Who this report is relevant to

This Annual Report provides information for registrants that are directly regulated by the OSC. These registrants primarily include exempt market dealer (**EMDs**), investment fund managers (**IFMs**), portfolio managers (**PMs**) and scholarship plan dealers (**SPDs**).



In general, firms must register with the OSC if they conduct any of the following activities in Ontario:

- are in the business of trading in, or advising on, securities. This is referred to as the 'business trigger' for registration,
- act as an underwriter or as an IFM, or
- conduct trading and advising activities involving commodity futures contracts or commodity futures options.

Individuals must register if they trade, advise or underwrite on behalf of a registered dealer or adviser, or act as the Ultimate Designated Person (**UDP**) or CCO of a registered firm.

There are seven dealer and adviser categories for firms trading in or advising on securities:

- EMDs,
- SPDs,
- restricted dealers,
- PMs,
- restricted portfolio managers,
- investment dealers (**IDs**), who must be members of the Investment Industry Regulatory Organization of Canada (**IIROC**), and
- mutual fund dealers (**MFDs**), who must, except in Quebec, be members of the Mutual Fund Dealers Association of Canada (**MFDA**).

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[1] This number excludes firms registered as MFDs or firms registered solely in the category of ID or other registration categories (commodity trading manager, futures commission merchant, restricted PM, and restricted dealer).

[2] This number includes firms registered as sole EMDs and EMDs also registered in other registration categories.

[3] This number includes firms registered as sole IFMs and IFMs also registered in other registration categories.

[4] This number includes firms registered as sole PMs and PMs also registered as EMDs, and in other registration categories.

[5] This number includes firms registered as sole SPDs and SPDs also registered as IFMs.

There are four dealer and adviser categories for firms trading in or advising on commodity futures:

- commodity trading adviser,
- commodity trading counsel,
- commodity trading manager, and
- futures commission merchant.

The OSC also registers firms and individuals in the category of MFDs and dealing representatives, and firms in the category of IDs, however, these firms and their registered individuals are directly overseen by the self-regulatory organizations (**SROs**) the MFDA and IIROC, respectively. Although this report focuses primarily on registered firms and individuals directly overseen by the OSC, firms directly overseen by the SROs should review Part 2 of the Annual Report as certain information would be applicable to them as well.

Although applications for registration are reviewed by CRR staff, we remind firms seeking registration in the category of ID, MFC or futures commission merchant to also apply separately for membership with the relevant SRO.

Part 1 OUTREACH TO REGISTRANTS

1.1 Registrant Outreach program and resources

Registrant Outreach since inception

54
In-person and webinar seminars held

4,055
Web replays viewed

10,407
Individuals that have attended in-person outreach sessions

95
E-mail blasts sent to registrants

We continue to interact with our stakeholders through our Registrant Outreach program, which was launched in 2013. The objectives of our Registrant Outreach program are to strengthen communication with Ontario registrants that we directly regulate and with other industry participants (such as lawyers and compliance consultants) to promote stronger compliance practices and to enhance investor protection.

- **Interested in attending an upcoming Registrant Outreach seminar?**
  Click here for our calendar of upcoming events.
- **Looking for information about regulation matters?**
  Take a look at our Registrant Outreach webpage or our Topical Guide for Registrants for help with key compliance issues and policy initiatives.
- **Want to be informed about newly released guidance?**
  Register to receive our e-mail blasts here.
- **Looking for a listing of recent e-mail blasts and links to each?**
  Refer to the OSC Compliance Reports, Staff Notices & E-mail blasts webpage.
- **Interested in reading previously published Director's Decisions?**
  Refer to the Director's Decisions webpage.

If you have questions related to the Registrant Outreach program or have suggestions for seminar topics, please send an e-mail to RegistrantOutreach@osc.gov.on.ca

1.2 Registration initiatives

Guide to completing and filing a firm application

To assist firms and individuals with navigating the registration process, the OSC's website was updated in 2017 to provide additional information with respect to getting registered with the OSC (http://www.osc.gov.on.ca/en/Dealers_getting-registered_index.htm) including a section outlining the process for submitting initial registration applications for firms and individuals (http://www.osc.gov.on.ca/en/Dealers_applying_index.htm).

Applicants are encouraged to review the Guide to Completing and Filing a Firm Application prior to submitting a registration application with the OSC. The guide also provides references to certain links that may assist the applicant during the application process.

Background checks

As of June 21, 2018 the OSC has commenced a United States (**U.S.**) background check procedure in partnership with Sterling Talent Solutions (**Sterling**), a provider of background screening products. This procedure will affect individual registration applications where an applicant has been resident in the U.S. at any time in the last 10 years prior to the date of the application.

In order to initiate this procedure, an individual applicant will be required to provide express consent to Sterling to conduct background checks. While Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (**Form 33-109F4**) provides consent for the OSC to collect personal information, including contacting "private bodies or agencies, individuals, corporations and other organizations for information" about an applicant, part of Sterling's security and privacy policies require that all applicants provide express consent directly to Sterling.

Applicants will receive an e-mail from Sterling within 48 hours of filing their application on the National Registration Database (**NRD**). This e-mail will contain a secure link to an intuitive and user-friendly online portal where the consent may be provided.

Applicants are not required to consent to a U.S. background check, however not doing so may impact their ability to become registered in a timely manner, or in some cases, at all.

We are confident that this arrangement will assist us in conducting timely due diligence, thereby minimizing impact to registrants.

1.3 OSC LaunchPad

"OSC LaunchPad is committed to innovation for the long-term and we look forward to continuing our work with fintech businesses."

Pat Chaukos, Deputy Director

Our recent LaunchPad initiative is an example of developing a collaborative approach to respond to emerging issues. These actions are essential to reach solutions that balance the inclusion of innovation and competition in the marketplace while maintaining appropriate investor safeguards.

OSC Statement of Priorities 2018-2019

What we do

The pace of fintech innovation continues to accelerate and is a disruptive force in the financial services industry. Our goal is to keep regulation in step with digital innovation.

Since October 2016, OSC LaunchPad has actively engaged with novel fintech businesses to provide support in navigating regulatory requirements. OSC LaunchPad provides a forum to discuss proposed approaches, raise questions and educate fintech businesses about the regulatory requirements for which registration and/or exemptive relief may be needed.

OSC LaunchPad strives to achieve the following:

- Greater use of creative regulatory approaches (for example, limited registration and other exemptive relief) that provide an environment for innovators to test their products, services and applications.
- With the **CSA Regulatory Sandbox**, support the development of novel business models and facilitate more timely registration and exemptive relief processes for emerging firms.
- Provide a positive and supportive environment for fintech innovation and ensure investors are protected.

With a small, dedicated **core team** focused exclusively on fintech and an extended team with expertise from the various branches at the OSC, the OSC LaunchPad team focuses on three areas:

Engage with the fintech community	Offer eligible fintech businesses direct support in navigating regulatory requirements	Take learnings and apply them to similar businesses going forward

Are you eligible for support?

You are a fintech business that has not yet started operations or is in the process of applying to the OSC for registration or exemptive relief. ✔

You have a new innovation or significantly different product, service or application from those currently available. ✔

Your innovation will likely provide identifiable benefits to investors. ✔

You understand the necessity of investor protections and will invest time and energy in understanding and addressing them. ✔

For more information on **how to apply for direct support**, as well as the types of support we offer, please visit OSC LaunchPad's **dedicated site**.

OSC LAUNCHPAD

Key accomplishments in fiscal 2017-2018

242	Meetings held with fintech businesses and stakeholders
156	Requests for support received and direct support provided to fintech businesses
55	Events that OSC LaunchPad has hosted or participated in
25	Collaborative reviews with the CSA Regulatory Sandbox of novel business models that want to operate across Canada

Guidance & investor resources

- Working with the CSA Regulatory Sandbox, OSC LaunchPad published **CSA Staff Notice 46-307 *Cryptocurrency Offerings*** (August 2017), which provides guidance on how securities law requirements may apply to initial coin and token offerings, cryptoasset investment funds and cryptoasset trading platforms.

- We also published **CSA Staff Notice 46-308 *Securities Law Implications for Offerings of Tokens*** (June 2018), which provides additional guidance on the applicability of securities laws to offerings of coins and tokens, including ones commonly referred to as “utility tokens”.

- Through Canadian Securities Administrators (**CSA**) investor alerts, we remind investors of the **inherent risks associated with cryptoasset futures contracts** and the **need for caution when investing with cryptoasset trading platforms**.

- OSC LaunchPad continues to support our Investor Office in the publication of guidance to investors, as well as research studies, on relevant topics:
  - **Get Smarter About Money: Cryptocurrency Offerings**
  - **Ontarians and Cryptocurrencies: A First Look**
  - **Get Smarter About Money: Cryptocurrency Basics**
  - **Taking Caution: Financial Consumers and the Cryptoasset Sector**

Trends & decisions

Complexity driven by financial innovation offers many potential benefits and risks to the market. Fintech is leveraging new technology and creating new business models in the financial services industry such as providing new product offerings (blockchain-based cryptoassets) and disrupting service channels (online advisers).

After an initial focus on online advisers, online lenders and crowdfunding portals, industry focus has largely shifted to cryptoasset-related businesses, including:

- Initial coin and token offerings
- Cryptoasset investment funds
- Traditional financial service businesses utilizing blockchain technology
- Cryptoasset trading platforms

We are also seeing many businesses seeking to provide RegTech services, technology-based compliance solutions and data analytics services. In the past fiscal year, OSC LaunchPad has worked with the CSA Regulatory Sandbox to approve a variety of innovative products and services, including:

- Initial coin and token offerings
- Cryptoasset investment funds
- Algorithmic trading platform
- New product offering by an online adviser

The **full list** of approved novel products and services can be found on OSC LaunchPad's **dedicated site**.

International co-operation highlights

The OSC, together with the CSA, entered into co-operation agreements with the **Abu Dhabi Global Market Financial Services Regulatory Authority** and the **France Autorité des Marchés Financiers** concerning co-operation and information sharing between authorities regarding their respective innovation functions. This adds to similar agreements entered into with the **Australian Securities and Investments Commission** and the **U.K. Financial Conduct Authority**.

Part 2 INFORMATION FOR DEALERS, ADVISERS AND INVESTMENT FUND MANAGERS

"The foundation of a strong culture of compliance begins with a commitment of resources and a tone from the top."

Felicia Tedesco, Deputy Director

Protect investors and foster confidence in our markets by upholding strong standards of compliance with our regulatory framework.

OSC Statement of Priorities 2018-2019

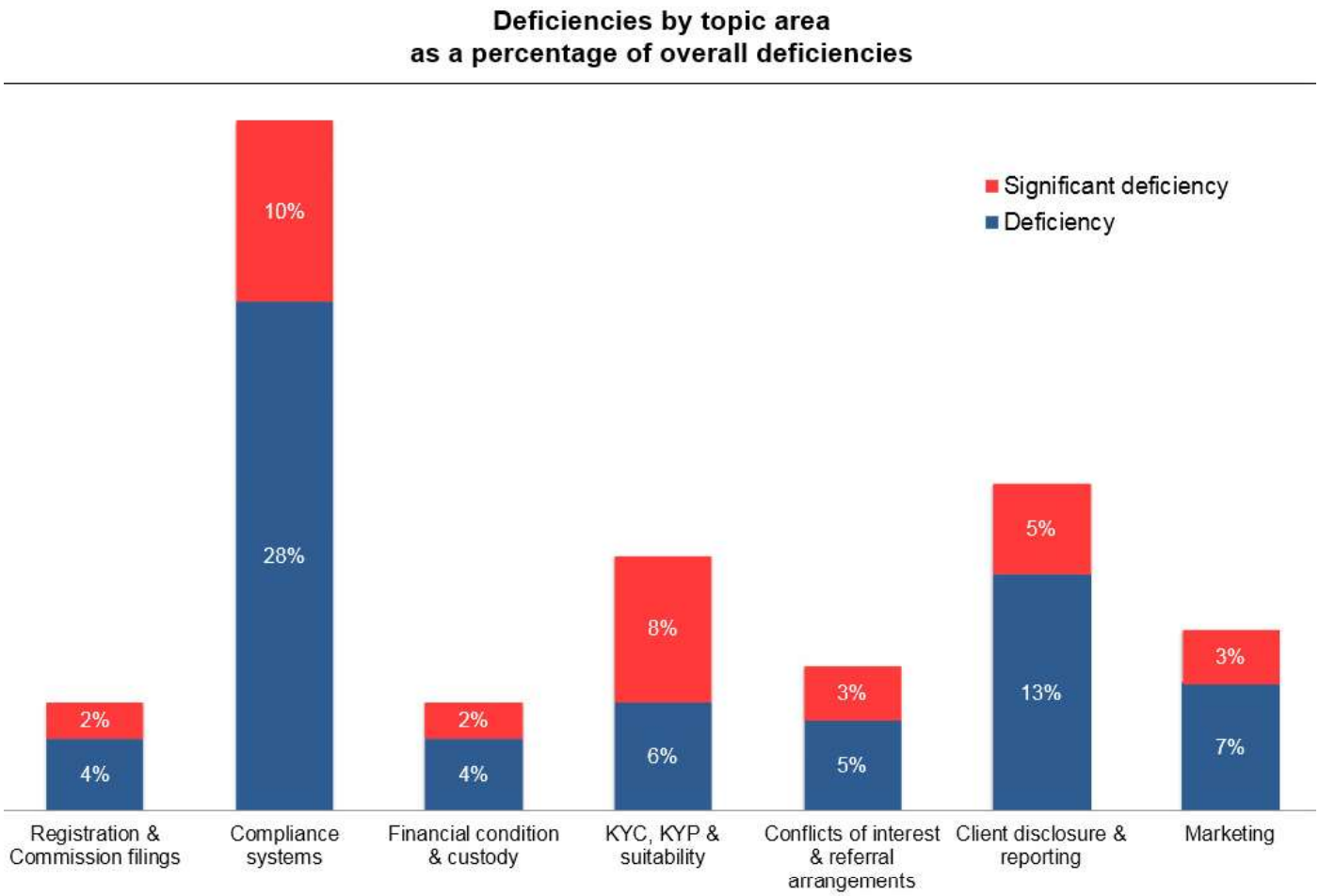
How to navigate Part 2 of the Annual Report

Section 2.1 - Annual highlights

Part 2 of the Annual Report provides an overview of the key findings and outcomes from compliance reviews conducted during the 2017/2018 fiscal year. Section 2.1 provides information specific to registered dealers, advisers and IFMs and discusses, at a high level, some of the key compliance reviews completed during the fiscal year.

Section 2.2 - Registration and compliance deficiencies

In contrast to prior versions of the annual report, this year's report categorizes our guidance for all registrant categories into 7 topic areas. The following chart illustrates the focus areas of our compliance reviews during fiscal 2017/2018, noting common deficiencies identified within each of the 7 topic areas, including those considered significant.



Which guidance applies to me?

The highlights section in 2.1 provides readers with a direct link between the key compliance reviews conducted, the guidance issued as a result of our findings and a list of the registration categories that the guidance applies to. In addition, in section 2.2, registration categories are listed beside each deficiency heading to indicate the information is relevant to firms registered in this capacity.

Registrants also have the option of navigating through section 2.2 of the Annual Report by topic area. Scroll over and click each of the topic areas listed below to access information on that topic.

Sections 2.2.1 to 2.2.7 discuss the most commonly identified deficiencies, suggested best practices (and unacceptable practices) and specify applicable legislation and guidance to assist firms in addressing each of the deficiency topic areas.

We encourage registrants to review all the information set out in Part 2 of this report as the guidance presented may be helpful to registration categories other than those listed.

2.1 Annual highlights

a) Senior suitability review

b) Client Relationship Model Phase 2 (CRM2) review

c) Expenses charged to investment funds review

d) Sales practices review

e) Scholarship plans review

f) Inappropriate capital raising activity by registrants

g) Excessive fees cases

h) Protection from reprisals review

i) Registration as the first compliance review

j) Targeted reviews

WHAT WE DID	GUIDANCE	REGISTRANTS

a) SENIOR SUITABILITY REVIEW

In 2017, we conducted a sweep of 20 PM and 10 EMD firms that provided investment advisory services or sales of products to a significant proportion of clients over the age of 60. We wanted to determine if registered firms had an appropriate compliance system and supervisory controls that were designed to effectively address the particular needs of older investors with the objective of protecting them from potential financial harm.

As part of the OSC Seniors Strategy, more detailed guidance will be developed to assist firms and their representatives to effectively manage their relationship with senior clients.

- section 2.2.2 (page 36)
- section 2.2.4 (page 48)

✔ PM
✔ EMD
✔ SPD

b) CRM2 REVIEW

The CRM2 review focused on assessing a firm's policies and procedures on client reporting and reviewing a sample of client statements, reports on charges and other compensation and investment performance reports. Registered firms selected for the desk review included 10 PMs, 5 EMDs and 15 registered firms maintaining registration under multiple categories.

- section 2.2.2 (page 38)
- section 2.2.6 (page 64)

✔ PM
✔ EMD
✔ SPD

"We engage with our PM registrants on a continuous basis, striving to provide them with appropriate flexibility to develop and adapt their business models while fostering best practices in compliance."

Elizabeth Topp, Manager
Portfolio Manager Team

WHAT WE DID	GUIDANCE	REGISTRANTS

c) EXPENSES CHARGED TO INVESTMENT FUNDS REVIEW

In 2017, we conducted a review of fees and expenses charged to investment funds by IFMs (the **expense desk review**). We selected 20 IFMs to participate in the expense desk review.

The expense desk review focused on assessing whether an IFM had properly developed, implemented and disclosed adequate policies and procedures to validate that the investment funds they managed were only charged fees and expenses related to the daily operation of the investment fund. We had previously conducted a similar review in 2014 as reported in OSC Staff Notice 33-743 *Guidance on sales practices, expense allocation and other relevant areas developed from the results of the targeted review of large investment fund managers* (**OSC Staff Notice 33-743**). The notice provides guidance on acceptable types of fees and expenses that can be allocated to investment funds.

- section 2.2.2 (page 43)
- OSC SN 33-743

✔ IFM

d) SALES PRACTICES REVIEW

In 2017, we continued to work with the Enforcement Branch to reach settlement agreements with registrants regarding the sales practices of industry participants in connection with the distribution of publicly offered mutual funds. Our work focused on sales practices that could be perceived as inducing dealers and their representatives to sell mutual fund securities on the basis of incentives they were receiving, rather than on the basis of what was suitable for and in the best interests of their clients.

- section 2.2.5 (page 56)

✔ IFM

✔ SPD

✔ MFD

✔ ID

WHAT WE DID	GUIDANCE	REGISTRANTS

e) SCHOLARSHIP PLANS REVIEW

We conducted compliance reviews of a sample of firms registered as SPDs as well as the affiliated IFMs of the scholarship plans. Areas of concern identified from the recent reviews include but are not limited to:

- the use of misleading or inaccurate marketing materials,
- inadequate branch oversight,
- inadequate insurance coverage,
- inadequate designation of trust accounts and commingling of investment fund assets,
- inadequate oversight of service providers,
- charging inappropriate expenses to investment funds, and
- inadequate interaction with and execution of Independent Review Committee (**IRC**) duties and obligations.

We are in the process of reporting the findings from these reviews to each firm. As is our normal process, depending on the deficiencies identified during a review, we may consider further regulatory action to remediate the deficiencies.

- section 2.2.2 (page 41-44)
- section 2.2.3 (page 45-47)
- section 2.2.5 (page 54-55)
- section 2.2.7 (page 66)

✔ IFM

✔ SPD

"We encourage an open dialogue with registrants and invite them to reach out to us to discuss current issues and developing trends."

Dena Staikos, Manager
Dealer Team

WHAT WE DID	GUIDANCE	REGISTRANTS

f) INAPPROPRIATE CAPITAL RAISING ACTIVITY BY REGISTRANTS

We implemented additional review procedures when reviewing a registrant's financial statements filed with us. The objective of the additional procedures are to identify potentially problematic capital raising activities such as registrants issuing shares or debt of themselves to retail investors directly or indirectly through the investment funds they manage. Areas of concern include:

- unsuitable investments, posing the risk of investor harm
- prohibited distributions to investors (when no prospectus exemption is available)

- section 2.2.3 (page 45)

- ✔ IFM
- ✔ PM
- ✔ EMD
- ✔ SPD

g) EXCESSIVE FEES CASES

We continued to work with the Enforcement Branch to reach no-contest settlements related to certain registrant practices that resulted in excessive fees being charged to clients over an extended period of time.

This initiative was discussed in detail in section 3.1(c)(vii) of OSC Staff Notice 33-748 *Annual Summary Report for Dealers, Advisers and Investment Fund Managers* (OSC Staff Notice 33-748)

- ✔ IFM
- ✔ PM
- ✔ EMD
- ✔ SPD

WHAT WE DID	GUIDANCE	REGISTRANTS

h) PROTECTION FROM REPRISALS REVIEW

We completed desk reviews of 30 registered firms to assess compliance with the provisions in section 121.5 - *No Reprisals* of the *Securities Act* (Ontario) (the **Act**). We identified a number of employee agreements that contained inappropriate language.

- section 2.2.2 (page 35)

- ✔ IFM
- ✔ PM
- ✔ EMD
- ✔ SPD

i) REGISTRATION AS THE FIRST COMPLIANCE REVIEW

As part of our review of initial firm registration applications or proposals to change a registered firm's business, we conducted 52 in-person meetings or calls with firms this year.

The purpose of these reviews is to facilitate mutual understanding of:

- the business model the firm plans to adopt,
- some of the key compliance issues a new firm might face, especially if planning to offer an online platform, and
- resources the OSC makes available to new firms, pre and post-registration.

- section 1.2 (page 10)

- ✔ IFM
- ✔ PM
- ✔ EMD
- ✔ MFD
- ✔ ID

"As gatekeepers, the Registration team operationalizes the registration regime by evaluating initial and ongoing fitness for registration based on the principles outlined in section 2.1 of the Act."

Louise Brinkmann, Manager
Registration Team

WHAT WE DID	GUIDANCE	REGISTRANTS

j) TARGETED REVIEWS

We conducted targeted compliance reviews of registered IFMs, PMs and EMDs using a risk-based approach and identified additional areas requiring guidance on registration and compliance issues including:

- not-for-profit organizations distributing securities,
- incorrect calculation of participation fees by registered firms,
- inadequate delivery of offering documents under the offering memorandum exemption,
- non-disclosure of outside business activities,
- inadequate compliance system,
- inadequate policies and procedures,
- inappropriate use of IFM registration,
- inadequate oversight of related party service providers,
- inadequate assessment of conflicts of interest,
- misleading marketing materials,
- inadequate working capital and/or insurance,
- inadequate relationship disclosure information, and
- inadequate control over the safeguarding of client assets.

- section 2.2.1 (page 27)
- section 2.2.2 (page 34)
- section 2.2.3 (page 45)
- section 2.2.4 (page 48)
- section 2.2.5 (page 53)
- section 2.2.6 (page 64)
- section 2.2.7 (page 66)

- ✔ IFM
- ✔ PM
- ✔ EMD
- ✔ SPD

"The IFM team is committed to helping fund managers succeed in meeting their obligations as registrants."

Vera Nunes, Manager
Investment Fund Manager Team

2.2 Registration and compliance deficiencies

2.2.1 Registration & Commission filings

2.2.2 Compliance systems

2.2.3 Financial condition & custody

2.2.4 Know your client (KYC), Know your product (KYP), & suitability

2.2.5 Conflicts of interest & referral arrangements

2.2.6 Client disclosure & reporting

2.2.7 Marketing

2.2.1 Registration & Commission filings

The registration requirements under securities law help to protect investors from unfair, improper or fraudulent practices by participants in the securities markets. In general, firms must register with the OSC if they:

- are in the business of trading in, or advising on, securities. This is referred to as the 'business trigger' for registration,
- act as an underwriter or as an IFM, or
- conduct trading and advising activities involving commodity futures contracts or commodity futures options.

a) Issuers directly offering securities (pre-registration)

We remind entities that offer their own or an affiliate's securities to continually reassess whether they are in the business of trading or advising and thus require registration. This activity does not have to be the entity's sole or even primary endeavour for it to be considered in the business of trading in, or advising on, securities.

Some of the factors we review to determine if the business trigger has been met include:

- how frequently Form 45-106F1 *Report of Exempt Distribution* filings are filed without reference to a registered dealer, since this raises the concern that trading activity is being conducted with repetition, regularity or continuity,
- entities that appear to be directly soliciting by advertising their securities offerings to prospective investors,
- using the internet, including public websites and discussion boards, to reach a large number of potential investors,
- employees of an entity actively soliciting the public for the purpose of selling that entity's securities, possibly with employees dedicated to the role of capital-raising,
- entities that raise large sums of capital from the general public through the distribution of securities.

More information about the factors that we consider to be relevant in determining whether an individual or entity is trading in, or advising on, securities for a business purpose and, therefore, subject to the dealer or adviser registration requirements, is set out in section 1.3 of NI 31-103CP.

The distribution of securities may also be subject to the prospectus requirements unless a prospectus exemption is available. When relying on a prospectus exemption, the issuer is responsible for determining whether the terms of the prospectus exemption are met at the time of the trade and that adequate supporting documentation to support the availability of the prospectus exemption is retained.

Legislative reference and guidance

- NI 31-103
- Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103CP)
- Section 1.9 of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106)
- Companion Policy 45-106CP *Prospectus Exemptions* (NI 45-106CP)

b) Not-for-profit organizations distributing securities (pre-registration)

We are aware of several not-for-profit organizations that, on a regular basis, directly solicit and sell investment opportunities to community members associated with the organization, including retail investors. These financing activities are sometimes done through a separate corporate entity that may or may not be organized as a not-for-profit entity. In particular, we have considered requests for exemptive relief from certain not-for-profit organizations that continually raise and pool capital, which is subsequently used to provide mortgages for the acquisition, construction, or renovation of houses of worship, homes for their leaders, and other places for their organization's activities such as schools, camps, and other similar programs. We encourage other not-for-profit organizations engaging in similar financing activities and their counsel to contact us to discuss the issues discussed below and potential options, including applying for exemptive relief.

i) Business model and financing activities

It is our understanding that not-for-profit organizations have established investment programs to provide these mortgage services because their borrowers (who are usually affiliated with the not-for-profit organization) generally have difficulty accessing financing at reasonable rates, if at all, from banks and other commercial lenders. The primary source of capital used by these organizations to fund mortgages or loans is selling securities to their community members. Typically, donations are not solicited or used to fund the mortgages or loans.

The activities of these organizations are not targeted to a specific project (e.g., a single faith group fundraising for the renovation of their own house of worship) but involve more general capital raising programs (e.g., for the provincial or national community). These more general capital raising investment programs are similar to those of mortgage investment entities that pool capital raised from investors and use that capital to provide loans to borrowers who are unable to access conventional mortgage financing. These organizations typically originate and administer these loans or mortgages and they earn a spread between the interest charged to borrowers and the interest paid to investors. This spread or profit is often used to pay for the organization's expenses from operating this program and the excess may be used for various purposes, including funding more mortgages, establishing a reserve fund for possible mortgage defaults, returning monies to current borrowers in the mortgage pool, or funding other programs of the organization.

We have been working with several of these organizations to ensure compliance with securities law requirements, including: (i) their or the separate corporate entity's registration as dealers and (ii) their reliance on available prospectus exemptions or discretionary relief. As an example, see the decision *In the Matter of Pentecostal Financial Services Group Inc., Pentecostal Securities Corp. and The Pentecostal Assemblies of Canada, (2017) 40 OSCB 8504*.

ii) Investor protection concerns

While acknowledging that these not-for-profit organizations may wish to engage in certain general capital raising activities through offering securities to their community members, Staff are concerned that, in certain circumstances, these activities are not being undertaken in compliance with applicable securities law (both registration and prospectus requirements) and may raise potential investor protection concerns, including the following:

- Investors may be provided with limited information about the securities being sold and the marketing materials provided may be overly promotional.

b) Not-for-profit organizations distributing securities (cont'd)

- Investors may not be provided with any disclosure of conflicts of interest.
- There may not be an assessment of whether the investment is suitable for the investor, and if there is such an assessment, it may not be adequate.
- Selling persons may lack proficiency as they may not have taken any securities related courses and may not have any securities related experience.
- Investors may not be experienced investors (i.e., very limited or no investing experience).
- Investors may be asked to invest based on appeals to support the mission of the not-for-profit organization, which raises the possibility for affinity fraud.

iii) Registration as dealers

When these organizations have formal or sophisticated capital raising and securities distribution programs, originate or administer loans or mortgages as part of these programs, and pool capital to invest in opportunities that do not necessarily directly benefit the community members that are solicited to invest (e.g., not raising funds necessarily for the camp that the investors' children will be attending that summer), we typically are of the view that they require registration as dealers because they are in the business of trading in securities.

For example, these organizations solicit investors (often retail) through word-of-mouth, webpages and/or community brochures, and carry on their capital raising and lending activities (which are similar to other registered firms) with repetition and regularity. As noted in section 1.3 of NI 31-103CP, the following factors, among others, are relevant to the registration business purpose analysis:

- having the capacity or ability to carry on the organization's activities to produce profit,
- the various sources of income for the organization,
- the amount of time the organization spends on the activities associated with the trading activity,
- soliciting investors or potential investors, and
- expecting to be remunerated or compensated.

Any one of the above factors on its own is not determinative of whether an individual or firm is in the business of trading securities.

Although not-for-profit organizations are not established for the purposes of earning a profit, a not-for-profit organization may engage in activities that result in income or profit and may carry on a business similar to "for profit" organizations. However, as a not-for-profit entity, the income or profits must only be used to carry out the goals and objectives of the organization and may not be paid to or made available for the personal benefit of any of its members or securityholders. Being a not-for-profit entity does not prevent the organization from being in the business of trading in securities.

There is no available exemption from the dealer registration requirement for these not-for-profit organizations. Further, if these organizations are not registered as dealers, there is no available exemption from the adviser registration requirement in respect of any incidental advice provided by the organization in connection with a trade in its securities.

However, depending on the organization's business model, we may consider exemptive relief from certain requirements, if they are not appropriate for this type of business model and if our concerns can otherwise be adequately addressed.

b) Not-for-profit organizations distributing securities (cont'd)

iv) Availability of not-for-profit issuer prospectus exemption

Given the extent and sophistication of the capital raising programs run by these not-for-profit issuers, Staff view these organizations' financing activities to likely be beyond the scope and intent of the not-for-profit issuer prospectus exemption in section 2.38 of NI 45-106 because this exemption requires that, among other things, issuers be organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit. That is, to use this exemption, issuers must be organized exclusively for one or more of the listed purposes and use the funds for these purposes.

The guidance in section 4.8 of NI 45-106CP indicates that if one of the not-for-profit organization's mandates is to provide an investment vehicle for its members, or if over time an organization that was initially organized for a listed purpose devotes more and more of its efforts to lending money or other capital raising activities, then the not-for-profit organization may be unable to rely upon section 2.38 of NI 45-106.

In considering whether a not-for-profit organization may appropriately rely on the exemption in section 2.38 of NI 45-106, we may not consider an issuer's status as a registered charity to be determinative and the following factors may also be considered:

- The extent, frequency and scope of the issuer's capital raising activities to its community members and whether such activities extend beyond its community.
- The nature of the securities offered and whether these securities are offered with an investment purpose or are held in registered accounts (e.g., RRSPs, RRIFs, etc.).
- The stated purposes of the issuer in their articles of incorporation, charter or other organizational documents, in particular, whether capital raising or providing financing to other persons is a listed purpose of the issuer.
- Whether the issuer is established solely to lend money or to carry on a business, even if for an educational, benevolent, fraternal, charitable, religious or recreational motive.

The presence of any or a combination of these factors may suggest an issuer is not organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and, consequently, the issuer's activities would not fall within the intended scope of the prospectus exemption in section 2.38 of NI 45-106.

Under these circumstances, we are of the view that these organizations fall outside of the scope of the exemption in section 2.38 of NI 45-106 and should instead rely on other available prospectus exemptions to offer securities, such as:

- the accredited investor exemption (set out in section 73.3 of the Act and section 2.3 of NI 45-106),
- the offering memorandum exemption (set out in section 2.9 of NI 45-106), and
- the friends, family and business associates exemption (set out in section 2.6.1 of NI 45-106).

Issuers may also apply for discretionary exemptive relief to accommodate the use of a restricted dealer to conduct suitability assessments in connection with the investment limits for eligible investors under the offering memorandum exemption or to otherwise accommodate the issuer's specific business model.

c) Calculation of participation fees paid by registered firms (IFM / PM / EMD / SPD)

Over the last year, we have seen a number of registered firms improperly deducting certain amounts from their "specified Ontario revenues" when determining their participation fees under OSC Rule 13-502 *Fees* (the **Fee Rule**).

A registered firm is required to remit, by December 31 of each year, the participation fee shown in Appendix B to the Fee Rule opposite the firm's "specified Ontario revenues" for the previous financial year of the firm.

Although a registered firm is permitted to deduct certain revenues not attributable to "capital markets activities", as defined in the Fee Rule, we have seen a number of registered firms deducting fees that fall within the definition of capital markets activities, such as origination fees and renewal fees paid to a registered firm in connection with mortgage financings.

We remind registered firms that the term "capital markets activities", as defined in the Fee Rule, means activities for which registration is required, or activities for which an exemption from registration is required under the Act or under the *Commodity Futures Act* (Ontario), or would be so required if those activities were carried out in Ontario.

Although subsection 35(4) of the Act and section 8.12 of NI 31-103 include an exemption from the registration requirement in respect of a trade in a mortgage on real property in Canada by a person or company registered or licensed under mortgage broker legislation in Canada, to the extent a registered firm engages in such activities, these activities would be considered capital markets activities. Accordingly, a registered firm is not permitted to deduct any revenues paid in connection with such activities.

We remind all registered firms to validate that all "specified Ontario revenues" from "capital markets activities" are being appropriately captured in their calculation for participation fees, as prescribed within the Fee Rule.

d) Outside business activities (IFM / PM / EMD / SPD)

Registrants must notify the Commission of updates to Item 10 of Form 33-109F4, including outside business activities (**OBAs**). Section 4.1(1)(b) of NI 33-109 requires a registered or permitted individual to notify the Commission of changes to information previously submitted in a Form 33-109F4, within 10 days of the change, including the information in Item 10 of Form 33-109F4. Item 10 requires a list and description of all current business and employment activities, including all officer or director or equivalent positions.

Item 10 also requires disclosure with respect to positions of influence, which can include religious roles, teaching roles, medical or personal care roles, as well as acting as a coach for national or elite-level athletes. We sometimes receive filing updates from registrants that include OBAs for coaching recreational or "house league" sports. This is generally not required to be reported and is generally not viewed to be a position of influence.

d) Outside business activities (cont'd)

We have met with certain registered firms during the year to discuss registration-related matters, including discussion of the types of activities and positions required to be disclosed for Item 10. Based on these discussions and trends identified in the year, firms should be aware of the following:

- failure to meet the filing deadlines set out in NI 33-109 can result in the firm incurring significant late fees, and
- certain OBAs may require terms and conditions be placed on the registrant.

Legislative reference and guidance

- National Instrument 33-109 *Registration Information* (NI 33-109)
- Companion Policy 33-109CP *Registration Information*
- Annual Summary Reports for Dealers, Advisers and Investment Fund Managers from prior years (2011 - 2017)

e) Inappropriate outsourcing of IFM responsibilities (IFM)

During the course of our reviews, we identified instances of registered firms inappropriately entering into an arrangement with other unrelated registered firms (i.e. EMDs, IIROC dealer members, MFDA member firms) responsible for the distribution of investment funds managed by the IFM. The following issues resulted from this arrangement:

- the IFM performed limited activity while the dealer took numerous actions directing the business, operations and affairs of the investment funds including, but not limited to:
    - preparing the offering memorandum in conjunction with external legal counsel,
    - directly providing seed capital for the investment funds,
    - indirectly making decisions on fund investments and managing the status of the investments,
    - having and exercising signing authority over the bank accounts of the investment funds,
    - engaging the service providers for the daily fund administration of the investment funds,
    - engaging an auditor to prepare the year-end audited financial statements of the investment funds, and
    - collecting the majority of the fees related to an investment in the investment fund.

The distributing dealer appeared to be the mind and management of the investment funds directing the business activities and operations of the funds.

Per subsection 1(1) of the Act, an investment fund manager is defined as a person or company that directs the business, operations or affairs of an investment fund.

e) Inappropriate outsourcing of IFM responsibilities (cont'd)

IFMs should:

- be involved in every aspect of the daily operations of an investment fund they manage. This includes, but is not limited to:
  - engaging service providers required to fulfill the key responsibilities of an investment fund,
  - establishing and implementing policies and procedures to actively oversee all service providers,
  - overseeing the service providers to confirm that all duties and responsibilities outsourced to them are conducted in accordance with securities law,
  - drafting and approving any legal documentation relating to the investment funds, and
  - reviewing and approving all aspects regarding fund administration.
- validate that each party involved with the investment fund is adequately executing their duties and responsibilities within the parameters of their registration category.

IFMs should not:

- allow other firms that are not registered as the IFM of the investment funds (i.e. EMD or other dealers (IIROC or MFDA) involved in the distribution of the investment funds, or PMs engaged to manage and execute trades in relation to the assets of the investment fund), to direct the business, operations or affairs of an investment fund it manages, and
- outsource the responsibility of overseeing the fund administration activities of an investment fund that it manages to another entity.

Legislative reference and guidance

- Part 11 - *Division 1 Compliance* of NI 31-103 and related NI 31-103CP
- Definition of investment fund manager per subsection 1(1) of the Act

2.2.2 Compliance systems

A registered firm must have a system of controls and supervision to provide reasonable assurance that the firm, and individuals acting for it, comply with securities law and prudently manage the risks associated with its business. An effective compliance system establishes, maintains and applies policies and procedures to ensure that a system of supervisory controls is in place.

a) Inadequate compliance system (IFM / PM / EMD / SPD)

We continue to have concerns that some registered firms are not establishing an adequate compliance system, based on the types of significant deficiencies we identify. We also continue to identify instances where a firm's UDP and/or CCO are not adequately meeting their stated regulatory obligations.

There are serious consequences when registered firms have deficiencies of this nature. In addition to requiring the registered firm to correct its deficiencies, we may also take further regulatory action, including:

- requiring the registered firm to hire an external compliance consultant to correct the deficiencies and to strengthen the firm's compliance system,
- requiring the registered firm to replace its CCO and/or UDP,
- requiring the registered firm to stop accepting new clients, new investments from existing clients and/or creating new investment funds,
- referring the matter to the Enforcement Branch, and/or
- suspending the firm's registration.

Registered firms should:

- create a compliance system that:
  - is appropriately tailored to the nature, size and risk of the firm's operations,
  - uses a risk-based approach to monitor and test compliance with the firm's policies and procedures,
  - proactively identifies and promotes the timely correction of non-compliance,
  - documents results and actions taken in compliance activities,
  - identifies and manages key risks, including risks related to new products or services, new locations, technology changes and changes to regulatory obligations, and
  - requires periodic self-assessments of compliance with securities law and acts to improve internal controls, monitoring, supervision and policies and procedures when necessary.

Legislative reference and guidance

- Part 11 - *Division 1 Compliance* of NI 31-103 and related NI 31-103CP
- Section 4.1.2 of OSC Staff Notice 33-742 *2013 OSC Annual Summary Report for Dealers, Advisers and Investment Fund Managers* (OSC Staff Notice 33-742)
- OSC E-mail blast (May 2012) - *Concerns about inadequate compliance systems and Chief Compliance Officers not adequately performing responsibilities*
- Registrant Outreach seminar (June 2015) - *Elements of an effective compliance system*

b) Protection from reprisals (IFM / PM / EMD / SPD)

We conducted a desk review of registered firms to review their compliance with provisions in section 121.5 of the Act, which came into force on June 28, 2016. The objective of the review was to identify restrictive provisions in employment contracts, severance agreements, confidentiality agreements and other related documents, which seek to preclude or purport to preclude employees from reporting violations of securities law to the OSC, SROs or law enforcement agencies. We selected a sample of 30 registered firms with a larger number of registered individuals, including firms registered as IFMs, PMs, and EMDs.

Overall, we found that a significant portion of the firms reviewed had employment agreements that contained inappropriate language. Specifically, we identified language that may inhibit possible disclosure to the OSC, SROs or law enforcement agencies. Furthermore, certain registered firms' policies and procedures, as well as other agreements and documents, contained provisions which preclude or purport to preclude whistleblowers from coming forward.

Registered firms should:

- review employment contracts, severance agreements, confidentiality agreements and other related documents to confirm that they do not contain provisions which preclude or purport to preclude whistleblowers from reporting securities law violations, including language that:
  - allows disclosure "only as required by law",
  - limits the types of information that an employee may report,
  - prohibits any and all disclosure of information, without an exception for reporting potential violations of securities law,
  - requires representations that an employee has not assisted in any investigation involving their employer,
  - requires notification or consent from an employer prior to reporting information, and
  - permits disclosure only for "good faith" reports but is silent as to how the firm will assess that a report is made in good faith.
- conduct appropriate remediation efforts in the event agreements containing provisions which preclude or purport to preclude whistleblowers from coming forward are identified. Remediation efforts may include:
  - the revision of agreements and other documents on a prospective basis to clarify that they will not prohibit employees from voluntarily communicating with the OSC, an SRO, a law enforcement agency, or from receiving a whistleblower award,
  - the distribution of general notices to employees who signed restrictive agreements, to inform them of their rights to contact the OSC, an SRO, a law enforcement agency, or to receive a whistleblower award,
  - contacting former employees who signed restrictive agreements to inform them that they are not prohibited from communicating with the OSC, an SRO, a law enforcement agency, or from receiving a whistleblower award.
- establish policies and procedures for reviewing and approving any and all such agreements to confirm that they do not contain provisions which preclude or purport to preclude whistleblowers from coming forward.

b) Protection from reprisals (cont'd)

Registered firms should (cont'd):

- review their internal compliance systems to determine whether a culture of compliance is being fostered. As part of this exercise, firms may also want to assess the availability and appropriateness of employee reporting channels to encourage potential whistleblowers to report misconduct internally and to allow the organization to investigate and remediate as appropriate.

c) Inadequate policies and procedures

(i) Senior investors (PM / EMD / SPD)

Staff conducted a focused sweep and approximately 90% of the firms reviewed did not have any written policies and procedures for dealing with seniors and vulnerable investors (for example investors with diminished capacity, severe or long term illness, mental or physical impairment, language barrier). Although the majority of firms were aware of the challenges associated with servicing senior clients, they had not established any written procedures or guidelines nor provided any training programs to their staff on how to identify and address issues such as potential financial abuse, diminished mental capacity and the misuse of a power of attorney (**POA**). As well, the firms did not have a clear definition of what they considered to be a senior or vulnerable client.

While we do not expect firms and their staff to be experts in identifying clients with suspected financial abuse or cognitive impairment issues, they should have adequate procedures and oversight controls to address these issues as they arise. When developing policies and procedures surrounding the sharing of client information with third parties, we remind firms to be cognizant of the potential implications of privacy legislation and develop controls to minimize the risk.

Through our discussions with the firms' CCOs and advising representatives, a small number of them indicated they had experienced difficulty when servicing clients that had suffered from diminished capacity or suspected financial abuse. In each case, they exercised their professional judgment and took appropriate steps to protect their clients such as consulting with their compliance staff or legal counsel and acting in a manner consistent with their obligations to deal fairly, honestly and in good faith with their clients.

Most advising representatives that we interviewed have known their senior clients, including their family members, for a long period of time. As such, they also maintain records of an emergency contact person on file. However, some of them expressed concerns about the difficulty in detecting clients with potential cognitive impairment issues or who may be victims of financial abuse. At times, they also found it challenging to share sensitive information with the clients' family members given existing privacy legislation.

c) Inadequate policies and procedures (cont'd)

(i) Senior investors (cont'd)

PMs, EMDs and SPDs should:

- develop policies and procedures specific to senior investors that:
  - define a senior or vulnerable investor,
  - provide training to staff on how to:
    - communicate with senior investors and document any verbal discussions,
    - recognize signs of financial abuse and cognitive impairment,
    - respond to identified issues of financial abuse and cognitive impairment,
    - interact with clients who show signs of diminished capacity or financial abuse,
    - identify the potential misuse of a POA and how to document the suspected misuse,
  - provide staff with a list of red flags that may suggest potential diminished capacity, financial abuse or the misuse of a POA,
  - instruct staff on how to escalate issues about a client with potential diminished capacity, financial abuse or the misuse of a POA to the CCO,
  - identify how, in the case of a client with potential diminished capacity, financial abuse or the misuse of a POA, the account will continue to be managed,
  - identify cases where it may be appropriate or necessary that the firm seek legal advice when dealing with an escalated issue,
  - describe when a POA may be necessary, and
  - outline how to verify the existence of a POA document and how to maintain an up-to-date version of the document.

Legislative reference and guidance

- Sections 13.2 *Know your client* and 13.3 *Suitability* of NI 31-103 and related NI 31-103CP
- CSA Staff Notice 31-336 *Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product and Suitability Obligations* (CSA Staff Notice 31-336)

c) Inadequate policies and procedures (cont'd)

(ii) Cyber security (IFM / PM / EMD / SPD)

In the fall of 2016, CRR staff, along with staff from other CSA jurisdictions, sent a survey to gather detailed information about the cyber security and social media practices of firms. In October 2017, the CSA published the results of the survey, along with high level guidance for registered firms, in CSA Staff Notice 33-321. During compliance reviews, CRR staff continue to review the cyber security preparedness of firms relating to potential cyber-attacks and other cyber security incidents.

Registered firms should:

- have policies and procedures to identify which information and systems the firm needs to protect and outline the ways they are protected,
- train employees on the firm's cyber security policies and procedures as employees are often the first line of defense against an attack,
- have an incident response plan to respond to and escalate a cyber security incident that details what steps a firm will take when it is attacked, and
- review the cyber security policies and procedures of third party service providers used by the firm.

Legislative reference and guidance

- Section 11.1 - *Compliance system* of NI 31-103 and related NI 31-103CP
- CSA Staff Notice 33-321 *Cyber Security and Social Media*
- CSA Staff Notice 11-332 *Cyber Security*
- CSA Staff Notice 11-326 *Cyber Security*

(iii) CRM2 (IFM/ PM / EMD / SPD)

In 2017, and into 2018, staff conducted a focused desk review to assess compliance with the client reporting requirements in Part 14 *Handling client accounts - firms* of NI 31-103. We identified inadequate or no policies and procedures for client reporting in addition to ineffective internal controls over client reporting.

c) Inadequate policies and procedures (cont'd)

(iii) CRM2 (cont'd)

Registrants should:

- develop tailored policies and procedures covering the following areas, if applicable:
  - method of determining market value of different types of securities,
  - method of determining security position cost,
  - preparation of:
    - trade confirmations,
    - account statements,
    - additional statements,
    - report on charges and other compensation, and
    - investment performance reports,
  - if a SPD, the preparation of scholarship plan dealer statements,
  - if a PM, procedures relating to PM-IIROC dealer-member service arrangements,
  - if an IFM, the preparation of security holder statements, and
  - if an IFM, the duty to provide information to dealers and advisers.

Legislative reference and guidance

- Section 11.1 - *Compliance system* of NI 31-103 and related NI 31-103CP
- Part 14 *Handling client accounts - firms* of NI 31-103 and related NI 31-103CP
- CSA Staff Notice 31-345 *Cost Disclosure, Performance Reporting and Client Statements - Frequently Asked Questions and Additional Guidance*
- CSA Staff Notice 31-347 *Guidance for Portfolio Managers for Service Arrangements with IIROC Dealer Members* (CSA Staff Notice 31-347)

(iv) Best execution (PM / EMD)

Registered firms must meet the requirements of section 4.2 of NI 23-101 which states that a dealer and an adviser must make reasonable efforts to achieve best execution when acting for a client. As defined in section 1.1 of NI 23-101 the term "best execution" means the most advantageous execution terms reasonably available under the circumstances.

Section 4.1 of NI 23-101CP further describes the obligation to achieve best execution. A dealer or an adviser should be able to demonstrate that it has abided by policies and procedures designed to meet its best execution obligations.

c) Inadequate policies and procedures (cont'd)

(iv) Best execution (cont'd)

PMs and Dealers should:

- have written best execution policies and procedures tailored to their business that:
  - outline the process they have designed toward the objective of achieving best execution,
  - describe how the firm evaluates whether best execution was obtained, and
  - adequately identify and address conflicts of interest arising from trading activities, such as using an affiliated dealer.
- provide training to employees on the firm's best execution policies and procedures,
- review the policies and procedures regularly and vigorously to confirm they are still designed to reasonably achieve best execution on behalf of client trades,
- periodically evaluate, on a sufficiently timely basis, whether best execution was achieved for client trades,
- maintain adequate books and records to demonstrate:
  - the steps taken to evaluate whether best execution was achieved for client trades, and
  - that policies and procedures were reviewed and updated as necessary.
- consider factors for achieving best execution to be considered by dealers if directly accessing a marketplace for a client trade.

PMs and Dealers should not:

- provide misleading or inaccurate disclosure to clients regarding the firm's processes to achieve best execution,
- rely on a dealer's best execution obligation or policies and procedures when executing client trades to satisfy their own best execution obligation, and
- unnecessarily interpose another party between the PM and the dealer or marketplace through which best execution can be achieved for client trades, for example, by directing commissions to a dealer not involved in executing the trade to compensate them for referred clients.

Legislative reference and guidance

- Sections 1.1 and 4.2 of NI 23-101 *Trading Rules*
- Sections 1.1.1 and 4.1 of the Companion Policy 23-101CP *Trading Rules*
- Section 3.3 b) iii) of OSC Staff Notice 33-748
- Section 3.2 a) of OSC Staff Notice 33-734 *2010 Compliance and Registrant Regulation Branch Annual Report*
- Director's Decision (26 September 2017) *In the Matter of Staff's Recommendation To Impose Terms and Conditions on the Registration of Acker Finley Asset Management Inc.*

d) Oversight of related party service providers (IFM)

Some IFMs have outsourced fund administration functions (for example, fund accounting and transfer agency) of their IFM operations to related parties. In limited instances, we noted that some IFMs performed limited or no oversight of the functions outsourced to related service providers.

NI 31-103 requires IFMs to establish a system of controls and supervision to ensure compliance with securities legislation and to manage their business risks in accordance with prudent business practices. Part 11 of NI 31-103CP, under the heading *General business practices - outsourcing*, states that registered firms are responsible and accountable for all functions that they outsource to a service provider.

IFMs should:

- have a system of controls for monitoring the service provider to meet their regulatory obligations,
- implement and follow the same level of oversight for both related and unrelated service providers,
- in some cases, where an IFM is part of a global conglomerate and using a related party service provider to allow for common compliance resources, take a modified approach to oversee the related party service provider. In these cases, IFMs must at a minimum:
    - maintain a service level agreement with the affiliate that clearly lists each party's roles and responsibilities,
    - implement a formal line of reporting between the affiliate and the registrant,
    - have officers/directors of the affiliated service provider attend and report to committees within the registrant's organization (including but not limited to the Risk Management Committee and Valuation Committee),
    - tailor oversight procedures to the IFM's business and the outsourcing arrangement to meet their regulatory obligations, and
    - compare the fees charged by a related service provider to those charged by third parties to confirm that the selection of the service provider is in the best interests of the investment funds, with referral of the matter to the IRC, if applicable, for consideration.

IFMs should not:

- rely solely on the related service provider and assume that all obligations under securities law are met since the service provider is related.

d) Oversight of related party service providers (cont'd)

Legislative reference and guidance

- Part 11 - *Division 1 Compliance* of NI 31-103 and related NI 31-103CP
- Part V of OSC Staff Notice 33-743
- Section 4.4.1 of OSC Staff Notice 33-742
- Registrant Outreach seminar (June 2017) - *Effective Oversight of Service Providers and Modernization of Investment Fund Product Regulation - Alternative Funds*

e) Inadequate branch audits conducted by registered firms (EMD / SPD)

During our reviews of EMDs and SPDs, we noted several instances where firms did not establish and maintain systems of controls and oversight to effectively supervise and monitor the firm's dealing representatives at their various branch office locations. Specifically, we reviewed the branch audit programs and branch audit testing results conducted by several firms of their branch office locations and noted one or more of the following deficiencies:

- branch audit methodologies, procedures and results were inadequately documented,
- branch audit programs did not adequately cover all areas of operations, business risks and securities legislation at the respective branch office locations,
- branch audit programs did not adequately address the product knowledge of the dealing representatives being examined, and
- there was a lengthy delay between the completion of the branch audit and the issuance of the audit report to the branch manager.

Registrants are required to establish, maintain and apply policies and procedures that establish a system of controls and supervision to ensure compliance with securities legislation and manage the firm's business risks in accordance with prudent business practices. Firms should have an appropriate audit framework and methodology in place to effectively audit branch office locations and address any significant concerns identified. A firm's audit framework should cover all relevant aspects of securities legislation and validate that branch audits are effectively being performed, reviewed and approved.

e) Inadequate branch audits conducted by registered firms (cont'd)

Dealers should:

- thoroughly document the firm's audit methodology including, where applicable, any metrics considered, timing, resource requirements, audit scope, materiality and sampling techniques,
- develop an audit program that is sufficiently detailed and covers areas relevant to each branch office location's business operations, as well as all aspects of securities legislation, including the firm's business risks,
- document all audit procedures performed including the results and any deficiencies identified,
- validate that branch audit results are communicated to dealing representatives and branch managers in a timely manner after the completion of the audit,
- follow-up on branch audits conducted to make certain that deficiencies identified are appropriately remediated in a timely manner (for example, confirm that dealing representatives with identified product knowledge deficiencies have received subsequent training, etc.), and
- confirm that branch audits are effectively being performed, reviewed and approved.

Dealers should not:

- use a template of a branch audit program provided by another firm or a consultant without reviewing and tailoring the template to the firm's operations and securities law obligations, and
- conduct branch audits using a "tick the box" approach without documenting in detail the results and findings of the audit procedures performed.

Legislative reference and guidance

- Subsection 32(2) of the Act
- Part 11 - *Division 1 Compliance* of NI 31-103 and related NI 31-103CP

f) Expenses charged to investment funds (IFM)

CRR staff performed a desk review on fees and expenses charged to investment funds by IFMs. The expense desk review focused on assessing an IFM's process to disclose and charge fees and expenses to the investment funds it manages. The most common deficiency we noted involved IFMs charging investment funds with various expenses related to the portfolio management function over and above a management fee charged to the funds, which already included an advisory fee paid to the PM. Examples of these expenses included costs incurred for research and analysis, portfolio management software and due diligence fees. We consider these examples to be expenses of executing the portfolio management function of an investment fund. As such, we expect that the portion of the management fee paid to the PM as an advisory fee will cover all the expenses of executing the portfolio management function and that additional portfolio management expenses should not be separately charged to the investment funds.

f) Expenses charged to investment funds (cont'd)

Other noted deficiencies were as follows:

- the use of an inappropriate methodology for allocating expenses between investment funds,
- inadequate disclosure of fees and expenses in offering documents,
- other inappropriate expenses charged to investment funds such as:
  - investment level penalties,
  - upfront fees charged upon the creation of the funds to subsidize future expenses of the funds,
  - a reimbursement to the IFM to compensate the IFM for subsidizing certain expenses of an investment fund in prior periods,
- overcharging performance fees, and
- no documentation to support expenses charged to the investment fund.

IFMs should:

- review the nature and type of expenses charged to each investment fund managed to confirm that expenses charged are attributable to the daily operation of the investment fund,
- use a fair allocation methodology to allocate expenses that includes cost drivers directly related to the type of expense being allocated,
- review the costs relating to termination, restructuring and mergers to assess if these costs are being charged to the investment funds and if so, if it is appropriate,
- have written policies and procedures in place that relate to expenses and fees to ensure consistency with the IFM's practice,
- communicate with the IRC on fees, expenses and costs arising from the termination, restructuring or merger of investment funds,
- provide adequate and accurate disclosure about fees and expenses, and
- review the performance fee charged to each investment fund managed to confirm that the calculation is accurate and any changes to the high watermark are reasonable and appropriately disclosed.

Legislative reference and guidance

- Section 19 of the Act
- Section 116 of the Act
- Part 11 - *Division 1 Compliance* of NI 31-103 and related NI 31-103CP
- OSC Staff Notice 33-743

2.2.3 Financial condition & custody

Solvency is considered one of three key pillars in assessing a firm's fitness for initial and ongoing registration. Registered firms must maintain solvency by adequately meeting their capital and insurance requirements at all times. In addition, to mitigate investor assets from the risk of misappropriation or insolvency, firms must use a qualified custodian to hold client and/or investment fund cash or securities.

a) Financial condition (IFM / PM / EMD / SPD)

Some registered firms are not adequately meeting their excess working capital and insurance coverage obligations. These are common deficiencies identified and previously reported in prior CRR annual reports. Registered firms must meet their capital and insurance requirements to maintain their registration in good standing.

Legislative reference and guidance

- Part 12 - *Division 1 Working Capital* of NI 31-103 and related NI 31-103CP
- Part 12 - *Division 2 Insurance* of NI 31-103 and related NI 31-103CP
- OSC Staff Notice 33-742 - Section 4.1.2 - *Inaccurate calculations of excess working capital*
- OSC Staff Notice 33-745 - *Annual Summary Report for Dealers, Advisers and Investment Fund Managers* (OSC Staff Notice 33-745) - Section 4.1(c)(iii) - *Inadequate insurance coverage*
- OSC Staff Notice 33-748 - Section 2.1(b) - *Review of insurance requirements*

b) Fund financial statements (IFM)

IFMs prepared financial statements for investment funds they managed in accordance with Accounting Standards for Private Enterprises (**ASPE**), but did not maintain documentation to support the appropriateness of these accounting standards.

In cases where NI 81-106 does not apply to a fund, IFMs are:

- required to refer to the preface to the CPA Canada Handbook – Accounting (**Handbook**) to determine which accounting standards are permitted for each fund that they manage, and
- only permitted to use ASPE for a fund's financial statements if the fund does not meet the definition of a publicly accountable enterprise (**PAE**).

IFMs should:

- if securities regulation does not specify a required accounting framework:
  - assess whether a fund meets the definition of a PAE as noted in the Handbook,
  - prepare a fund's financial statements in accordance with International Financial Reporting Standards (**IFRS**) if it meets the definition of a PAE,
  - prepare a fund's financial statements in accordance with IFRS, or ASPE, if a fund does not meet the PAE definition, and
  - maintain documentation to support the appropriateness of the accounting framework used if a fund's financial statements are not prepared in accordance with IFRS.

b) Fund financial statements (cont'd)

IFMs should not:

- prepare a fund's financial statements using a basis of accounting that is contrary to what is prescribed by securities regulation, and
- where securities regulation does not prescribe an accounting framework, fail to:
  - assess whether a fund meets the PAE definition, and
  - maintain documentation to support the basis of that determination.

Legislative reference and guidance

- Preface to the CPA Canada Handbook - Accounting
- NI 81-106 *Investment Fund Continuous Disclosure* (NI 81-106)
- Section 11.5 - *General requirements for records* of NI 31-103

c) Holding client assets (IFM)

We continued to note instances where IFMs were not complying with the requirement to hold investment fund assets separately and apart from firm assets, despite previously issued guidance in prior versions of the Annual Report. We remind registered firms that deficiencies of this nature raise serious violations of Ontario securities law and may result in regulatory action. Section 14.6 of NI 31-103 requires IFMs to hold client assets:

- separate and apart from the registrant's own property,
- in trust for the registrant's clients, and
- in the case of cash, held in a designated trust account at a Canadian financial institution, a Schedule III bank, or an IIROC member firm.

Amendments to the custody requirements came into force on June 4, 2018. We advise each IFM to review these amendments to assess applicability to the operation of their investment funds and apply the changes accordingly. Please refer to section 3.4 for additional details on these changes.

Legislative reference and guidance

- Part 14 - *Division 3 Client assets and investment fund assets* of NI 31-103 and NI 31-103CP
- Section 3.4 (a)(ii) of OSC Staff Notice 33-748

d) Safeguarding client assets (IFM)

We noted instances where IFMs did not have adequate controls in place through a segregation of duties to safeguard client assets. In particular, certain IFMs performing the trust accounting function in-house, lacked proper segregation of duties and an independent review and approval process, which as a result, exposed client assets to increased risk. We identified activities where:

- the trust accounting function was executed by a single employee who was responsible for:
  - reconciling the trust accounts, and
  - disbursing monies from the trust accounts,
- the trust account was not reviewed or approved by someone other than the employee responsible for reconciling the account, and
- a single employee was able to issue cheques and wire disbursements from the trust account without any secondary authorization or review.

We remind registered firms that deficiencies of this nature raise serious violations of Ontario securities law and may result in regulatory action.

IFMs should:

- establish, maintain and apply policies and procedures that establish a system of controls and supervision to ensure compliance with securities legislation and manage their business risks in accordance with prudent business practices. These include:
  - ensuring that reconciliations, and the corresponding activity within trust accounts, are reviewed, signed and dated by an individual independent of the preparer, and
  - requiring that disbursements from the trust accounts are authorized by multiple approved persons, and
- implement adequate compensating controls to address the increased risks present when there is a lack of segregation of duties.

IFMs should not:

- accept client assets without having clearly documented policies and procedures regarding the handling of client assets.

Legislative reference and guidance

- Part 11 - *Division 1 Compliance* of NI 31-103 and related NI 31-103CP
- Part 14 - *Division 3 Client assets and investment fund assets* of NI 31-103 and NI 31-103CP
- Part 11 - *Commingling of Cash* of National Instrument 81-102 *Investment Funds* (NI 81-102)

2.2.4 Know your client (KYC), Know your product (KYP) & suitability

Securities laws impose a duty on registrants to deal fairly, honestly and in good faith with clients. Part 13 *Dealing with clients - individuals and firms* of NI 31-103 sets out the principal KYC, KYP, and suitability obligations for registrants. These obligations work together and are an extension of the duty to deal fairly. More specifically, the suitability obligation requires a registrant to know the client, know the product that is the subject of the proposed recommendation or client order, and to form an opinion as to whether the product is suitable in light of the client's investment needs and objectives.

The purpose of the KYC obligation is to establish the client's identity, establish the suitability of the proposed transaction and, if applicable, to determine whether the prospectus exemption relied upon is available in the circumstances. Without adequate and timely KYC information, a firm cannot meet its suitability obligation to clients. Section 13.3 *Suitability* of NI 31-103 requires a registrant to take reasonable steps to ensure that before it makes a recommendation to, or accepts an instruction from a client to buy or sell a security, or makes a purchase or sale of a security for a client's managed account, the registrant must determine if the purchase or sale is suitable for the client. We remind firms of the importance of maintaining adequate documentation to demonstrate compliance with their suitability obligation.

a) Inadequate KYC and suitability assessment for senior investors (PM / EMD / SPD)

i) Inadequate collection and documentation of client KYC information

From our senior suitability sweep, approximately 57% of the firms reviewed did not collect and document sufficient KYC information, including information relating to risk tolerance, time horizon and investment knowledge, for some of their clients. This is one of the common deficiencies that we continue to find in our reviews of firms. While most of the firms and their representatives were able to demonstrate that these were documentation issues rather than a general lack of understanding of their senior clients' investment needs and objectives, we remind firms to maintain adequate and up-to-date KYC information to support their compliance with the KYC and suitability obligations.

In addition, we generally found that firms adopted the same KYC process as was used for other clients when servicing senior clients. For instance, the frequency of the KYC update and the type of KYC information collected were the same regardless of the client's age. However, some firms were more proactive in discussing the potential use or existence of a POA and obtaining the names and contact information of family members or other third party representatives (for example, lawyers or accountants) during the onboarding process, even though their clients did not appear to have any mental capacity or health related issues.

a) Inadequate KYC and suitability assessment for senior investors (cont'd)

We also observed that certain firms established a policy whereby they increased the frequency of contacting their senior clients (where possible, through face-to-face meetings) once they suspected any issues relating to diminished capacity or financial abuse. These firms also documented the outcome of their discussions after each meeting to further support the selected investment strategies and suitability determination. These firms believed that frequent interaction with senior clients assisted them in identifying early signs of diminished capacity or suspected financial abuse so that appropriate protective measures could be taken in a timely manner.

ii) Inadequate documentation to support suitability determination

Further, from our senior suitability sweep, we also noted approximately 23% of the firms reviewed did not maintain adequate documentation to support suitability determinations. Although in most cases the firms were able to provide staff with additional information to support their suitability assessments, such information was not documented on file at the time of our reviews. In one review, we noted some of the firms' senior clients invested more than 10% of their net financial assets in a related issuer product which raised concerns as to whether the investments were suitable given the level of investment concentration in that product. There was no documentation to support why the firm considered these trades to be suitable. It was also unclear whether the firm had explained to their senior clients the risk of holding such a concentrated position in their portfolios.

With respect to the review procedures for senior clients, they were generally the same as for other clients; we did not observe any different practices in terms of supervision and review procedures for senior or vulnerable clients when compared to a firm's other clients. We expect firms to heighten their reviews of senior and vulnerable client accounts, particularly when they have identified signs of issues such as diminished capacity and financial abuse, to make sure that their client's portfolio holdings or trades remain aligned with their investment needs and objectives.

PMs, EMDs and SPDs should:

When communicating with seniors and gathering up-to-date KYC information:

- obtain and collect additional KYC information such as future plans, health conditions, liquidity needs, sources of income, risk tolerance (financial capacity and willingness to accept risk) and time horizon including a breakdown of their expenses such as health care, nursing home etc. and consider the potential increases of such costs over time when developing the investment plan,
- explain whether a client's investments are generating sufficient income to meet their retirement needs or maintain their current lifestyle,
- be proactive and engage with clients to prepare for future life event changes which may affect their ability to make investment decisions,
- budget more time for meeting with senior clients,
- assist clients in evaluating the use of different tools (for example, the use of a POA or trusted contact person (**TCP**)) to address issues in the event of a loss of capacity,

a) Inadequate KYC and suitability assessment for senior investors (cont'd)

PMs, EMDs and SPDs should (cont'd):

- increase the frequency of contact with senior and vulnerable clients to assist with the identification of early signs of diminished capacity or financial abuse,
- provide a list of red flags to staff to assist them in identifying potential mental capacity and financial abuse issues when interacting with older investors,
- maintain more frequent contact if the firm identifies signs of diminished capacity or financial abuse and maintain documentation of discussions with clients and/or family members. Keep the CCO apprised of any new developments,
- establish a process to confirm and check the validity of an existing POA and how to make sure that the POA on file remains current,
- verify any trade or withdrawal of funds request received from the POA holder, where appropriate, with the clients,
- use plain language and avoid financial jargon when interacting with senior clients. Encourage them to ask questions during meetings, and
- provide a written summary of any discussions including any decisions that were agreed upon with the clients.

When preparing documentation to support suitability determinations:

- flag accounts of senior and vulnerable clients with potential suitability issues such as concentrated positions (for example, illiquid securities, high risk products or complex products) and patterns of unusual trading activity for further review and suitability assessments,
- enhance the oversight review of a client account when there are signs of mental capacity issues or financial abuse,
- document in the client file any suitability assessments and discussions with the TCP on how the account was managed in light of the client's issues,
- maintain adequate documentation to support the review process and suitability determination,
- confirm KYC is up-to-date, and
- make sure that any issues, such as diminished capacity, have been escalated and addressed appropriately with documentation to support all actions taken.

When performing portfolio management activities:

- monitor concentration issues in client portfolios, and
- monitor liquidity requirements of the account to validate the portfolio generates sufficient income for the senior investors.

a) Inadequate KYC and suitability assessment for senior investors (cont'd)

PMs, EMDs and SPDs should not:

- ignore the red flags of diminished capacity or financial abuse and continue to service their clients in the same manner,
- avoid discussion with clients regarding topics such as diminished capacity and financial abuse for fear of offending the clients, and
- invest senior clients in high risk and/or illiquid products if the clients rely on their investment principal, or income generated from it, to fund their retirement expenses.

Legislative reference and guidance

- Sections 13.2 *Know your client* and 13.3 *Suitability* of NI 31-103 and related NI 31-103CP
- CSA Staff Notice 31-336
- Section 3.1(b)(i) of OSC Staff Notice 33-747 *Annual Summary Report for Dealers, Advisers and Investment Fund Managers* (2016)
- Section 4.3(a)(iii) of OSC Staff Notice 33-746 *Annual Summary Report for Dealers, Advisers and Investment Fund Managers* (2015)

b) Offering memorandum exemption – delivering offering documents (EMD)

The person relying on a prospectus exemption is responsible for determining whether the terms and conditions of the prospectus exemption are met at the time of the trade. For an issuer to rely on the offering memorandum exemption (the **OM exemption**), among other things, a dealer must have delivered to the investor (where the issuer has not) an offering memorandum (**OM**) in the prescribed form at the same time or before the purchaser signs the agreement to purchase the security.

There is no prescribed method for the delivery of an OM, however, a dealer must be able to demonstrate that an OM has been delivered.

We have identified some concerns with electronic delivery of an OM. Some dealers are making an electronic version of an OM available on their websites or online platforms, but are not providing the recipients with separate notice of its availability. Other dealers are delivering an OM in electronic format (for example, as a compact disk), without taking reasonable steps to ensure that the electronic access to the OM, in this type of format, is not burdensome or overly complicated for recipients. Further, certain dealers are not maintaining any documentation of how and when an OM was delivered to the investor.

NP 11-201 sets out guidance for dealers and other industry participants who want to use electronic delivery to fulfill delivery requirements in securities legislation. When providing documents to investors through electronic delivery, it is important that investors are made aware of the electronic document, are able to open the electronic document and are provided access to the electronic document at any point in time.

b) Offering memorandum exemption – delivering offering documents (cont'd)

EMDs should:

- implement appropriate policies and procedures to provide reasonable assurance of compliance with the requirements for delivery of an OM,
- document the reasonable steps taken to deliver the OM to an investor and when it was delivered, and
- provide training to dealing representatives on the requirements to deliver an OM and the dealer's policies and procedures surrounding the process.

EMDs should not:

- process a transaction in reliance on the OM exemption when the investor has not received an OM,
- rely solely on the posting of an OM on a website or online platform, etc., as delivery, and
- allow dealing representatives to determine themselves how and when an OM will be delivered to an investor.

Legislative reference and guidance

- Paragraph 2.9(2.1)(c) of NI 45-106
- Section 1.9 of NI 45-106CP
- National Policy 11-201 *Electronic Delivery of Documents*

2.2.5 Conflicts of interest & referral arrangements

A registered firm is responsible for having a compliance system that promotes compliance by the firm and its individuals with securities law, including when individuals of the firm encounter conflict of interest situations during their daily operational activities. A registered firm is also responsible for meeting the requirements applicable to referral arrangements prior to entering into any such arrangements.

On June 21, 2018 the CSA published for comment detailed proposed amendments (**Client Focused Reforms**) to certain obligations of registered firms and individuals that would require registrants to, among other things, address conflicts of interest in the best interest of the client. In addition, the Client Focused Reforms propose to amend the obligations of registered firms that enter into referral arrangements. We remind registrants that the proposed rules and guidance recommend significant enhancements to a registrant's obligations when dealing with conflicts of interest and referral arrangements. As such, in addition to reviewing the following guidance, we encourage registrants to review the Client Focused Reforms which are accessible using the following link:

https://www.osc.gov.on.ca/documents/en/Securities-Category3/rule_20180621_31-103_client-focused-reforms.pdf

a) Assessing & addressing conflicts of interest (IFM / PM / EMD / SPD)

Registered firms are responsible for identifying and appropriately responding to any conflicts of interest under Part 13 - *Dealing with clients - individuals and firms* of NI 31-103. Conflicts of interest that arise for registered firms when dealing with their clients include (but are not limited to):

- *competing firm and client interests* – where the interests of the registered firm are not aligned with the interests of its clients, and
- *competing client interests* – where the interests of a client of the registered firm are not aligned with the interests of another client of the registered firm.

Registered firms must:

- have written policies and procedures to address conflicts of interest,
- have a process in place to identify existing conflicts of interest and new conflicts as they arise,
- adequately assess and document the level of risk that the conflicts of interest raise,
- avoid the situation giving rise to a conflict of interest if the risk of harming a client or potential harm to the integrity of the markets is too high,
- document the steps taken to manage a conflict of interest,
- provide disclosure to clients, if appropriate, that:
  - clearly describes, in plain language, the situation giving rise to the conflict,
  - explicitly identifies the situation as a conflict of interest, and
  - explains how the conflict of interest could affect the service the client is being offered.
- provide registered individuals and other relevant staff adequate training so they are aware, and understand the nature of, any material conflicts of interest inherent in the firm's business model and the importance of avoiding, managing and/or disclosing them.

a) Inadequate assessment & addressing conflicts of interest (cont'd)

Registered firms must not:

- assume that disclosure alone, which identifies and explains a conflict of interest, is sufficient to respond to it,
- give partial disclosure about a conflict of interest that could mislead clients,
- present conflicts of interest disclosure in an obscure or confusing manner, such as in lengthy and complex documents, and
- ask a client to waive receiving conflicts of interest disclosure.

Legislative reference and guidance

- Part 13 - Division 2 *Conflicts of Interest* of NI 31-103 and related NI 31-103CP
- OSC Staff Notice 33-745 - Section 4.1(f)
- CSA Staff Notice 31-343 *Conflicts of interest in distributing securities of related or connected issuers*

b) Ineffective use of Independent Review Committee (IFM)

A key finding from our ongoing compliance reviews of IFMs relates to conflicts of interest. We noted several scenarios where IFMs were not adequately meeting their conflict of interest obligations in executing their responsibilities in relation to the daily operations of the investment funds they manage. In particular, this section summarizes significant deficiencies raised regarding an IFM's use of an IRC, for reporting issuer investment funds.

The requirement to establish an IRC belongs to the IFM. Once the IRC is established, both the IFM and the IRC have obligations to comply with securities law requirements as set out in NI 81-107.

We noted instances where IFMs did not meet their obligations under NI 81-107. Specifically, some IFMs did not have, or did not adhere to, written policies and procedures in place in relation to the IRC, including but not limited to the following:

- not identifying and referring conflict of interest matters to the IRC for review, recommendation or approval,
- not obtaining standing instructions where conflict of interest matters were identified in the normal course of operations,
- not submitting sufficient information to assist the IRC in its determination to issue or approve standing instructions in relation to conflict of interest matters, and
- not submitting a written report to the IRC describing each instance that the IFM acted in reliance on a standing instruction.

b) Ineffective use of Independent Review Committee (cont'd)

IFMs should:

- have written policies and procedures in place regarding the IRC,
- provide, for any conflict of interest matter identified by the IFM and referred to the IRC, information sufficient to enable the IRC to adequately assess the conflict of interest matter and to determine whether standing instructions should be issued, and
- not engage in a conflict of interest matter before the IRC's assessment of the matter has been completed and communicated.

IRCs should:

- have a written charter which specifies its mandate, responsibilities, functions, and the policies and procedures it will follow when executing its functions,
- meet, at least annually, to comply with its annual reporting obligations,
- review and assess, at least annually:
  - the adequacy and effectiveness of the IFM's written policies and procedures,
  - any standing instructions it has provided to the IFM, and
  - both the IFM's and the funds' compliance with any conditions imposed by the IRC relating to previous recommendations or approvals provided to the IFM, and
- engage in 'reasonable inquiry' when an IFM refers a conflict of interest matter to the IRC for its recommendation or approval, as appropriate.

Legislative reference and guidance

- National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107)
- Companion Policy 81-107CP *Independent Review Committee for Investment Funds* (NI 81-107CP)
- OSC Staff Notice 81-713 *Focused Disclosure Review*
- CSA Staff Notice 81-317 *Frequently Asked Questions on National Instrument 81-107 Independent Review Committee for Investment Funds*

c) Sales practices (IFM)

We continued to work closely with the Enforcement Branch to reach Commission approved settlement agreements related to our focused compliance reviews of sales practices relating to section 5.2 of NI 81-105 that governs the organization and presentation of mutual fund sponsored conferences. The compliance reviews, which began in December 2015, included a sample of 20 IFMs and focused on mutual fund sponsored conferences organized and presented between 2013 and 2015. In total, we reviewed 63 mutual fund sponsored conferences organized by 13 IFMs that engaged in this type of sales practice under Part 5 of NI 81-105.

The purpose of the focused compliance reviews was to:

- determine if there had been improvement in sales practice compliance resulting from the publication of OSC Staff Notice 33-743,
- review and assess an IFM's policies, procedures and practices relating to sales practices and, specifically, to the organization and presentation of mutual fund sponsored conferences,
- determine and assess involvement by an IFM's compliance staff in the organization and execution of mutual fund sponsored conferences, and
- assess and identify areas where additional guidance to industry participants may be needed.

One or more of the following significant deficiencies were noted in the reviews of registered firms referred to the Enforcement Branch:

- the process followed to select representatives of participating dealers (representatives) – IFMs were targeting their 'top producers' and directing wholesale staff to invite these representatives to mutual fund sponsored conferences,
- the payment of prohibited costs – payment of travel, accommodation and personal incidental expenses of representatives attending the conferences,
- the reasonableness of the conference costs – conference costs and in particular costs associated with meals, entertainment and the provision of non-monetary benefits were excessive, extravagant and not in keeping with the spirit of the NI 81-105.

As a result of certain findings from these compliance reviews, the Enforcement Branch expanded their investigations of sales practices to include business promotion generally between IFMs and participating dealers and their representatives.

We encourage IFMs to assess and take appropriate steps to improve their sales practices and related policies and procedures considering the guidance summarized here and in the settlement agreements. OSC staff will continue to monitor and test registrant compliance with all parts of NI 81-105 through various compliance initiatives.

Part 5 of NI 81-105

Part 5 of NI 81-105 regulates the sales practices of industry participants in connection with the distribution of publicly offered securities of mutual funds to safeguard the interests of investors. The companion policy to NI 81-105 (**NI 81-105CP**) states that NI 81-105 was adopted in order to discourage sales practices and compensation arrangements that could be perceived as inducing dealers and their representatives to sell mutual fund securities on the basis of incentives they were receiving rather than on the basis of what was suitable for and in the best interests of their clients.

c) Sales practices (cont'd)

The purpose of NI 81-105 is to provide a minimum standard of conduct to ensure that investor interests remain uppermost in the actions of mutual fund industry participants when they are distributing mutual fund securities and that conflicts of interest arising from sales practices and compensation arrangements are minimized. Specific provisions under Part 5 of NI 81-105 must be considered in the context of this guiding principle.

Non-compliant sales practices

We previously issued guidance on sales practices in OSC Staff Notice 33-743. We have interacted with many IFMs through our various compliance initiatives that demonstrated their understanding of this previously issued guidance and that have implemented sales practices policies and procedures that comply with Part 5 of NI 81-105 and its guiding principle. However, we continue to see similar non-compliant sales practice issues with some IFMs.

We strongly encourage IFMs to use the information from the three recent sales practices settlement agreements dated March 31, 2017, April 4, 2018 and April 19, 2018 respectively, OSC Staff Notice 33-743 and the December 2016 Investment Funds Practitioner, to enhance their systems of compliance, internal controls and supervision in relation to sales practices. Many aspects of securities law that an IFM must comply with are not prescriptive but rather require the exercise of judgement. Compliance with NI 81-105 is not different in this respect. As such, it is the responsibility of the IFM to exercise judgement when interpreting and implementing securities law through the creation and application of an adequate compliance system.

A. IFM provision of non-monetary benefits

Non-monetary benefits are provided by IFMs to participating dealers and representatives through promotional items and activities. To avoid providing non-monetary benefits that could pose a risk of non-compliance with Part 5 of NI 81-105, IFMs must consider a number of factors. Please refer to the flowchart included at the end of this section entitled "Example framework to assess compliance of the provision of a non-monetary benefit with section 5.6 of NI 81-105". This framework is an example of a process that may be used by an IFM to assist in assessing compliance of the provision of a non-monetary benefit with NI 81-105.

i) Promotional items

The types of promotional items of minimal value contemplated under section 5.6 of NI 81-105 include examples of reminder advertising as outlined in section 7.6 of NI 81-105CP such as pens, calendars, t-shirts, hats, coffee mugs, paperweights and golf balls. Furthermore, Staff's view is that in order for an item to be considered promotional in nature, the IFM's logo must be prominently displayed directly on the item itself.

We have noted through our compliance initiatives that IFMs have expanded the types of items that they consider to be a promotional item of minimal value. We have seen the provision of items that are clearly not compliant with the spirit of NI 81-105. The items provided by IFMs as promotional items that are referenced in the settlement agreements referred to above are examples of items that are not promotional in nature, not of minimal value, excessive and therefore not in compliance with Part 5 of NI 81-105.

c) Sales practices (cont'd)

The following table lists some of the promotional items provided by IFMs to representatives that Staff noted during compliance initiatives to be compliant and also items provided as promotional items by IFMs that were non-compliant for which deficiencies were raised and references included in the settlement agreements.

Compliant: promotional items that are of minimal value, prominently display an IFM's logo, are not extensive and/or frequently provided.

- luggage tags
- embroidered basic bags (i.e. back packs)
- water bottles
- insulated coffee mugs
- notebooks and notepads
- USB keys
- umbrellas
- passport holders
- business card holders
- mobile telephone cases

Non-compliant: items that are not of minimal value, do not prominently display the IFMs logo, are extensive and/or frequently provided.

- electronic items - BOSE soundlink speakers or wireless music systems, activity trackers, Sony digital cameras
- computers or tablets - iPad minis, Samsung Galaxy Tablets
- alcohol - Dom Pérignon champagne, expensive bottles of wine
- designer brand jewellery - Tiffany & Co. earrings
- custom made clothing - men's dress shirt, sports jacket
- household appliances and gadgets - Nespresso espresso machine
- luxury sporting goods - expensive golf putters and golf shoes, Nike golf bags, BUSHNELL Neo-ghost golf GPS
- gifts for life events - baby gifts, wedding, anniversary, retirement, funeral, etc.

ii) Business promotion activities

An IFM is permitted to engage in reasonable business promotion activities under Part 5 of NI 81-105. Section 7.6 of NI 81-105CP provides examples of reasonable business promotion activities including occasional meals or drinks, tickets to sporting events, the ability to participate in events such as golf tournaments and other comparable entertainment. The purpose of these activities is to provide an opportunity outside of a business environment to discuss and promote an IFM's funds.

For an activity to be considered promotional in nature, a representative of the IFM must attend the activity, for the entire duration of the event, along with the representative(s) of the participating dealer to whom the IFM is providing the activity. There should also be a reasonable number of IFM representatives attending the activity in relation to the number of dealing representatives that attend.

c) Sales practices (cont'd)

We have noted through our compliance initiatives, that IFMs have expanded the type of activities that they consider to be a "reasonable promotional activity". Staff's view is that promotional activities must not be extravagant or excessive or be an activity that would be out of reach, based either on cost or access, for an average person.

The following table summarizes promotional activities provided by IFMs to representatives that Staff noted during compliance initiatives to be compliant and also activities provided as promotional activities by IFMs that were non-compliant for which deficiencies were raised and references included in the settlement agreements.

 **Compliant:** promotional activities which a representative of the IFM attended, that were not extensive or frequent.	 **Non-compliant:** activities for which a representative of the IFM did not attend and/or were extensive and frequent.
rounds of golf at golf courses with reasonable green fees	the opportunity to play at a golf course with expensive green fees or golf followed by a reception including cocktails, dinner and non-promotional gifts not of minimal value that in aggregate made the cost of the day excessive – e.g., Eastern township golf events, golf green fees in excess of $600 per representative
tickets to sporting events at a reasonable cost per ticket (e.g. - regular season sporting tickets for MLB, NBA, NHL, etc. and no floor seats, no box seats, etc.)	major league sporting event play-off tickets or tickets to sporting events that include expensive catering and bar service or meals and drinks and non-promotional gifts (i.e. team jerseys, hats, and other non-promotional sport paraphernalia) – e.g., Vancouver Canucks and Montreal Canadiens hockey games with a total benefit of more than $700 per representative
breakfast, lunch or dinners at costs that were not excessive and not held at extravagant venues	after business hour activities at conferences held at extravagant venues, including excessive cocktails, dinner receptions and entertainment – e.g., approximately $1,500 per representative for dinner and activities held at a luxury resort, approximately $700 per representative for dinner and activities held at the Bacara Resort, approximately $500 per representative for dinners at various exclusive venues
tickets to city attractions at mutual fund sponsored conferences (e.g. - Empire State building, the city zoo, etc.)	tickets to popular celebrity concerts and/or sporting events for a representative and their family members at excessive costs - e.g., Madonna concert, Tears for Fears concert
keynote speakers that do not have celebrity status at conferences or seminars	the opportunity to listen and meet celebrity keynote speakers such as sports athletes – e.g., Magic Johnson as the keynote speaker at a mutual fund sponsored conference

c) Sales practices (cont'd)

iii) Value of promotional items and business promotion activities attributed to participating dealers and representatives

When assessing the value of the promotional item/activity provided to a participating dealer and/or representative, an IFM must consider the retail value of items and activities. This is the value it would cost an individual that does not have special access to purchase the item or pay for the activity on their own. If an IFM is able to obtain tickets to an event or an item at a wholesale price or a deep discount, the non-discounted value is the cost of the non-monetary benefit that should be attributed per ticket or item, per attending representative for purposes of assessing compliance with NI 81-105.

- For example, if an IFM purchases a season ticket package to a sporting event, tickets provided to representatives must be allocated based on the retail value of the ticket and not the weighted average cost based on the value of the entire package.

It is not enough for an IFM to set dollar limits and assume compliance with Part 5 of NI 81-105 as long as spending remains within the set internal parameters. An IFM must also apply a qualitative analysis when assessing a non-monetary benefit to confirm compliance with the spirit of NI 81-105.

- For example, the provision of tickets to a national or major league play-off sporting event is considered a type of event that would not normally be available to the average person. The cost of the tickets, which can vary from one Canadian city to another, is irrelevant. The provision of the non-monetary benefit is the same regardless of where the sporting activity occurs.

Some IFMs are also combining individual internal limits for non-monetary benefits that can be provided under different categories, such as food, promotional activities and promotional items to provide a combined event to representatives. In order to make the event comply with Part 5 of NI 81-105, these IFMs are treating each component of the event separately when assessing reasonableness of the event. In some instances, the combination of the limits has resulted in the provision of excessive and extravagant non-monetary benefits. Promotional activities that combine limits for different sales practice components should not only be assessed individually against internal limits but also considered collectively when assessing compliance with Part 5 of NI 81-105.

Staff noted that some IFMs do not have adequate internal controls to track all non-monetary benefits provided to representatives and participating dealers. Any non-monetary benefits that IFMs provide must be categorized into one of the sections of Part 5 of NI 81-105. IFMs must have policies and procedures that include a process to confirm that all non-monetary benefits are tracked and allocated to participating dealers and/or representatives as permitted by Part 5 of NI 81-105.

- For example, non-monetary benefits provided to guests of representatives attending a mutual fund sponsored conference under section 5.2 of NI 81-105 represent non-monetary benefits for the representative. The cost of these non-monetary benefits should be attributed to the attending representative.

c) Sales practices (cont'd)

B. Prohibited solicitation by participating dealers and representatives

We remind participating dealers and their representatives that section 2.2 of NI 81-105 restricts a participating dealer and its representatives from soliciting or accepting from an IFM, in connection with the distribution of securities of a mutual fund, among other requirements, the provision of a non-monetary benefit. The only exemptions available to section 2.2 of NI 81-105 are:

- a participating dealer can solicit and accept a non-monetary benefit as permitted by Part 5 of NI 81-105, and
- a representative of a participating dealer can only accept a non-monetary benefit as permitted by Part 5 of NI 81-105. No solicitation by representatives is permitted.

We understand that, in some cases, the provision of prohibited spending and non-monetary benefits is being driven by:

- participating dealers soliciting IFMs to pay for expenses of their dealer events that do not fall within allowable sections of Part 5 of NI 81-105, and
- representatives soliciting IFMs to provide non-monetary benefits. Examples include:
    - tickets for sporting events and concerts,
    - gaming consoles,
    - golf equipment such as golf putters, and
    - cases of alcohol solicited by providing an IFM representative with an invitation to holiday parties.

If a non-monetary benefit is solicited by a representative of a participating dealer, it is deemed to be non-compliant. If a non-monetary benefit solicited or accepted by a participating dealer does not fall within the allowable categories of Part 5 of NI 81-105, it is non-compliant, as discussed in further detail below.

C. Prohibited categories of spending

As a result of the prohibition included in section 2.2 of NI 81-105, participating dealers are prohibited from soliciting funding and non-monetary benefits from IFMs, and IFMs are prohibited from providing funding and non-monetary benefits to participating dealers and their representatives, for categories not included in Part 5 of NI 81-105.

- For example, providing funding for non-educational dealer events and then tracking the spending per representative of a participating dealer under section 5.6 of NI 81-105 is not a compliant practice. Monetary support for participating dealer events can only fall within section 5.5 of NI 81-105 and these types of events do not qualify under this section. In addition, this is not the type of spending on promotional items and activities originally contemplated when NI 81-105 and section 5.6 was adopted, and is not within the spirit of the rule.

c) Sales practices (cont'd)

Example framework to assess compliance of the provision of a non-monetary benefit with section 5.6 of NI 81-105

IFMs may choose to use this example framework as a tool to help assess compliance of the provision of a non-monetary benefit.

This example framework can also be used to assess compliance of the provision of a non-monetary benefit outside of section 5.6 of NI 81-105. For example, if an IFM is providing a non-monetary benefit through an item or activity during a conference or seminar organized under section 5.2 of NI 81-105, the framework can be used to assess compliance with the requirement to ensure the reasonableness of the cost of the item or activity being provided. Section 7.3 of NI 81-105CP states that the term "reasonable" costs pertaining to paragraph 5.2(e) of NI 81-105 would not include gifts or entertainment provided to attendees other than as permitted by section 5.6 of NI 81-105.

Staff's view is that any exceptions to an IFM's internal policies and procedures on sales practices would constitute non-compliance with NI 81-105 and are therefore, not permissible. Unintended or unforeseen exceptions should be documented and escalated for resolution.

Example framework to assess compliance of the provision of a non-monetary benefit with section 5.6 of NI 81-105		
Step	**Promotional item**	**Business promotion activity**
	IFM decides to provide a non-monetary benefit through a promotional item.	IFM decides to provide a non-monetary benefit through a business promotion activity.
#1	Was the item solicited by a representative?	Was the activity solicited by a representative?
	No – proceed to step #2	
	Yes – the IFM cannot provide the item/activity	
#2	Is the item promotional - does it prominently display the IFM's logo?	Is the activity promotional - will a representative of the IFM attend the activity as well?
	Yes – proceed to step #3	
	No – the IFM cannot provide the item/activity	

#3	Execute a quantitative analysis: Assess if the cost of the promotional item is of minimal value and if the cost of the promotional activity is reasonable to ensure compliance with the parameters of section 5.6 of NI 81-105 and the IFM's internal policies and procedures.
	Consider the following factors when executing a quantitative analysis:
	• Does the cost fit within the IFM's internally set limits?
	  ◦ limit per item,
	  ◦ limit per activity,
	  ◦ limit per representative/participating dealer per quarter and per annum,
	  ◦ frequency limit,
	  ◦ other limits set by the IFM's internal policies and procedures.
	• Does the item fall within the non-compliant examples included in this report?	

	Is the cost of the item of minimal value?	Is the cost of the activity within the parameters of section 5.6 of NI 81-105?
	Yes – proceed to step #4	
	No – the IFM cannot provide the item/activity	
#4	Execute a qualitative analysis: Assess the nature of the item/activity to determine reasonability within the parameters of Part 5 of NI 81-105 and the IFM's internal policies and procedures. Consider the following factors when executing a qualitative analysis: • Does the item/activity comply with the spirit of the rule? • Would the activity be out of reach for an average person? • Does the item/activity fit within the IFM's internal policies and procedures established to help with a qualitative analysis? • How would an independent third party react to the provision of the non-monetary benefit? Would they consider it to be extravagant? • What would be the reputational impact to the IFM if the non-monetary benefit was made public, for example in a news article? • Does the item/activity fall within the non-compliant examples included in this report?	
	Is the nature of the item reasonable?	Is the nature of the activity reasonable?
	Yes – the IFM can provide the item/activity	
	No – the IFM cannot provide the item/activity	

2.2.6 Client disclosure & reporting

Division 2 of Part 14 *Handling client accounts - firms* of NI 31-103 sets out disclosure requirements for registered firms. Sections 14.2, 14.2.1 and 14.4 explain the content and frequency of disclosure to clients including: relationship disclosure information, pre-trade disclosure of charges and disclosure when the firm has a relationship with a financial institution.

Division 5 of Part 14 *Handling client accounts - firms* of NI 31-103 sets out client reporting requirements for registered firms including, where applicable, the requirement to send account statements and additional statements (collectively, **client statements**), the report on charges and other compensation (**compensation reports**) and the investment performance report (**performance reports**).

a) Relationship disclosure information (IFM / PM / EMD / SPD)

We continue to raise a number of deficiencies related to relationship disclosure information as a result of:

- the document(s) provided to clients not containing all of the required disclosure,
- the document(s) provided to clients containing incorrect or outdated information, or
- in some instances, no document or disclosure being provided.

Legislative reference and guidance

- Part 14 - *Division 2 Disclosure to Clients* of NI 31-103 and related NI 31-103CP
- CSA Staff Notice 31-334 *CSA Review of Relationship Disclosure Practices*
- Section 5.1.2 - *Inadequate relationship disclosure information* of OSC Staff Notice 33-738 *2012 OSC Annual Summary Report for Dealers, Advisers and Investment Fund Managers*
- Registrant Outreach seminar (November 2016) - *Communicating with clients in a compliant manner* and accompanying slides 28-37

b) Inadequate client statements and reports (PM / EMD / SPD)

During our CRM2 review, we noted that some firms were not delivering the required client statements, compensation reports and performance reports. Examples of these firms include:

- EMDs that hold client assets,
- EMDs that do not hold client assets, but receive trailing commissions related to the client's ownership of the securities they purchased for clients, and
- PMs that believed they had met their statement delivery obligation because their clients' custodian(s) were carrying out these tasks (we remind PMs to refer to CSA Staff Notice 31-347).

b) Inadequate client statements and reports (cont'd)

We also noted the following common deficiencies in the client statements, compensation reports and performance reports reviewed:

Client statements:

- were provided on a consolidated basis, combining all accounts owned by a client or family group

Compensation reports:

- did not include adequate disclosure about the operating and/or transaction charges when clients with multiple accounts (for example, TFSA and RRSP accounts) had designated one account to pay for all the fees incurred
- were consolidated inappropriately (for example, for a family group) or without obtaining written client consent

Performance reports:

- were missing information (for example, the definition of total percentage return and associated notification)
- did not include text, tables and charts to illustrate the contents of the report
- included inadequate disclosures when presenting benchmarks
- were consolidated inappropriately (for example, for a family group) or without obtaining written client consent

Legislative reference and guidance

- Appendix D *Annual Charges and Compensation sample report* of **NI 31-103CP**
- Appendix E *Performance Report sample* of **NI 31-103CP**
- Appendix F *Part 14 Client reporting requirements and sole EMDs* of **NI 31-103CP**
- Sections 14.17, 14.18 and 14.19 of **NI 31-103** and related **NI 31-103CP**
- Questions 36-45 of **CSA Staff Notice 31-345** *Cost Disclosure, Performance Reporting and Client Statements - Frequently Asked Questions and Additional Guidance*
- Section 3.1 b) ii) of **OSC Staff Notice 33-748**
- **CSA Staff Notice 31-347**

2.2.7 Marketing

a) Misleading or inaccurate marketing materials (IFM / PM / EMD / SPD)

Registered firms must validate that all marketing materials are accurate and free of misleading statements or unsubstantiated claims. This is important in order to meet obligations under securities law, including the obligation to deal fairly, honestly and in good faith with clients. Registered firms should establish procedures to conduct an adequate review and obtain approval of all marketing materials prior to dissemination in order to provide both meaningful and accurate marketing materials to existing and prospective clients.

We have identified concerns with the marketing materials provided to prospective clients. Some examples include:

- the use of hypothetical performance data, without first determining whether the use of the hypothetical performance data is fair and not misleading,
- sales presentations that are not fair and balanced as they do not include information on key features such as commissions, fees and risks, thus exaggerating the benefits of the investment or plan, and
- unsubstantiated statements in marketing and promotional materials that are not supported by evidence to verify the claims.

Registered firms should:

- present actual performance returns for clients of the firm where available,
- consider relevant factors to determine whether the use of hypothetical performance data is permitted, fair and not misleading,
- substantiate all claims made in marketing materials, and
- adequately reference information supporting claims so that investors can easily assess the merits of claims made.

Registered firms should not:

- provide sales presentations to prospective clients which understate commissions or fees, and do not adequately communicate the risks associated with an investment.

Legislative reference and guidance

- Subsection 2.1(1) of OSC Rule 31-505 *Conditions of Registration*
- CSA Staff Notice 31-325 *Marketing Practices of Portfolio Managers*

Part 3

KEY POLICY INITIATIVES IMPACTING REGISTRANTS

3.1 Derivatives regulation

CRR staff have been working with the Derivatives Branch to develop a number of rules relating to the regulation of derivatives, including proposed rules that will set out the principal business conduct and registration requirements and exemptions for derivatives dealers and derivatives advisers (collectively, **derivatives firms**), and a rule that prohibits the advertising, offering, selling or otherwise trading of binary options to or with individual investors. In addition, CRR staff continue to work with the Derivatives Branch on the implementation of other rules relating to derivatives, including conducting compliance reviews of derivatives market participants in connection with their compliance with OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting*.

Derivatives business conduct and registration rules

On April 4, 2017, the CSA published for comment Proposed **National Instrument 93-101 *Derivatives: Business Conduct*** and a related companion policy (collectively, **the Proposed Business Conduct Rule**). The Proposed Business Conduct Rule sets out the principal business conduct obligations and exemptions for derivatives firms and certain of their representatives and will apply to a derivatives firm, regardless of whether the derivatives firm is registered or exempted from the requirement to be registered under Ontario securities law.

Similarly, on April 19, 2018, the CSA published for comment Proposed **National Instrument 93-102 *Derivatives: Registration*** and a related companion policy (collectively, **the Proposed Registration Rule**) for a 150-day comment period. We considered comments received on the April 2017 publication of the Proposed Business Conduct Rule in developing the Proposed Registration Rule.

On June 14, 2018 the CSA published a revised version of the Proposed Business Conduct Rule for a second comment period. The comment period coincides with the comment period for the Proposed Registration Rule. This gives stakeholders the opportunity to consider both of the proposed instruments when making their comments. Comments should be submitted in writing on or before September 17, 2018.

The CSA has developed the Proposed Business Conduct and the Proposed Registration Rule to help protect investors, reduce risk, improve transparency and accountability, and to implement a comprehensive regime for the regulation of persons or companies that are in the business of trading derivatives and in the business of advising on derivatives. Many of the requirements in the Proposed Business Conduct and the Proposed Registration Rule are similar to existing market conduct and registration requirements applicable to registered dealers and advisers under NI 31-103 but have been modified to reflect the different nature of derivatives markets and their participants.

Prohibition on the offer or sale of binary options to individuals

CRR staff have also been working with the Derivatives Branch, Enforcement Branch and the Investor Office in developing a number of strategies to respond to investor complaints over binary options fraud.

These strategies include the development and adoption of a new rule, **Multilateral Instrument 91-102 *Prohibition of Binary Options*** (the **Binary Options Rule**), that prohibits advertising, offering, selling or otherwise trading of binary options to or with individual investors.

The firms and individuals involved in binary options trading platforms are often located overseas. Many of these products and the platforms selling them have been identified as vehicles to commit fraud. We emphasize that no offering of these products, including by a broker, dealer or platform, has been authorized in Canada. All current offerings in Canada are therefore illegal, with only limited and narrow exceptions for transactions with highly sophisticated investors. Nevertheless, some persons are using misleading information to promote these products as legal and legally offered.

The Binary Options Rule came into force in Ontario on December 12, 2017 and is available on the OSC website at the following link: **http://www.osc.gov.on.ca/en/54014.htm**

In addition, over the last year, CRR staff have assisted Enforcement Branch staff in a number of enforcement proceedings involving unregistered offshore platforms that have victimized Canadian investors. Lastly, CRR staff have also worked with the Investor Office in developing investor warning materials about the risks of binary options, including the materials at: **http://www.binaryoptionsfraud.ca**.

Before making a decision to invest, investors should visit **aretheyregistered.ca** to check the registration of a person or company offering the investment. There are no registered individuals or firms permitted to trade binary options in Canada.

3.2 Syndicated mortgages

On March 8, 2018, the CSA published a notice and request for comment for proposed amendments to both NI 45-106 and NI 31-103 relating to syndicated mortgages (the **Proposed Amendments**).

The purpose of the Proposed Amendments is to introduce additional investor protections related to the distribution of syndicated mortgages and to increase harmonization regarding the regulatory framework for syndicated mortgages across all CSA jurisdictions.

At present, the Act provides that mortgages sold by persons registered or exempt from registration under mortgage brokerage legislation are exempt from the registration and prospectus requirements in Ontario. These exemptions currently include syndicated mortgages, which are defined as mortgages in which two or more persons participate, directly or indirectly, as the mortgagee.

The Proposed Amendments include changes to the prospectus and registration exemptions available for the distribution of syndicated mortgages, and in particular:

- remove the prospectus and registration exemptions for trades in syndicated mortgages in the CSA jurisdictions where the exemptions are available (in Ontario, the Act will be similarly amended),
- introduce additional requirements to the OM exemption under section 2.9 of NI 45-106 that apply when the exemption is used to distribute syndicated mortgages, and
- amend the private issuer prospectus exemption under section 2.4 of NI 45-106 so that it is not available for the distribution of syndicated mortgages.

The comment period for this notice ended on June 6, 2018. CSA staff are reviewing the comments received and anticipate that the final amendments will be published shortly.

3.3 OBSI Joint Regulators Committee (JRC)

On March 29, 2018, the CSA, IIROC, and MFDA jointly published the fourth annual report of the JRC (the **JRC Annual Report**), see ***CSA Staff Notice 31-353 OBSI Joint Regulators Committee Annual Report for 2017***.

The JRC Annual Report:

- provides an overview of the JRC's mandate and its major activities during the year,
- details steps to strengthen OBSI's ability to secure redress for investors by considering a regulatory framework to facilitate binding decisions, and
- describes the JRC's ongoing monitoring of:
  - complaint volumes,
  - the types of investment issues raised in complaints, and
  - cases where the amount compensated by the registered firm was below the OBSI recommendation.

The JRC is comprised of representatives from the CSA, IIROC and MFDA. It meets regularly with OBSI to discuss governance and operational matters and other significant issues that could influence the effectiveness of the dispute resolution system. For more information on the JRC, please see the **JRC web page** on the OSC's website.

Publication of joint notice

On December 7, 2017, the CSA, IIROC and MFDA released a joint notice ***CSA Staff Notice 31-351, IIROC Notice 17-0229, MFDA Bulletin #0736-M Complying with requirements regarding the Ombudsman for Banking Services and Investments (OBSI)***.

The notice highlights concerns about some registered firms' complaint handling systems and participation in OBSI's services, and sets out potential regulatory responses. The notice also highlights regulators' concerns regarding the use of an internal "ombudsman" as part of complaint handling systems.

We expect registered firms to participate in OBSI's dispute resolution process in a manner consistent with their obligation to deal fairly, honestly and in good faith with their clients and to respond to each customer complaint in a manner that a reasonable investor would consider fair and effective.

3.4 Custody requirements for IFMs and PMs

On June 4, 2018, the amendments to NI 31-103 that enhance the custody requirements (the **Custody Amendments**) came into force. The related guidance in NI 31-103CP became effective on the same date.

The Custody Amendments apply to investment fund managers, advisers and dealers (with certain exceptions, including those described below). These amendments (i) address potential intermediary risks when registered firms are involved in the custody of client assets, (ii) enhance the protection of client assets, and (iii) codify existing custodial best practices of registered firms.

Generally, the Custody Amendments:

- require registered firms to ensure that a "qualified custodian" (as defined in NI 31-103) is used to hold securities and cash of a client or an investment fund in certain circumstances,
- with limited exceptions, prohibit self-custody by registered firms and prohibit the use of a custodian that is not functionally independent of the registered firm,
- require registered firms to confirm that the securities and cash of a client or an investment fund are being held by a qualified custodian, and that the custodian's records show that the client or investment fund beneficially owns these assets, with limited exceptions, and
- require registered firms to disclose to clients where and how client assets are held or accessed, and any associated risks and benefits.

The Custody Amendments do not apply to certain firms, clients, investment funds, or assets. These exceptions are typically based on whether another custodial regime applies, there is no (or limited) intermediary risk, or the client has a certain level of sophistication. For example, exceptions exist for the following:

- investment funds subject to NI 81-102 or National Instrument 41-101 *General Prospectus Requirements*,
- customer collateral subject to custodial requirements under National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*,
- registered firms that:
  - are members of IIROC or the MFDA, and
  - comply with the custodial provisions of IIROC and the MFDA, respectively,
- securities recorded on the books of a security's issuer, or the transfer agent of that issuer, only in the name of the client or investment fund,
- permitted clients that are not individuals and not investment funds, and
- mortgages under certain conditions.

Future proposals to revise the Custody Amendments (including the terminology and the exemptions) may follow as a consequence of the CSA's ongoing policy work in respect of both the modernization of investment fund product regulation under NI 81-102 and derivatives.

For more information see NI 31-103, NI 31-103CP, and the related CSA notice of amendments published on July 27, 2017 at: **http://www.osc.gov.on.ca/en/SecuritiesLaw_20170727_31-103_amendments.htm**.

3.5 Amendments to NI 31-103 to clarify restrictions on EMD participation in prospectus offerings & brokerage activities

On December 4, 2017, certain amendments to NI 31-103 that impact the EMD category of registration came into force. These amendments, among other things, make it clear that an EMD is not permitted to act as a dealer or underwriter in a distribution of securities being qualified by a prospectus. This restriction includes:

- acting as a "selling group member" in a prospectus distribution, or
- acting as an agent in a special warrant transaction.

The ID category or, in the case of a mutual fund prospectus distribution, the MFD category, are the appropriate dealer registration categories for prospectus distributions. However, the amendments do not have any impact on the ability of an EMD to participate in a distribution by an issuer, including a reporting issuer, under a prospectus exemption.

In addition, the amendments further clarify the existing restriction on EMDs participating in brokerage activities involving listed securities.

An overview of the amendments to NI 31-103 that impact the EMD category of registration may be found in the Registrant Outreach Session on EMDs, available at the following link:

http://www.osc.gov.on.ca/documents/en/Dealers/ro_20171121_exempt-market-dealers.pdf

Part 4 ACTING ON REGISTRANT MISCONDUCT

Registration is a privilege and not a right, that is granted to individuals and firms that have demonstrated their suitability for registration. (*Re Sterling Grace & Co. Ltd. and Casale, (2014) 37 O.S.C.B. 8298, 8331*)

Elizabeth King, Deputy Director

The OSC is committed to improving the efficiency and effectiveness of its compliance, supervision and enforcement processes and will protect the interests of investors by taking action against firms and individuals who do not comply with Ontario securities law. These activities help to deter misconduct and non-compliance by registrants and market participants.

OSC Statement of Priorities 2018-2019

4.1 Annual highlights and trends

The Registrant Conduct Team within the CRR Branch is responsible for investigating conduct issues involving individual and firm registrants, recommending regulatory action where appropriate, and conducting OTBH proceedings before the Director. Potential registrant misconduct comes to our attention through compliance reviews, applications for registration, disclosures on NRD, and by other means such as complaints, inquiries or tips.

Registrants must also remain alert and monitor for potential misconduct by enacting and implementing appropriate policies and procedures and ensuring that controls are in place to detect and address instances of misconduct.

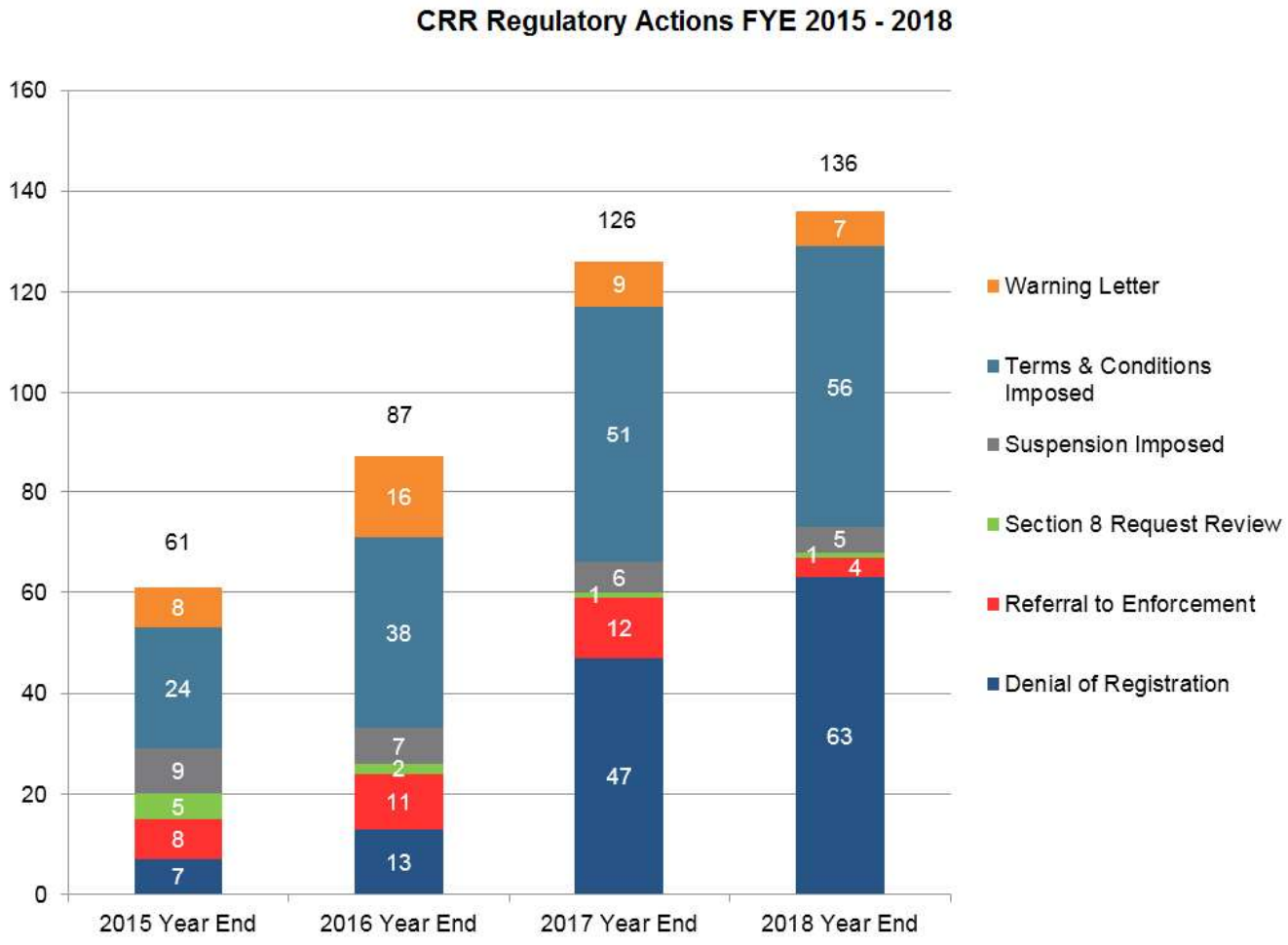
As our Director recently stated:

> "Investors place a great deal of trust in registrants' ability to assist them with financial matters. Registrants help clients evaluate their financial needs and objectives, assist with developing a plan to meet those objectives and recommend products that are suitable for the client. Clients expect registrants to have high standards of fitness and business conduct and act honestly and responsibly."

"We need to deal promptly and effectively with registrant misconduct to be fair to registered firms and individuals who do their best to comply with Ontario securities law."

Michael Denyszyn, Manager
Registrant Conduct Team

The following chart summarizes the regulatory actions taken by CRR staff against firms or individuals engaged in registrant misconduct or serious non-compliance with Ontario securities law.



The chart illustrates that CRR makes use of regulatory actions along the compliance-enforcement continuum, the action being commensurate with the magnitude of the misconduct or non-compliance in a given situation. Terms and conditions, denials of registration, and suspensions of registrations are all tools available to CRR staff to address serious non-compliance. Referrals are made to the Enforcement Branch in cases where the appropriate tool is a power that can only be exercised by the Commission.

CRR is continually improving our information tools, which is having the intended effect of identifying high risk registrants and applicants for registration. This has resulted in an increase in regulatory actions over the past four years. Sources of information include background and solvency checks on individual registrants or individual applicants, responses to the RAQ, external contacts received directly and indirectly from the Contact Centre, and referrals from SROs and other organizations.

The Registrant Conduct Team continues to investigate instances of the significant and recurring issue of false or misleading applications for registration, the consequences of which may include regulatory action.

CSA Staff Notice 33-320 The Requirement for True and Complete Applications for Registration was published on July 13, 2017 to remind applicants of their obligation to provide true and complete information in their applications, and to encourage firms to self-assess their existing policies and procedures relating to the due diligence they must exercise to ensure the truth and completeness of applications they sponsor. The guidance in the notice is equally applicable to registrants and all registration-related documents and information updates they are required to deliver pursuant to their ongoing obligations under NI 33-109 and NI 31-103.

4.2 Opportunity to be Heard (OTBH) process

Prior to a Director of the OSC imposing terms and conditions on registration, refusing an application for registration, or suspending a registration, an applicant or registrant has the right under section 31 of the Act to request an OTBH before the Director. There were 11 OTBH decisions from fiscal 2017/2018.

A registrant or applicant may also request a hearing and review by the Commission of a Director's decision under section 8 of the Act. A section 8 review was requested once this fiscal year.

DIRECTOR'S DECISIONS

Director decisions on OTBH proceedings are published in the OSC Bulletin and on the OSC website at **Director's Decisions**, where they are presented by topic and by year. Director decisions can be used as an important resource for registrants and their advisers, as they highlight matters of concern to the OSC, as well as the regulatory action that may be taken as a result of misconduct and non-compliance.

4.3 Cases of interest

CONTESTED OTBH DECISIONS AND SETTLEMENTS BY TOPIC

The following matters came before the Director this year.

i) Appointing a UDP

Registrant and date of Director's decision	Description
Hanane Bouji June 22, 2017	Hanane Bouji, already a director of two affiliated firms and registered as a dealing representative, applied to amend her registration by adding the category of UDP. Bouji's father, who was the former UDP of the firms and the sole shareholder, was the subject of significant sanctions due to past misconduct, including a prohibition on acting as an officer or director. Staff argued that the amended registration would be objectionable in light of evidence that the applicant's father remained active in directing the affairs of the firms despite the prohibitions, and in light of the non-independent applicant acquiescing in this misconduct while acting as the Chair of the Board of Directors for the firms. Following an OTBH, the Director agreed and refused to amend the registration. Bouji requested a hearing and review under section 8 of the Act, and the Commission confirmed the Director's decision, citing the applicant's role in the firms' failure to appropriately restrict the applicant's father's role in their respective businesses.

ii) Best execution

Registrant and date of Director's decision	Description
Acker Finley Asset Management Inc. September 26, 2017	Acker Finley Asset Management Inc. is a registered PM and IFM. The firm provides discretionary management services to a number of individual accounts, and advises and manages two investment funds. A compliance review by Staff found that the firm had been placing many of its trades through its affiliated ID, and that the firm had no policies or procedures in place as to how it would assess compliance with its best execution obligation when it directed its trades to its affiliated dealer. Following an opportunity to be heard, the Director concluded that the firm had failed to comply with its obligations:

ii) Best execution (cont'd)

	• to make reasonable efforts to achieve best execution, • to make a good faith determination that its clients receive a reasonable benefit from the use of client brokerage commissions, and • to respond to a material conflict of interest in an effective manner. As a result, the Director imposed some (but not all) terms and conditions that had been recommended by Staff. Specifically, the terms and conditions imposed by the Director required the firm to retain a compliance consultant to assist the firm in rectifying the issues that had been identified by Staff through its compliance review.

iii) Compliance with securities laws of foreign jurisdictions

Registrant and date of Director's decision	Description
Pierre Prieur November 7, 2017	Pierre Prieur was registered as a mutual fund dealing representative. Prieur resides in Quebec, and therefore his principal regulator was the Autorité des marchés financiers in Québec (**AMF**). On September 28, 2017, the Chambre de la sécurité financière ordered that Prieur's registration under Quebec securities law be suspended for two months following his admission that he had forged a client's signature on two discretionary management agreements. On November 3, 2017, and at Staff's request, Prieur consented to a suspension of his registration in Ontario. In requesting his consent to this suspension, Staff informed Prieur that it was of the view that it would be objectionable for him to be registered in Ontario during such time as his registration in Quebec was suspended.
Hugh Smilestone November 10, 2017	Hugh Smilestone filed an application for registration in an additional jurisdiction to reinstate his registration in Ontario. Staff recommended that Smilestone's Ontario registration as a mutual fund dealing representative be subject to terms and conditions that mirrored terms and conditions imposed on Smilestone's registration by Nova Scotia, his principal regulator. Smilestone had been registered as a mutual fund dealing representative in Nova Scotia for approximately 14 years, when, in March 2010 some of his conduct became the subject of an investigation of the MFDA. In a 2013 settlement agreement with the MFDA, Smilestone admitted that he had engaged in conduct in violation of MFDA rules, including, among other things, falsifying client signatures on account documents and engaging in unauthorized discretionary trading. Smilestone was fined and prohibited from conducting securities related business for two years.

iii) Compliance with securities laws of foreign jurisdictions (cont'd)

	In 2015 the Nova Scotia Securities Commission approved Smilestone's application for registration in Nova Scotia subject to certain customized supervisory terms and conditions. When Mr. Smilestone reapplied for registration in Ontario, Staff recommended terms and conditions on his Ontario registration which included strict supervision of his trading activity, requirements concerning disclosure of his outside business activities and other customized terms and conditions that were consistent with those imposed on his registration in Nova Scotia, which Smilestone consented to.
Bonwick Capital Partners, LLC November 27, 2017	A registered firm, whose principal regulator is the AMF, failed to pay its annual fees or deliver its annual audited financial statements to the AMF. The firm has also previously had its FINRA membership in the U.S. cancelled for, among other reasons, non-payment of fees. After the AMF suspended the firm's registration and in light of late fees owing to the OSC, Staff recommended that the firm's registration also be suspended in Ontario. The firm did not request an opportunity to be heard, and the Director accepted Staff's recommendation to suspend the firm's registration.

iv) False client documentation

Registrant and date of Director's decision	Description
Christopher Aqui March 28, 2017	Christopher Aqui applied for a reactivation of registration on April 8, 2016. A review of Aqui's application revealed that he had been terminated from his previous firm for material violations of the firm's policy concerning the use of blank signed forms, making false representations on an annual compliance questionnaire regarding the use of blank signed forms, and non-compliance with the firm's policy regarding deferred sales charges (**DSC**). Specifically, the review found that Aqui had obtained at least 90 pre-signed forms for 15 different clients, and most of those forms had been used for securities transactions. In one case, pre-signed forms had been used to facilitate discretionary trading. Aqui also had at least 27 forms for 17 clients where he had altered the document without having the client initial the change. During his employment, Aqui had completed annual compliance questionnaires from his firm in which he represented that he did not obtain or use pre-signed forms. Finally, from time to time Aqui would transfer his clients' assets from one DSC mutual fund to another, thereby restarting the DSC schedule and generating a sales commission for himself. Although Aqui believed he verbally informed his clients that their DSC schedule would restart, he did not provide them with any written disclosure to that effect.

iv) False client documentation (cont'd)

	Consequently, Staff identified concerns relating to Aqui's suitability for registration. In March 2017, Staff and Aqui signed a settlement agreement in which Aqui agreed: • to withdraw his application and not to reapply for 15 months from the date of the application under consideration, • he would successfully complete the Conduct and Practices Handbook Course before reapplying, and • that if his registration was reactivated it would be subject to supervisory terms and conditions for a period of not less than one year.

v) Financial condition

Registrant and date of Director's decision	Description
R. Alan Filer November 13, 2017	R. Alan Filer, a mutual fund dealing representative, invested in tax shelters over a 15 year period. The Canada Revenue Agency (**CRA**) denied the deductions associated with these tax shelters and imposed penalties and interest on the taxes owing. As a result, Filer entered into a consumer proposal and agreed to pay a high six figure amount to the CRA over a defined five year payment schedule. After reviewing Filer's financial disclosure change submission under NI 33-109, Staff followed general practice and recommended that Filer's registration be subject to close supervision terms and conditions to mitigate against an identified solvency concern. During the OTBH, Filer submitted, among other things, that he had the financial means to meet the payment schedule, had never been the subject of a client complaint or criminal charge, and that colleagues provided necessary checks and balances with respect to his activities. Nonetheless, the Director found no reason to vary from the Commission's long standing practice of imposing close supervision terms and conditions in circumstances where Staff has solvency concerns with a registrant, finding the practice appropriate in the Filer's case and consistent with the Commission's investor protection mandate. The Director determined that the registration of the Filer should be subject to the close supervision terms and conditions until such time as his financial obligation under the consumer proposal to the CRA is satisfied.

vi) Misleading staff or sponsor firm

Registrant and date of Director's decision	Description
Sital Singh Dhillon July 31, 2017	Following an OTBH, the Director refused Sital Dhillon's application to reactivate his registration as a mutual fund dealing representative, finding that Dhillon did not meet the proficiency requirement because it had been almost 27 years since he passed the Canadian Investment Funds Course Exam, and none of the exemptions to the rule that an exam must have been completed within three years of the date of the application were applicable (see section 3.5 of NI 31-103). The Director also found that Dhillon lacked the integrity required for registration based on conduct issues that had occurred at two previous sponsor firms, his participation in the preparation of a false tax return for a client, and misrepresentations made to Staff during the application process. The Director found that Dhillon lacked any remorse for his conduct and refused to acknowledge any wrongdoing on his part. Dhillon's application for a hearing and review under section 8 of the Act by a panel of the Commission was heard on February 12, 2018, and dismissed with reasons on April 3, 2018. In the time between the Director's decision and the commencement of the hearing and review application, the firm that had been sponsoring Dhillon's application withdrew its support. The panel allowed the hearing and review to proceed on the basis that, notwithstanding the firm's withdrawal of its sponsorship, Dhillon was still directly affected by the Director's decision, and should be entitled to continue with his application. However, the panel dismissed the application for the same reasons as the Director concluding that Dhillon lacked integrity and was ungovernable.

vii) Outside business activity

Registrant and date of Director's decision	Description
Donald Mason November 30, 2017	Donald Mason, a registered mutual fund dealing representative, disclosed that he had begun an outside activity as a lay minister in a church, visiting people in need and assisting the congregation in prayer during religious services. Staff recommended "restricted client terms and conditions," by which Mason would be restricted from acting as a dealing representative with members of his church or their families, citing the potential for undue influence given his position of spiritual leadership and caregiving. Although Mason had not traded in securities with church members, he nevertheless exercised his OTBH right. Mason argued that his religious freedoms were compromised by these terms and conditions, and that he should not be required to confirm that his clients are not church members. However, the Director imposed the terms and conditions, citing the need to protect investors from potential undue influence. Mason has requested a hearing and review of the Director's decision under section 8 of the Act, which has been scheduled for late 2018.

viii) Trading or advising without appropriate registration

Registrant and date of Director's decision	Description
Kashmir Singh Marok July 4, 2017	Kashmir Marok was a registered mutual fund dealing representative. In March 2016, Marok initiated contact with a school board regarding a proposal by him to distribute securities marketing materials relating to registered disability savings programs to parents of children with special learning needs who might be eligible for such programs. In his communications with the board, Marok was informed of specific concerns that the board had about the proposal, was informed that consent was not being given for a board-wide distribution, and that if Marok wanted to seek approval from principals on a school-by-school basis, he could do so. Marok told the principal of the school where his wife was a teacher (and that was within the board) that he had the board's approval for his proposal, and the principal then authorized him to distribute his materials at the school. Marok assembled approximately 30 information packages and provided them to his wife, who in turn placed them in the mailboxes of teachers with special needs children in their class (which information she had obtained from the school's special education department) to be taken home by the children to give to their parents.

viii) Trading or advising without appropriate registration (cont'd)

	A number of parents who received the packages distributed by Marok were upset. Nobody who received a package ever became a client of Marok, and he claimed that he had honestly misunderstood the instructions given to him by the board, although he admitted that he failed to take reasonable care to ensure that he had the informed consent of the principal (and his own supervisor) before carrying out his plan. On July 5, 2017, the Director approved of a settlement agreement between Marok and Staff in which Marok agreed that: • his registration would be suspended for two months, • upon reregistration, his registration would be subject to supervisory terms and conditions for a period of not less than nine months, and • he would successfully complete the Conduct and Practices Handbook Course.

Part 5 ADDITIONAL RESOURCES

5.1 Registrant Advisory Committee

Established in January 2013, the Registrant Advisory Committee (**RAC**) is currently comprised of 10 external members. The RAC's objectives include:

- advising on issues and challenges faced by registrants in interpreting and complying with Ontario securities law (registration and compliance related matters), and
- providing feedback for the development and implementation of policy and rule making initiatives that promote investor protection and fair and efficient capital markets.

The RAC meets quarterly with members serving a minimum of 2 year terms. Topics of discussion over the past fiscal year included:

- proposed amendments to enhance the client-registrant relationship,
- referral arrangements,
- sales practices, incentives and compensation structures, and
- the OSC's whistleblower initiative.

5.2 Fintech Advisory Committee

We have a Fintech Advisory Committee (**FAC**) to advise OSC staff on developments in the fintech space as well as the unique challenges faced by fintech businesses in the securities industry. The current FAC includes key players from a broad spectrum of the fintech community, ranging from innovation hubs, to startups, to financial institutions. The committee plays a critical role in advising the OSC on meeting the novel demands of the rapidly growing fintech space.

The FAC meets quarterly, with members serving one-year terms. Topics of discussion over the past fiscal year included:

- blockchain technology,
- issues around cryptoasset offerings, including custody and auditing,
- artificial intelligence and machine learning,
- open data, and
- KYC onboarding processes.

5.3 CRR directory

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1.1.2 CSA Staff Notice 46-309 – Bail-in Debt

Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA Staff Notice 46-309
Bail-in Debt

August 23, 2018

Introduction

This notice summarizes the views of Canadian Securities Administrators (**CSA**) staff related to the distribution or other trading of bail-in debt to investors.

Background

On June 22, 2016, federal amendments to the *Bank Act* and the *Canada Deposit Insurance Corporation Act* that implement a bail-in regime for Canada's domestic systemically important banks (**D-SIBs**) received Royal Assent.[1] The Office of the Superintendent of Financial Institutions (**OSFI**) has declared the six largest domestic Canadian banks[2] as D-SIBs. If OSFI is of the opinion that a D-SIB has ceased, or is about to cease, to be viable, the Canada Deposit Insurance Corporation may, in certain circumstances, take temporary control of the D-SIB and convert all or a portion of the D-SIB's bail-in debt (**D-SIB Bail-in Debt**) into common shares.

The details of D-SIB Bail-in Debt are set out in regulations under the *Bank Act* and the *Canada Deposit Insurance Corporation Act* that were adopted by the federal government on March 26, 2018, and will come into force on September 23, 2018 (**Regulations**).[3] Under the Regulations, D-SIB Bail-in Debt generally includes all unsubordinated unsecured debt of a D-SIB that is tradeable and transferable with an original term to maturity of over 400 days. Explicit exclusions from the bail-in regime are provided for covered bonds, derivatives and certain structured notes.[4] The Regulations also include certain disclosure and naming requirements in respect of the D-SIB Bail-in Debt.

In 2013, the Autorité des marchés financiers (**AMF**) designated the Desjardins Group as a domestic systemically important financial institution.

On July 13, 2018, amendments to the *Deposit Insurance Act* (Québec) came into force, which established a bail-in regime that applies to the Desjardins Group. Subject to the upcoming adoption of implementing regulations, the Desjardins Group will be subject to a bail-in regime that is similar to the one applicable to D-SIBs.

In this notice, D-SIB Bail-in Debt together with securities subject to the bail-in regime under Québec legislation are referred to as "Bail-in Debt".

Regulation of Bail-in Debt

The introduction of the D-SIB bail-in regime is not retroactive. D-SIB debt issued before the effective date of the Regulations would not be subject to bail-in, unless an instrument issued before September 23, 2018 is amended on or after that day to increase its principal amount or extend its term to maturity. This means that a D-SIB with outstanding unsubordinated debt securities issued both before and after September 23, 2018 would have multiple types of "unsubordinated debt" that would carry different levels of risk of loss.

CSA staff are of the view that:

- there is an important distinction between holding Bail-in Debt compared to non-Bail-in Debt in terms of investment risk;
- compliance with know-your-client (or KYC), know-your-product (or KYP) and suitability requirements under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Requirements* (**NI 31-103**) is a critical aspect of investor protection; and

1 *Budget Implementation Act, 2016 No. 1* (Bill C-15).
2 As of the date of this Notice, the D-SIBs are Canadian Imperial Bank of Commerce, Bank of Montreal, National Bank of Canada, The Bank of Nova Scotia, Royal Bank of Canada and The Toronto-Dominion Bank.
3 Bank Recapitalization (Bail-in) Conversion Regulations: SOR/2018-57; Bank Recapitalization (Bail-in) Issuance Regulations: SOR/2018-58.
4 The constituents of D-SIB Bail-in Debt are prescribed in the Regulations.

- the risks of owning D-SIB Bail-in Debt include the risk that a determination of non-viability of a D-SIB by federal authorities could lead to the conversion of all or a portion of a D-SIB's Bail-in Debt into common shares.

CSA staff position

If CSA staff become aware of any distributions or trades of Bail-in Debt by persons or companies in the business of trading in securities that are being made to investors located in Canada that are not being made either: (i) by or through a registered dealer (in accordance with investor protection requirements applicable to that registered dealer under NI 31-103); or (ii) in compliance with the international dealer registration exemption in section 8.18 of NI 31-103, CSA staff will consider whether regulatory action is appropriate. This would include seeking a cease-trade order in respect of the Bail-in Debt, where warranted.

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1.1.3 CSA Staff Notice 81-331 – Investment Funds Investing in Bail-in Debt

Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA Staff Notice 81-331
Investment Funds Investing in Bail-in Debt

August 23, 2018

Purpose

The purpose of this notice is to set out the views of the Canadian Securities Administrators (**CSA**) staff regarding the implementation of the Canadian bail-in regime and to provide clarity on certain issues for investment fund issuers subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**).

Background

On June 22, 2016, federal amendments to the *Bank Act* and the *Canada Deposit Insurance Corporation Act* that implement a bail-in regime for Canada's domestic systemically important banks (**D-SIBs**) received Royal Assent.[1] The Office of the Superintendent of Financial Institutions (**OSFI**) has declared the six largest domestic Canadian banks[2] as D-SIBs. In 2013, the Autorité des marchés financiers (**AMF**) designated the Desjardins Group as a domestic systemically important financial institution. On July 13, 2018, amendments to the *Deposit Insurance Act* (Québec) came into force, which established a bail-in regime that applies to the Desjardins Group. Subject to the upcoming adoption of implementing regulations, the Desjardins Group will be subject to a bail-in regime that is similar to the one applicable to D-SIBs.

If OSFI is of the opinion that a D-SIB has ceased, or is about to cease, to be viable, the Canada Deposit Insurance Corporation (**CDIC**) may, in certain circumstances, take temporary control or ownership of the D-SIB and convert all or a portion of the D-SIB's bail-in debt (**Bail-in Debt**) into common shares of the D-SIB. The term "Bail-in Debt" refers to certain debt issued by D-SIBs before any conversion occurs under the Canadian bail-in regime.

The details of Bail-in Debt are set out in regulations under the *Bank Act* and *the Canada Deposit Insurance Corporation Act* that were adopted by the federal government on March 26, 2018, and will come into force on September 23, 2018 (**Regulations**).[3] Under the Regulations, Bail-in Debt generally includes all unsubordinated unsecured debt of a D-SIB that is tradeable and transferable with an original term to maturity of over 400 days. Explicit exclusions from the bail-in regime are provided for covered bonds, derivatives and certain structured notes.[4] The Regulations also include certain disclosure and naming requirements in respect of Bail-in Debt.

CSA staff guidance

CSA staff notes that pursuant to subsection 2.18(1) of NI 81-102, a money market fund is restricted in the types of securities it may have in its portfolio. In general, a money market fund may invest in investment grade short-term debt (i.e. remaining term to maturity of 365 days or less) to achieve its investment objectives of capital preservation and liquidity. CSA staff have received inquiries as to whether Bail-in Debt could be an eligible investment for a money market fund.

Given that Bail-in Debt is different from conventional convertible debt and is convertible in certain circumstances as defined in the *Canada Deposit Insurance Corporation Act*, CSA staff's view is that money market funds are permitted to invest in Bail-in Debt so long as the Bail-in Debt continues to meet the prescribed eligibility requirements applicable to money market funds[5] as set out in NI 81-102. For example, investment fund managers (**IFMs**) must continually monitor their investments in Bail-in Debt to ensure that such investments are in compliance with the designated rating requirements as prescribed by NI 81-102 and are generally readily convertible to cash, among other requirements, to ensure the safety and liquidity in such a money market fund's portfolio assets.

Should an investment fund decide to invest in Bail-in Debt, the IFM must fully understand the key features and risks of such Bail-in Debt and take into consideration any risks to their funds as a result of such investment, for example, the risk that the CDIC may convert all or a portion of the Bail-in Debt into common shares.

1 *Budget Implementation Act*, 2016 No. 1 (Bill C-15).
2 As of the date of this Notice, the D-SIBs are the Bank of Montreal, The Bank of Nova Scotia, Canadian Imperial Bank of Commerce, National Bank of Canada, Royal Bank of Canada and The Toronto-Dominion Bank.
3 Bank Recapitalization (Bail-in) Conversion Regulations: SOR/2018-57; Bank Recapitalization (Bail-in) Issuance Regulations: SOR/2018-58.
4 The constituents of Bail-in Debt are prescribed in the Regulations.
5 Subsection 2.18(1) of NI 81-102.

If an IFM determines that one or more of its investment funds will or may hold Bail-in Debt CSA staff remind the IFM that:

- any such holdings must be consistent with the fund's investment objectives and strategies and be held in compliance with NI 81-102, as applicable; and
- such funds must consider their disclosure obligations to their securityholders, including, for example, appropriate risk disclosure as it relates to Bail-in Debt and distinctions between Bail-in Debt and non-Bail-in Debt.

CSA staff will continue to monitor developments with respect to the implementation of the Canadian bail-in regime for investment fund issuers and will consider whether additional guidance is needed in this area. The CSA welcomes any input or feedback with respect to the issues in this notice.

Questions

Please refer your questions to any of the following:

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1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 Roy Ping Bai and RBP Consulting – ss. 127(1), 127(10)

FILE NO.: 2018-46

IN THE MATTER OF
ROY PING BAI (aka PING BAI) and
RBP CONSULTING

NOTICE OF HEARING
Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5

PROCEEDING TYPE: Inter-jurisdictional Enforcement Proceeding

HEARING DATE AND TIME: In writing

PURPOSE

The purpose of this proceeding is to consider whether it is in the public interest for the Commission to make the order(s) requested in the Statement of Allegations filed by Staff of the Commission on August 13, 2018.

Take notice that Staff of the Commission has elected to proceed by way of the expedited procedure for a written hearing provided for by Rule 11(3) of the Commission's Rules of Procedure.

Staff must serve on you this Notice of Hearing, the Statement of Allegations, Staff's hearing brief containing all documents Staff relies on, and Staff's written submissions.

You have **21 days** from the date Staff serves these documents on you to file a request for an oral hearing, if you do not want to follow the expedited procedure for a written hearing.

Otherwise, you have **28 days** from the date Staff served these documents on you to file your hearing brief and written submissions.

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 15th day of August, 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
ROY PING BAI (aka PING BAI) and
RBP CONSULTING

STATEMENT OF ALLEGATIONS
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990 c S.5)

1. Staff of the Enforcement Branch (**Staff**) of the Ontario Securities Commission (the **Commission**) elect to proceed using the expedited procedure for inter-jurisdictional proceedings as set out in Rule 11(3) of the Commission's *Rules of Procedure*.

A. ORDER SOUGHT

2. Staff request that the Commission make the following inter-jurisdictional enforcement order, pursuant to paragraph 4 of subsection 127(10) of the *Ontario Securities Act*, RSO 1990 c S.5 (the **Act**):

   (a) against Roy Ping Bai (also known as Ping Bai) (**Bai**) that:

      i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Bai cease permanently;

      ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Bai cease permanently;

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

      iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Bai resign any positions that he holds as a director or officer of any issuer or registrant, including an investment fund manager;

      v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Bai be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant, including an investment fund manager; and

      vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Bai be prohibited permanently from becoming or acting as a registrant, including an investment fund manager, or promoter;

   (b) against RBP Consulting (**RBP**) that:

      i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by RBP cease permanently;

      ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by RBP cease permanently;

      iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to RBP permanently; and

      iv. pursuant to paragraph 8.5 of subsection 127(1) of the Act, RBP be prohibited permanently from becoming or acting as a registrant, including an investment fund manager, or promoter; and

   (c) such other order or orders as the Commission considers appropriate.

B. FACTS

Staff make the following allegations of fact:

3. Bai and RBP (together, the **Respondents**) are subject to an order made by the British Columbia Securities Commission (the **BCSC**) dated May 11, 2018 (the **BCSC Order**) that imposes sanctions, conditions, restrictions or requirements upon them.

4. In its findings on liability dated February 6, 2018 (the **Findings**) a panel of the BCSC (the **BCSC Panel**) found that the Respondents perpetrated a fraud, contrary to section 57(b) of the British Columbia *Securities Act*, RSBC 1996, c 418 (the **BC Act**).

(i) The BCSC Proceedings

Background

5. The conduct for which the Respondents were sanctioned occurred between February 2012 and July 2014 (the **Material Time**).

6. Bai was a resident of Vancouver and West Vancouver, British Columbia during the Material Time.

7. RBP is a general partnership registered in British Columbia in 2008. Bai and his wife were RBP's only partners, and Bai was its sole operating and controlling mind. RBP was Bai's alter ego. Bai's wife was not named as a respondent and no allegations of wrongdoing were asserted against her.

8. During the Material Time, Bai (directly or through RBP) received a total of $1,530,000 from nine investors for the purpose of investing in foreign exchange trading. Investors received letter agreements on RBP letterhead documenting their investments, which promised high rates of return (generally 5% per month or 30-60% per annum).

9. The Respondents subsequently provided investors various correspondence, advising that RBP would be obtaining a public listing of its securities, but that the related process was delayed due to problems with its securities regulatory filings. The Respondents also advised investors that, among other things, returns on their investments were delayed due to a tax audit.

10. The BCSC Panel found that the Respondents deposited approximately $129,000 into foreign exchange trading accounts. The remainder of the investors' funds were used for purposes other than what was represented, including payments to other investors and Bai's personal expenditures.

11. The BCSC Panel further found that the investors' funds have been lost, and noted that the Respondents' correspondence to investors was designed to forestall them seeking the return of their funds, and from learning of the Respondents' misappropriation of their investments.

BCSC Findings - Conclusions

12. In its Findings, the BCSC Panel concluded that:

    (a) The Respondents contravened section 57(b) of the BC Act by perpetrating a fraud with respect to nine investors for total proceeds of $1,401,000.

(ii) The BCSC Order

13. The BCSC Order imposed the following sanctions, conditions, restrictions or requirements upon the Respondents:

    (a) under section 161(1)(d)(i) of the BC Act, Bai resign any position he holds as a director or officer of an issuer or registrant;

    (b) Bai is permanently prohibited:

        i. under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts;

        ii. under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision;

        iii. under section 161(1)(d)(ii) of the BC Act, from becoming or acting as a director or officer of any issuer or registrant;

        iv. under section 161(1)(d)(iii) of the BC Act, from becoming or acting as a registrant or promoter;

        v. under section 161(1)(d)(iv) of the BC Act, from acting in a management or consultative capacity in connection with activities in the securities market; and

vi. under section 161(1)(d)(v) of the BC Act, from engaging in investor relations activities;

(c) Bai pay to the BCSC $1,291,000 pursuant to section 161(1)(g) of the BC Act;

(d) Bai pay to the BCSC an administrative penalty of $1,000,000 under section 162 of the BC Act;

(e) RBP is permanently prohibited:

i. under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts;

ii. under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision;

iii. under section 161(1)(d)(iii) of the BC Act, from becoming or acting as a registrant or promoter;

iv. under section 161(1)(d)(iv) of the BC Act, from acting in a management or consultative capacity in connection with activities in the securities market; and

v. under section 161(1)(d)(v) of the BC Act, from engaging in investor relations activities.

C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

14. The Respondents are subject to an order of the BCSC imposing sanctions, conditions, restrictions or requirements upon them.

15. Pursuant to paragraph 4 of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company may form the basis for an order in the public interest made under subsection 127(1) of the Act.

16. Staff allege that it is in the public interest to make an order against the Respondents.

17. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

DATED at Toronto this 13th day of August, 2018.

1.3.2 Vincent George Byrne – ss. 127(1), 127(10)

FILE NO.: 2018-47

IN THE MATTER OF
VINCENT GEORGE BYRNE

NOTICE OF HEARING
Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5

PROCEEDING TYPE: Inter-jurisdictional Enforcement Proceeding

HEARING DATE AND TIME: In writing

PURPOSE

The purpose of this proceeding is to consider whether it is in the public interest for the Commission to make the order(s) requested in the Statement of Allegations filed by Staff of the Commission on August 13, 2018.

Take notice that Staff of the Commission has elected to proceed by way of the expedited procedure for a written hearing provided for by Rule 11(3) of the Commission's *Rules of Procedure*.

Staff must serve on you this Notice of Hearing, the Statement of Allegations, Staff's hearing brief containing all documents Staff relies on, and Staff's written submissions.

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Otherwise, you have **28 days** from the date Staff served these documents on you to file your hearing brief and written submissions.

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

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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 15th day of August, 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
VINCENT GEORGE BYRNE

STATEMENT OF ALLEGATIONS
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990 c S.5)

1. Staff of the Enforcement Branch (**Staff**) of the Ontario Securities Commission (the **Commission**) elect to proceed using the expedited procedure for inter-jurisdictional proceedings as set out in Rule 11(3) of the Commission's *Rules of Procedure*.

A. ORDER SOUGHT

2. Staff request that the Commission make the following inter-jurisdictional enforcement order, pursuant to paragraphs 4 and 5 of subsection 127(10) of the Ontario *Securities Act*, RSO 1990 c S.5 (the **Act**):

   (a) against Vincent George Byrne (**Byrne** or the **Respondent**) that:

      i. pursuant to paragraph 1 of subsection 127(1) of the Act, should Byrne seek registration in Ontario, terms and conditions of close supervision and monthly reporting be imposed upon any grant of registration to Byrne, for a period of five years from the date of granting the registration;

      ii. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Byrne cease until February 28, 2021, except that Byrne may continue to trade in securities which are beneficially owned by Byrne or by those persons listed in Appendix “A” to the Order of the Nova Scotia Securities Commission (**NSSC**) dated February 28, 2018 (the **NSSC Order**);

      iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Byrne until February 28, 2028;

      iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Byrne resign any positions that he holds as a director or officer of any issuer or registrant, including an investment fund manager;

      v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Byrne be prohibited from becoming or acting as a director or officer of any issuer or registrant, including an investment fund manager, until February 28, 2023; and

   (b) such other order or orders as the Commission considers appropriate.

B. FACTS

Staff make the following allegations of fact:

3. On February 8, 2018, Byrne entered into a Settlement Agreement (the **Settlement Agreement**) with the NSSC.

4. Pursuant to the Settlement Agreement, Byrne admitted to breaching registration requirements under Nova Scotia securities legislation, and agreed to be made subject to sanctions, conditions, restrictions or requirements within the province of Nova Scotia.

5. Byrne is subject to the NSSC Order, which imposes sanctions, conditions, restrictions or requirements upon him.

(i) The NSSC Proceedings

Statement of Agreed Facts

6. In the Settlement Agreement, Byrne agreed with the following facts:

   Background

   (a) The Respondent is a resident of Amherst, Nova Scotia.

   (b) The Respondent was registered with the NSSC in the category of mutual fund salesperson, or dealing representative, from November 1992 until October 2013.

(c) At no time was the Respondent a registered representative of a member firm of the Investment Industry Regulatory Organization of Canada.

(d) From 1992 to 2009, the Respondent was the bank manager at Scotiabank in Amherst, Nova Scotia.

(e) In February 2006, the Respondent registered a partnership known as Vince Byrne and Associates Consulting with the Nova Scotia Registry of Joint Stocks. The nature of the business is noted as financial consulting, mortgage broker, and custom travel excursions.

Unregistered Activity

(f) Between 2013, when the Respondent's registration with the NSSC ended, and December 2016, the Respondent recommended to some clients that they open trading accounts at Scotia iTrade. The account documents included a standard Scotia iTrade Trading Authority which, when made out in the Respondent's name, gave him access to account information as well as trading authority over those accounts. The Respondent charged some of those clients $25 per month to manage those iTrades accounts.

(g) Between 2013 and December 2016, numerous trades in equities and mutual funds in at least 16 client Scotia iTrade accounts were effected through the Respondent.

Specific Violation

(h) By having trading authority and by effecting numerous trades in 16 client accounts, the Respondent acted as an adviser without being registered to do so, thereby violating section 31(1)(2)(a) of the Nova Scotia *Securities Act*, RSNS 1989, c 418, as amended (the **Nova Scotia *Securities Act***).

(ii) The NSSC Order

7. The NSSC Order imposed the following sanctions, conditions, restrictions or requirements upon Byrne:

i. pursuant to section 134(1)(a)(i) of the Nova Scotia Securities Act, Byrne complies with and ceases contravening Nova Scotia securities laws;

ii. pursuant to section 134(1)(b) of the Nova Scotia *Securities Act*, Byrne shall, for a period of three years from the date of the NSSC Order, cease trading in securities beneficially owned by anyone other than himself, with the exception of those persons listed in Appendix "A" to the NSSC Order, which shall not be made public;

iii. pursuant to section 134(1)(c) of the Nova Scotia *Securities Act*, all of the exemptions contained in Nova Scotia securities laws do not apply to Byrne for a period of ten years from the date of the NSSC Order;

iv. pursuant to section 134(1)(d)(ii) of the Nova Scotia *Securities Act*, Byrne shall be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, for a period of five years from the date of the NSSC Order;

v. pursuant to section 134(1)(f) of the Nova Scotia *Securities Act*, that terms and conditions of close supervision and monthly reporting be imposed upon any grant of registration to Byrne for a period of five years from the date of granting the registration;

vi. pursuant to section 134(1)(h) of the Nova Scotia *Securities Act*, Byrne shall be reprimanded; and

vii. pursuant to sections 135(a) and (b) of the Nova Scotia *Securities Act*, Byrne shall pay to the NSSC an administrative penalty in the amount of seven thousand five hundred dollars ($7,500.00): five thousand dollars ($5,000.00) of which is payable within 60 days from the date of the NSSC Order, and two thousand five hundred dollars ($2,500.00) of which is payable within six months of the date of the NSSC Order.

C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

8. Pursuant to the Settlement Agreement, Byrne agreed to be made subject to sanctions, conditions, restrictions or requirements within the province of Nova Scotia.

9. Byrne is subject to an order of the NSSC imposing sanctions, conditions, restrictions or requirements upon him.

10. Pursuant to paragraphs 4 and 5, respectively, of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company, or an agreement with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that a person or company is to be made subject to sanctions, conditions, restrictions or requirements may form the basis for an order in the public interest made under subsection 127(1) of the Act.

11. Staff allege that it is in the public interest to make an order against Byrne.

12. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

DATED at Toronto this 13th day of August, 2018.

1.3.3 Jason Michael Currey et al. – ss. 127(1), 127(10)

FILE NO.: 2018-48

IN THE MATTER OF
JASON MICHAEL CURREY,
THE HEALTHY RETIREMENT GROUP INC.,
SUNSET CREEK RESOURCES INC. and
1826487 ALBERTA LTD.

NOTICE OF HEARING
Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5

PROCEEDING TYPE: Inter-jurisdictional Enforcement Proceeding

HEARING DATE AND TIME: In writing

PURPOSE

The purpose of this proceeding is to consider whether it is in the public interest for the Commission to make the order(s) requested in the Statement of Allegations filed by Staff of the Commission on August 13, 2018.

Take notice that Staff of the Commission has elected to proceed by way of the expedited procedure for a written hearing provided for by Rule 11(3) of the Commission's *Rules of Procedure*.

Staff must serve on you this Notice of Hearing, the Statement of Allegations, Staff's hearing brief containing all documents Staff relies on, and Staff's written submissions.

You have **21 days** from the date Staff serves these documents on you to file a request for an oral hearing, if you do not want to follow the expedited procedure for a written hearing.

Otherwise, you have **28 days** from the date Staff served these documents on you to file your hearing brief and written submissions.

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 15th day of August, 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
JASON MICHAEL CURREY,
THE HEALTHY RETIREMENT GROUP INC.,
SUNSET CREEK RESOURCES INC. and
1826487 ALBERTA LTD.

STATEMENT OF ALLEGATIONS
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990 c S.5)

1. Staff of the Enforcement Branch (**Staff**) of the Ontario Securities Commission (the **Commission**) elect to proceed using the expedited procedure for inter-jurisdictional proceedings as set out in Rule 11(3) of the Commission's *Rules of Procedure*.

A. ORDER SOUGHT

2. Staff request that the Commission make the following inter-jurisdictional enforcement order, pursuant to paragraph 4 of subsection 127(10) of the Ontario *Securities Act*, RSO 1990 c S.5 (the **Act**):

   (a) against Jason Michael Currey (**Currey**) that:

   until the later of February 27, 2038 or the date on which the administrative penalty ordered against Currey in paragraph 94 of the Alberta Securities Commission's Order dated February 27, 2018 (the **ASC Order**) has been paid in full:

   i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities or derivatives by Currey cease, except that this order does not preclude Currey from trading in securities through a registrant (who has first been given a copy of the ASC Order, and a copy of the order of the Commission in this proceeding, if granted) in registered accounts or tax-free savings accounts maintained with that registrant for the benefit of one or more of Currey, his spouse or his dependent children;

   ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Currey cease, except that this order does not preclude Currey from purchasing securities through a registrant (who has first been given a copy of the ASC Order, and a copy of the order of the Commission in this proceeding, if granted) in registered accounts or tax-free savings accounts maintained with that registrant for the benefit of one or more of Currey, his spouse or his dependent children;

   iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Currey;

   iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Currey resign any positions that he holds as a director or officer of any issuer or registrant, including an investment fund manager;

   v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Currey be prohibited from becoming or acting as a director or officer of any issuer or registrant, including an investment fund manager, except that this order does not preclude Currey from becoming or acting as a director or officer of an issuer that is wholly owned by Currey, his spouse, his parents, his siblings or his children, and which does not issue or propose to issue securities to the public; and

   vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Currey be prohibited from becoming or acting as a registrant, including an investment fund manager, or promoter;

   (b) against The Healthy Retirement Group Inc. (**HRG**), Sunset Creek Resources Inc. (**Sunset**) and 1826487 Alberta Ltd. (**182 Alberta**) that:

   until the later of February 27, 2038 or the date on which the administrative penalty ordered against Currey in paragraph 94 of the ASC Order has been paid in full:

   i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities or derivatives by HRG, Sunset and 182 Alberta cease;

ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by HRG, Sunset and 182 Alberta cease;

iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to HRG, Sunset or 182 Alberta; and

iv. pursuant to paragraph 8.5 of subsection 127(1) of the Act, HRG be prohibited from becoming or acting as a registrant, including an investment fund manager; and

(c) such other order or orders as the Commission considers appropriate.

B. FACTS

Staff make the following allegations of fact:

3. Currey, HRG, Sunset and 182 Alberta (the **Respondents**) are subject to the ASC Order, which imposes sanctions, conditions, restrictions or requirements upon them.

4. In its findings on liability dated February 27, 2018 (the **Findings**) a panel of the ASC (the **ASC Panel**) found that the Respondents engaged in unregistered dealing and advising, without any exemption to do so, contrary to sections 75(1)(a) and 75(1)(b), respectively, of the Alberta *Securities Act*, RSA 2000 c S-4 (the **Alberta Act**). Further, the ASC Panel found that the Respondents perpetrated a fraud on investors in relation to securities of Sunset and 182 Alberta, contrary to section 93(b) of the Alberta Act.

(i) The ASC Proceedings

Statement of Admissions and Joint Submission on Sanction

5. During the course of the ASC proceedings, the Respondents and ASC Staff entered into a Statement of Admissions and Joint Submission on Sanction (the **Statement**). The Respondents admitted therein that they had engaged in fraud and unregistered dealing, as alleged by ASC Staff. Currey and HRG admitted that they had engaged in unregistered advising, as alleged by ASC Staff. A summary of the Statement and the ASC Panel's Findings is set out below.

Background

6. The conduct for which the Respondents were sanctioned occurred between approximately December 2013 and October 2015 (the **Material Time**).

7. As of the date of the Findings, Currey was a resident of Calgary, Alberta. Currey was registered as an exempt market dealer with the ASC for a brief period in 2011, but was not registered with the ASC during the Material Time.

8. Currey was the founder, guiding mind, and sole director, shareholder and employee of each of the three corporate Respondents, HRG, Sunset and 182 Alberta. In the Statement, Currey admitted to authorizing, permitting or acquiescing in breaches of the Alberta Act by HRG, Sunset and 182 Alberta.

9. HRG was incorporated in Alberta in January 2008, and carried on business in Calgary. Its business ostensibly involved insurance sales and was Currey's primary marketing vehicle, engaging in the business of trading and advising in securities. HRG was not registered with the ASC during the Material Time.

10. Sunset was incorporated in Alberta in November 2013, and carried on business in Calgary. Currey operated Sunset as an investment vehicle. Sunset distributed debentures or other securities in Sunset, the proceeds of which were purportedly intended to fund investments in resource development companies. Sunset was not registered with the ASC during the Material Time.

11. 182 Alberta was incorporated in Alberta in June 2014, and carried on business in Calgary. Currey operated 182 Alberta as an investment vehicle. 182 Alberta distributed debentures or other securities in 182 Alberta, the proceeds of which were purportedly intended to fund real estate purchases and other unspecified investments. 182 Alberta was not registered with the ASC during the Material Time.

12. During the Material Time, Currey and HRG used Sunset and 182 Alberta to raise approximately $3.2 million from the sale of securities, including promissory notes and debentures.

13. Sunset and 182 Alberta investors were told that their funds would be directed to specific investments that were not high risk, and would provide them with a return. However, by June 2014, the Respondents used at least $695,200 for purposes other than those disclosed to investors, including payments to other investors and directing funds to HRG or Currey, for Currey's personal expenses and debt.

ASC Findings - Conclusions

14. In its Findings, the ASC Panel concluded, consistent with the Statement, that:

(a) the Respondents engaged in unregistered dealing, without any exemption to do so, contrary to section 75(1)(a) of the Alberta Act;

(b) Currey and HRG engaged in unregistered advising, without any exemption to do so, contrary to section 75(1)(b) of the Alberta Act; and

(c) the Respondents perpetrated a fraud on investors in relation to securities of Sunset and 182 Alberta, contrary to section 93(b) of the Alberta Act.

(ii) The ASC Order

15. The ASC Order imposed the following sanctions, conditions, restrictions or requirements upon the Respondents:

Market-Access Bans

(a) under s. 198(1)(d) of the Alberta Act, Currey must immediately resign all positions he holds as a director or officer of any issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system;

(b) for a period of 20 years from the date of the ASC Order or until the administrative penalty set out below is paid in full, whichever is the later:

i. under s. 198(1)(b) of the Alberta Act, the Respondents must cease trading in or purchasing any securities or derivatives, except that the ASC Order does not preclude Currey from trading in or purchasing securities through a registrant (who has first been given a copy of the ASC Order) in registered accounts or tax-free savings accounts maintained with that registrant for the benefit of one or more of himself, his spouse or his dependent children;

ii. under s. 198(1)(c) of the Alberta Act, all of the exemptions contained in Alberta securities laws do not apply to the Respondents;

iii. under s. 198(1)(e) of the Alberta Act, Currey is prohibited from becoming or acting as a director or officer (or both) of any issuer (or other person or company that is authorized to issue securities), registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system, except that the ASC Order does not preclude Currey from becoming or acting as a director or officer (or both) of an issuer that is wholly owned by himself, his spouse, his parents, his siblings or his children, and which does not issue or propose to issue securities to the public;

iv. under s. 198(1)(e.1) of the Alberta Act, Currey and HRG are prohibited from advising in securities or derivatives;

v. under s. 198(1)(e.2) of the Alberta Act, Currey is prohibited from becoming or acting as a registrant, investment fund manager or promoter; and

vi. under s. 198(1)(e.3) of the Alberta Act, Currey is prohibited from acting in a management or consultative capacity in connection with activities in the securities market;

Disgorgement

(c) under s. 198(1)(i) of the Alberta Act, Currey must pay to the ASC $120,200 obtained as a result of his non-compliance with Alberta securities laws;

Administrative Penalty

(d) under s. 199 of the Alberta Act, Currey must pay to the ASC an administrative penalty of $200,000; and

Cost Recovery

(e) under s. 202 of the Alberta Act, Currey must pay to the ASC $25,000 of the costs of the ASC's investigation and hearing.

C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

16. The Respondents are subject to an order of the ASC imposing sanctions, conditions, restrictions or requirements upon them.

17. Pursuant to paragraph 4 of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company may form the basis for an order in the public interest made under subsection 127(1) of the Act.

18. Staff allege that it is in the public interest to make an order against the Respondents.

19. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

DATED at Toronto this 13th day of August, 2018.

1.5 Notices from the Office of the Secretary

1.5.1 Brian Michael Sutton and Investment Industry Regulatory Organization of Canada

FOR IMMEDIATE RELEASE
August 15, 2018

BRIAN MICHAEL SUTTON AND
INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA,
File Nos. 2017-37 and 2018-10

TORONTO – The Commission issued its Reasons and Decision and an Order in the above named matters.

A copy of the Reasons and Decision and Order dated August 14, 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)

1.5.2 Roy Ping Bai and RBP Consulting

FOR IMMEDIATE RELEASE
August 15, 2018

ROY PING BAI (aka PING BAI) and
RBP CONSULTING,
File No. 2018-46

TORONTO – The Office of the Secretary issued a Notice of Hearing pursuant to Subsections 127(1) and 127(10) of the *Securities Act*.

A copy of the Notice of Hearing dated August 15, 2018 and Statement of Allegations dated August 13, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.3 Vincent George Byrne

FOR IMMEDIATE RELEASE
August 15, 2018

VINCENT GEORGE BYRNE,
File No. 2018-47

TORONTO – The Office of the Secretary issued a Notice of Hearing pursuant to Subsections 127(1) and 127(10) of the Securities Act.

A copy of the Notice of Hearing dated August 15, 2018 and Statement of Allegations dated August 13, 2018 are available at www.osc.gov.on.ca.

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GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.4 Jason Michael Currey et al.

FOR IMMEDIATE RELEASE
August 15, 2018

JASON MICHAEL CURREY,
THE HEALTHY RETIREMENT GROUP INC.,
SUNSET CREEK RESOURCES INC. and
1826487 ALBERTA LTD.,
File No. 2018-48

TORONTO – The Office of the Secretary issued a Notice of Hearing pursuant to Subsections 127(1) and 127(10) of the Securities Act.

A copy of the Notice of Hearing dated August 15, 2018 and Statement of Allegations dated August 13, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Brookfield Renewable Partners L.P.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer requires relief from the requirement in Part 8 of National Instrument 51-102 Continuous Disclosure Obligations to file a business acquisition report – Acquisition is insignificant applying the asset and investment tests – Applying the profit or loss test produces an anomalous result because the significance of the acquisition under this test is disproportionate to its significance on an objective basis in comparison to the results of the other significance tests and from a practical, commercial and financial perspective – Issuer has provided additional measures that demonstrate the insignificance of the acquisition to the issuer and that are generally consistent with the results when applying the asset and investment tests.

Applicable Legislative Provisions

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.
National Instrument 51-102 Continuous Disclosure Obligations, ss. 8.3, 13.1.

August 14, 2018

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
BROOKFIELD RENEWABLE PARTNERS L.P.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in the Jurisdiction (the **Decision Maker**) has received an application (the **Application**) from the Filer for a decision (the **Exemption Sought**) under the securities legislation of the Jurisdiction (the Legislation) for relief from the requirement under Part 8 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) to file a business acquisition report (a **BAR**) in connection with the acquisition of an approximate 14% interest in TerraForm Power Inc. (**TerraForm Power**) on June 11, 2018 by the Filer and its institutional partners (the **2018 TerraForm Power Investment**).

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

(a) the Ontario Securities Commission is the principal regulator (the **Principal Regulator**) for the Application; and

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

Interpretation

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

Representations

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

The Filer

1. The Filer is an exempted limited partnership existing under the laws of Bermuda. The Filer was established on June 27, 2011 under the provisions of the *Exempted Partnerships Act 1992* of Bermuda and the *Limited Partnership Act 1883* of Bermuda. The Filer's head and registered office is located at 73 Front Street, 5th Floor, Hamilton, HM 12, Bermuda.

2. The Filer is a reporting issuer (or the equivalent thereof) under the securities legislation of each of the provinces and territories of Canada. The Filer is not in default of securities legislation in any jurisdiction of Canada.

The 2018 TerraForm Power Investment

3. On June 11, 2018, the Filer and its institutional partners announced the completion of the 2018 TerraForm Power Investment. After giving effect to the 2018 TerraForm Power Investment, the Filer and its institutional partners hold an approximate 65% interest in TerraForm Power and the Filer holds an approximate 30% proportionate interest

in TerraForm Power (which includes the Filer's 15.7% proportionate interest held prior to the 2018 TerraForm Power Investment).

Application of the Significance Tests

4. Under Part 8 of NI 51-102, the Filer is required to file a BAR for any completed business acquisition that is determined to be significant based on the acquisition satisfying any of the three significance tests set out in section 8.3(2) of NI 51-102.

5. The 2018 TerraForm Power Investment is not a significant acquisition under the asset test in section 8.3(2)(a) of NI 51-102 as the Filer's incremental proportionate share of the consolidated assets of TerraForm Power as at December 31, 2017 represented only approximately 3.0% of the Filer's total assets as at December 31, 2017.

6. The 2018 TerraForm Power Investment is not a significant acquisition under the investment test in section 8.3(2)(b) of NI 51-102 as the Filer's completed investments in and advances to TerraForm Power pursuant to the 2018 TerraForm Power Investment represented only approximately 1.4% of the Filer's total assets as at December 31, 2017.

7. The 2018 TerraForm Power Investment is, however, a significant acquisition under the profit or loss test in section 8.3(2)(c) of NI 51-102 as the Filer's incremental proportionate share of the consolidated specified profit or loss of TerraForm Power for the twelve months ended December 31, 2017 represented approximately 256.4% of the absolute value of the Filer's proportionate interest in its consolidated specified profit or loss for the twelve months ended December 31, 2017.

8. The application of the profit or loss test leads to an anomalous result in that the significance of the 2018 TerraForm Power Investment is exaggerated out of proportion to its significance on an objective basis and in comparison to the results of the asset test and the investment test.

9. For the purposes of completing its quantitative analysis of the asset test, investment test and profit or loss test, the Filer utilized financial statements of TerraForm Power which were prepared in accordance with U.S. generally accepted accounting principles and the Filer's financial statements which were prepared in accordance with International Financial Reporting Standards (IFRS). The differences between U.S. generally accepted accounting principles and IFRS would not be significant to the quantitative analysis presented in the Application.

The Significance of the 2018 TerraForm Power Investment from a Practical, Commercial and Financial Perspective

10. The Filer does not believe (nor did it at the time that it completed the 2018 TerraForm Power Investment) that the 2018 TerraForm Power Investment is significant to it from a practical, commercial and financial perspective.

11. The Filer has provided the principal regulator with additional operating metrics that demonstrate the non-significance of the 2018 TerraForm Power Investment to the Filer. The Filer presented operating metrics that compared generation (in GWh), generation capacity (in MW) and generation capacity (in MW in North America only) of the Filer's incremental proportionate interest in TerraForm Power to that of the Filer, and the results of those metrics are generally consistent with the results of the asset test and the investment test.

12. The Filer is of the view that the asset test, the investment test and these alternative financial and operating metrics much more closely reflect the actual significance of the 2018 TerraForm Power Investment to the Filer from a practical, commercial and financial perspective.

Decision

The Decision Maker 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 Maker under the Legislation is that the Exemption Sought is granted.

"Michael Balter"
Manager, Corporate Finance

2.1.2 EHP Funds Inc. and Edgehill Partners

Headnote

Under paragraph 4.1(1)(b) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations a registered firm must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if the individual is registered as a dealing, advising or associate advising representative of another registered firm. The Filers are affiliated entities and have valid business reasons for the individuals to be registered with both firms. The Filers have policies in place to handle potential conflicts of interest. The Filers are exempted from the prohibition.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1 and 15.1.

August 16, 2018

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

AND

IN THE MATTER OF
EHP FUNDS INC.
(EFI)

AND

EDGEHILL PARTNERS
(EP, and together with EFI, the Filers)

DECISION

Background

The Ontario Securities Commission (the **Commission**) has received an application from the Filers for a decision under the securities legislation of Ontario (the **Legislation**) pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) for relief from paragraph 4.1(1)(b) of NI 31-103 (the **Dual Registration Restriction**) to permit Mr. Jason Mann, Mr. Ian Fairbrother and Mr. James Park (the **Advising Representatives**) to be registered as advising representatives of each of EP and EFI (the **Relief Sought**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* 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:

Background

1. EP is registered as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador; an adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer in all provinces other than Prince Edward Island and Nova Scotia. The head office of EP is located in Toronto, Ontario.

2. EFI is seeking registration as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador and as an adviser in the category of portfolio manager in Ontario. The head office of EFI is located in Toronto, Ontario.

3. Since the Filers are under common control, each of EP and EFI is an affiliate of the other and the Filers are affiliated registrants.

4. Mr. Mann has been registered in an advisory capacity with EP since May 2010. Mr. Mann serves as the President and Co-Chief Executive Officer (**Co-CEO**) of EP and has 16 years of investment experience, including five years as the Chief Investment Officer (**CIO**) of EP where he manages five alternative strategy funds. In Mr. Mann's role as CIO, he is the primary individual responsible for the investment process and implementation of the offerings of the EP alternative strategy funds and will have similar responsibilities in respect of the investment funds to be advised by EFI. In Mr. Mann's role of Co-CEO and Ultimate Designated Person (**UDP**) of EP, he is ultimately responsible for the direction of the firm as it relates to product offerings, distribution, and compliance.

5. Mr. Fairbrother has been registered in an advisory capacity with EP since May 2010. Mr. Fairbrother has 24 years of investment industry experience, including five years at EP as a portfolio manager of five alternative strategy funds with similar mandates. In Mr. Fairbrother's role as portfolio manager at EP, he is a key member of the team responsible for strategy development and implementation, as well as part of the management team that determines the overall strategic direction of the firm. Mr. Fairbrother is also the primary partner responsible for developing and managing client relationships.

6. Mr. Park has been registered in an advisory capacity with EP since August 2015. Mr. Park has nine years of investment industry experience, including three years as Chief Risk Officer of EP where he is a portfolio manager of five alternative strategy funds. In Mr. Park's role as Chief Risk

Officer, he is the primary individual responsible for measuring and enforcing EP's risk policies as it relates to the strategies of the EP alternative strategy funds. In Mr. Park's role as portfolio manager, he is a key member of the team responsible for strategy development and implementation.

7. EP manages and advises a family of privately offered investment funds (the EHP Private Funds) that are distributed pursuant to available exemptions from the prospectus requirements under applicable securities laws. The EHP Private Funds are only available to purchasers that qualify as "accredited investors" (as such term is defined in National Instrument 45-106 *Prospectus Exemptions*) or are eligible to rely on other exemptions from the prospectus requirements. In its capacity as an exempt market dealer, EP is permitted to distribute securities of the EHP Private Funds for which it acts as the manager in the jurisdictions that it is registered.

8. EFI is currently seeking registration in the categories of investment fund manager and portfolio manager. EFI was established to manage and advise the EHP family of mutual funds that will be offered by way of a simplified prospectus (the **EHP Public Funds**) and subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**). Mutual funds that are subject to NI 81-102 are required to comply with various investment restrictions and operational requirements that do not apply to privately offered funds. The EHP Public Funds are available to retail purchasers without the need to rely on any exemptions from the prospectus requirements. In addition, exempt market dealers are prohibited from participating in the distribution of securities offered under a prospectus.

9. Due to the fundamental differences in the manner in which privately offered investment funds and publicly offered mutual funds are regulated, operated and distributed, separating the management and advisory functions between EP and EFI with respect to the EHP Private Funds and the EHP Public Funds, respectively, is the preferable organizational structure for the business.

10. The Filers will have different client bases.

11. Dual registration of the Advising Representatives with EFI is being requested to permit the Advising Representatives to provide portfolio management services to the EHP Public Funds and would also allow the Advising Representatives to continue to provide investment management services to EP clients including the EHP Private Funds. The Advising Representatives would continue to advise any current or future clients of EP strictly pursuant to their EP registrations.

12. The Advising Representatives are familiar with the business model of each of EP and EFI. The role of the Advising Representatives will be to support the business activities and interests of both EP and EFI.

13. The Advising Representatives will be subject to supervision by, and the applicable compliance requirements of, both Filers. The Filers' Chief Compliance Officer will ensure that the Advising Representatives have sufficient time and resources to adequately serve each Filer and their respective clients.

14. The Filers do not expect that the dual registration of the Advising Representatives will create significant additional work and are confident that the advising activities and services provided to the respective clients of the Filers will not interfere with their responsibilities to either Filer.

15. EP and EFI are affiliates and accordingly, the dual registration of the Advising Representatives will not give rise to the conflicts of interest that may be present in a similar arrangement involving unrelated, arm's length firms. The interests of the Filers are aligned in connection with the appropriate management and administration of the EHP Private Funds and the EHP Public Funds, and the roles of the Advising Representatives. This will mitigate the risks of conflicts of interest arising from dual registration.

16. The Filers have adequate policies and procedures in place to address any potential conflicts of interest that may arise as a result of the dual registration of the Advising Representatives and will be able to appropriately deal with any such conflicts, should they arise.

17. The Advising Representatives will be under the supervision of both Filers and are subject to all policies and procedures addressing conflicts of interest that may arise as a result of the dual registration.

18. The Filers have jointly agreed upon a common allocation policy, to ensure that investment opportunities suitable for the EHP Private Funds and the EHP Public Funds are allocated between them fairly.

19. The relationship between EP and EFI, and the fact that the Advising Representatives are dually registered with both EP and EFI, is fully disclosed in writing to clients of each of them that deal with such Advising Representative.

20. The Advising Representatives will act in the best interest of all clients of each Filer and will deal fairly, honestly and in good faith with such clients.

21. Each of the Filers is subject to the restrictions and requirements contained in Part 13 of NI 31-103.

22. The Filers are not in default of any requirement of securities legislation in any jurisdiction of Canada.

23. For the reasons provided above, the Filers respectfully submits that it would not be prejudicial to the public interest to grant the Requested Relief.

Decision

The Commission is satisfied that the decision meets the test set out in the Legislation for the Commission to make the decision.

The decision of the Commission under the Legislation is that the Relief Sought is granted on the following conditions:

(a) Each Advising Representative is subject to supervision by, and the applicable compliance requirements of, both Filers;

(b) The Chief Compliance Officer and Ultimate Designated Person of each Filer ensures that each Advising Representative has sufficient time and resources to adequately serve the respective Filer and its clients;

(c) Each Filer has adequate policies and procedures in place to address any potential conflicts of interest that may arise as a result of the dual registration of the Advising Representatives, and deal appropriately with any such conflicts; and

(d) The relationship between EP and EFI, and the fact that the Advising Representatives are dually registered with both EP and EFI, is fully disclosed in writing to clients of each of them that deal with such Advising Representative.

"Pat Chaukos"
Compliance and Registrant Regulation
Ontario Securities Commission

2.1.3 Global Innovation Dividend Fund

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Closed-end investment trust exempt from the prospectus requirement in connection with the sale of units redeemed or purchased from existing security holders pursuant to purchase or redemption programs, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.A. 2000, c.S-4, sections 110 and 14.

Citation: Re Global Innovation Dividend Fund, 2018 ABASC 93

Date: June 5, 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
GLOBAL INNOVATION DIVIDEND FUND
(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 (the **Exemption Sought**) under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirement to file a prospectus (the **Prospectus Requirement**) in connection with the distribution of units of the Filer (the **Units**) that have been repurchased by the Filer pursuant to the Purchase Programs (as defined below) or redeemed by the Filer pursuant to the Redemption Programs (as defined below) in the period prior to a Conversion (as defined below).

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 section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended

to be relied upon in British Columbia, Saskatchewan, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Northwest Territories, Nunavut and Yukon; 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

Terms defined in National Instrument 14-101 *Definitions*, National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) or MI 11-102 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

1. The Filer is an unincorporated closed-end investment trust established under the laws of Alberta.

2. The Filer is not considered to be a "mutual fund" as defined in the Legislation because the holders of Units are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Filer.

3. The Filer is a reporting issuer in each of the provinces of Canada and is not in default of securities legislation in any jurisdiction of Canada.

4. The Units are listed and posted for trading on the Toronto Stock Exchange (the **TSX**). As of March 23, 2018, the Filer had 8,000,000 Units issued and outstanding.

5. Middlefield Limited (the **Manager**), which is incorporated under the Business Corporations Act (Alberta), is the manager and the trustee of the Filer.

6. Subject to applicable law, which may require approval from the holders of the Units (the **Unitholders**) or regulatory approval, the Manager may (a) merge or otherwise combine or consolidate the Filer with any one or more other funds managed by the Manager or an affiliate thereof or (b) where it determines that to do so would be in the best interest of Unitholders, merge or convert the Filer into a listed exchange-traded mutual fund, an open-end mutual fund or a split trust fund (each a **Conversion**).

Mandatory Purchase Program

7. The constating document of the Filer provides that the Filer, subject to certain exceptions and compliance with any applicable regulatory requirements, is obligated to purchase (the **Mandatory Purchase Program**) any Units offered on the TSX or such other exchange or market on which the Units are then listed and primarily traded (the **Exchange**) if, at any time after the closing of the Filer's initial public offering, the price at which Units are then offered for sale on the Exchange is less than 95% of the net asset value of the Filer per Unit, provided that the maximum number of Units that the Filer is required to purchase pursuant to the Mandatory Purchase Program in any calendar quarter is 1.25% of the number of Units outstanding at the beginning of each such period.

Discretionary Purchase Program

8. The constating document of the Filer also provides that the Filer, subject to applicable regulatory requirements and limitations, has the right, but not the obligation, exercisable in its sole discretion at any time, to purchase outstanding Units in the market at prevailing market prices (the **Discretionary Purchase Program** and together with the Mandatory Purchase Program, the **Purchase Programs**).

Monthly Redemptions

9. Subject to the Filer's right to suspend redemptions, Units may be surrendered for redemption (the **Monthly Redemption Program**) on the second last business day of each month in order to be redeemed at a redemption price per Unit equal to the Monthly Redemption Price per Unit (as defined in the Filer's long form prospectus dated February 22, 2018 (the **Prospectus**)).

Annual Redemptions

10. Subject to the Filer's right to suspend redemptions, Units may be surrendered for redemption (the **Annual Redemption Program**) on the second last business day of September in each year commencing in 2019 at a redemption price per Unit equal to the Redemption Price per Unit (as defined in the Prospectus).

Additional Redemptions

11. At the sole discretion of the Manager and subject to the receipt of any necessary regulatory approvals, the Manager may from time to time allow additional redemptions of Units (**Additional Redemptions** and collectively with the Monthly Redemption Program and the Annual Redemption Program, the **Redemption Programs**), provided that the holder thereof shall be required to use the

full amount received on such redemption to purchase treasury securities of a new or existing fund promoted by the Manager or an affiliate thereof then being offered to the public by prospectus.

Resale of Repurchased Units or Redeemed Units

12. Purchases of Units made by the Filer under the Purchase Programs or Redemption Programs will be made pursuant to exemptions from the issuer bid requirements of applicable securities legislation.

13. The Filer wishes to resell, in its sole discretion and at its option, through one or more securities dealers and through the facilities of the Exchange, the Units repurchased by the Filer pursuant to the Purchase Programs (**Repurchased Units**), or redeemed pursuant to the Redemption Programs (**Redeemed Units**).

14. All Repurchased Units and Redeemed Units will be held by the Filer for a period of four months after the repurchase or redemption thereof by the Filer (the **Holding Period**), prior to any resale.

15. The resale of Repurchased Units and Redeemed Units will be effected in such a manner as not to have a significant impact on the market price of the Units.

16. Repurchased Units and Redeemed Units that the Filer does not resell within 12 months after the Holding Period (that is, within 16 months after the date of repurchase or redemption, as applicable) will be cancelled by the Filer.

17. During any calendar year, the Filer will not resell an aggregate number of Repurchased Units and Redeemed Units that is greater than 5% of the number of Units outstanding at the beginning of such calendar year.

18. Prospective purchasers of Repurchased Units or Redeemed Units will have access to the Filer's continuous disclosure, which will be filed on SEDAR.

19. The Legislation provides that a trade by or on behalf of an issuer in previously issued securities of that issuer that have been purchased by that issuer is a distribution and, as such, is subject to the Prospectus Requirement. In the absence of the Exemption Sought, any sale by the Filer of Repurchased Units or Redeemed Units would be a distribution that is subject to the Prospectus Requirement.

Decision

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

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

(a) the Repurchased Units and Redeemed Units are otherwise sold by the Filer in compliance with applicable securities legislation, and through the facilities of and in accordance with the regulations and policies of the Exchange;

(b) the Filer complies with conditions 1 through 5 of section 2.8(2) of National Instrument 45-102 Resale of Securities as if it were a selling security holder thereunder; and

(c) the Filer complies with the representations made in paragraphs 15, 16 and 17 above.

For the Commission:

"Tom Cotter"
Vice-Chair

"Kari Horn"
Vice-Chair

2.1.4 CIBC Asset Management Inc. and CIBC Multi-Asset Absolute Return Strategy

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from NI 81-104 – requirement to maintain permanent seed capital in a commodity pool – relief granted to allow commodity pool to comply with seed capital requirements applicable to all other mutual funds under NI 81-102.

Applicable Legislative Provisions

National Instrument 81-104 Commodity Pools, sections 3.1, 3.2, and 10.1.
National Instrument 81-102 Investment Funds, section 3.1.

August 10, 2018

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
CIBC ASSET MANAGEMENT INC.
(the Filer)

AND

IN THE MATTER OF
CIBC MULTI-ASSET ABSOLUTE RETURN STRATEGY
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Fund for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) granting relief (the **Exemption Sought**) from section 3.2 of National Instrument 81-104 *Commodity Pools* (**NI 81-104**) to permit the Filer to comply with the seed capital requirements in subsections 3.1(1) and 3.1(2) of National Instrument 81-102 *Investment Funds* (**NI 81-102**).

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* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined herein. Capitalized terms used in this decision have the following meanings:

Seed Investor means, in respect of the Fund, each manager, portfolio adviser, promoter or sponsor, or any of their respective partners, directors, officers or securityholders, who invests in Units of the Fund before the time of filing the final prospectus of the Fund.

Outside Investor means each investor, other than a Seed Investor, who invests in Units of the Fund.

Units means Series A Units, Series F Units, Series O Units and Series S Units of the Fund.

Representations

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

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

2. The Filer is registered as an investment fund manager in Ontario, Québec and Newfoundland and Labrador, as a portfolio manager in all Jurisdictions, as a commodity trading manager in Ontario, and as a derivatives portfolio manager in Québec.

3. The Filer will be the manager, portfolio advisor and trustee of the Fund.

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

5. The Fund will be a mutual fund subject to NI 81-102 and a commodity pool, as such term is defined under NI 81-104, in that the Fund will adopt fundamental investment objectives that permit the Fund to invest, directly or indirectly, in specified derivatives in a manner that is not permitted under NI 81-102.

6. The Fund filed in accordance with National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) a preliminary prospectus with respect to the proposed offering of Units of the Fund under SEDAR Project No 2786166.

7. Upon the filing of the final prospectus of the Fund, prepared in accordance with NI 41-101 (the **Final Prospectus**), and obtaining a receipt therefor, the Units will be qualified for distribution and the Fund will be a reporting issuer in each of the Jurisdictions.

8. Pursuant to section 3.2(1) of NI 81-104, the Final Prospectus may not be filed unless:

   (a) investments totalling at least $50,000 in Units have been made, and those Units are beneficially owned, before the time of filing, by Seed Investors; and

   (b) the Final Prospectus states that the Fund will not issue Units to Outside Investors until the Fund has received and accepted subscriptions aggregating not less than $500,000 from Outside Investors.

9. Pursuant to section 3.2(2) of NI 81-104, a Seed Investor may redeem, repurchase or return its initial investment in Units only if: (i) Units issued to Seed Investors that had an aggregate issue price of $50,000 remain outstanding and at least $50,000 invested by Seed Investors remains invested in the Fund, or (ii) the redemption, repurchase or return is effected as part of the dissolution or termination of the Fund (the **Permanent Seed Capital Requirement**).

10. The Filer understands that the policy rationale behind the Permanent Seed Capital Requirement under NI 81-104 is to encourage promoters to ensure that the commodity pool is being properly run for the benefit of its investors by requiring that the promoter of a commodity pool, or a related party, will itself be an investor in the commodity pool at all times.

11. The Fund will be properly managed for the benefit of investors for the following reasons:

   (a) as trustee of the Fund, the Filer will be obliged in accordance with the terms of the declaration of trust governing the Fund, and in accordance with its fiduciary duty, to act as a reasonably prudent person and to manage the Fund in the best interests of its unitholders; and

   (b) as manager of the Fund, the Filer will be obliged in accordance with applicable securities law to act honestly and in good faith, and in the best interests of the Fund, and to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

12. Having regard to the fiduciary obligations and standard of care applicable to the Filer as set out in paragraph 11 above, requiring the Filer (or another Seed Investor) to maintain $50,000 in the Fund at all times will not change how Filer performs it duties in managing the Fund.

13. The Filer is an experienced investment fund manager with a past track record of managing many other mutual funds governed by NI 81-102 and will manage the Fund in accordance will all applicable securities legislation in Canada and its contractual requirements.

14. On September 22, 2016, the Canadian Securities Administrators (the CSA) published proposed amendments to NI 81-102, NI 81-104 and related instruments (the **Alternative Funds Proposal**). If adopted, the Alternative Funds Proposal would repeal NI 81-104 and, among other changes, impose on commodity pools the initial investment requirements applicable to mutual funds as contained in section 3.1 of NI 81-102, such that:

   (a) the Final Prospectus may be filed if either:

      (i) the Filer receives investments totalling at least $150,000 in Units, those Units being beneficially owned, before the time of filing, by Seed Investors, or

      (ii) the Final Prospectus states that the Fund will not issue Units to Outside Investors until the Fund has received and accepted subscriptions aggregating not less than $500,000 from Outside Investors; and

   (b) a Seed Investor may redeem its initial investment in Units only if subscriptions aggregating not less than $500,000 have been received from Outside Investors and accepted by the Fund.

15. In keeping with the Alternative Funds Proposal and the initial investment requirements in section 3.1 of NI 81-102, the Filer wishes to seed the Fund by investing an aggregate of at least $150,000 in the Fund before filing the Final Prospectus, and wishes to be able to redeem such amount once the Fund has received and accepted subscriptions aggregating not less than $500,000 from Outside Investors.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

(a) the Filer complies with the seed capital requirements in subsections 3.1(1) and 3.1(2) of NI 81-102 in respect of the Fund; and

(b) the basis on which a Seed Investor may redeem any of its initial investment in the Fund is disclosed in the Final Prospectus.

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

2.1.5 Minto Apartment Real Estate Investment Trust

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from provisions in section 8.4 of National Instrument 51-102Continuous Disclosure Obligations (NI 51-102) permitting the filer to include alternative financial disclosure in the business acquisition report pursuant to section 13.1 of NI 51-102 – filer acquired three properties for which it cannot obtain certain historical financial information – missing financial information is not material.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, ss. 8.4 and 13.1.

August 9, 2018

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
MINTO APARTMENT REAL ESTATE
INVESTMENT TRUST
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer (the **Application**) for a decision (the **Exemption Sought**) under the securities legislation of the Jurisdiction (the **Legislation**) for relief pursuant to Part 13 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) from certain requirements in Item 3 of Form 51-102F4 and Part 8 of NI 51-102 in respect of a business acquisition report (the **BAR**) required to be filed by the Filer in connection with the completion on July 3, 2018 of the initial public offering (the **Offering**) of 13,794,000 trust units of the Filer, and the indirect acquisition (the **Acquisition**) of a portfolio of 22 multi-residential rental properties located in Canada (the **Initial Properties**), so that the BAR is not required to include audited financial information in respect of the following Initial Properties (collectively, the **Exempt Properties**):

- York House, The Lancaster House and Hi-Level Place, in Edmonton, Alberta (all of which were

acquired as part of a single transaction by Minto Properties Inc. (**MPI**) in December 2016),

for the periods prior to the date they were acquired by MPI, which was the vendor of the Initial Properties to the Filer in connection with the Offering. The Filer also acquired as part of the Initial Properties, The Laurier, in Calgary, Alberta (the **Laurier**), though relief is not specifically required for this property, as it was acquired by MPI in 2015.

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

(a) the Ontario Securities Commission is the principal regulator for the Application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Nunavut, the Northwest Territories and Yukon Territory.

Interpretation

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

Representations

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

1. The Filer is an open-ended real estate investment trust established under the laws of the Province of Ontario pursuant to a declaration of trust dated April 24, 2018, as amended and restated on June 27, 2018, as amended July 10, 2018.

2. The Filer's head office is located at 200 – 180 Kent Street, Ottawa, Ontario K1P 0B6.

3. The Filer is a reporting issuer in each of the provinces and territories of Canada and is not in default of securities legislation in any jurisdiction of Canada.

4. The Filer's trust units are listed and posted for trading on the Toronto Stock Exchange under the symbol "MI.UN".

5. MPI is currently a related party of the Filer, and intends to maintain a significant ownership position in the Filer over the long-term. A wholly-owned subsidiary of MPI (the **Retained Interest Holder**) currently holds an approximate 56.8% interest in the Filer on a fully diluted basis, assuming the exchange of all class B units of Minto Apartment Limited Partnership held by the Retained Interest Holder for trust units of the Filer on a one-for-one basis.

6. MPI also benefits from the rights afforded to the Retained Interest Holder under the Filer's Investor Rights Agreement, which, among other things, provides nomination rights to the Retained Interest Holder.

7. On July 3, 2018, the Filer completed the Offering of 13,794,000 trust units of the Filer pursuant to a long form prospectus, filed June 22, 2018 (the **Prospectus**).

8. In connection with the closing of the Offering, the Filer indirectly acquired the Initial Properties.

9. Prior to the closing of the Offering, MPI indirectly owned all of the Initial Properties, including the Exempt Properties.

10. The Exempt Properties were acquired by MPI in 2016.

11. Audited financial statements of the Exempt Properties for periods prior to their acquisition by MPI, do not exist and the Filer is unable to produce such financial statements.

12. The Filer proposes to exclude the following financial statements from the BAR (collectively, the **Excluded Financial Statements**):

- Audited financial statements of the Exempt Properties for periods prior to their acquisition by MPI; and
- Audited financial statements of the Laurier for periods prior to their acquisition by MPI.

13. The Filer proposes to include (or incorporate by reference) the following financial statements in the BAR (collectively, the **Proposed Financial Statements**). All financial statements described below have been prepared in accordance with IFRS.

Filer

- Unaudited pro forma consolidated financial statements as at and for the three month period ended March 31, 2018 and for the year ended December 31, 2017.

Initial Properties (other than the Excluded Financial Statements)

- Audited combined carve-out financial statements for the years ended December 31, 2017, 2016 and 2015.

- Unaudited condensed combined carve-out financial statements for the three months ended March 31, 2018 and 2017.

14. The Excluded Financial Statements that are missing from the BAR are not material. The Exempt Properties represent an insignificant amount of the overall (a) number of suites, (b) aggregate fair market value, (c) NOI and (d) gross revenues, of the Initial Properties. The Exempt Properties will not be significant or otherwise material (individually or in the aggregate) to the Filer having regard to the overall size and value of the Filer's business and operations.

15. Prior to their acquisition by MPI, the Exempt Properties were owned and managed by different arm's length vendors. The Filer does not possess, does not have access to and is not entitled to obtain access to, sufficient financial information for the Exempt Properties for any period prior to acquisition by MPI.

16. Audited historical financial statements of the Exempt Properties were not relevant to MPI's decision to acquire the Exempt Properties in 2016. Given that such audited financial statements were not considered relevant to the investment decision made to acquire the Exempt Properties, the Filer does not believe that such financial statements are material to the investment decision to be made by a potential investor in the Filer, particularly when considered in light of the other financial information the Filer intends to provide in the BAR. The financial information the Filer intends to provide in the BAR is the same as that provided in the Prospectus, for which the Filer obtained similar relief from Item 32 of Form 41-101F1 *Information Required in a Prospectus*.

17. The Filer will also incorporate by reference into the BAR the financial forecast included in the Prospectus for the 12 months ended June 30, 2019. The forecast includes information with respect to all of the Initial Properties and is accompanied by a signed auditor's report with respect to the examination of the forecast made by the Filer's auditors.

18. The Filer will also incorporate by reference into the BAR the disclosure from the Prospectus of the aggregate market value of the Initial Properties on a portfolio basis based on the appraisals completed by an independent third party appraiser. A copy of the summary of such appraisal is available under the Filer's profile on SEDAR at www.sedar.com.

19. The Filer believes that the Proposed Financial Statements will provide sufficient historical information for an investor to make an informed decision regarding the Initial Properties as a portfolio.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that the BAR for the Acquisition includes (or incorporates by reference) all of the following:

1. The Proposed Financial Statements as set out in paragraph 13.

2. The financial forecast included in the Prospectus as set out in paragraph 17.

3. The description of the appraisal included in the Prospectus completed by a third party appraiser for the Initial Properties on a portfolio basis, as set out in paragraph 18.

"Sonny Randhawa"
Deputy Director, Corporate Finance
Ontario Securities Commission

2.1.6 Jarislowsky, Fraser Limited

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from related party transaction reporting requirements in s. 117 of theSecurities Act (Ontario) – monthly reporting not required provided that substantially similar disclosure is made in the annual and interim management reports on fund performance for each investment fund and that certain records of related party portfolio transactions are kept by the investment fund.

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, ch S.5, as amended, paras. 117(1)1, 3 and 4 and s. 117(2).

August 10, 2018

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO

AND

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

AND

IN THE MATTER OF
JARISLOWSKY, FRASER LIMITED
(the Filer)

DECISION

Background

The principal regulator in Ontario has received an application (the **Application**) from the Filer for a decision under the securities legislation of Ontario (the **Legislation**) exempting the Filer from the management company reporting requirements in the Legislation (the **Mutual Fund Conflict of Interest Reporting Requirements**) which require the Filer, or an affiliate to:

a. file a report of every transaction of purchase or sale of securities between the mutual fund and any related person or company;

b. file a report of every transaction of purchase and sale effected by the mutual fund through any related person or company with respect to which the related person or company receives a fee either from the mutual fund or from the other party to the transaction or from both; and

c. file a report of every transaction, other than an arrangement relating to insider trading in portfolio securities, in which the mutual fund is a joint participant with one or more of its related persons or companies;

in respect of the Funds (as defined below) (the **Requested Relief**).

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

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

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

Interpretation

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

In addition, the following terms have the following meanings:

(i) **BNS** means The Bank of Nova Scotia;

(ii) For the purposes of paragraphs 7, 8, 9, 11, 12 and 14, references to the **Filer** includes the Filer and its affiliates;

(iii) **Funds** means mutual funds which are reporting issuers and for which the Filer or an affiliate acts as portfolio manager from time to time, and **Fund** means one of them;

(iv) **NI 81-106** means National Instrument 81-106 Investment Fund Continuous Disclosure;

(v) **NI 81-107** means National Instrument 81-107 Independent Review Committee for Investment Funds; and

(vi) **Related Party** means Scotia Capital Inc. or other brokers or dealers that are subsidiaries or affiliates of BNS from time to time.

Representations

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

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act*, and its head office is in Montréal, Québec. The Filer is indirectly a wholly-owned subsidiary of BNS.

2. The Filer is registered as a portfolio manager in each of the Jurisdictions and as an investment fund manager in Ontario, Québec, Newfoundland and Labrador, Alberta and British Columbia.

3. Neither the Filer nor any of the Funds is in default of any securities legislation in any of the Jurisdictions.

4. The Funds are or will be mutual funds that are reporting issuers in each of the Jurisdictions.

5. Each Related Party is a "related person or company" to the Funds within the meaning of the Legislation because each Related Party is subsidiary or affiliate of BNS, the parent company of the Filer.

6. The Filer is or will be the portfolio manager of the Funds and accordingly is a "management company" or equivalent under the Legislation.

7. A Fund is or will be a "related person or company" in respect of another Fund and in respect of other investment funds and managed accounts managed by the Filer, as such term is defined in Section 106 of the Legislation.

8. Pursuant to Section 6.1 of NI 81-107 as well as exemptive relief granted to a Fund from time to time, the Fund is permitted to purchase or sell securities with another Fund.

9. The Filer has discretion to allocate the brokerage transactions of the Funds in any manner that it believes to be in the Funds' best interests. The Filer may from time to time allocate brokerage business of the Funds to a Related Party for which the Related Party may receive a fee. The Filer uses the same criteria in selecting all brokers, regardless of whether the broker is a Related Party.

10. The Filer, as portfolio manager to the Funds, may from time to time cause a Fund to participate as a joint participant with one or more other Funds in the purchase of securities under a distribution, including where a Related Party may act as an underwriter in connection with such offering.

11. In the absence of relief therefrom, the Mutual Fund Conflict of Interest Reporting Requirements would require the Filer to file, within 30 days of the end of the month in which each transaction occurs, a report of (i) any purchase or sale of securities between a Fund and another Fund or other Related Party (ii) any purchase or sale of securities by a Fund that is effected through a Related Party, in which that Related Party received a fee for such services, either from the Fund or another party to the transaction, and (iii) every transaction in which, by arrangement, a Fund, with one or more Funds or Related Parties, acts as a joint participant. The report in each case, would have to disclose the issuer of the securities purchased or sold, the class or designation of the securities, the amount or number of securities, the consideration, the name of the related person or company receiving a fee, the name of the person or company that paid the fee to the related person or company and the amount of the fee received by the related person or company.

12. Pursuant to NI 81-106, the Funds prepare and file interim and annual management reports of fund performance (each a **MRFP**) that disclose any transactions involving a Related Party, including the identity of that Related Party, the relationship to the Fund, the purpose of the transaction, the measurement basis used to determine the recorded amount, and any ongoing commitments to the related party.

13. It is costly and time consuming for the Filer to also provide the reports required by the Mutual Fund Conflict of Interest Reporting Requirements, which are substantially similar to the information required by NI 81-106 to be disclosed in the MRFPs, on a monthly and segregated basis for each Fund.

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 Relief is granted provided that:

(a) the annual and interim MRFP for each Fund disclose:

  (i) the name of the related person or company;

  (ii) the amount of fees paid to each related person or company;

  (iii) the person or company who paid the fees, if they were not paid by the Fund; and

(b) the records of portfolio transactions maintained by each Fund include, separately, for every portfolio transaction effected by the Fund through a related person or company:

  (i) the name of the related person or company;

  (ii) the amount of fees paid to the related person or company; and

  (iii) the person or company who paid the fees

"Mark Sandler"
Commissioner
Ontario Securities Commission

"Frances Kordyback"
Commissioner
Ontario Securities Commission

2.1.7 AGF Investments Inc. et al.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the requirement in s.3.2.01, NI 81-101 to deliver a fund facts document to investors for subsequent purchases of mutual fund securities made pursuant to automatic rebalancing services, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, sections 3.2.01 and 6.1.

August 13, 2018

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
AGF INVESTMENTS INC.
CI INVESTMENTS INC.
COUNSEL PORTFOLIO SERVICES INC.
FIDELITY INVESTMENTS CANADA ULC
FRANKLIN TEMPLETON INVESTMENTS CORP.
INVESCO CANADA LTD.
MACKENZIE FINANCIAL CORPORATION
MANULIFE ASSET MANAGEMENT LIMITED
NATIXIS INVESTMENT MANAGERS CANADA LP
SENTRY INVESTMENTS INC.
SUN LIFE GLOBAL INVESTMENTS (CANADA) INC.
(each a Filer, and collectively, the Filers)

AND

IN THE MATTER OF
ASSANTE CAPITAL MANAGEMENT LTD.
(the Representative Dealer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filers on behalf of the mutual funds that are or will be managed from time to time by the Filers or by a successor of such Filers (the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator exempting the Representative Dealer and all other registered dealers who trade in securities of the Funds with purchasers, from the fund facts delivery requirement (the **Fund Facts Delivery Requirement**) set out in section 3.2.01 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**), where the Fund Facts Delivery Requirement arises in respect of purchases of securities of the Funds made pursuant to the Automatic Rebalancing Services (as defined and described below) that are offered and administered by the Filers (the **Requested Relief**).

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

(a) the Ontario Securities Commission is the principal regulator for the 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 of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut (together with Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

The Filers

1. The head office of each Filer is set out in Schedule "A".

2. The Jurisdictions in which each Filer is registered and the specific categories of registration for each Filer are provided in Schedule "A".

3. The Funds are, or will be, managed by the Filers or by a successor of the Filers.

4. None of the Filers are in default of any of the requirements of securities legislation of the Jurisdictions.

The Funds

5. Each Fund is, or will be, an open-end mutual fund trust or an open-end mutual fund that is a class of shares of a mutual fund corporation.

6. Each Fund is, or will be, a reporting issuer in some or all of the provinces and territories of Canada and subject to National Instrument 81-102 Investment Funds. The securities of the Funds are, or will be, qualified for distribution pursuant to a simplified prospectus (Prospectus), fund facts document (Fund Facts) and annual information form that have been, or will be, prepared and filed in accordance with NI 81-101.

7. None of the existing Funds are in default of any of the requirements of securities legislation of the Jurisdictions.

The Representative Dealer

8. Securities of each Fund are, or will be, distributed through dealers which may or may not be affiliated with the applicable Filer that is the manager of the Fund (individually, each dealer that distributes securities of a Fund is a **Dealer** and collectively, the **Dealers**).

9. The Representative Dealer is a member of the Investment Industry Regulatory Organization of Canada and is registered in the category of investment dealer in the Jurisdictions.

10. Each Dealer is, or will be, registered as a dealer in one or more of the provinces and territories of Canada. The Dealers are, or will be, members of either the Investment Industry Regulatory Organization of Canada or the Mutual Fund Dealers Association of Canada, or registered as a mutual fund dealer with the Autorité des marchés financiers in Québec, if such Dealer is only registered in Québec.

11. The Representative Dealer is not in default of securities legislation in any of the Jurisdictions, other than with respect to the matters described in the Application.

Automatic Rebalancing Services

12. Each of the Filers offers, or may in the future offer, an automatic rebalancing service (**Automatic Rebalancing Service**), the particulars of which are, or will be, set out in each applicable Fund's Prospectus. Each Automatic Rebalancing Service allows a Dealer to recommend that a purchaser invest in two or more Funds, and the purchaser may, with the recommendations of the Dealer, decide to use the Automatic Rebalancing Service and so agree on specific target allocations, frequency of rebalancing and a rebalancing range for each of those Funds, as the same may be applicable, through the Automatic Rebalancing Service (**Purchaser Instructions**).

13. Dealers presently provide and will continue to provide the Fund Facts for each of the Funds invested in by purchasers under the Automatic Rebalancing Service as required by the Fund Facts Delivery Requirement when the purchaser first agrees to invest in the Funds and use the Automatic Rebalancing Service.

14. Under the Automatic Rebalancing Service, the Filers automatically rebalance the holdings in the Funds, from time to time, based on the Purchaser Instructions to ensure that the purchaser's investments in the Funds are allocated in line with the Purchaser Instructions. The Filers exercise no discretion in carrying out the Automatic Rebalancing Service and act only according to the Purchaser Instructions and according to the terms of the Automatic Rebalancing Service.

15. The Filers do not change, add to or remove any of the Funds invested in under the Automatic Rebalancing Service, unless the purchaser provides modified Purchaser Instructions to his or her Dealer, where applicable and the Dealer provides a Fund Facts for any new Funds in accordance with the Fund Facts Delivery Requirement, or the change, addition or removal is done in accordance with securities law obligations (for instance, in connection with a merger of the Funds) or the parameters of the Filer's Automatic Rebalancing Service agreed to by the purchaser.

16. The Purchaser Instructions are provided when the purchaser agrees with the Dealer to invest in the Funds and to use the Automatic Rebalancing Service. A purchaser may terminate the instructions, or give amended instructions, at any time to his or her Dealer.

17. Each Filer describes, or will describe the Automatic Rebalancing Service in the Prospectus of the Funds.

18. Rebalancing is achieved by switching investments among the Funds that were selected in accordance with the Purchaser Instructions. Each switch entails a redemption of securities from one Fund or Funds, immediately followed by a purchase of securities of another Fund or Funds. Each purchase of securities of a Fund that is completed as part of the Automatic Rebalancing Service triggers the Fund Facts Delivery Requirement.

19. It is not practical or possible for the Dealer to deliver the Fund Facts upon each purchase of securities of a Fund or Funds completed as part of the Automatic Rebalancing Service. This is because the rebalancing inherent in each Filer's Automatic Rebalancing Service is carried out systematically and automatically by the Filer. It is not possible for Dealers to develop a program to monitor the potential rebalancing so that the Fund Facts Delivery Requirement can be satisfied in advance of any rebalancing, nor is it practical or possible for the Filers to undertake to deliver the Fund Facts for the applicable Funds in advance of the rebalancing made pursuant to the Automatic Rebalancing Services. For these reasons, to date, neither the Filers nor the Dealers have not provided Fund Facts, in advance of each rebalancing made pursuant to the Automatic Rebalancing Service, because to do so would have necessitated material changes to the systems operated by the Filers that allow the Automatic Rebalancing Service to operate.

20. In the absence of the Requested Relief, the Dealer would be required to deliver the most recently filed Fund Facts in accordance with the Fund Facts Delivery Requirement in advance of the purchases of securities of the Funds that are made upon the automatic rebalancing inherent with the Automatic Rebalancing Service.

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 Relief is granted in respect of each Automatic Rebalancing Service offered by a Filer provided that:

1. a purchase of a Fund made under the Automatic Rebalancing Service is not the first purchase of that Fund under the Automatic Rebalancing Service;

2. each new purchaser who establishes a rebalancing program under the Automatic Rebalancing Service after the date of the decision, receives written information that states,

    a. subject to condition 4, the purchaser will not receive the Fund Facts after the date of the notice, unless the purchaser specifically requests it,

    b. the purchaser is entitled to receive upon request, at no cost to the purchaser, the most recently filed Fund Facts by calling a specified toll-free number, or by sending a request by mail or e-mail to a specified address or e-mail address,

    c. how to access the Fund Facts electronically,

d. the purchaser will not have a right of withdrawal under securities legislation for subsequent purchases of a security of any Funds under the Automatic Rebalancing Service, but will continue to have a right of action if there is a misrepresentation in the Prospectus or any document incorporated by reference into the Prospectus, and

e. the purchaser may terminate the Automatic Rebalancing Service at any time;

3. each purchaser who participates in the Automatic Rebalancing Service as of the date of the decision, will be sent a notice that provides the information in condition 2, by an applicable Dealer as soon as practicable and in any event, not later than a Filer's next scheduled annual communication;

4. at least annually while the purchaser subscribes to the Automatic Rebalancing Service, an applicable Dealer notifies the purchaser in writing of how the purchaser can request the most recently filed Fund Facts;

5. an applicable Dealer delivers or sends the most recently filed Fund Facts to the purchaser if the purchaser requests it;

6. the Filers provide to the principal regulator, on an annual basis, beginning 60 days after the date upon which the Requested Relief is first relied upon by a Dealer, either:

   a. a current list of all such Dealers that are relying on the Requested Relief; or

   b. an update to the list of such Dealers or confirmation that there has been no change to such list; and

7. prior to a Dealer relying on the Requested Relief, the Filers provide to the Dealer a disclosure statement informing the Dealer of the implications of this decision.

"Stephen Paglia"
Manager, Investment Funds & Structured Products Branch
Ontario Securities Commission

Schedule "A"

List of Fund Managers and Related Relevant Information

	Name of Fund Manager (Filer)	Location of Head Office	Category of Registration	Jurisdiction of Registration
1.	AGF Investments Inc.	Toronto, Ontario	Investment Fund Manager	Ontario, Alberta, British Columbia, Newfoundland and Labrador, Quebec
			Mutual Fund Dealer	Ontario, British Columbia, Quebec
			Exempt Market Dealer	Ontario, Alberta, British Columbia, Manitoba, Quebec, Saskatchewan
			Portfolio Manager	All provinces and territories of Canada
			Commodity Trading Manager	Ontario
2.	CI Investments Inc.	Toronto, Ontario	Investment Fund Manager	Ontario, Newfoundland and Labrador, Quebec
			Exempt Market Dealer	All provinces and territories of Canada
			Portfolio Manager	All provinces and territories of Canada
			Commodity Trading Counsel	Ontario
			Commodity Trading Manager	Ontario
3.	Counsel Portfolio Services Inc.	Mississauga, Ontario	Investment Fund Manager	Ontario, Quebec and Newfoundland and Labrador
			Portfolio Manager	Ontario
			Commodity Trading Manager	Ontario
4.	Fidelity Investments Canada ULC	Toronto, Ontario	Investment Fund Manager	Ontario, Quebec and Newfoundland and Labrador
			Portfolio Manager	All provinces and territories of Canada
			Mutual Fund Dealer	All provinces and territories of Canada
			Commodity Trading Manager	Ontario
5.	Franklin Templeton Investments Corp.	Toronto, Ontario	Exempt Market Dealer	All provinces of Canada and Yukon
			Investment Fund Manager	Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario, and Quebec

	Name of Fund Manager (Filer)	Location of Head Office	Category of Registration	Jurisdiction of Registration
			Mutual Fund Dealer	All provinces of Canada and Yukon
			Portfolio Manager	All provinces of Canada and Yukon
			Commodity Trading Manager	Ontario
6.	Invesco Canada Ltd.	Toronto, Ontario	Mutual Fund Dealer	Quebec, Prince Edward Island, Ontario, Nova Scotia, Alberta, British Columbia
			Exempt Market Dealer	All provinces of Canada
			Portfolio Manager	All provinces of Canada
			Investment Fund Manager	Ontario, Quebec and Newfoundland and Labrador
			Commodity Trading Manager	Ontario
7.	Mackenzie Financial Corporation	Toronto, Ontario	Investment Fund Manager	Ontario, Newfoundland and Labrador and Quebec
			Exempt Market Dealer	All provinces and territories of Canada
			Portfolio Manager	All provinces and territories of Canada
			Commodity Trading Manager	Ontario
			Adviser	Manitoba
8.	Manulife Asset Management Limited	Toronto, Ontario	Investment Fund Manager	Ontario, Newfoundland and Labrador and Quebec
			Portfolio Manager	All provinces and territories of Canada
			Derivatives Portfolio Manager	Quebec
			Commodity Trading Manager	Ontario
9.	Natixis Investment Managers Canada LP	Toronto, Ontario	Investment Fund Manager	Quebec, Ontario, and Newfoundland and Labrador
			Exempt Market Dealer	All provinces and territories of Canada
			Mutual Fund Dealer	Ontario
			Portfolio Manager	Ontario
10.	Sentry Investments Inc.	Toronto, Ontario	Investment Fund Manager	Ontario, Quebec and Newfoundland and Labrador
			Mutual Fund Dealer	All provinces of Canada
			Exempt Market Dealer	All provinces of Canada
			Portfolio Manager	Alberta and Ontario
			Commodity Trading Manager	Ontario
11.	Sun Life Global Investments	Toronto, Ontario	Mutual Fund Dealer	All provinces and territories of Canada

	Name of Fund Manager (Filer)	Location of Head Office	Category of Registration	Jurisdiction of Registration
	(Canada) Inc.		Investment Fund Manager	Newfoundland and Labrador, Ontario, and Quebec
			Commodity Trading Manager	Ontario
			Portfolio Manager	Ontario

2.1.8 I.G. Investment Management, Ltd. et al.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the requirement in s.3.2.01, NI 81-101 to deliver a fund facts document to investors for subsequent purchases of mutual fund securities made pursuant to automatic rebalancing services, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 3.2.01 and 6.1.

August 13, 2018

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

AND

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

AND

IN THE MATTER OF I.G. INVESTMENT MANAGEMENT, LTD. (the Filer)

AND

IN THE MATTER OF INVESTORS GROUP FINANCIAL SERVICES INC. and INVESTORS GROUP SECURITIES INC. (the Dealers and individually a Dealer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer on behalf of the mutual funds that are or will be managed from time to time by the Filer or by a successor of such Filer (the **Funds**) for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Dealers from the fund facts delivery requirement (the Fund Facts Delivery Requirement) set out in section 3.2.01 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**), where the Fund Facts Delivery Requirement arises in respect of purchases of securities of the Funds made pursuant to the Automatic Rebalancing Service (as defined and described below) that will be offered and administered by the Filer (the **Requested Relief**).

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

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

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

Interpretation

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

Representations

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

The Filer

1. The head office of the Filer is located in Winnipeg, Manitoba.

2. The Filer is registered as an investment fund manager in Manitoba, Ontario, Quebec and Newfoundland and Labrador, as a portfolio manager in Manitoba, Ontario and Quebec and as an adviser under the *Commodity Futures Act* in Manitoba.

3. The Funds are, or will be, managed by the Filer or by a successor of the Filer.

4. The Filer is not in default of any of the requirements of securities legislation of any of the jurisdictions of Canada.

The Funds

5. Each Fund is, or will be, an open-end mutual fund trust or an open-end mutual fund that is a class of shares of a mutual fund corporation.

6. Each Fund is, or will be, a reporting issuer in some or all of the provinces and territories of Canada and subject to National Instrument 81-102 *Investment Funds*. The securities of each Fund are, or will be, qualified for distribution pursuant to a simplified prospectus (Prospectus), fund facts document (**Fund Facts**) and annual information form that have been, or will be, prepared and filed in accordance with NI 81-101.

7. None of the existing Funds are in default of any of the requirements of securities legislation of any of the jurisdictions of Canada.

The Dealers

8. Securities of each Fund are, or will be, distributed through the Dealers, which are affiliated with the Filer.

9. Each Dealer is registered as a dealer in all provinces and territories of Canada. Investors Group Financial Services Inc. is registered as a mutual fund dealer and is a member of the Mutual Fund Dealers Association of Canada. Investors Group Securities Inc. is registered as an investment dealer and is a member of the Investment Industry Regulatory Organization of Canada.

10. Neither of the Dealers are in default of securities legislation in any of the jurisdictions of Canada.

Automatic Rebalancing Service

11. The Filer currently offers a rebalancing service (the **Existing Rebalancing Service**) that allows a Dealer to recommend that the purchaser invests in two or more Funds, using the Existing Rebalancing Service. The purchaser will agree on specific target allocations, frequency of rebalancing and a rebalancing range for each of those Funds, as applicable (**Purchaser Instructions**). In conjunction with agreeing to participate in the Existing Rebalancing Service and invest in the Funds, the applicable Dealer complies with the Fund Facts Delivery Requirement. Under the Existing Rebalancing Service, the Filer rebalances a purchaser's investments in the Funds manually pursuant to the Purchaser Instructions. Prior to each manual rebalancing carried out by the Filer under the Existing Rebalancing Service, the Filer ensures that the Fund Facts Delivery Requirement is adhered to.

12. The Filer intends to automate its Existing Rebalancing Service, such that it will become a systematized and automated rebalancing service (**Automatic Rebalancing Service**). Under the Automatic Rebalancing Service, the Filer will automatically rebalance the holdings in the Funds, from time to time, based on the Purchaser Instructions to ensure that the purchaser's investments in the Funds are allocated in line with the Purchaser Instructions. The Filer will not exercise any discretion in carrying out the Automatic Rebalancing Service and will act only according to the Purchaser Instructions and according to the terms of the Automatic Rebalancing Service. The Automatic Rebalancing Service will be consistent with the Filer's practice with the Existing Rebalancing Service, except the Filer carries out these functions manually for the Existing Rebalancing Service.

13. The Dealers currently provide the Fund Facts for each of the Funds invested in by purchasers under the Existing Rebalancing Service and will continue to provide the Fund Facts for each of the Funds invested in by purchasers under the Automatic Rebalancing Service as required by the Fund Facts Delivery Requirement when the purchaser agrees to use the Automatic Rebalancing Service. The purchaser receives the Fund Facts documents when the Purchaser first invests in the Funds to be rebalanced. Once the Filer's program is automated, the applicable Fund Facts documents will continue to be delivered when the purchaser first invests in the Funds and signs up for the Automatic Rebalancing Service.

14. The Filer will not change, add to or remove any of the Funds invested in under the Automatic Rebalancing Service, other than as permitted under the requirements of securities legislation of any of the jurisdictions of Canada (in conjunction with a Fund merger, for instance), unless the purchaser provides amended Purchaser Instructions to his or her Dealer, which in turn will be provided to the Filer, and the Dealer provides a Fund Facts for any new Funds in accordance with the Fund Facts Delivery Requirement.

15. As is presently done under the Existing Rebalancing Service, when a purchaser agrees with a Dealer to invest in the Funds using the Automated Rebalancing Service, the Purchaser Instructions will be provided to the applicable Dealer and to the Filer. A purchaser may terminate the Purchaser Instructions, or give amended Purchaser Instructions, at any time to the Dealer.

16. The Filer will describe the Automatic Rebalancing Service in each Fund's Prospectus and the applicable Dealer will send a notice to each applicable purchaser participating in the Existing Rebalancing Service explaining the Automatic Rebalancing Service and the implications regarding delivery of the applicable Fund Facts. This notice will be provided at the time of the Filer's next annual mailing which is generally sent in or about June each year, after the Filer begins to rely on the Requested Relief (**Mailing Date**).

17. Rebalancing under the Existing Rebalancing Service is achieved today by switching investments among the Funds that were selected in accordance with the Purchaser Instructions. Each switch entails a redemption of securities from one Fund or Funds, immediately followed by a purchase of securities of another Fund or Funds. Each purchase of securities of a Fund that is completed as part of the Existing Rebalancing Service and, in the future, the Automatic

Rebalancing Service triggers the Fund Facts Delivery Requirement. Because the Existing Rebalancing Service is a manual process carried out by the Filer, it complies with the Fund Facts Delivery Requirement.

18. Once the Filer initiates the Automatic Rebalancing Service, it will not be practical or possible for the Dealers to deliver the Fund Facts upon each purchase of securities of a Fund or Funds completed as part of the Automatic Rebalancing Service. This restriction is because the rebalancing that will be inherent in the Filer's program will be carried out systematically and automatically by the Filer.

19. In the absence of the Requested Relief, the Dealers would be required to deliver the most recently filed Fund Facts in accordance with the Fund Facts Delivery Requirement in advance of the purchases of securities of the Funds that are made upon the automatic rebalancing inherent with the Automatic Rebalancing Service.

Decision

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

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

1. for purchasers who establish a rebalancing program under the Automatic Rebalancing Service, a purchase of a Fund made under the Automatic Rebalancing Service is not the first purchase of that Fund;

2. each purchaser, who establishes a rebalancing program under the Automatic Rebalancing Service, receives written information that states,

    a. subject to condition 4, the purchaser will not receive a Fund Facts after the date of the notice, unless the purchaser specifically requests it,

    b. the purchaser is entitled to receive upon request, at no cost to the purchaser, the most recently filed Fund Facts by calling a specified toll-free number, or by sending a request by mail or e-mail to a specified address or e-mail address,

    c. how to access the Fund Facts electronically,

    d. the purchaser will not have a right of withdrawal under securities legislation for subsequent purchases of a security of any Funds under the Automatic Rebalancing Service, but will continue to have a right of action if there is a misrepresentation in the Prospectus or any document incorporated by reference into the Prospectus, and

    e. the purchaser may terminate the Automatic Rebalancing Service at any time;

3. each purchaser, who participates in the Existing Rebalancing Service, will be sent a notice that includes information consistent with condition 2 by the applicable Dealer at the time of the next Mailing Date, provided the purchaser is a participant in the Automatic Rebalancing Service at the time the notice is sent out;

4. at least annually while the purchaser subscribes to the Automatic Rebalancing Service, the applicable Dealer notifies the purchaser in writing of how the purchaser can request the most recently filed Fund Facts; and

5. the applicable Dealer delivers or sends the most recently filed Fund Facts to the purchaser if the purchaser requests it.

"Chris Besko"
Director, General Counsel
The Manitoba Securities Commission

2.1.9 CIBC Asset Management Inc. and Canadian Imperial Bank of Commerce

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption from subsection 5.1(a) of NI 81-105 to allow investment fund managers to pay to a participating dealer direct costs incurred by the participating dealer relating to a sales communication, investor conference or investor seminar prepared or presented by the participating dealer which has a primary purpose of providing educational information on financial planning matters.

Applicable Legislative Provisions

National Instrument 81-105 Mutual Fund Sales Practices, ss. 5.1(a) and 9.1.

August 14, 2018

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
CIBC ASSET MANAGEMENT INC. AND
CANADIAN IMPERIAL BANK OF COMMERCE
(the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction (**the Legislation**) for relief from subsection 5.1(a) of National Instrument 81-105 *Mutual Fund Sales Practices* (**NI 81-105**) to permit the Filers to pay to a participating dealer direct costs incurred by the participating dealer relating to a sales communication, investor conference or investor seminar prepared or presented by the participating dealer (collectively, the **Cooperative Marketing Initiatives** and each a **Cooperative Marketing Initiative**) if the primary purpose of the Cooperative Marketing Initiative is to promote or provide educational information concerning investing in securities and investment, retirement, tax and estate planning (collectively, **Financial Planning**) matters (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) each of the Filers has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (together with Ontario, the Jurisdictions).

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 or NI 81-105 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. CIBC Asset Management Inc. (**CAMI**) is a corporation incorporated under the federal laws of Canada and its head office is located in Toronto, Ontario.

2. CAMI is registered as an adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer under the securities legislation of each of the Jurisdictions, as an investment fund manager in British Columbia, Newfoundland and Labrador, Ontario and Québec, and as a commodity trading manager in Ontario.

3. Canadian Imperial Bank of Commerce (**CIBC**) is a Schedule 1 Canadian chartered bank governed by the Bank Act (Canada) with its head office in Toronto, Ontario.

4. CIBC is registered as an investment fund manager in Newfoundland and Labrador and Québec.

5. The Filers act and may in the future act as investment fund managers in respect of various mutual funds (the **Funds**) governed by National Instrument 81-102 *Investment Funds*, the securities of which are qualified for distribution to investors in each of the Jurisdictions pursuant to various simplified prospectuses, as they may be amended or renewed from time to time.

6. Securities of the Funds are distributed by participating dealers in the Jurisdictions.

7. Each of the Filers is a “member of the organization” (as that term is defined in NI 81-105) of the Funds, as the Filers are the managers of the Funds.

8. Each of the Filers complies with NI 81-105, including Part 5 of NI 81-105, in respect of its marketing and educational practices.

9. The Filers are not in default of securities legislation in any of the Jurisdictions.

10. Under subsection 5.1(a) of NI 81-105, the Filers are permitted to pay direct costs incurred by a participating dealer where the purpose of the Cooperative Marketing Initiative is to promote or provide educational information about the Funds, the mutual fund family of which the Funds are members, or mutual funds generally.

11. Subsection 5.1(a) of NI 81-105 prohibits the Filers from paying direct costs incurred by a participating dealer relating to a Cooperative Marketing Initiative where the primary purpose is to provide educational information about Financial Planning matters. Consequently, the Filers are not permitted to sponsor the cost of sales communications, investor seminars or investor conferences prepared or presented by participating dealers where the main topics discussed include investment planning, retirement planning, tax planning and estate planning, each of which are aspects of Financial Planning.

12. The Filers and their affiliates have expertise in Financial Planning matters or may retain others with such expertise from time to time.

13. In addition to the topics currently permitted under subsection 5.1(a) of NI 81-105, the Filers wish to sponsor Cooperative Marketing Initiatives where the primary purpose of the Cooperative Marketing Initiatives is to provide educational information concerning Financial Planning matters. The Filers will comply with subsections 5.1(b) to (e) of NI 81-105 in respect of such Cooperative Marketing Initiatives it sponsors.

14. Mutual funds typically form only a portion of an investor's portfolio and should be considered in the broader context of the investor's Financial Planning. Allowing the Filers to sponsor Cooperative Marketing Initiatives on Financial Planning matters may benefit investors as it may facilitate and potentially increase investors' access to educational information on such matters, which may in turn better equip them to make financial decisions that involve mutual funds.

15. Under sections 5.2 and 5.5 of NI 81-105, the Filers are permitted to sponsor the costs incurred by participating dealers in attending or organizing and presenting at conferences where the primary purpose is the provision of educational information on, among other things, financial planning.

16. Specifically, under subsection 5.2(a) of NI 81-105, the Filers are permitted to provide a non-monetary benefit to a representative of a participating dealer by allowing him or her to attend a conference or seminar organized and presented by the Filers where the primary purpose is the provision of educational information about, among other things, financial planning, investing in securities or mutual fund industry matters.

17. Similarly, under subsection 5.5(a) of NI 81-105, the Filers are permitted to pay to a participating dealer part of the direct costs the participating dealer incurs in organizing or presenting at a conference or seminar that is not an investor conference or investor seminar referred to in section 5.1 of NI 81-105, where the primary purpose is the provision of educational information about, among other things, financial planning, investing in securities or mutual fund industry matters.

18. The Filers will not require participating dealers to sell any of their Funds or other financial products to investors as a condition of the Filers' sponsorship of a Cooperative Marketing Initiative.

19. The Filers will pay for their sponsorship of a Cooperative Marketing Initiative out of their normal sources of revenue. Accordingly, the sponsorship cost will not be borne by the Funds.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that in respect of a Cooperative Marketing Initiative whose primary purpose is to provide educational information concerning Financial Planning matters:

a) the Filers otherwise comply with the requirements of subsections 5.1(b) through (e) of NI 81-105;

b) the Filers do not require any participating dealer to sell any of their Funds or other financial products to investors;

c) other than as permitted by NI 81-105, the Filers do not provide participating dealers and their representatives with any financial or other incentives for recommending any of their Funds to investors;

d) the materials presented in a Cooperative Marketing Initiative concerning Financial Planning matters contain only general educational information about such matters;

e) the Filers prepare or approve the content of the general educational information about Financial Planning matters presented in a Cooperative Marketing

Initiative they each sponsor, and select or approve an appropriately-qualified speaker for each presentation about such matters delivered in a Cooperative Marketing Initiative;

f) any general educational information about Financial Planning matters presented in a Cooperative Marketing Initiative contains an express statement that the content presented is for information purposes only, and is not providing advice to the attendees of the investor conference or investor seminar or the recipients of the sales communication, as applicable; and

g) any general educational information about Financial Planning matters presented in a Cooperative Marketing Initiative contains an indication of the types of professionals who may generally be qualified to provide advice on the subject matter of the information presented.

"Robert P. Hutchison"
Commissioner

"Peter Currie"
Commissioner

2.1.10 Edgehill Partners et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to mutual funds subject to National Instrument 81-101 Mutual Fund Prospectus Disclosure that seeks to engage in alternative investment strategies not otherwise permitted by National Instrument 81-102 Investment Funds – Relief to permit funds to invest up to 20% of net assets in securities of a single issuer – Relief from cash cover and designated rating requirement in respect of use of derivatives – Relief to permit funds to borrow cash for investment purposes and to grant a security interest over assets in connection with such borrowing – Relief to permit funds to engage in short selling in excess of 20% of the net assets of the fund and to use proceeds from short sales to enter into a long position in a security – Relief to permit funds to enter into incentive fee arrangements – Borrowing and short selling subject to a combined maximum limit of 50% of the fund's net asset value – Aggregate gross exposure of the fund (long positions, short positions and notional value of derivatives positions) subject to maximum limit of 3 times the net asset value of the fund – Relief subject to certain limitations on distribution of securities of the funds – Relief subject to the inclusion of certain required disclosures in the simplified prospectus, annual information form, fund facts document and continuous disclosure documents.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, subsections 2.1(1), 2.6.1(1)(c), 2.6.1(2), (3), 2.7(1), (2), (3) and sections 2.6, 2.8, 2.11, 6.8, 7.1, 19.1.

August 14, 2018

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
EDGEHILL PARTNERS
(the Filer)

AND

IN THE MATTER OF
EHP GUARDIAN ALTERNATIVE FUND,
EHP ADVANTAGE ALTERNATIVE FUND,
EHP GUARDIAN INTERNATIONAL
ALTERNATIVE FUND,
EHP ADVANTAGE INTERNATIONAL

ALTERNATIVE FUND,
EHP SELECT ALTERNATIVE FUND AND
EHP GLOBAL ARBITRAGE FUND
(collectively, the Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**), pursuant to section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**), exempting each Fund from the following provisions of NI 81-102:

(a) subsection 2.1(1) of NI 81-102, to permit each Fund to invest more than 10% of the net asset value of each Fund in the securities of a single issuer (**Single Issuer Relief**);

(b) to permit each Fund to purchase, sell or use specified derivatives and/or debt-like securities other than in compliance with subsections 2.7(1), (2) and (3), section 2.8 and section 2.11 of NI 81-102 (**Specified Derivatives Relief**);

(c) section 2.6 of NI 81-102, to permit each Fund to borrow cash to use for investment purposes in excess of the limits set out in subsection 2.6(a) of NI 81-102 and to grant a security interest of its assets in connection therewith (**Cash Borrowing Relief**);

(d) subsections 2.6.1(1)(c) and 2.6.1(2) and (3) of NI 81-102, to permit each Fund to borrow securities from a borrowing agent to sell securities short whereby: (i) the aggregate market value of all securities of the issuer of the securities sold short by each Fund may exceed 5% of the net asset value of such Fund; (ii) the aggregate market value of all securities sold short by each Fund may exceed 20% of the net asset value of such Fund; (iii) each Fund is not required to hold cash cover in connection with short sales of securities by such Fund; and (iv) each Fund is permitted to use the cash from a short sale to enter into a long-position in a security (**Short Selling Relief**);

(e) section 6.8 of NI 81-102, to permit each Fund to deposit with its lender, assets over which it has granted a security interest in connection with the Cash Borrowing Relief (**Cash Borrowing Custody Relief**); and

(f) subsection 7.1 of NI 81-102, to permit each Fund to pay, or enter into arrangements that would require it to pay, a fee that is determined by the performance of the Fund that is based on the cumulative total return of the Fund for the period that began immediately after the last period for which such fee was paid (**Incentive Fee Relief**),

(collectively, the **Requested Relief**).

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

(i) the Ontario Securities Commission is the principal regulator for this application; and

(ii) 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 each of the other provinces and territories of Canada (the **Other Jurisdictions**).

Interpretation

Terms defined in NI 81-102, National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**), National Instrument 14-101 *Definitions*, and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

Background

1. The Filer will be the trustee, the investment fund manager and the portfolio manager of each Fund. The Filer is registered as an investment fund manager, portfolio manager and exempt market dealer in Ontario, Québec and Newfoundland and Labrador. The Filer is also registered as a portfolio manager and exempt market dealer in British Columbia, Alberta, Saskatchewan, Manitoba and New Brunswick. The head office of the Filer is in Toronto, Ontario.

2. The Funds will be mutual funds created under the laws of the Province of Ontario and will be governed by the provisions of NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.

3. Units of each Fund will be offered by simplified prospectus, subject to NI 81-101, filed in all of the provinces and territories in Canada and, accordingly, each Fund will be a reporting issuer in each of the provinces and territories of Canada.

4. The proposed investment objective differs for each Fund, but in each case, a core objective is to provide positive total returns, regardless of market conditions or general market direction, by employing disciplined, long/short, predominantly quantitative strategies.

5. The proposed investment objective of EHP Guardian Alternative Fund and EHP Guardian International Alternative Fund (the **Guardian**

Funds) is to provide a positive total return, regardless of market conditions or general market direction, with low correlation to applicable equity markets. The Guardian Funds will use alternative investment strategies including equity long/short, equity market neutral and credit long/short, by investing in North American equities, fixed income ETFs, equity ETFs and treasury futures derivative contracts as a part of implementing these strategies. The Guardian Funds may invest up to 100% or more of its net assets in foreign securities. The Guardian Funds will engage in physical short sales and/or borrowing for investment purposes.

6. The proposed investment objective of EHP Advantage Alternative Fund and EHP Advantage International Alternative Fund (the **Advantage Funds**) is to generate superior risk adjusted investment returns over the long-term by utilizing a multi-strategy approach consisting of diversified quantitative and systematic investment strategies. The Advantage Funds will use alternative investment strategies including equity long/short, equity market neutral and credit long/short, by investing in equities, fixed income ETFs, equity ETFs and treasury futures derivative contracts as a part of implementing these strategies. The Advantage Funds may invest up to 100% or more of its net assets in foreign securities. The Advantage Funds will engage in physical short sales and/or borrowing for investment purposes. The Advantage Funds will also seek to preserve capital and mitigate risk through the application of portfolio and risk management tools.

7. The proposed investment objective of EHP Select Alternative Fund (the **Select Fund**) is to provide a better risk-adjusted return than the S&P TSX Composite Index, regardless of market conditions or general market direction. The Select Fund targets a volatility that is approximately equal to the S&P TSX Composite Index, but with lower correlation to the index and with lower peak-to-trough drawdowns. The Select Fund will use an equity long/short alternative investment strategy, by investing in Canadian equities and ETFs as a part of implementing this strategy. The Select Fund will engage in physical short sales and/or borrowing for investment purposes.

8. The proposed investment objective of EHP Global Arbitrage Alternative Fund (the **Global Arbitrage Fund**) is to provide a positive total return over a market cycle, regardless of market conditions or general market direction, with low correlation to equity markets. The Global Arbitrage Fund will use alternative investment strategies including merger arbitrage, equity long/short, convertible arbitrage and credit long/short, by investing in global developed-market equities, fixed income securities, convertible securities, fixed income ETFs, equity ETFs, Special Purpose Acquisition Corps (the **SPACs**) and treasury futures derivative contracts as a part of implementing these strategies. The Global Arbitrage Fund may invest up to 100% or more of its net assets in foreign equities. The Global Arbitrage Fund will engage in physical short sales and/or borrowing for investment purposes.

9. The proposed investment strategy of each Fund provides that the Fund's aggregate gross exposure, to be calculated as the sum of the following, must not exceed three times the Fund's net asset value: (i) the aggregate market value of the Fund's long positions; (ii) the aggregate market value of physical short sales on equities, fixed income securities or other portfolio assets; and (iii) the aggregate notional value of the Fund's specified derivatives positions excluding any specified derivatives used for hedging purposes.

10. Each Fund may take both long and short positions in foreign currencies in order to hedge currency exposure of the Fund, its investment portfolio or a particular class of units.

11. Each Fund is expected to invest in a variety of derivatives and may take both long and short positions. Each Fund's use of derivatives may include futures (including index futures, equity futures, bond futures and interest rate futures), currency forwards, options and swaps (including equity swaps, swaps on index futures, total return swaps, and interest rate swaps). In its use of derivatives, each Fund will aim to contribute to the target return and the volatility objectives of such Fund.

12. The Funds may use leverage through a combination of one or more of the following: (i) borrowing cash for investment purposes; (ii) physical short sales on equity securities, fixed-income securities or other portfolio assets; and/or (iii) through the use of specified derivatives.

13. The Filer will determine each Fund's risk rating using the *CSA's Mutual Fund Risk Classification Methodology For Use In Fund Facts and ETF Facts* as set out in Appendix F of NI 81-102 (the **Risk Methodology**). Given that the Funds do not have an established ten-year track record, the Filer will determine the risk rating based on the standard deviation of a reference index selected in accordance with Item 5 of the Risk Methodology (the **Reference Index**). The Filer will assess the reasonableness of using the Reference Index on at least a quarterly basis. This will include monitoring the correlation between each Funds and the applicable Reference Index over time. In conducting this analysis, the Filer will also consider whether it is appropriate to exercise the discretion accorded by the Risk Methodology to increase the risk rating of the particular Fund.

14. The Filer and its affiliates will also manage future mutual funds and non-redeemable investment funds that will be subject to NI 81-102 (collectively the **Top Funds**). A Top Fund may seek to invest a portion its net assets in the Funds provided that such investment is consistent with the Top Fund's investment objectives and the requirements of NI 81-102.

15. Prior to allowing a Top Fund managed by the Filer to invest in the Fund, the Filer will implement policies and procedures to monitor a Top Fund's compliance with the investment limits that will apply to a Top Fund's investment in the Funds (the **Top Fund Policies**). To the extent that a Top Fund is managed by an affiliate of the Filer, the Filer will obtain an undertaking from the affiliate confirming that it has also implemented Top Fund Policies and that the affiliate will monitor and adhere to the restrictions on Top Fund investments that are set out in this decision (the **Undertaking**).

16. The Filer acknowledges that additional guidance regarding proficiency for the distribution of alternative funds has not been finalized at this time and will accompany the final publication of the proposed amendments to NI 81-102 (the **Proposed Alternative Fund Investment Restrictions**) and NI 81-101 (the **Proposed Alternative Fund Disclosure**) (the Proposed Alternative Fund Investment Restrictions and the Proposed Alternative Fund Disclosure, collectively, the **Proposed Alternative Fund Rules**), which were contemplated within the CSA Notice and Request for Comment – *Modernization of Investment Fund Product Regulation – Alternative Funds* (2016), 39 OSCB 8051 dated September 22, 2016. The Filer will take steps to ensure the Funds are only distributed through dealers that are registered with the Investment Industry Regulatory Organization of Canada (**IIROC**) or to Top Funds managed by the Filer or its affiliates. In order to be eligible to distribute the Funds, each dealer will be required to sign an agreement with the Filer confirming its registration status with IIROC.

Fund Disclosure of Alternative Strategies

17. The Filer proposes to file a simplified prospectus in respect of each Fund that:

    (a) identifies the Fund as an alternative fund;

    (b) discloses within the Fund's investment objectives, the asset classes and strategies used which are outside the scope of the existing NI 81-102;

    (c) disclose within the Fund's investment objective the maximum amount of leverage to be employed;

    (d) disclose within the Fund's investment strategies the maximum amount the Fund may borrow, together with a description of how borrowing will be used in conjunction with the Fund's other strategies and a summary of the Fund's borrowing arrangements; and

    (e) disclose, in connection with the Fund's investment strategies that may be used which are outside the current scope of NI 81-102, how such strategies may affect investors' chance of losing money on their investment in the Fund.

18. The Filer proposes to file an annual information form in respect of each Fund that:

    (a) identifies the Fund as an alternative fund; and

    (b) discloses the name of each person or company that has lent money to the Fund including whether such person or company is an affiliate or associate of the manager of the Fund.

19. The Filer proposes to file a fund facts document in respect of each Fund that:

    (a) identifies the Fund as an alternative fund; and

    (b) includes cover page text box disclosure to highlight how the Fund differs from other mutual funds in terms of its investment strategies and the assets it is permitted to invest in.

20. The Filer will include within each Fund's financial statements and management reports of fund performance disclosure regarding actual use of leverage within the Fund for the applicable period referenced therein.

21. The Filer will ensure that the proposed disclosure in respect of each Fund shall accurately describes its investment strategies while emphasizing the particular strategies which are outside the current scope of NI 81-102.

Single Issuer Relief

22. Each Fund's investment strategies will allow it to invest up to 20% of its net asset value in securities of an issuer.

23. Subsection 2.1(1) of NI 81-102, does not permit an investment fund to purchase a security of an issuer, enter into a specified derivatives transaction or purchase index participation units if, immediately after the transaction, more than 10%

of its net asset value would be invested in securities of any issuer.

24. The Filer believes that it is in the best interests of each Fund to be permitted to invest up to 20% of its net assets in one issuer, as such investments will allow each Fund to fully express the convictions of the Fund's portfolio managers.

Specified Derivatives and Debt-Like Security Relief

25. The investment strategies of each Fund contemplate flexible use of specified derivatives for hedging and/or non-hedging purposes. Each Fund has the ability to opportunistically use options, swaps, futures and forward contracts and/or other derivatives under different market conditions.

26. Under subsections 2.7(1), (2) and (3) of NI 81-102, a mutual fund cannot purchase an option (other than a clearing corporation option) or a debt-like security or enter into a swap or a forward contract unless, at the time of the transaction, the option, debt-like security, swap or contract has a designated rating or the equivalent debt of the counterparty or of a person or company that has fully and unconditionally guaranteed the obligations of the counterparty in respect of the option, debt-like security, swap or contract, has a designated rating (the **Designated Rating Requirement**). The policy rationale behind this is to address, at least in part, a mutual fund's counterparty credit risk by ensuring that counterparties that enter into certain types of derivatives with mutual funds meet a minimum credit rating.

27. The Filer is seeking to have the operational flexibility to deal with a variety of over-the-counter derivative counterparties, including scenarios where at the time of the transaction, the specified derivative or equivalent counterparty (or its guarantor) will not have a designated rating. The Filer submits that this flexibility will provide more competitive pricing and give the Funds access to a wider variety of over-the-counter products.

28. The Filer submits that, any increased credit risk which may arise due to an exemption from the Designated Rating Requirements is counterbalanced by the fact that each Fund's mark-to-market exposure to any specified derivatives counterparty (other than for positions in cleared specified derivatives) must not exceed 10% of its net asset value for a period of 30 days or more.

29. Under section 2.8 of NI 81-102, a mutual fund must not purchase a debt-like security that has an options component, unless, immediately after the purchase, not more than 10% of its net asset value would be made up of those instruments held for purposes other than hedging. Section 2.8 also imposes a series of requirements for mutual funds to cover their specified derivatives positions for purposes other than hedging, using a combination of cash, cash equivalents, the underlying interest of the specified derivative and/or the right to acquire the underlying interest of the specified derivative (the **Option and Cover Requirements**).

30. Commodity pools, the predecessor to alternative funds, are not subject to the Option and Cover Requirements or to section 2.11 of NI 81-102. The Filer submits that the Funds should also be exempt from the Designated Rating Requirement, the Option and Cover Requirements and from section 2.11 of NI 81-102.

Cash Borrowing Relief

31. The investment strategies of the Fund will permit the Fund to borrow cash and purchase securities on margin in excess of the limits currently described in section 2.6 of NI 81-102.

32. Each Fund's investment strategy has the ability to borrow cash and purchase securities on margin in excess of the limits currently described in section 2.6 of NI 81-102 and the Filer's current expectation is that each Fund may engage in cash borrowing at launch.

33. Subsection 2.6(a) of NI 81-102 restricts investment funds from borrowing cash or providing a security interest over portfolio assets unless the transaction is a temporary measure to accommodate redemptions, the security interest is required to enable the investment fund to effect a specified derivative transaction or short sale under NI 81-102, the security interest secures a claim for the fees and expenses of the custodian or sub-custodian of the investment fund, or, in the case of an exchange-traded mutual fund, the transaction is to finance acquisition of its portfolio securities and the outstanding amount of all borrowings is repaid on the closing of its initial public offering.

34. The Proposed Alternative Fund Investment Restrictions give investment funds the ability to borrow, and purchase securities on margin, up to 50% of their net asset value to use for investment purposes in order to facilitate a wider array of investment strategies.

35. The Filer believes that it is in the best interests of each Fund to be permitted to borrow cash and purchase securities on margin to meet its investment objectives and strategies.

Short Sale Relief

36. The investment strategies of each Fund will permit it to:

(a) sell securities short, provided the aggregate market value of securities of any one issuer sold short by the Fund does not exceed 10% of the net asset value of the Fund, and the aggregate market value of all securities sold short by the Fund does not exceed 50% of its net asset value;

(b) sell a security short without holding cash cover; and

(c) sell a security short and use the cash from a short sale to enter into a long position in a security, other than a security that qualifies as cash cover.

37. Each Fund may engage in physical short sales from time to time.

38. Subsection 2.6.1 of NI 81-102 requires that a fund may only sell a security short if, at the time the fund sells the security short, the fund has borrowed or arranged to borrow the security to be sold under the short sale, if the aggregate market value of all securities of the issuer of the securities sold short by the fund does not exceed 5% of the net asset value of the fund, and if the aggregate market value of all securities sold short by the fund does not exceed 20% of the net asset value of the fund.

39. The Filer believes that it is in the best interests of each Fund to be permitted to sell securities short in excess of the current limits, in a manner that is consistent with the Proposed Alternative Fund Investment Restrictions.

Incentive Fee Relief

40. Each Fund will be permitted to pay, or enter into arrangements that would require it to pay, an incentive fee that is determined by the performance of the Fund that is based on the cumulative total return of the Fund for the period that began immediately after the last period for which such incentive fee was paid.

41. The method of calculating the incentive fee payable by each Fund shall be described in the simplified prospectus in respect of each Fund.

42. The Filer believes that the proposed incentive fee structure for the Funds aligns the interests of the manager or portfolio advisor with that of the investors.

43. The Filer believes that it is in the best interests of each Fund to be permitted to pay, or enter into arrangements that would require it to pay, a fee that is determined by the performance of the Fund in a manner that is consistent with the Proposed Alternative Fund Investment Restrictions.

44. The Filer is not, and the Funds will not be, in default of the securities legislation in any of the Jurisdictions.

45. For the reasons provided above, the Filer respectfully submits that it would not be prejudicial to the public interest to grant the Requested Relief.

Decision

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that:

1. the Filer will file a standalone simplified prospectus, annual information form and fund facts document for the Funds, which will include the following disclosure:

(a) the simplified prospectus and annual information form will indicate on the cover page that each Fund is an alternative fund;

(b) within the simplified prospectus, the Filer will include disclosure within each Fund's investment objectives on the asset classes that the Fund may invest in and the investment strategies that the Fund may engage in pursuant to the Requested Relief and which are outside the scope of NI 81-102;

(c) within the simplified prospectus, the Filer will include disclosure in each Fund's investment objectives describing the maximum amount of leverage to be employed by the Fund;

(d) within the simplified prospectus, the Filer will include disclosure in each Fund's investment strategies on the maximum amount of borrowing and short selling that the Fund may engage in, together with a description of how borrowing and short selling will be used in conjunction with the Fund's other strategies;

(e) within the simplified prospectus, the Filer will include disclosure in each Fund's investment strategies explaining how the investment strategies that the Fund may engage in pursuant to the exemptive relief which are outside the scope of may affect investors' chance of losing money on their investment in the Fund;

(f) the annual information form will disclose under Item 10 of Form 81-101F2 the name of each person or company that has lent money to the Fund including

whether such person or company is an affiliate or associate of the Filer; and

(g) the fund facts document will include text box disclosure above Item 2 of Part I of Form 81-101F3 identifying each Fund as an alternative fund and highlighting how the Fund differs from other mutual funds in terms of its investment strategies and the assets it is permitted to invest in.

2. The Filer will disclose in each Fund's annual and interim financial statements and each Fund's Management Report of Fund Performance:

(a) the lowest and highest level of leverage experienced by the Fund in the reporting period covered by the financial statements;

(b) a brief explanation of the sources of leverage used (e.g. borrowing, short selling or use of derivatives);

(c) a description of how the Fund calculates leverage; and

(d) the significance to the Fund of the lowest and highest levels of leverage.

3. In the case of the Single Issuer Relief, the Fund must not purchase a security of an issuer, enter into a specified derivatives transaction or purchase an index participation unit if, immediately after the transaction, more than 20% of its net asset value would be invested in securities of any one issuer, provided, however, this limitation shall not apply in respect of (i) a government security; (ii) a security issued by a clearing corporation; (iii) a security issued by an investment fund if the purchase is made in accordance with the requirements of section 2.5 of NI 81-102; or (iv) an index participation unit that is a security of an investment fund.

4. In the case of the Specified Derivatives Relief:

(a) each Fund's aggregate gross exposure calculated as the sum of the following, must not exceed three times the Fund's net asset value: (i) the aggregate market value of the Fund's long positions; (b) the aggregate market value of securities sold short by the Fund pursuant to the Short Selling Relief; and (c) the aggregate notional value of the Fund's specified derivatives positions excluding any specified derivatives used for "hedging purposes" as defined in NI 81-102;

(b) in determining each Fund's compliance with the restriction contained in 4(a) above, the Fund must also include in its calculation its proportionate shares of securities of any underlying investment funds for which a similar calculation is required;

(c) each Fund must determine its compliance with the restriction contained in 4(a) above, as of the close of business of each day on which the Fund calculates a net asset value; and

(d) if a Fund's aggregate gross exposure as determined in subsection 4(a) above exceeds three times the Fund's net asset value, the Fund must, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate gross exposure to three times the Fund's net asset value or less.

5. In the case of the Cash Borrowing Relief:

(a) each Fund may only borrow from an entity described in section 6.2 of NI 81-102, except that the requirement set out in subsection 6.2(3)(a) of NI 81-102 will be satisfied if the company has equity, as reported in its most recent audited financial statements that have been made public or that will be made available to the Fund and its custodian upon request, of not less than $10,000,000;

(b) if the lender is an affiliate of the Filer, the independent review committee must approve the applicable borrowing agreement under subsection 5.2(2) of NI 81-107;

(c) the borrowing agreement entered into is in accordance with normal industry practice and on standard commercial terms for the type of transaction; and

(d) the total value of cash borrowed must not exceed 50% of each Fund's net asset value.

6. In the case of Short Selling Relief:

(a) the aggregate market value of all securities sold short by each Fund does not exceed 50% of the net asset value of the Fund; and

(b) the aggregate market value of all securities of the issuer of the securities sold short by each Fund does not exceed 10% of the net asset value of the Fund.

7. In the case of Incentive Fee Relief:

Each Fund must not pay, or enter into arrangements that would require it to pay, an incentive fee that is determined by the performance of the Fund unless:

(a) the payment of the incentive fee is based on the cumulative total return of the Fund for the period that began immediately after the last period for which such incentive fee was paid; and

(b) the method of calculating the incentive fee payable by each Fund shall be described in the simplified prospectus in respect of each Fund.

8. In the case of the Cash Borrowing Relief and the Short Selling Relief:

(a) each Fund must not borrow cash pursuant to the Cash Borrowing Relief or sell securities short pursuant to the Short Selling Relief, if immediately after entering into a cash borrowing or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of all securities sold short by the Fund would exceed 50% of the Fund's net asset value; and

(b) if the aggregate value of cash borrowed combined with the aggregate market value of all securities sold short by each Fund exceeds 50% of the Fund's net asset value, the Fund must, as quickly as commercially reasonable take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short to 50% or less of the Fund's net asset value.

Distribution

9. The Filer will ensure each Fund is only distributed through dealers that are registered with IIROC.

10. The Filer will not distribute securities of the Fund to other mutual funds other than the Top Funds.

11. In the case of Top Funds managed by the Filer, the Filer will ensure that such Top Funds will not purchase securities of the Funds if, immediately after the transaction, more than 10% of the net asset value of the Top Fund, taken at market value at the time of the transaction, would consist of securities of the Funds.

12. For Top Funds managed by an affiliate of the Filer, the Filer will obtain the Undertaking from its affiliate affirming that the affiliate will ensure that the Top Funds it manages will abide by the investment limits set out in condition 11 above.

13. The Filer will provide the Principal Regulator with notification of all affiliates from which it has obtained an Undertaking.

Term

14. This decision shall expire upon the earlier of: (i) the coming into force of the Proposed Alternative Fund Rules or substantially similar rules; and (ii) five years from the date of this decision.

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

2.2 Orders

2.2.1 Brian Michael Sutton and the Investment Industry Regulatory Organization of Canada – ss. 8, 21.7

FILE NO.: 2017-37 and 2018-10

IN THE MATTER OF
BRIAN MICHAEL SUTTON

AND

IN THE MATTER OF
THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA

Timothy Moseley, Vice-Chair and Chair of the Panel
Deborah Leckman, Commissioner
Lawrence Haber, Commissioner

August 14, 2018

ORDER
Sections 8 and 21.7 of the Securities Act, RSO 1990, c S.5

WHEREAS on June 28, 2018, the Ontario Securities Commission (**Commission**) held a hearing in relation to an application by Brian Michael Sutton (**Sutton**) filed on March 5, 2018, to review decisions of the Investment Industry Regulatory Organization of Canada (**IIROC**) dated July 5, 2017 and January 31, 2018 (the **Sutton Application**), and in relation to an application filed by IIROC to review the decision dated January 31, 2018 (the **IIROC Application**);

ON READING the Sutton Application, the IIROC Application, and on hearing the submissions of Sutton, IIROC, and Staff of the Commission;

IT IS ORDERED THAT:

1. Sutton's approval as a CFO with an IIROC dealer member firm is prohibited for a period of three years;

2. Sutton shall pay a $50,000 fine to IIROC; and

3. Sutton shall pay costs in the amount of $50,000 to IIROC.

"Timothy Moseley"

"Deborah Leckman"

"Lawrence Haber"

2.2.2 Thomson Reuters Multilateral Trading Facility – s. 147

Headnote

Application for an order that a multilateral trading facility authorized by the United Kingdom Financial Conduct Authority is exempt from the requirement to register as an exchange in Ontario on an interim basis – requested order granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5 as am., ss. 21, 147.

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

AND

IN THE MATTER OF
THOMSON REUTERS MULTILATERAL TRADING FACILITY

ORDER
(Section 147 of the Act)

WHEREAS Reuters Transaction Services Limited (the "**Applicant**" or "**RTSL**") has filed an application on behalf of Thomson Reuters Multilateral Trading Facility (the "**Facility**" or "**TR MTF**") dated March 20, 2018 ("**Application**") with the Ontario Securities Commission ("**Commission**") pursuant to section 147 of the Act requesting an interim order exempting the Facility from the requirement to be recognized as an exchange under subsection 21(1) of the Act ("**Order**");

AND WHEREAS the Applicant has represented to the Commission that:

1. The Facility is operated by the Applicant, a member of the Thomson Reuters Group;

2. Effective December 1, 2001, the U.K. Financial Services Authority ("**FSA**"), a financial regulatory body in the United Kingdom, authorized RTSL, under Part 4A of the UK *Financial Services and Markets Act* 2000, to act as the operator of an Alternative Trading System ("**ATS**"); on November 1, 2007, the authorization was changed to the operator of a multilateral trading facility ("**MTF**") when the ATS regime was replaced by the new MiFID regulated activity of *Operating a Multilateral Trading Facility* and this authorization subsequently was transferred to the FSA's successor regulatory body the Financial Conduct Authority (the "**FCA**"), also a financial regulatory body in the United Kingdom, on April 1, 2013. RTSL was previously authorized by the Bank of England between 1992 and 2001. The following types of investment are offered for trading on the Facility: foreign exchange FX forwards (swaps), FX forwards (outrights), FX swaps, FX non-deliverable forwards ("**NDFs**") and FX options;

3. On January 3, 2018, the Markets in Financial Instruments Directive (Directive 2014/65/EU of the European Parliament and of the Council) ("**MiFID II**") entered into force as implemented in the United Kingdom by transposition into national law together with the Markets in Financial Instruments Regulation (Regulation (EU) No 600/2014 of the European Parliament and of the Council) ("**MiFIR**") which is directly applicable in the United Kingdom, containing the amended regulatory framework for the operator of an MTF. Without the Requested Relief, participants in Ontario will be precluded from trading with EU/EEA participants on the TR MTF, a EU regulated trading venue;

4. The TR MTF is comprised of two trading segments known as Forwards Matching and FXall RFQ. All trading segments are governed by the TR MTF Rule Book ("**Rules**") applicable to the TR MTF as a whole. Each trading segment further has its own Rules specific to that trading segment. A client who enters into a Participant Agreement in respect of the TR MTF (a "**Participant**") must comply with both the Rules applicable to the Facility as a whole, and the Rules applicable to the specific trading segment to which the Participant is authorized and wishes to access. Trading on the Facility is offered in the Financial Instruments listed in the following table:

Trading Segment	Financial Instrument
Forwards Matching	FX forwards (swaps)
FXall RFQ	FX forwards (outrights), FX swaps, FX NDFs, FX options

These Financial Instruments are admitted in various currency pairs;

5. The Applicant is subject to regulatory supervision by the FCA and is required to comply with the FCA's regulatory framework set out in the FCA Handbook, which includes, among other things, rules on (i) the conduct of business (including rules regarding client categorization, communication with clients and other investor protections and client agreements), (ii) market conduct (including rules applicable to firms operating an MTF), and (iii) systems and controls (including rules on outsourcing, governance, record-keeping and conflicts of interest). The FCA requires the Applicant to comply at all times with a set of threshold conditions for authorization, including requirements that the Applicant is "fit and proper" to be authorized and that it has appropriate resources for the activities it carries on. The Applicant is subject to prudential regulation, including minimum regulatory capital requirements, and is capitalized in excess of regulatory requirements. The Applicant is required to maintain a permanent and effective compliance function. The Applicant's Compliance Department is responsible for implementing and maintaining adequate policies and procedures designed to ensure that the Applicant (and all associated staff) comply with their obligations under the FCA rules. These policies and procedures are set forth in the RTSL Compliance Manual and associated internal policies and procedures;

6. An MTF is obliged under the FCA Handbook to have requirements governing the conduct of Participants, to monitor compliance with those requirements and report to the FCA (a) significant breaches of the Facility's Rules, (b) disorderly trading conditions, and (c) conduct that may involve market abuse. The Applicant may also notify the FCA when a Participant's access is terminated, temporarily suspended or subject to condition(s). As required by the FCA Handbook, the Applicant has implemented a trade surveillance program. As part of the program, the Applicant's Compliance Department conducts real-time market monitoring of trading activity on the TR MTF to identify disorderly trading and market abuse or anomalies. The trade surveillance program is designed to maintain a fair and orderly market for TR MTF participants;

7. Participants may only connect to the Facility using a connection method permitted by RTSL. These connection methods are described more fully in the rules relevant to each specific trading segment. The Forwards Matching trading segment currently permits connections through a Thomson Reuters GUI application and the Matching application programming interface ("API") for FX Forwards. Participants may allow remote-manned use of Thomson Reuters APIs if the Participant ensures that the API applications in use at the remote site are at all times monitored and managed from that remote monitoring site. The Facility offers publicly available pricing plans based on trading segment, rate engine or pricing tool selected. The rate stated is purely for the MTF transaction component and does not include any pricing for the rates engine or pricing tools used;

8. Participants are responsible for ensuring the prompt exchange and processing of transaction confirmations directly with their counterparties in accordance with market practice. Failure to settle transactions will constitute a breach of the Facility Rules. Participants are also responsible for ensuring that transactions are not required to be cleared pursuant to applicable law. If Participants are required or choose to clear a transaction, they are responsible for making the necessary arrangements;

9. The Applicant requires that all Participants meet the criteria of an Eligible Counterparty, either '*Per Se*' or '*Elective*' as defined by the FCA in the FCA's Conduct of Business Sourcebook, Chapter 3 "Client Categorization"[1]. Each prospective participant must (i) comply and ensure that its authorized traders comply, and, in each case, continue to comply, with the Rules and applicable law (ii) have a sufficient level of trading ability, skill, competence and experience to conduct activities on the Facility; (iii) must be of adequate financial soundness; (iv) have adequate organizational arrangements commensurate with meeting their own regulatory obligations (v) have in place adequate systems and controls to ensure their on-going compliance with the Rules and management of their trading activities, and (vi) must satisfy any other criteria that RTSL may reasonably require from time to time;

10. All Participants, including Participants in Ontario ("**Ontario Participants**") are required to ensure they meet the necessary eligibility criteria for use of the Facility. Ontario Participants must ensure they meet all applicable Ontario regulatory requirements with respect to trading on the Facility. Ontario Participants are required to notify immediately the Applicant if they cease to meet the criteria of an Eligible Counterparty. Participants must also supply any information requested by the Facility or Applicant to enable monitoring of responsibilities with respect to eligibility and operational criteria;

11. The Facility also requires information to be provided regarding the operational functions of the participants, including the qualifications required of staff in key position and pre and post-trade controls;

12. Ontario Participants may include financial institutions, asset managers, dealers, government entities, pension funds and other well-capitalized entities that meet the criteria described above;

[1] See Section 3.6 of the Sourcebook located at https://www.handbook.fca.org.uk/handbook/COBS.pdf.

13. The TR MTF provides certain Ontario Participants with significant access to liquidity for which, at least for certain types of transactions, there is no appropriate alternative platform, and the Ontario capital markets will be disrupted if the Order is not granted;

14. Because the Facility sets requirements for the conduct of its participants and surveils the trading activity of its Participants, it is considered by the Commission to be an exchange;

15. Since the Applicant seeks to provide Ontario Participants with direct access to trading on the Facility, the Facility is considered by the Commission to be "carrying on business as an exchange" in Ontario and is required to be recognized as such or exempted from recognition pursuant to section 21 of the Act;

16. The Facility has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described herein;

17. The Applicant (or a related entity that will carry on the business of the Facility after the departure of the United Kingdom from the European Union) intends to file a full application to the Commission for a subsequent order exempting the Facility from the requirement to be recognized as an exchange under section 147 of the Act ("**Subsequent Order**");

AND WHEREAS the products traded on the Facility are not commodity futures contracts as defined in the Commodity Futures Act (Ontario) and the Facility is not considered to be carrying on business as a commodity futures exchange in Ontario;

AND WHEREAS the Applicant has acknowledged to the Commission that the scope of the Exchange Relief and the terms and conditions imposed by the Commission set out in Schedule "A" to this order may change as a result of the Commission's monitoring of developments in international and domestic capital markets or the Applicant or the Facility's activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives or securities;

AND WHEREAS based on the Application, together with the representations made by and acknowledgments of the Applicant to the Commission, the Commission has determined that the granting of the Exchange Relief would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that, pursuant to section 147 of the Act, the Facility is exempt on an interim basis from recognition as an exchange under subsection 21(1) of the Act,

PROVIDED THAT:

1. This Order shall terminate on the earlier of (i) August 16, 2019 and (ii) the effective date of the Subsequent Order;

2. The Applicant complies with the terms and conditions contained in Schedule "A"; and

3. The Applicant (on behalf of the Facility or on behalf of a related entity that will carry on the business of the Facility) files a full application to the Commission for a Subsequent Order by November 15, 2018.

DATED August 17, 2018

"Deborah Leckman" "Philip Anisman"

Schedule A

Terms and Conditions

Regulation and Oversight of the Applicant

1. The Applicant will maintain its permission to operate as a multilateral trading facility (MTF) with the U.K. Financial Conduct Authority (FCA) and will continue to be subject to the regulatory oversight of the FCA.

2. The Applicant will continue to comply with the ongoing requirements applicable to it as the operator of an MTF authorized by the FCA.

3. The Applicant will promptly notify the Commission if its permission to operate an MTF has been revoked, suspended, or amended by the FCA, or the basis on which its permission to operate an MTF has been granted has significantly changed.

4. The Applicant must do everything within its control, which includes cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the Act in compliance with Ontario securities law.

Access

5. The Applicant will not provide direct access to a participant in Ontario (Ontario User) unless the Ontario User is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, and qualifies as an "eligible counterparty" (either "per se" or "elective"), as defined by the FCA in the FCA's Conduct of Business Sourcebook, Chapter 3 "Client Categorisation."

6. For each Ontario User provided direct access to the Facility, the Applicant will require, as part of its application documentation or continued access to the Facility, the Ontario User to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.

7. The Applicant may reasonably rely on a written representation from the Ontario User that specifies either that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, provided the Applicant notifies such Ontario User that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote or otherwise uses the Facility.

8. The Applicant will require Ontario Users to notify the Applicant if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Ontario User and subject to applicable laws, the Applicant will promptly restrict the Ontario User's access to the Applicant if the Ontario User is no longer appropriately registered or exempt from those requirements.

9. The Applicant must make available to Ontario Users appropriate training for each person who has access to trade on the Applicant's facilities.

Trading by Ontario Users

10. The Applicant will not provide access to an Ontario User to trading in products other than swaps, as defined in section 1a(47) of the United States Commodity Exchange Act as amended, without prior Commission approval.

Submission to Jurisdiction and Agent for Service

11. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of the Applicant in Ontario, the Applicant will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.

12. The Applicant will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the Applicant's activities in Ontario.

Disclosure

13. The Applicant will provide to its Ontario Users disclosure that:

    (a) rights and remedies against the Applicant may only be governed by the laws of the United Kingdom, rather than the laws of Ontario and may be required to be pursued in the United Kingdom rather than in Ontario; and

    (b) the rules applicable to trading on the Facility may be governed by the laws of the United Kingdom rather than the laws of Ontario.

Prompt Reporting

14. The Applicant will notify staff of the Commission promptly of:

    (a) any material change to its business or operations or the information provided in the Application, including, but not limited to, material changes to:

        (i) the regulatory oversight by the FCA;

        (ii) the corporate governance structure of the Applicant;

        (iii) the access model, including eligibility criteria, for Ontario Users;

        (iv) systems and technology; and

        (v) the clearing and settlement arrangements for the Facility;

    (b) any condition or change in circumstances whereby the Applicant is unable or anticipates it will not be able to continue to meet any of the relevant rules and regulations of the FCA, as set forth in the FCA Handbook;

    (c) any known investigations of, or any disciplinary action against the Applicant by the FCA or any other regulatory authority to which it is subject;

    (d) any matter known to the Applicant that may materially and adversely affect its financial or operational viability, including, but not limited to, any declaration of an emergency pursuant to the Applicant's rules;

    (e) any default, insolvency, or bankruptcy of a participant of the Applicant known to the Applicant or its representatives that may have a material, adverse impact upon the Applicant; and

    (f) any material systems outage, malfunction or delay.

15. The Applicant will promptly provide staff of the Commission with the following information to the extent it is required to provide to or file such information with the FCA:

    (a) details of any material legal proceeding instituted against the Applicant;

    (b) notification that the Applicant has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Applicant or has a proceeding for any such petition instituted against it; and

    (c) the appointment of a receiver or the making of any voluntary arrangement with creditors.

Quarterly Reporting

16. The Applicant will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a quarterly basis (within 30 days of the end of each calendar quarter), and at any time promptly upon the request of staff of the Commission:

    (a) a current list of all Ontario Users and whether the Ontario User is registered under Ontario securities laws or is exempt from or not subject to registration, and, to the extent known by the Applicant, other persons or companies located in Ontario trading on the Facility as customers of participants ("Other Ontario Participants");

(b) the legal entity identifier assigned to each Ontario User, and, to the extent known by the Applicant, to Other Ontario Participants in accordance with the standards set by the Global Legal Entity Identifier System;

(c) a list of all Ontario Users whom the Applicant has referred to the FCA, or, to the best of the Applicant's knowledge, whom have been disciplined by the FCA with respect to such Ontario Users' activities on the Facility and the aggregate number of all participants referred to the FCA in the last quarter by the Applicant;

(d) a list of all active investigations during the quarter by the Applicant relating to Ontario Users and the aggregate number of active investigations during the quarter relating to all participants undertaken by the Applicant;

(e) a list of all Ontario applicants for status as a participant who were denied such status or access to the Applicant during the quarter, together with the reasons for each such denial;

(f) a list of all additions, deletions, or changes to the products available for trading since the prior quarter;

(g) for each product,

(i) the total trading volume and value on the Facility originating from Ontario Users, and, to the extent known by the Applicant, from Other Ontario Participants, presented on a per Ontario User or per Other Ontario Participant basis; and

(ii) the proportion of worldwide trading volume and value on the Facility conducted by Ontario Users, and, to the extent known by the Applicant, by Other Ontario Participants, presented in the aggregate for such Ontario Users and Other Ontario Participants;

provided in the required format; and

(h) a list outlining each material incident of a security breach, systems failure, malfunction, or delay (including cyber security breaches, systems failures, malfunctions or delays reported under section 14(f) of this Schedule) that occurred at any time during the quarter for any system relating to trading activity, including trading, routing or data, specifically identifying the date, duration and reason, to the extent known or ascertainable by the Applicant, for the failure, malfunction or delay, and noting any corrective action taken.

Annual Reporting

17. The Applicant will file with the Commission any annual financial report or financial statements (audited or unaudited) of the Applicant provided to or filed with the FCA promptly after filing with the FCA.

Information Sharing

18. The Applicant will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

2.2.3 ICE Futures Canada, Inc. – s. 144 of the OSA and s. 78 of the CFA

Headnote

Subsection 144(1) of the OSA and Section 78 of the CFA – Application for an order revoking an order issued September 25, 2012, granting ICE Futures Canada, Inc, pursuant to section 147 of the OSA, an exemption from the requirement to be recognized as an exchange under section 21 of the OSA, and pursuant to section 80 of the CFA, an exemption from registration as a commodity futures exchange under section 15 of the CFA.

Statutes Cited

Securities Act, R.S.O. 1990, c. S. 5 as am., ss. 21.2, 144, 147.
Commodity Futures Act, R.S.O. 1990, c. C.20 as am., ss. 15, 22, 33, 38, 78, 80.

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

AND

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

AND

IN THE MATTER OF
ICE FUTURES CANADA, INC.
(IFCA)

REVOCATION ORDER
(Section 144 of the OSA and Section 78 of the CFA)

WHEREAS the Ontario Securities Commission (**Commission**) issued an order dated September 25, 2012 granting exemptions to IFCA:

a) Pursuant to section 147 of the OSA, from the requirement to be recognized as an exchange under subsection 21 of the OSA and pursuant to section 80 of the CFA, from registration as a commodity futures exchange under section 15 of the CFA;

b) Pursuant to section 38 of the CFA, from the requirements of section 33 of the CFA; and

c) Pursuant to section 38 of the CFA, from the registration requirements under section 22 of the CFA (collectively, **Exemption Order**);

AND WHEREAS IFCA has notified the Commission that:

(i) All futures and options on futures contracts (**Contracts**) listed for trading on IFCA were transitioned to its affiliate, ICE Futures U.S., Inc. (**IFUS**), over the time period July 27, 2018 to July 30, 2018 (**Transition Weekend**);

(ii) All open positions at ICE Clear Canada, Inc. (**ICCA**) the designated clearing agency for IFCA, were transitioned to ICE Clear US, Inc. (**ICUS**) the designated clearing agency for IFUS, on Monday July 30, 2018;

(iii) Trading in the Contracts commenced on IFUS as at trade date Monday July 30, 2018;

(iv) IFCA ceased operations as an exchange under the OSA and as a commodity futures exchange under the CFA;

(v) IFCA had previously notified all stakeholders of the foregoing, including clearing participants, market participants, shareholders, regulators, and required government agencies of the matters set out above;

(vi) IFCA intends, as soon as practicable after the Transition Weekend, and after fulfilling all statutory and other legal requirements, to dissolve as a corporation.

AND WHEREAS IFCA has requested that the Exemption Order be revoked as soon as practicable after July 31, 2018;

AND WHEREAS staff of the Manitoba Securities Commission (**MSC**), the lead regulator of IFCA, have confirmed that the MSC revoked its order recognizing IFCA as a self-regulatory organization and registering IFCA as a commodity futures exchange in Manitoba effective on August 21, 2018;

AND WHEREAS the Commission is of the opinion that it would not be prejudicial to the public interest to revoke the Exemption Order;

THE COMMISSION hereby revokes the Exemption Order pursuant to section 144 of the OSA and section 78 of the CFA.

DATED this 17th day of August 2018 and effective upon August 21, 2018.

“Deborah Leckman”

“Philip Anisman”

2.2.4 ICE Clear Canada, Inc. – s. 144

Headnote

Section 144 of the Securities Act (Ontario) (Act) – Application for an order revoking an order issued on February 1, 2011, granting ICE Clear Canada, Inc., pursuant to section 147 of the Act, an exemption from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the Act.

Statutes Cited

Securities Act, R.S.O. 1990, c. S. 5 as am., ss. 21.2, 144, 147.
National Instrument 24-102 Clearing Agency Requirements s. 2.3(1).

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

AND

IN THE MATTER OF
ICE CLEAR CANADA, INC.
(ICCA)

REVOCATION ORDER (Section 144 of the Act)

WHEREAS the Ontario Securities Commission (**Commission**) issued an order dated February 1, 2011 and effective March 1, 2011 exempting ICCA, pursuant to section 147 of the Act, from the requirement to be recognized as a clearing agency under subsection 21.2 (0.1) of the Act (**Exemption Order**);

AND WHEREAS on May 1, 2018 ICCA filed with the Commission a report on Form 24-102F2 *Cessation of Operations Report for Clearing Agency* under National Instrument 24-102 *Clearing Agency Requirements*, and filed an amended Form 24-102F2 dated July 3, 2018;

AND WHEREAS ICCA has notified the Commission that:

(i) All futures and options on futures contracts (**Contracts**) listed for trading on ICE Futures Canada, Inc. (**IFCA**), the parent company of ICCA, were transitioned to an affiliated company, ICE Futures U.S., Inc. (**IFUS**), over the time period July 27, 2018 to July 30, 2018 and trading in the Contracts commenced on IFUS as at trade date July 30, 2018;

(ii) All open positions at ICCA the designated clearing agency for IFCA, were transitioned to an affiliated company, ICE Clear US, Inc. (**ICUS**), the designated clearing agency for IFUS, on Monday, July 30, 2018 (**Transition**);

(iii) ICCA implemented transition rules that provided that, inter alia, all open positions held in house accounts and customer accounts of registered participants of ICCA (**Clearing Participant**) were transitioned and novated to house accounts and customer accounts of registered members of ICUS pursuant to the provision of agreements between IFCA, IFUS, ICCA, ICUS, ICUS Clearing Members and ICCA Clearing Participants and the novation of open positions took place as at 9:30 am (CT) on Monday July 30, 2018;

(iv) On Monday July 30, 2018 payments were made by ICCA to ICCA Clearing Participants to return all margin monies and all guaranty fund deposits;

(v) ICCA ceased operations as a clearing agency as at the close of business on Monday July 30, 2018;

(vi) ICCA had previously notified all stakeholders of the foregoing, including Clearing Participants, market participants, shareholders, regulators, and required government agencies of the matters set out above;

(vii) ICCA intends, as soon as practicable after the Transition and after fulfilling all statutory and other legal requirements, to dissolve as a corporation.

AND WHEREAS ICCA has requested that the Exemption Order be revoked as soon as practicable after July 31, 2018;

AND WHEREAS staff of the Manitoba Securities Commission (**MSC**), the lead authority of ICCA, have confirmed that the MSC revoked its order designating ICCA as a recognized clearing house on August 13, 2018;

AND WHEREAS the Commission is of the opinion that it would not be prejudicial to the public interest to revoke the Exemption Order;

THE COMMISSION hereby revokes the Exemption Order pursuant to section 144 of the Act.

DATED this 17th day of August 2018.

“Deborah Leckman”

“Philip Anisman”

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Brian Michael Sutton and the Investment Industry Regulatory Organization of Canada – ss. 8(3), 21.7

Citation: Sutton (Re), 2018 ONSEC 42
Date: August 14, 2018
File No. 2017-37 and 2018-10

IN THE MATTER OF
BRIAN MICHAEL SUTTON

AND

IN THE MATTER OF
THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA

REASONS AND DECISION
(Subsection 8(3) and section 21.7 of the Securities Act, RSO 1990, c S.5)

Hearing:	June 28, 2018	
Decision:	August 14, 2018	
Panel:	Timothy Moseley	Vice-Chair and Chair of the Panel
	Deborah Leckman	Commissioner
	Lawrence Haber	Commissioner
Appearances:	Kenneth A. Dekker Daphne Hooper	For Brian Michael Sutton
	Linda Fuerst Rob DelFrate Ted Brook	For Staff of the Investment Industry Regulatory Organization of Canada
	Yvonne Chisholm	For Staff of the Ontario Securities Commission

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REASONS AND DECISION

I. OVERVIEW

[1] Brian Sutton was the Chief Financial Officer (**CFO**) of First Leaside Securities Inc. (**FLSI**), a dealer member firm of the Investment Industry Regulatory Organization of Canada (**IIROC**). One of Mr. Sutton's responsibilities at FLSI involved the pricing of certain unlisted securities issued by three limited partnerships (the **Funds**) related to FLSI. Specifically, Mr. Sutton was responsible for ascribing a price for the units of the Funds (the **Fund Units**), to be shown on statements issued to every unitholder, most if not all of whom were clients of FLSI.

[2] IIROC Staff alleged that from September 2009 to October 2011 (the **Material Time**), Mr. Sutton failed to discharge that responsibility properly, contrary to IIROC Dealer Member Rule 38.6(c), which requires a CFO to "monitor adherence to the Dealer Member's policies and procedures as necessary to provide reasonable assurance that the Dealer Member complies with [IIROC's] financial rules."

[3] At a hearing before an IIROC tribunal panel, Mr. Sutton claimed that he had relied on an active market in the Fund Units in order to ascribe an appropriate price. In the IIROC panel's decision of July 5, 2017 (the **Liability Decision**)[1], the panel concluded that there had been no active market that could properly form the basis for pricing decisions, and that the price of the Fund Units as communicated to the unitholders did not reflect the value of those securities. The IIROC panel found that Mr. Sutton had indeed breached Rule 38.6(c).

[4] In a subsequent decision dated January 31, 2018 (the **Sanctions and Costs Decision**)[2], the IIROC panel described Mr. Sutton's error as an "honest mistake".[3] The panel imposed a fine of $25,000 and reprimanded Mr. Sutton. It declined IIROC Staff's request for a $100,000 fine, a permanent prohibition against Mr. Sutton's registration as a CFO with an IIROC Dealer Member, and costs.

[5] Mr. Sutton applies to the Commission for a review of the Liability Decision. He asserts that the IIROC panel erred in a number of ways, including by:

a. reviewing material that was not properly before it;

1 *Sutton (Re)*, 2017 IIROC 35.
2 *Sutton (Re)*, 2018 IIROC 03.
3 Sanctions and Costs Decision at paras 1, 12.

b. making findings of fact that were unsupported by the evidence;

c. unjustifiably concluding that there was no active market in one of the Funds at issue;

d. reaching conclusions, without the benefit of expert evidence, about Mr. Sutton's conduct; and

e. effectively holding Mr. Sutton to a strict liability standard, by finding a breach despite what the panel described as an absence of "*mens rea* or intent to do wrong".[4]

[6] IIROC Staff applies to the Commission for a review of the Sanctions and Costs Decision. IIROC Staff asserts that the sanctions ought to be more severe, and that Mr. Sutton ought to be ordered to pay costs. IIROC Staff submits that the IIROC panel erred by, among other things:

a. failing to consider Mr. Sutton's role as a gatekeeper;

b. disregarding the importance of accurate information to investors;

c. concluding that Mr. Sutton's breach did not harm investors;

d. improperly treating Mr. Sutton's history and seniority in the securities industry as a mitigating factor; and

e. concluding that because Mr. Sutton's error was "an honest mistake", it would not be appropriate to impose a prohibition on his approval.

[7] Our decision and these reasons relate to both applications, which were heard together.

[8] For the reasons that follow, we conclude that in reaching the Liability Decision, the IIROC panel made errors that, when taken together, constitute an error of law that leads us to set aside the Liability Decision and substitute our own decision. Having said that, once we complete our own analysis, we reach the same result that the IIROC panel did; that is, that Mr. Sutton contravened Rule 38.6(c).

[9] Any sanctions decision has as its foundation a preceding liability or merits decision. In this case, therefore, because we are setting aside the Liability Decision, we consider the questions of sanctions and costs afresh, and substitute our own decision for the Sanctions and Costs Decision. We conclude that the sanctions imposed by the IIROC panel did not adequately address the seriousness of this matter, and that the circumstances warrant a fine of $50,000, a three-year prohibition against Mr. Sutton being approved as a CFO of an IIROC dealer member, and a reprimand. We also conclude that Mr. Sutton should be required to pay costs to IIROC in the amount of $50,000.

II. REGULATORY FRAMEWORK

[10] In carrying out its responsibility to oversee recognized self-regulatory organizations such as IIROC, including the review of decisions of those organizations, the Commission must be guided by the purposes of the *Securities Act* (the **Act**)[5], as set out in section 1.1 of the Act. In this matter, most relevant among those purposes are the protection of investors from unfair or improper practices, and the fostering of confidence in capital markets.

[11] In an enforcement proceeding that originates before a self-regulatory organization, that organization, like the Commission, must discharge its function in a manner that "restrain[s] future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets".[6]

[12] These principles apply both to the liability phase and to the sanctions and costs phase (if any) of an enforcement proceeding. In our analysis below regarding sanctions, we also refer to the *IIROC Sanction Guidelines*[7], a document that assists IIROC panels in determining appropriate sanctions, and helps set expectations among those participants in the capital markets who are regulated by IIROC.

4 RSO 1990, c S.5.

5 RSO 1990, c S.5.

6 *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37, [2001] 2 SCR 132 at para 43.

7 IIROC Sanction Guidelines, Investment Industry Regulatory Organization of Canada, online: http://www.iiroc.ca/industry/enforcement/Documents/IIROCSanctionGuidelines_en.pdf (IIROC Sanction Guidelines) (***IIROC Sanction Guidelines***).

III. BACKGROUND

A. Introduction

[13] Before setting out the background facts, or engaging in our analysis, some clarification is in order with respect to one key issue that arises in this case. We address the issue in more detail below, but a reading of our reasons will be assisted by some preliminary comments regarding terminology.

[14] The issue relates to the price of the Fund Units, and to the roles played by Mr. Sutton and others in that regard. The price of a Fund Unit manifests itself at two different stages in the process: first, when a trade is executed, and second, when information is communicated to unitholders by way of periodic statements.

[15] As we explain below, the price at which every trade in Fund Units was executed during the Material Time was fixed by Mr. Phillips, the President and Ultimate Designated Person (**UDP**) of FLSI. In this sense, Mr. Phillips "determined" the price of every trade.

[16] It was then Mr. Sutton's responsibility to assess the price at which the trade had already been executed and decide whether it was appropriate to show that price on unitholder statements. An internal FLSI document that Mr. Sutton created to describe the pricing methodology (see paragraph [88] below) notes that it is the CFO's responsibility to "determine" and to "establish" the price of a Fund Unit.

[17] The word "determine", in this context, is ambiguous as between the different roles played by Mr. Phillips and Mr. Sutton. Accordingly, we have adopted "fix" to describe Mr. Phillips's role, and "ascribe" to describe Mr. Sutton's role. These terms reflect our findings as set out below.

B. Facts

[18] The Fund Units were sold through FLSI, a dealer that was a member of a group of affiliated entities (referred to together as the FL Group). The three Funds, which were themselves members of the FL Group, were:

a. the First Leaside Fund, units of which were issued as an exempt product to accredited investors starting in 2005, and the sole material assets of which were unsecured promissory notes given by FL Master Texas Ltd. (**Master Texas**), a member of the FL Group;

b. the First Leaside Properties Fund (**Properties Fund**), units of which were issued pursuant to a prospectus beginning in 2009, and the sole material assets of which were unsecured promissory notes given by FL Master Sherman Ltd. (**Master Sherman**), a member of the FL Group; and

c. the Wimberly Fund, units of which were issued pursuant to offering memoranda under two offerings in May and November of 2010, and the sole material assets of which were unsecured promissory notes given by Master Texas.

[19] The debtors Master Texas and Master Sherman were based in Texas, and invested in real estate, primarily in that state. Interest on the promissory notes was paid first by the debtor to the Fund, and then paid out to unitholders of the Fund. The unitholders also expected to receive a return of their principal at the end of the ten-year maturity period.

[20] All trades of all units of all three Funds, including initial distributions and secondary market trades, were executed at $1.00 per unit throughout the Material Time. Until the fall of 2011, FLSI issued statements to its client unitholders, showing $1.00 as the current price of the Fund Units. Beginning in the fall of 2011, FLSI began to show the price as "not available".

[21] Mr. Sutton is 68 years old and has had a long and unblemished career in various capital markets-related positions, including consulting work and senior roles with IIROC member firms. He is not currently registered. During the Material Time, he was CFO of FLSI but had no other role at FLSI or with other members of the FL Group.

IV. ISSUES

[22] These applications present the following issues:

a. What is the standard of review when the Commission reviews the decision of a self-regulatory organization, including with respect to alleged procedural errors?

b. What should be the consequences, if any, of the IIROC panel's having reviewed material that was not properly in evidence before it, as the parties have agreed that the panel did?

c. Apart from the IIROC panel's review of extraneous material, did the panel reach conclusions unsupported by the evidence, and if so, what should be the consequences of its having done so?

d. Was Mr. Sutton's methodology for ascribing a price for Fund Units appropriate? In particular, did the trading history of Fund Units constitute an "active market" sufficient for this purpose?

e. Did Mr. Sutton adequately monitor adherence to FLSI's policies and procedures as necessary to provide reasonable assurance that FLSI complied with IIROC's financial rules, and if not, did he thereby contravene IIROC Dealer Member Rule 38.6(c)?

f. Was the Commission required to hear expert evidence in order to reach a conclusion on the preceding issue?

g. If Mr. Sutton contravened IIROC Dealer Member Rule 38.6(c), what are the appropriate sanctions, and should Mr. Sutton be required to pay costs?

V. ANALYSIS

A. Standard of review

[23] Subsections 8(3) and 21.7(2) of the Act govern an application to the Commission, by a person or company directly affected by a decision of a self-regulatory organization (**SRO**), for a review of that decision. Together, those subsections authorize the Commission to confirm the decision of the SRO, or to "make such other decision as the Commission considers proper."

[24] The Commission's review of an SRO decision is a hearing *de novo*, rather than an appeal. In other words, the Commission exercises original jurisdiction rather than a more limited appellate jurisdiction. Further, no deference need be accorded by the Commission to the SRO panel's decision.[8]

[25] Despite the fact that such deference is not required, the Commission has chosen as a matter of practice to limit the circumstances under which it will substitute its own decision for that of an SRO panel.[9] This choice is consistent with the requirement in the Act that the Commission have regard to the fundamental principle that the Commission should "use the enforcement capability and regulatory expertise of recognized self-regulatory organizations."[10]

[26] The Commission has often stated[11] that it will interfere with an SRO decision only if:

a. the hearing panel proceeded on an incorrect principle;

b. the hearing panel erred in law;

c. the hearing panel overlooked some material evidence;

d. new and compelling evidence is presented to the Commission that was not presented to the hearing panel; or

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

[27] Mr. Sutton submitted that "there is no deference shown [to the SRO panel] on issues of law or issues of procedural fairness – in which case the standard of review is always correctness."[12] In support of this proposition, Mr. Sutton cited authority that addresses the standard of review applicable to a court reviewing a decision of the Commission, as opposed to the Commission reviewing an SRO decision.

[28] We do not accept that submission. While courts may impose a standard of correctness on issues of procedural fairness, there is no statutory or judicial authority that requires a similar approach by the Commission. We see no reason to disturb the long-standing test set out above in paragraph [26].

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8 *Johal v Funeral Services*, 2012 ONCA 785 at para 4; *HudBay Minerals Inc. (Re)*, 2009 ONSEC 15, (2009), 32 OSCB 3733 at para 106.
9 *Pariak-Lukic v Investment Industry Regulatory Organization of Canada*, 2016 ONSC 2564 (Div Ct) (***Pariak-Lukic DivCt***) at para 14.
10 Paragraph 4 of section 2.1 of the Act.
11 See, e.g., *Canada Malting Co. (Re)* (1986), 9 OSCB 3565 at para 24; *Marek (Re)* 2017 ONSEC 41, (2017), 40 OSCB 9167 at para 24.
12 Sutton's written submissions (liability) at para 152.

B. Problems relating to evidence at the IIROC hearing

1. Introduction

[29] We will now consider Mr. Sutton's submission that the IIROC panel made a number of errors regarding evidence, and that these errors are serious enough to warrant our setting aside the Liability Decision.

[30] Underlying this submission is the important principle that respondents must know the case they have to meet, and that they must have the opportunity to meet it.

[31] The errors fall into two categories: review by the panel of material not properly before it, and findings of fact not supported by the evidence that was properly before it.

2. Review of material not in evidence

[32] We begin with Mr. Sutton's submission that the panel reviewed material that was not in evidence.

[33] At the beginning of the liability hearing before the IIROC panel, IIROC Staff filed a 13-volume compendium of documents. The parties had reached an agreement, which the panel accepted, that admissibility of the compendium's contents would be dealt with on a document-by-document basis, as documents were referred to by counsel or by witnesses. The panel members were not to review material that was not brought to their attention during the hearing.

[34] It is common ground that despite this clear understanding, the IIROC panel made three references in the Liability Decision to material that had not been referred to during the hearing, and which, it would appear, the panel reviewed after the hearing, or possibly before the hearing but without adverting to the material during the hearing. In this application before the Commission, IIROC Staff properly conceded that the panel ought not to have done so. IIROC Staff submits, however, that these errors by the IIROC panel were inconsequential. IIROC Staff disagrees with Mr. Sutton's submission that the errors resulted in an unfairness to him.

[35] We consider each of the three errors in turn. We then consider Mr. Sutton's concern that the panel may have reviewed other extraneous material not cited in the Liability Decision.

(a) Internal IIROC emails

[36] Paragraph 35 of the Liability Decision reproduces a series of internal IIROC emails from September 2010. In that paragraph, the IIROC panel introduced the emails as follows:

> While there was no direct evidence in the record before the Hearing Panel of a concern on the part of FinOps [IIROC's Financial Operational Compliance section] about FLSI's pricing of the Fund Units until the latter part of 2010, in an email dated September 17, 2010 from Mr. Dines [IIROC's Manager, Financial and Operational Compliance] to his FinOps superiors, there is an indication that FinOps had had concerns earlier.

[37] It is common ground that the emails were not introduced into evidence during the hearing. The panel ought not to have reviewed them and ought not to have incorporated them into the Liability Decision.

[38] The Liability Decision contains no subsequent explicit reference to the emails, and it is not clear whether or not the emails formed a part of the panel's analysis. It is possible, although not certain, that the panel had the emails in mind in writing paragraph 60 of the decision, which concludes that at least by 2010, "the FL Group faced financial difficulties", a finding for which there was no evidence before the panel. The panel goes on to imply, without stating explicitly, that the financial difficulties resulted in pressure to maintain the price of $1.00 per Fund Unit.

[39] Nowhere in the Liability Decision does the panel make a connection between IIROC Staff's view of the situation (as reflected in the emails) and any of the factual findings that underlie the panel's ultimate conclusions as to liability. In our view, no such connection exists.

[40] IIROC Staff submits that while the IIROC panel's reference to the emails was an error, it was an inconsequential one. We agree that by itself, this error would not justify our interfering with the decision.

(b) Grant Thornton report

[41] Paragraphs 46 and 47 of the Liability Decision refer to the contents of an August 2011 report produced by Grant Thornton LLP, an accounting and consulting firm that had been retained to review and make recommendations regarding the affairs of the FL Group (the **Grant Thornton Report**).

[42] The Grant Thornton Report was presented to one witness, who was asked only to review an organizational chart that was included in the report. The report's authors were not called as witnesses at the IIROC hearing, and the report was never referred to again.

[43] Despite the limited use made during the hearing of the Grant Thornton Report, the IIROC panel quoted in the Liability Decision a number of the report's findings regarding the process associated with the purchase of certain unspecified limited partnership units. The panel did not go on to rely on those findings, however. In fact, the panel noted that there are errors in the findings with respect to the pricing process. The panel also noted that Mr. Sutton is not mentioned in the report, that it appeared that Mr. Sutton had not been interviewed for the report, and that Mr. Sutton did not even see the report until after the IIROC proceeding was commenced.

[44] Further, the panel did not advert to whether the quoted findings actually referred to the three Funds involved in this case. It is not clear that they do.

[45] Given all those limitations, we do not know why the Grant Thornton Report was mentioned in the Liability Decision. In any event, it is common ground that the panel ought not to have reviewed the report (other than the organizational chart) and ought not to have referred to the report's findings. Having said that, and especially in light of the panel's conclusion that the report's findings were incorrect, we are satisfied that the panel did not rely on the report. We agree with IIROC Staff's contention that this error by the panel was inconsequential.

(c) IIROC Staff's interview of FLSI's former Chief Compliance Officer

[46] In paragraph 58 of the Liability Decision, the panel addresses what it calls the "precarious nature of the promise" by Mr. Phillips, the founder of the FL Group and the President and UDP of FLSI, that any investor who wanted to recover their investment could do so. To illustrate that point, the panel quotes from the transcript of an interview by IIROC Staff of FLSI's former Chief Compliance Officer (**CCO**). In the quoted portion, the former CCO testifies about what might happen "should investors sense problems", *i.e.*, if holders of the Fund Units were to become aware that their expected interest payments were in jeopardy:

> So that they then turn to their clients and say, You know what? We just figured out these properties can't afford your 9 percent interest." And then everyone says, "Give me back my money". And, boom, we would be where we are today. At least we stopped selling it.

[47] It is common ground that the interview transcript was not in evidence at the hearing. It ought not to have been reviewed by the panel and it ought not to have been referred to in the Liability Decision. Once again, IIROC Staff concedes the error but maintains that it is of no consequence, for two primary reasons.

[48] First, IIROC Staff submits that it is "only common sense"[13] that a sell-off might have occurred if the value of a Fund Unit could not be determined or was less than $1.00. IIROC Staff acknowledges that this possibility may have been a motivation for FLSI to continue to show the price as $1.00.

[49] While there is some truth to that submission, one must ask why, if the proposition were "only common sense", the panel nonetheless felt that the CCO's perspective added anything and was therefore worth mentioning. We cannot be sure of the answer, but in our view, there is at least a reasonable likelihood that the CCO's statement contributed to the panel's view of the nature of the commitment by Mr. Phillips or FLSI to redeem Fund Units for $1.00. Indeed, as noted above, the panel's opening words in paragraph 58 of the Liability Decision connect the quoted statement with the panel's conclusion about the commitment. We are therefore unable to conclude that the quoted text had no influence on the panel's thinking.

[50] IIROC Staff's second submission on this point is that the excerpted portion does not directly relate to the question of whether Mr. Sutton adhered to the FLSI Pricing Policy. It is true that the panel's reasons do not explicitly connect the CCO's comment to the ultimate conclusion. However, we are left with some discomfort, given that the $1.00 price, and the process that led to every trade being conducted at that price, were central to the panel's analysis.

[51] Specifically, the extent to which FLSI or Mr. Phillips could be counted on to deliver a trade at $1.00, no matter what the circumstances, may have played a part in the panel's ultimate determination that it was inappropriate to show the $1.00 price to other investors as being the actual value of a Fund Unit.

[13] IIROC's written submissions (liability) at para 62.

[52] The panel's reasons do not disclose what emphasis, if any, the panel placed on the quoted text. In such circumstances, we are of the view that within a range of reasonable possibilities, the uncertainty should accrue to the benefit of Mr. Sutton, against whom the adverse finding was made.

(d) The possibility of other extraneous material

[53] Mr. Sutton expresses the concern that the above three items are the known instances of the panel going beyond the permissible boundaries, but that the panel may have reviewed other extraneous material. IIROC Staff submits that there is no basis for that concern, and that it is mere speculation.

[54] In response, Mr. Sutton cites the example of the excerpt from the transcript of the CCO's examination. He points out that the transcript numbered more than 250 pages. At no time during the IIROC hearing did either party direct the panel's attention to the quoted portion. Mr. Sutton asserts, and we agree, that it defies logic to assume that the panel did not read any portion of the transcript other than the several sentences quoted above.

[55] Similarly, neither party directed the IIROC panel's attention to the emails referred to in paragraph 35 of the Liability Decision. The panel selected the emails and the quoted text from among the 13 volumes, and cited them along with the findings from the Grant Thornton Report. We can conceive of no reasonable explanation other than that the panel reviewed various extraneous materials from the compendium, either before or after the hearing, and in either case without notice to the parties. In our view, this scenario is a likely one and is well beyond mere speculation.

(e) Conclusion as to extraneous material

[56] The IIROC panel's review of extraneous material, the extent of which is unclear, is of particular concern to us. Mr. Sutton was denied the opportunity to confront this material, whether by challenging its admissibility, or by seeking to minimize its impact by leading evidence to the contrary or through cross-examination.

[57] We cannot be sure how influential the extraneous material was on the panel's thinking, in particular because we are not in a position to know how much extraneous material the panel reviewed in addition to the three items referred to in paragraphs [36] to [52] above. Given the uncertainty, it would be unfair to Mr. Sutton for us to assume that there was no further prejudice to him beyond that associated with those three items.

3. Unsupported findings of fact

[58] We now consider Mr. Sutton's other complaint regarding evidentiary matters, *i.e.*, his submission that the panel reached factual conclusions unsupported by the evidence that was properly before the panel. They are as follows.

(a) Alleged promise by Mr. Dines to Mr. Sutton

[59] In paragraphs 52 through 55 of the Liability Decision, the IIROC panel refers to a meeting that took place in June of 2011. Attendees included Mr. Dines of IIROC and Mr. Sutton, as well as a number of other individuals. Immediately following that group meeting, Mr. Dines and Mr. Sutton met separately. The only evidence before the IIROC panel about what happened at that second meeting came from Mr. Sutton at the IIROC hearing.

[60] In his evidence, Mr. Sutton referred to a Review Engagement Report prepared by accounting firm Sloan Partners LLP (the **Sloan Report**), which had been prepared at the request of Properties Fund, and which commented on the book value of the Fund's promissory notes receivable. According to Mr. Sutton, Mr. Dines said to Mr. Sutton in the second meeting that if Penson Financial Services (**Penson**), FLSI's carrying broker, would accept the Sloan Report, then "my [Mr. Dines's] file is closed."[14] Mr. Sutton "said okay", and the meeting ended. The IIROC panel had no further evidence about that discussion.

[61] In the Liability Decision, the IIROC panel mischaracterized Mr. Sutton's evidence. In paragraph 55, the panel wrote:

> …even assuming the promise was made as Mr. Sutton asserts it was, it was far beyond Mr. Dines' authority to terminate proceedings, which at that stage involved both IIROC Enforcement and the Ontario Securities Commission on his own initiative. In that regard, it is worthy of note that there is no written reference in the written record before us of such a promise. If it was made, the promise was unenforceable and Mr. Sutton would have been well aware of that fact.

[62] Contrary to the panel's description, Mr. Sutton's evidence did not refer to any "proceedings". According to Mr. Sutton, Mr. Dines referred only to Mr. Dines's own file. There was no basis for the panel to conclude that Mr. Sutton was

[14] Exhibit 1, Tab 32, Transcript of the testimony of Brian Sutton, January 20, 2017, at p 65, lines 8-9.

claiming that Mr. Dines had made a promise beyond Mr. Dines's authority; indeed, there was no evidence about what limits there were on that authority.

[63] More importantly, the panel's reference to the absence of a written record, and the somewhat dismissive "Mr. Sutton would have been well aware of that fact", both imply that the panel questioned the reliability of his evidence on this point.

[64] It is true that the unfavourable impression that this mischaracterization created would have been mitigated at least somewhat by the favourable comments that the panel made about Mr. Sutton throughout the Liability Decision. Nonetheless, the unfavourable impression ought not to have existed at all.

(b) Conclusion regarding the setting of the price

[65] Paragraph 57 of the Liability Decision says: "While it is not entirely clear on the record, it seems highly likely that the selection of $1.00 was made by Mr. Phillips."

[66] Mr. Sutton submits that there was no evidence upon which the panel could have concluded that Mr. Phillips set the price. We disagree. At the IIROC liability hearing, IIROC Staff read into the record various excerpts from the transcript of the interview of Mr. Sutton during the investigation. Mr. Sutton testified that Mr. Phillips described the process as follows: "We maintain the market. We maintain the price. We support it."[15]

[67] Mr. Phillips's role did not end at fixing the price that was to be applied. According to Mr. Sutton, Mr. Phillips also said: "…I'm in charge here… I approve every single trade",[16] and that Mr. Phillips justified that role by saying, "It's my firm."[17]

[68] That evidence amply supports the IIROC panel's conclusion.

[69] In paragraph 57 of the Liability Decision, the panel goes on to say:

> By offering the original purchase price to investors who 'wished to liquidate' their investments as one witness put it, Mr. Phillips offered them the security of believing they would be able to recover their investment should they choose to do so…

[70] Mr. Sutton notes that the mentioned witness is unidentified, and he submits that there was no evidence to support the panel's conclusion about investors' beliefs. In our view, the identity of the witness is inconsequential; the panel merely adopted the phrasing of that witness. The conclusion the panel reached is a sensible and natural inference that could easily be drawn from the evidence in the record.

(c) FL Group's financial difficulties

[71] In paragraph 60 of the Liability Decision, the panel states:

> In 2010 and perhaps earlier, it was apparent that the FL Group faced financial difficulties which would become overwhelming if it couldn't maintain the confidence of its investors. Mr. Sutton must have known that was the case…

[72] Mr. Sutton submits that there was no evidence to support the conclusion about the FL Group's financial situation or about Mr. Sutton's knowledge of that situation. In response, IIROC Staff does not cite any supporting evidence, but maintains that the conclusions are of no consequence to the ultimate issue.

[73] We are unable to accept IIROC Staff's categorical submission. The panel goes on to say that "Mr. Sutton stuck bravely, if somewhat irrationally, to the idea that $1.00 was a market derived price." The panel included both the text quoted above regarding the FL Group's financial situation, and this latter comment about Mr. Sutton's "irrational" behaviour, in the same paragraph. At the very least, this suggests that the panel thought there was a connection, and likely a causal one. If the panel reached that conclusion, as would appear to be the case, it ought not to have done so.

(d) Trades in the Properties Fund

[74] Finally, Mr. Sutton points to paragraph 42 of the Liability Decision, in which the IIROC panel refers to a report from accounting firm Parker Simone LLP, issued in August 2011, regarding trading in the Properties Fund (the **Parker**

[15] Exhibit 2, Tab 5, Transcript of the testimony of Edward Varela, January 17, 2017, at p 154, line 3835.
[16] Exhibit 2, Tab 5, Transcript of the testimony of Edward Varela, January 17, 2017, at p 150, line 3739.
[17] Exhibit 2, Tab 5, Transcript of the testimony of Edward Varela, January 17, 2017, at p 160, line 3999.

Simone Report). Mr. Sutton submits that the panel was incorrect in stating that "there were relatively few trades and the trades were all through FLSI or a related company at a fixed price."

[75] We do not accept Mr. Sutton's assertion. The term "relatively few" is not unreasonable, because it is vague, and we do not know "relative to what?". As for the trades being "through FLSI or a related company", the evidence was clear that all trades had some connection to FLSI or other members of the FL Group. Even those trades that were crosses between third parties involved no independent dealers. Further, as noted above, Mr. Phillips approved every trade. It is therefore fair to say that all trades were "through FLSI or a related company."

4. Conclusion as to evidentiary issues

[76] Disciplinary proceedings before an SRO panel, or similar proceedings before this Commission, can have serious consequences for market participants generally, and particularly for those whose career may be affected by an adverse decision. We bear that important point in mind as we assess the gravity of the IIROC panel's errors in this case.

[77] To summarize our findings regarding Mr. Sutton's concerns about the IIROC panel's treatment of evidence, we conclude that his concerns are well-founded in respect of the following:

a. the panel's review of numerous extraneous materials, *i.e.*, the 2010 internal IIROC emails, the Grant Thornton Report, and the transcript of the interview of the former CCO;

b. the likelihood that the panel reviewed other documents not in evidence before it, including other portions of the transcript of the interview of the former CCO;

c. the panel's mischaracterization of the evidence regarding the meeting between Mr. Dines and Mr. Sutton; and

d. the panel's statement, unsupported by the evidence, regarding the FL Group's financial difficulties in 2010, and Mr. Sutton's knowledge of those difficulties.

[78] None of these, by itself, appears to have determined the outcome of either the Liability Decision or the Sanctions and Costs Decision. However, these errors have a cumulative effect. Together they constitute a significant unfairness to Mr. Sutton, and an error of law that is substantial enough to warrant our setting aside the Liability Decision and the Sanctions and Costs Decision, and substituting our own decisions.

[79] Therefore, we now turn to conduct our own analysis of the issues raised by IIROC Staff's allegation against Mr. Sutton, that he breached Dealer Member Rule 38.6(c).

C. IIROC Staff's allegation that Mr. Sutton breached Dealer Member Rule 38.6(c)

1. Introduction

[80] The rule that Mr. Sutton was alleged to have breached requires that a CFO "monitor adherence to" firm policies and procedures "as necessary to provide reasonable assurance" that the firm is in compliance with applicable financial rules.

[81] In this case, the relevant firm policies and procedures governed the task of ascribing an appropriate price to the Fund Units, to be communicated to client unitholders (among other purposes). At many firms, someone other than the CFO would carry out that task, and the CFO would monitor that activity. In contrast, at FLSI the policies and procedures expressly contemplated that the CFO herself/himself would be carrying out the task of ascribing an appropriate price. Such a practice is not unusual, especially for a smaller firm.

[82] Mr. Sutton points to the fact that the Dealer Member Rule that he is alleged to have contravened addresses the obligation imposed on a CFO, not the obligations of a person who prices securities. Mr. Sutton therefore urges us to focus on the appropriate conduct of a CFO who is in a monitoring role, and he emphasizes the Rule's reference to "reasonable assurance" in that context.

[83] We will return below to review that submission, and to consider the implications of Mr. Sutton having been both the CFO and the person who carried out the task of ascribing a price to the Fund Units. Before doing so, however, we look at the pricing methodology and how Mr. Sutton applied it, without considering any different or additional obligations he had as CFO.

2. Pricing of the Fund Units

(a) Regulatory and policy requirements

[84] IIROC's Dealer Member Rule 17.2A requires that "every Dealer Member shall establish and maintain adequate internal controls in accordance with", among other things, IIROC's Internal Control Policy Statement 7 (**ICPS 7**), which addresses the pricing of securities.[18]18

[85] ICPS 7 sets out a number of control objectives, including "independent and timely verification of security prices", and "accuracy and completeness of the pricing of securities and… the reliability of prices." This latter objective contemplates the existence of a range of possible approaches to determining an appropriate price. It also requires the application of a sound methodology designed to produce a sufficiently "reliable" price.

[86] FLSI's Policies and Procedures Manual (**PPM**), which Mr. Sutton was involved in drafting, described the firm's procedures and methodologies aimed at ensuring compliance with ICPS 7. Section 3.8.3 of the PPM, which dealt with the pricing of unlisted securities, listed various bases on which a price could be determined, with the first basis being the price at which previous trades were executed. However, the section provided that if the CFO were to obtain prices from traders or from Penson (its carrying broker), the prices must be accompanied by a record showing an independent source for the pricing.

[87] The PPM's alternative bases for pricing unlisted securities included the determination, where possible, of an issuer's net asset value or shareholders' equity. In situations where audited financial statements alone did not provide an accurate basis for valuation, e.g. where real estate assets were involved, the CFO was entitled to rely on valuations or appraisals performed by qualified third parties, and current financial statements. If the CFO could not obtain sufficient information to support a price, then the price was to be shown as "Price not available" on client monthly statements.

[88] IIROC Staff became concerned with how the Funds were being priced, and communicated those concerns to FLSI. In response, Mr. Sutton created the PPM Pricing Supplement (**Supplement**). He testified at the IIROC hearing that he wanted to "make a couple of things very clear to IIROC and Mr. Warden [the author of the report referred to in paragraph [133] below] …what exactly I had to do in my role and who I consulted with."[19]

[89] The Supplement described, in greater detail than the PPM, the processes and methodologies employed by FLSI in pricing the Fund Units, although it referred specifically only to the Properties Fund. It stated that the CFO, in consultation with Senior Management, would first determine if an "active market" existed for the Fund Units. If so, then the CFO, "in consultation with Senior Management, shall ascribe a price per Trust Unit accordingly".[20] Mr. Sutton emphasized that while the Supplement described a hierarchy of other criteria he would look to if no active market existed, "If I satisfy '1' [*i.e.*, the active market criterion], we're done."[21]

[90] The meaning of the term "active market", found in the Supplement, is therefore a central issue in this proceeding. The term is not defined in Ontario securities law, or in IIROC's rules, or in FLSI policies. We must therefore determine its meaning for the purposes of this case.

(b) What is meant by an "active market"?

[91] In the absence of a prescribed definition of "active market", we should be guided by the purpose for which that criterion forms a central element of the pricing methodology. A true active secondary market in a security can be the most reliable indicator of the fair market value of that security, and can equip existing or prospective unitholders to make fully informed investment decisions. As Mr. Sutton agreed at the hearing before us, he was responsible for assessing the price at which trades were executed, and for determining whether that price was an appropriate one to ascribe to the Fund Units and to show clients on their statements.

[92] Various factors can contribute to making a secondary market more reliable for the purpose of ascribing an appropriate price. It would be beyond the scope of this proceeding for us to attempt to prescribe an exhaustive list of factors that could be applied in all cases in order to determine whether a particular market is sufficiently reliable. In the context of this case, however, three factors are particularly relevant:

a. *Independence* – Are the trades that purport to constitute the active market independent of any artificial constraint? In other words, did the trades occur at prices that reflect a true auction market, and/or freely negotiated arm's-length transactions between a willing seller and a willing buyer?

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18 Internal Control Policy Statement 7 is made part of IIROC's rules by virtue of Rule 2600.
19 Exhibit 1, Tab 31 and Exhibit 2, Tab 8, Transcript of the testimony of Brian Sutton, January 19, 2017, at p 119, lines 5-7.
20 Exhibit 2, Tab 18, PPM Pricing Supplement at p 420.
21 Exhibit 1, Tab 31 and Exhibit 2, Tab 8, Transcript of the testimony of Brian Sutton, January 19, 2017, at p 119, line 1.

b. *Recency* – Are the trades sufficiently recent to justify reliance on them? In other words, are those trades now stale, giving rise to an appreciable risk that intervening events undermine the reliability of the prices?

c. *Frequency* – Even if there are trades that are sufficiently recent, did the relied-upon trades occur frequently enough to provide an adequate basis for concluding that the recent price is a fair market price?

[93] With those specific factors in mind, we now consider whether, throughout the Material Time, there was an active market as Mr. Sutton asserts there was.

(c) Did the trading in the Fund Units constitute an active market?

i. Introduction

[94] Before conducting our own analysis as to whether the trading in the Fund Units constituted an active market, we pause to note that Mr. Sutton's third basis of complaint regarding the Liability Decision is that the IIROC panel unjustifiably concluded that there was no such active market. He submits that the IIROC panel overlooked material evidence and misapprehended other evidence in reaching its conclusion. Because we have decided that we are substituting our own decision for that of the IIROC panel, and because we are therefore conducting our own analysis of the core question, there is no need for us to scrutinize the process by which the IIROC panel arrived at its conclusion. We decline to do so.

[95] We begin our own analysis by recalling Mr. Sutton's description of how he determined if there was an active market in the trading of the Properties Fund:

> …I looked at trading, trading summaries and the blotters that were produced from Penson. That tells me whether there's an active market… It was absolutely an active market… because of the volume of the trades...

[96] Mr. Sutton submitted that his reliance on Penson fulfilled the obligation, set out in the PPM and referred to in paragraph [86] above, that there be an independent source for the pricing. In one limited sense, Mr. Sutton is correct in this assertion. Penson was independent of FLSI, and it reported pricing information. However, Penson had a limited role. It was FLSI's carrying broker and performed administrative functions for FLSI. Penson's report detailed the trades that took place each month and the price at which each trade was executed. The prices on Penson's report were based directly on the trade tickets that were submitted by FLSI.

[97] While Penson had an obligation to give accurate reports that reflected the information it received, it was not Penson's role to assess or to opine on the appropriateness of trade prices, or on the communication of price information to FLSI clients. Indeed, as was expressly confirmed in the Parker Simone Report, "Penson is not involved in the pricing process."[22] Further, as Mr. Sutton himself confirmed, pricing was "[his] job. Not the others."[23]

[98] We agree with the IIROC panel's observation that "Penson's pricing of units was simply mirroring what FLSI said, and therefore cannot be seen as independent."[24] In other words, while Penson was independent for the limited purpose of summarizing and reporting objective facts (the prices at which trades took place), Penson's presence contributed nothing to the question of whether those prices were arrived at in a manner independent of artificial constraints. We reject Mr. Sutton's position that Penson's independence as a reporting entity means that its presence helps to establish the independence of the prices themselves, or that Penson was giving an independent opinion about the appropriateness of the prices (as opposed to the fact that those were the trade prices).

[99] Accordingly, Penson's presence is of no consequence to any of the three criteria we identified above, *i.e.*, independence, recency and frequency. We will now consider those criteria in the context of the other relevant facts of this case.

ii. Independence from artificial constraints

[100] Beginning at paragraph [66] above, we reviewed the evidence that demonstrates that Mr. Phillips fixed the price at which each trade took place. He maintained one consistent and constant price for units of all three Funds, throughout the Material Time, despite the different yields and maturity terms of the Funds, and despite the variability of market conditions (including prevailing interest rates) and of the values of the underlying assets. As we explain below, we find that Mr. Phillips's role precludes the conclusion that a true active market existed.

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22 Exhibit 1, Tab 6, Parker Simone Report, at p 4.
23 Exhibit 1, Tab 32 and Exhibit 2, Tab 8, Transcript of the testimony of Brian Sutton, January 19, 2017, at p 114, line 21.
24 Liability Decision at para 61, footnote 2.

[101] Mr. Phillips's role in fixing the trade price leads to an inconsistency in Mr. Sutton's position. On one hand, Mr. Sutton maintains that there was an "active market" sufficient to serve the main purpose described above, *i.e.*, to equip existing and potential unitholders to make fully informed decisions about investing in Fund Units. On the other hand, Mr. Sutton relies on the very fact of Mr. Phillips's role, when Mr. Sutton maintains that the $1.00 price is reliable, in the sense that a unitholder wishing to sell could expect to be able to do so at that price.

[102] We find these two submissions to be inherently contradictory, in that the one thing on which potential sellers could supposedly rely is an external constraint that is inconsistent with the existence of a true active market.

[103] Having stated our finding in that regard, we nonetheless explore both submissions, beginning with Mr. Sutton's position regarding the existence of an active market. Our conclusion that no such active market existed is reinforced by the fact that, as noted above, there was no evidence that any bid or offer involved a dealer other than FLSI. In other words, there was no independent check against the arbitrary price that Mr. Phillips had set.

[104] Mr. Sutton could not reasonably have assumed that the constant price also happened to be a true market price. There is no inherent reason that fixed income instruments such as the Fund Units should trade at par. Factors such as interest rates, credit quality considerations and term to maturity would normally affect the pricing of any fixed income instrument.

[105] Even in times of low volatility, it would be highly improbable that the Fund Units from all three Funds would freely trade at the same price as each other, let alone all at a constant price, without any fluctuation, even over a few months, let alone over the longer period at issue here.[25] Such a pattern, especially given the higher-than-normal volatility in the wake of the global financial crisis, ought to have been an extreme red flag conveying the clear message that there was an external and artificial constraint on the trading price, and that an alternative approach was required in order to ascribe an appropriate price to the Fund Units, to disclose to unitholders.

[106] Having said that, and as noted above, Mr. Sutton also relies on this artificial constraint. Rather than seeing the unwavering price as a red flag, he viewed the history as evidence that unitholders who wanted to sell would continue to be able to do so at that price. His perspective might be somewhat defensible, but for two reasons:

a. The "guarantee" was illusory. The trading history was evidence that clients had, in the past, sold their Fund Units at $1.00, but there was no evidence that FLSI had committed to all or any unitholders to ensure a similar result in the future. If anything, the past history may have provided existing unitholders with a false sense of security.

b. The fixed price of $1.00 acted not only as a floor, but also as a ceiling. A selling unitholder was able to sell Fund Units at $1.00, but for no more than $1.00. It may well have been the case that at some point during the Material Time, if Fund Units had freely traded, their price would have exceeded $1.00. In those circumstances, some unitholders who sold at $1.00 would have been deprived of the opportunity to realize a higher market price.

[107] Any inherent contradictions aside, the fatal flaw in Mr. Sutton's position is, in our view, the incompatibility between the notion of a truly independent active market and Mr. Phillips's role in fixing prices.

iii. Recency and frequency

[108] Even if the trading history reflected prices that were independent, in that they were determined solely by market forces, it would be necessary to consider whether that trading had been sufficiently recent and frequent so as to provide reliable information to existing or prospective unitholders.

[109] Our review of the records discloses that trading was sporadic at best for some periods during the Material Time.

[110] In the Properties Fund, three of the 24 months featured no trading at all, and one six-week period passed without any trades. Eleven of the remaining months featured only one day on which any trades took place, and no month had more than three such days. For the full year from October 2010 to October 2011 inclusive, trading occurred on only 14 days.

[25] Mr. Sutton did submit that all primary market distributions had to be at the offering price. However, this fact is of little assistance to him, particularly given that most of the subject trading was in units of the Properties Fund, and that all of that trading came after the conclusion of the primary distribution. Further, IIROC Staff takes the position that trades from a fund to an FL Group entity may have been primary market distributions, but the subsequent sale of those units to a client would have been a secondary market trade. It is unnecessary for us to resolve that question, given our conclusion that much of the subject trading came after the initial distribution period.

[111] The First Leaside Fund saw no trading at all in five of the 24 months, and only one day of trading in each of seven of the other months. From October 2010 to October 2011, trading occurred on only 12 days. Almost every month from June 2010 to October 2011 featured no more than 10 trades in the month.

[112] Trading in units of the Wimberly Fund was somewhat more active while it was in primary distribution from March 2010 to March 2011, although for the remaining months of 2011 (during which the Fund may still have been in primary distribution; the evidence is unclear) it followed a pattern similar to that of the other two Funds. Three of the seven months in 2011 featured no trading at all (including the two-month period of June and July), and four of the months had trading on only one day.

[113] Despite these patterns, FLSI showed $1.00 as the price on client statements, without interruption.

[114] It would not be appropriate for us to prescribe specific numeric measures against which, in all cases relating to all securities, the recency and frequency of trading can be assessed in order to determine whether that trading constitutes an "active market". Having said that, we have no hesitation in concluding that in this case, for at least some periods during the Material Time, there was insufficient trading to support the pricing information that FLSI communicated to its clients. This is particularly so for the Properties Fund throughout the two-year period, and for the First Leaside Fund for the last eighteen months, given the infrequent and sporadic trading.

iv. Conclusion as to active market

[115] We therefore cannot accept Mr. Sutton's position that there was an "active market" throughout the Material Time.

[116] At a minimum, Mr. Sutton should have been on alert not to rely solely on the trading history. By itself, the lack of independent trading ought to have set off alarm bells. The lack of sufficiently recent and frequent trading ought to have done the same, at least during the latter half of the Material Time, if not sooner.

[117] It was not reasonable for Mr. Sutton to conclude, especially as categorically as he did and on the basis that he did, that the trading history provided a sufficient basis for price disclosure to FLSI's clients.

(d) Other potential sources of information relevant to determining the price of the Fund Units

i. Introduction

[118] Mr. Sutton was adamant that there was an active market, and that he did not need to resort to other factors in his "hierarchy" (described in paragraph [89] above) to ascribe an appropriate price. Indeed, when asked whether yield would be one possible consideration, he stated that yield would be "key… if you have to go that far in the hierarchy, but as I said, if you satisfy number 1, trading activity, then you don't have to look at the other items."[26]

[119] However, he also testified that he did consider yield and other factors "from a comfort point of view",[27] although it is not clear how often or how consistently he did so.

ii. Yield

[120] With respect to yield, Mr. Sutton stated that he relied upon the consistent high yields paid by each of the Funds to support the price of $1.00. All of the Fund Units yielded between 7% and 9%, which rates were substantially higher than the prevailing interest rates. During his interview with IIROC, Mr. Sutton asserted that the $1.00 price was supported by the fact that interest rates for the Fund Units were higher than rates for comparable products in the market. However, when asked if the rates supported a price of more than $1.00, Mr. Sutton responded categorically that it "isn't for me to say."[28]

[121] We are unable to reconcile that disavowal with Mr. Sutton's acceptance of responsibility for ascribing an appropriate price. To our knowledge, Mr. Sutton offered no basis for being in a position to conclude from the yield that $1.00 was an appropriate price but not being in a position to reach a conclusion about any price greater than $1.00.

iii. Value of underlying real estate

[122] In September 2009, Mr. Sutton obtained a report regarding the value of the real estate underlying the promissory notes held by the three Funds. The report indicated that the value of the assets exceeded the Funds' liabilities. However,

[26] Exhibit 1, Tab 31 and Exhibit 2, Tab 8, Transcript of the testimony of Brian Sutton, January 19, 2017, at p 144, lines 20-25.
[27] Exhibit 1, Tab 31 and Exhibit 2, Tab 8, Transcript of the testimony of Brian Sutton, January 19, 2017, at p 143, lines 18-19.
[28] Exhibit 1, Tab 16, Transcript of the testimony of Edward Varela, January 17, 2017, at p 184, lines 20-21.

contrary to Mr. Sutton's assertion that this four-page report constituted an "appraisal", it is a "Broker Opinion of Value" from a "national mortgage banking firm".

[123] Mr. Sutton ought not to have derived any comfort from the report, for a number of reasons. Significantly, the report assumed future redevelopment of the subject properties. It provided a stabilized, *pro forma* value assuming completion of a capital improvement program and reflected "post-rehab" rental rates, a fully recovered U.S. economy and a fully stabilized real estate market. The report's author described this as "essentially a best case scenario." Further, the report omits any assumptions about future rental rates and the cost of the necessary capital improvements. The report did not even purport to provide a fair market, present day value of the underlying real estate.

iv. Financial statements

[124] Mr. Sutton highlights the fact that he reviewed some financial statements. In order to determine how much comfort (if any) he ought to have derived from this review, we must examine the extent to which he reviewed financial statements of three categories of entities:

a. the Funds themselves;

b. Master Sherman and Master Texas, whose debts to the Funds constituted the Funds' only material assets; and

c. WALP, which by December 31, 2009, was the parent partnership of Master Sherman and Master Texas.

[125] With respect to the Funds themselves, Mr. Sutton had no financial statements available to him for the First Leaside Fund or the Wimberly Fund. He did review the Properties Fund's 2009 and 2010 audited financial statements, although these statements were not available until May 2011, almost at the end of the Material Time.

[126] While the audit opinion in those financial statements was "clean", notes to the statements warned that the fair value of the Master Sherman promissory notes held by the Fund (*i.e.*, the Fund's only material assets) "could not be reasonably calculated as no comparable commercial terms are available", and that:

> …the promissory notes receivable and virtually all of the interest income are from Master Sherman. The loss of interest income or the inability of Master Sherman to repay the promissory notes receivable could have a material adverse effect on the Fund's results of operations and financial position.

[127] Notwithstanding these notes in the Properties Fund's financial statements, Mr. Sutton did not review the underlying financial statements for Master Sherman (which, similarly, were not even available until May 2011). Those statements disclosed operating losses, cash flow deficiencies and a partners' deficiency of $8.7 million in 2010. Master Sherman could not service its debt obligations from its cash flows, and it used capital injections from the Fund itself to enable the Fund to make interest payments to unitholders. Mr. Sutton testified that he took comfort from the fact that payments to unitholders were made consistently. However, the Master Sherman financial statements showed that these payments were not sustainable.

[128] We were not directed to any evidence that Mr. Sutton ever reviewed financial statements for Master Texas, if indeed those financial statements even existed.

[129] Finally, Mr. Sutton did not, during the Material Time, review any financial statements of WALP. Statements for the years ended December 31, 2009 and 2010 were not issued until September 2011, and were therefore not available to Mr. Sutton during the Material Time, except for approximately one month at the end of that period. However, WALP's financial statements as at December 31, 2008, which included results from Master Texas (but not Master Sherman), were issued in September 2009. Mr. Sutton did not review those financial statements during the Material Time. Had he done so, he would have seen a partners' deficiency of more than $41 million, and the following note:

> There is significant doubt about the appropriateness of the use of the going concern assumption because the Partnership does not have sufficient cash on hand to meet its obligations…
>
> There is no certainty that management will raise sufficient capital to permit the Partnership to continue its operations and discharge its liabilities when due.[29]

[29] Exhibit 2, Tab 38, WALP financial statements as at December 31, 2008, at p 710-711.

[130] Given the timing of the issuance of the various financial statements, Mr. Sutton could not have derived any comfort from them for most of the Material Time. Further, given the limitations of the Properties Fund's financial statements, he ought not have derived any comfort from them even following their release.

v. Sloan Report

[131] Following 2011 discussions with IIROC about the pricing of the Fund Units, FLSI hired Sloan Partners LLP, an independent accounting firm, to prepare the Sloan Report referred to in paragraph [60] above. The Sloan Report stated:

> Based on our review, nothing has come to our attention that causes us to believe that the promissory notes receivable is not, in all material respects, less than the book value disclosed in the audited financial statements (of First Leaside Properties Fund as at December 31, 2010).

[132] The Sloan Report was a review, not an audit. There is no detail as to what information was supplied and what analysis was undertaken. The report was delivered in June 2011, very near the end of the Material Time. It could not have provided any comfort to Mr. Sutton throughout virtually the entire period, and ought not to have provided meaningful comfort even after its issuance.

vi. Parker Simone Report

[133] The Parker Simone Report, referred to in paragraph [74] above, concluded that the valuation methodologies of FLSI appeared in all material respects to be in compliance with IIROC Internal Policy 7. It went on to state that the methodologies appeared appropriate for pricing the fair value estimate of the Fund and management had complied with its policy under Section 3.8.3. Specifically, the report stated that there appeared to be sufficient evidence of an active secondary market during 2009-2011 and that "it would not appear unreasonable to accept that the Dealer Member is in compliance with the pricing methodologies underlying the policy provided by management".[30]

[134] The report relied on a one-page trading summary provided by Mr. Sutton. The summary presented only three-year averages and did not break down trading by month, nor did it identify which trades involved FLSI or any other affiliate of the FL Group. We find it to be of limited support for Mr. Sutton's view.

(e) Conclusion as to pricing

[135] Mr. Sutton maintains that he priced the three Funds appropriately, and as set out in the PPM he drafted.

[136] We disagree. We find that there was no "active market" for the Fund Units. Such market as existed was wholly insufficient to provide reliable information for investors to make fully informed decisions. The trade prices were not determined through market forces, and the recency and frequency of the trades were insufficient.

[137] By Mr. Sutton's own evidence, he went no further than the "active market" question in assessing whether $1.00 was an appropriate price. However, to the extent he claims to have derived "comfort" from other sources, the sources he cites ought not to have given him any such comfort.

[138] We therefore find that the pricing approach adopted by Mr. Sutton did not fall within a reasonable range of possible approaches.

3. Role played by Mr. Sutton

[139] Our conclusion that the way in which Mr. Sutton applied the pricing methodology was unreasonable does not end the matter. As we discussed above in paragraphs [80] to [83], the rule that Mr. Sutton is alleged to have contravened relates to the obligation of a CFO to monitor adherence to the firm's policies and procedures so as to provide reasonable assurance that the firm is complying with IIROC's financial rules. We therefore return now to Mr. Sutton's submission that this obligation, which is to ensure "reasonable compliance", somehow modifies the standard by which Mr. Sutton's conduct should be measured.

[140] We reject that submission.

[141] If Mr. Sutton had truly been in an oversight role with respect to this task, and in an oversight role alone, then our analysis would align more closely with his submissions. Sensibly, an individual in an oversight role is typically afforded some latitude, because that person is not expected to be a guarantor of perfect compliance by the person whom she or

[30] Exhibit 1, Tab 6 and Exhibit 2, Tab 11, Parker Simone Report, at p 23.

he oversees. Put another way, the person in the oversight role may not be expected to review each and every transaction. The imposition of such an expectation could cause a significant and unnecessary burden and duplication of effort. It is for this reason that many regulatory requirements contemplate the development of systems designed to provide **reasonable assurance** of compliance by those carrying out the original tasks.

[142] An example of the contemplated latitude may be found in Member Regulation Notice MR0435, issued by Staff of the Investment Dealers Association of Canada (IIROC's predecessor organization) and other regulators in late 2006. The Notice, titled *The Role of Compliance and Supervision*, describes its purpose as being to provide "SRO expectations of the compliance function at Members".[31] The Notice explicitly distinguishes between the compliance function on the one hand (independent oversight, but without decision-making authority over the activity in question) and the supervisory function on the other (authority for day-to-day management). This distinction is even more pronounced when contrasting the compliance function with the individual who is actually carrying out the task and therefore subject to supervision, as opposed to the person doing the supervising.

[143] Mr. Sutton's reliance on the Notice, and on the principles set out in it, is misguided. No one was overseeing Mr. Sutton's work of ascribing a price to be communicated to unitholders. Mr. Sutton was under an obligation to do that work appropriately, as would anyone else charged with that task. His obligation was neither more nor less onerous than the obligation that would have been imposed on a hypothetical individual carrying out the same task, with respect to whom Mr. Sutton would have had oversight responsibility. Whatever range of reasonable pricing approaches would have been available to such an individual was equally available to Mr. Sutton. The boundaries of the range of reasonable pricing approaches are independent of the identity or title of the person who carries out the pricing task.

[144] It is illogical, and contrary to the important objective of investor protection, to further broaden the range of reasonable pricing approaches simply because the person who is assessing the propriety of the price also happens to be the CFO. Mr. Sutton highlights the words "reasonable assurance" in Dealer Member Rule 38.6(c), but the determination of how much assurance is "reasonable" must be made in context. In this context, given that Mr. Sutton was both actor and overseer, it is unreasonable for him to benefit as CFO from an incremental degree of latitude beyond that afforded the person who ascribes an appropriate price. It is reasonable to expect that he would be no less diligent in overseeing his own pricing (an illusory conceptual separation of responsibilities) than he would be in doing the pricing in the first place.

[145] Accordingly, in the circumstances of this case, we conclude that Mr. Sutton's obligation to monitor, as imposed by Dealer Member Rule 38.6(c), required him to apply the same level of scrutiny as he was required to apply to his task of ascribing an appropriate price. A choice of pricing approach outside the range of reasonable approaches was therefore, by definition, a failure to provide reasonable assurance that FLSI was complying with IIROC's financial rules.

[146] It follows that we reject Mr. Sutton's fifth basis of complaint about the Liability Decision, *i.e.*, that the IIROC panel effectively held him to a strict liability standard, by finding a breach despite the absence of an "intent to do wrong". As explained above, the obligation to provide accurate price information to unitholders allows for a reasonable range of pricing approaches. A particular approach is either reasonable or it is not; the provision of unreasonable price information by an individual to unitholders can support a breach even absent unfavourable conclusions about the individual's mental state in selecting the unreasonable approach.

D. Expert evidence

[147] Mr. Sutton submits that the IIROC panel erred in reaching its ultimate conclusions in the absence of expert evidence "on the standard of care that was required to be met by a reasonable CFO for an IIROC dealer in the circumstances."[32] He further submits that the panel erred "in reversing the onus of proof and requiring that Mr. Sutton adduce expert evidence of the standard he was required to meet as CFO".[33]

[148] Our earlier finding, that the IIROC panel's evidence-related errors warrant our substituting our own decision, obviates the need to consider whether that panel also erred with respect to the need for expert evidence. However, Mr. Sutton makes the same argument to us about our own ability to reach certain conclusions without the benefit of expert evidence led by IIROC Staff. We must therefore consider that submission in the context of this application.

[149] We begin our analysis by noting that Mr. Sutton submits that expert evidence was required about the standard of care of "a reasonable CFO". We do not accept that framing of the issue.

[150] As explained above in paragraphs [141] to [144], we find that on the facts of this case, any discussion about the standard of care of a CFO is inapplicable. Mr. Sutton himself was the person who was carrying out the task of

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31 *The Role of Compliance and Supervision,* IDA MR0435 (30 November 2006) at p 1.
32 Sutton's written submissions (liability) at para 149(b).
33 Sutton's written submissions (liability) at para 149(b).

determining the price to be shown on client statements. He was not supervising such a person, nor was he monitoring such a person.

[151] We therefore reject the notion that there is a need for expert evidence about the standard of care of a CFO. On the facts of this case, that issue simply does not arise.

[152] Given that conclusion, we need not, for the purposes of this decision, address Mr. Sutton's submission that neither the IIROC panel nor this panel is qualified to decide for itself whether his conduct met a standard of care for CFOs. However, the point was fully argued and the general question arises from time to time before SRO panels and before the Commission. For those reasons, and because during the hearing before us Mr. Sutton's counsel provided a Court of Appeal for Ontario decision on the point, we consider it important to address the issue.

[153] Specialized administrative tribunals may draw upon their own expertise. They may assess evidence and draw inferences within the boundaries of that expertise, without the assistance of an expert. It is for a tribunal to determine whether it needs that assistance.[34]

[154] While Dealer Member Rule 38.6(c), the rule that Mr. Sutton is alleged to have contravened, imposes an obligation on Chief Financial Officers specifically, the obligation relates to the member firm's compliance with IIROC's financial rules. The core task at issue in this case is the pricing of securities. It is not an esoteric accounting question such as the determination of the appropriate accounting treatment of complex corporate actions. The assessment of alternative methods of valuing securities, and in particular determining whether there is an active market sufficient for that purpose, are questions that are squarely within the expertise of this Commission. We do not require the assistance of an outside expert.

[155] Moreover, even if we had accepted the fiction that Mr. Sutton as CFO (*i.e.*, with oversight responsibility) was one step removed from Mr. Sutton as the person who determined the appropriate price in the first place, no expert evidence is necessary about the standard for someone in that kind of oversight role. The nature of the CFO role in the context of IIROC's financial rules is substantially similar to that of a CCO in the context of IIROC's trading rules, for example. In both cases, the central question is what constitutes reasonable assurance as to the propriety of another's activity. Again, that question is one that is squarely within the expertise of a securities regulator, and the sufficiency of that expertise is unaffected in this case by the fact that the individual involved is a CFO and not a CCO.

[156] Finally on this point, during the hearing before us, counsel for Mr. Sutton produced the 1983 decision of the Court of Appeal for Ontario in Reddall and College of Nurses of Ontario (Re),[35] in which the court allowed in part an appeal from the decision of a disciplinary tribunal. Mr. Sutton submits that this decision, applied to the present case, requires the conclusion that without the benefit of expert evidence, we cannot reach the conclusions sought by IIROC Staff.

[157] The decision was provided to IIROC Staff only the day before the hearing. After hearing submissions during the hearing, we are not of the view that the parties had the opportunity to fully argue the implications of the decision, including the effect of any subsequent decisions that considered it. Having said that, it appears that the decision should be distinguished from the present case, given a central finding by the court that the tribunal in question was subject to a specific statutory limitation regarding evidence and findings, which limitation would not apply to this Commission. Further, we observe that the conclusion sought by Mr. Sutton on this point would, in our view, run counter to the cases cited above and to the well-established authority that the admission of expert evidence depends on, among other things, necessity in assisting the trier of fact.[36]

[158] We therefore conclude that there were no issues before the IIROC panel, and there are no issues in this proceeding before us, with respect to which expert evidence was or is required.

E. Sanctions

1. Introduction

[159] In the Sanctions and Costs Decision, the IIROC panel:

a. ordered a reprimand as requested by IIROC Staff;

b. imposed a $25,000 fine instead of the $100,000 fine requested by IIROC Staff; and

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[34] *Sammy (Re)*, 2017 ONSEC 21, (2017), 40 OSCB 4877 at paras 36-37; *R v Abbey*, [1982] 2 SCR 24 at p 42, cited in *Northern Securities (Re)*, 2012 IIROC 35 at para 6.

[35] 1983 CanLII 1947.

[36] *R v Mohan*, 1994 CanLII 80, [1994] 2 SCR 9.

c. rejected IIROC Staff's request for a permanent prohibition on Mr. Sutton's approval for registration as a CFO with an IIROC dealer member, instead ordering no prohibition at all.

[160] IIROC Staff applies to the Commission for a review of that decision. IIROC Staff asks for the sanctions originally requested, except that it now seeks a prohibition of between three and five years as opposed to a permanent prohibition. Further, while IIROC Staff originally requested that the prohibition be against Mr. Sutton's approval for registration as a CFO with an IIROC Dealer Member,[37] its request before us is not limited to registration in a particular capacity.[38]

2. Analysis

[161] We begin our analysis regarding sanctions with a review of the various principles and factors that we consider to be relevant in determining an appropriate result. The principles and factors reflected in the IIROC Sanction Guidelines are substantially similar to the sanctioning factors considered by the Commission in its decisions.[39]

(a) Importance of timely and accurate disclosure

[162] As we have explained above, an important principle at the centre of this matter is the need for "timely, accurate and efficient disclosure of information", as prescribed by subparagraph 2(i) of section 2.1 of the Act. Disclosure is a cornerstone of securities regulation,[40]40 and a failure of disclosure undermines confidence in our capital markets.[41] In the context of this case, proper disclosure would have enabled existing and potential investors to have adequate and reliable information.

[163] This principle is reflected in section 3.8.3 of FLSI's PPM, which in turn reflected the requirements of IC Policy 7. We agree with the IIROC panel's description that "the position Mr. Sutton espoused that it was an active market undercuts the very purpose underlying the regulatory objective of making sure that the investors had the information necessary to make informed investment decisions."[42]

[164] Pricing unlisted securities is not an exact science. However, as we have discussed, Mr. Sutton's approach in this case falls outside a reasonable range of approaches. His failure to follow a reasonable methodology denied existing and potential unitholders the information that they required and to which they were entitled. We consider this to have been a serious breach of the requirement to make timely and accurate disclosure.

(b) Mr. Sutton's seniority and experience

[165] This Commission has often stated that registrants are held to a higher standard of conduct than are non-registrants, given the level of trust that is placed in registrants by investors.[43] This is particularly so for registrants who are in senior positions and/or who have lengthy experience. Investor confidence in the capital markets depends in part on senior registrants diligently exercising their gatekeeper role.

[166] We agree with the following comments of the IIROC panel in *Trenholm (Re)*:

> Gatekeeper obligations have been imposed by courts because registrants are in a unique position, and even better than regulators, to effectively monitor market activities and to apply their knowledge to spot any potential impropriety.[44]

[167] Mr. Sutton has had a 37-year career in the capital markets, including numerous positions at senior levels. His position as CFO at FLSI was among the very highest positions one could occupy at a dealer. His experience and his seniority impose a greater burden on him than would apply to a non-registrant or to a new entrant. The capital markets, the investing public, FLSI clients, and securities regulators are entitled to expect Mr. Sutton to meet that high standard.

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37 Sanctions and Costs Decision at para 3(i).
38 Sanctions and Costs Decision at para 3(i).
39 *Northern Securities Inc. (Re)*, 2014 ONSEC 27, (2014), 37 OSCB 8535 at para 140.
40 *Coventree Inc. (Re)*, 2011 ONSEC 38, (2011), 35 OSCB 119 at para 48.
41 *Home Capital Group Inc. (Re)*, 2017 ONSEC 32, (2017), 40 OSCB 7136 at para 3.
42 Liability Decision at para 62.
43 See, *e.g.*, *Pro-Financial Asset Management (Re)*, 2018 ONSEC 18, (2018), 41 OSCB 3512 at para 100.
44 [2009] IIROC No. 40 at para 28. Mr. Sutton noted that the decision goes on to find that for disciplinary cases, the "conduct at issue must amount to something more than mere inadvertence or negligence" (para 29) and that "[n]egligence is not likely to be a basis for discipline unless it is gross or habitual, or both" (para 30). We do not believe those statements are an accurate reflection of the law, and we decline to adopt that standard.

(c) Mr. Sutton's unblemished record

[168] While Mr. Sutton's long career in senior positions imposes a greater obligation on him, it is also noteworthy that this is the first time throughout his lengthy career that he has been subject to disciplinary action. We consider this to be a mitigating factor in Mr. Sutton's favour, especially since a primary objective of sanctions is to protect the investing public. In determining what sanctions are necessary to achieve sufficient protection, we have regard to Mr. Sutton's previously unblemished record as an indicator of the likelihood of future breaches.

[169] That record cannot be determinative, however. In this case, we struggle to understand how an individual of Mr. Sutton's seniority and experience could have regarded the available trading history as a sufficient and reliable indicator of an active market. His failure to see the red flags, and to take meaningful additional steps to ascribe an appropriate price to the Fund Units, undermines any confidence we have that there is little risk of a future lapse.

(d) Significance of Mr. Sutton's role as the sole gatekeeper

[170] Mr. Sutton's failure is particularly concerning to us, because of the fact that Mr. Sutton was effectively FLSI's only independent control with respect to communicating appropriate pricing information. As discussed above, he was responsible for ascribing an appropriate price. He was not overseeing the work of another, and his work was not supervised by a more senior person.

[171] There was no true compensating control. Mr. Sutton was the sole gatekeeper. With his experience, he ought to have had a sound appreciation for the associated risk. If he did have a sound appreciation, then he failed to respond accordingly.

[172] We consider this failure to have been an aggravating factor.

(e) Harm

[173] Mr. Sutton submits, correctly, that there was no specific evidence of actual detrimental reliance or pecuniary loss incurred by any investors. However, we do not accept the conclusion that he says follow from that, *i.e.*, that there was no harm. As noted above, existing and potential investors were deprived of the opportunity to make a fully informed decision. It follows that at a minimum, investor funds were subject to a risk that the investors did not knowingly assume. It also follows that at least some investors likely suffered a financial loss, and it would be no answer to that to say that some other investors might have realized a gain, even if that aggregate gain were equal to or greater than the aggregate loss.

[174] In addition, his failure caused a more general harm to the capital markets, by undermining confidence in those markets.

[175] As a result, we categorically reject the IIROC panel's finding that it heard "no evidence in the liability phase that would support a conclusion that Mr. Sutton's breach caused some measure of harm to investors."[45] Evidence of specific and quantifiable harm would be admissible and relevant, but the absence of such evidence does not support a conclusion that there was no such harm. The harm we have described above is a reasonable inference to be drawn from the circumstances, and is a conclusion we have no difficulty reaching on the balance of probabilities.

(f) Absence of dishonest or intentional misconduct

[176] The IIROC panel emphasized its finding that Mr. Sutton's breach was an "honest mistake". Mr. Sutton urges that characterization upon us, and submits that an honest mistake cannot justify a prohibition against approval with IIROC.

[177] The term "honest mistake" may be accurate in a literal sense, because there is no evidence that Mr. Sutton was dishonest, and as we have found, his chosen pricing methodology was indeed a mistake, in that it was unreasonable and unacceptable. However, we do not adopt the term, especially to the extent it implies an innocent mistake or mere inadvertence.

[178] In our view, there is no evidence in the record that would lead us to conclude that Mr. Sutton's mental state should be either an aggravating or a mitigating factor. We recognize the absence of any deliberate misconduct, but we consider his conduct to fall well short of the necessary standard. In our view, Mr. Sutton's pricing approach was a serious mistake.

[45] Sanctions and Costs Decision at para 23.

[179] An absence of deliberate misconduct does not lead to the conclusion that no prohibition against registration is warranted. This Commission has previously rejected the notion that "only matters of integrity merit periods of suspension".[46]

(g) Repetition over time

[180] Repetition of improper behaviour typically acts as an aggravating factor. In such cases, however, the IIROC Sanction Guidelines caution against imposing a cumulative sanction that is excessive; rather, a global approach may be appropriate.[47] Ultimately, the total sanction must be proportionate to the overall misconduct.

[181] In one sense, Mr. Sutton's misconduct in this case was repeated monthly over a two-year period. On the other hand, it could be argued that the contravention has one single root, *i.e.*, one inappropriate exercise of judgment about pricing methodology, that manifested itself a number of times.

[182] In our view, this case lies somewhere between the two. Mr. Sutton's breach was not confined to a single incident. As time passed, and especially as the trading became less frequent, the validity of Mr. Sutton's decision about an active market diminished. He had an ongoing responsibility to judge whether the chosen basis for pricing was appropriate, and that judgment had to be renewed monthly and independently in light of changing circumstances.

[183] We consider this repetition to be an aggravating factor, although we place less weight on it than we would in a case of repeated deliberate misconduct.

(h) General deterrence

[184] Deterrent sanctions are prospective and preventive. They are aimed at potential wrongdoers.[48] Ensuring that sanctions are proportionate to misconduct, and ensuring that the sanctions are sufficient to deter others from engaging in misconduct, serves to protect investors and other market participants against future harm.

[185] While we must be cautious never to place too much weight on the need for general deterrence, it is an important principle that is particularly relevant in this case. Persons in positions similar to Mr. Sutton's must clearly understand the responsibility that they have accepted, and that a failure to discharge that responsibility diligently can lead to serious consequences.

(i) Specific deterrence

[186] Mr. Sutton submits that this process, including a finding that he contravened the rules about which he claims to be an expert, is "devastating".[49] We understand that he believes that his reputation is at stake, and we consider that belief to be a reasonable one.

[187] In our view, the mere existence of this decision and these reasons will have some effect as a specific deterrent. However, to impose token sanctions would be to send a message to Mr. Sutton that a significant failure need not attract a meaningful response. We are of the view that there is a need for sanctions proportionate to the failure.

[188] We do not accept the IIROC panel's finding that "a reprimand is at least as significant as a suspension and in fact may carry more opprobrium with it."[50] IIROC Staff's request for sanctions did not characterize a reprimand and a prohibition as alternatives. The two sanctions may be ordered together and it cannot be doubted that a reprimand accompanied by a suspension would be viewed by Mr. Sutton (and others) as being more severe than a reprimand alone.

(j) Conclusion as to sanctions

[189] As we have explained, we consider Mr. Sutton's lengthy unblemished record to be a mitigating factor. We consider the following to be aggravating factors:

a. the seriousness of the contravention, given the particular importance of timely and accurate disclosure;

b. Mr. Sutton's seniority and experience;

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46 *Pariak-Lukic (Re)*, 2015 ONSEC 18, (2015), 38 OSCB 5755 at paras 98-102, aff'd *Pariak-Lukic* DivCt; *Sterling Grace & Co. Ltd. (Re)*, 2014 ONSEC 24, (2014), 37 OSCB 8298.

47 *IIROC Sanction Guidelines* at s 3.

48 *Cartaway Resources Corp. (Re)*, [2001] 1 SCR 672 at paras 52 and 60.

49 Hearing transcript, at p 156, lines 9-10.

50 Sanctions and Costs Decision at para 28.

c. the significance of Mr. Sutton's role as the only true control at FLSI with respect to assessing the appropriateness of reported prices; and

d. the repetition over two years of the failure to conduct a proper assessment of the reported prices.

[190] It is rare that substantially similar precedents can be found to assist in determining appropriate sanctions. That is particularly true here, given the unusual facts of this case. Having said that, we note that the present circumstances are, in part, somewhat comparable to those in *Stevenson (Re)*,[51] in which an IIROC panel approved a settlement agreement relating to the individual respondent's failure to exercise his gatekeeper function (by failing to adequately supervise the opening of about twenty accounts), among other contraventions. The agreed-upon sanctions included a twelve-month suspension from approval, along with an obligation to complete various courses and examinations, a fine of $50,000, and a requirement of on-site close supervision. In approving the settlement, the IIROC panel noted that "no harm was done", and that the respondent had a 40-year "spotless disciplinary record".[52]

[191] The range of contraventions in Stevenson is broader than the single (but repeated) contravention in this case. However, the range of sanctions in that case is correspondingly broad, and some of the aggravating factors present in this case and cited above were not present in Stevenson. Given the distinguishing factors, given that Stevenson was a settlement as opposed to a contested hearing, and given that ten years have passed, we think it appropriate and in the public interest to impose a similar fine, and a somewhat longer prohibition.

[192] We also refer to the Commission's decision approving a settlement in Mark Bonham (Re),[53] in which the individual respondent admitted to having carried out manual pricing of securities held in a mutual fund, without proper documentation or a consistent and proper methodology. The Commission noted that this conduct posed a risk to the investing public,[54] and approved the agreed-upon sanctions, which included a three-year suspension of registration, a three-year ban on the individual respondent acting as an officer or director of a registrant, and a three-year cease-trade order against the individual respondent, except for trading in his personal accounts. The settlement also called for a voluntary payment of $50,000, plus costs of $150,000.

i. Prohibition against approval as an IIROC registrant

[193] In our view, taking into account all the circumstances and in particular the aggravating and mitigating factors listed above, a prohibition against Mr. Sutton's approval for some period is warranted. That result is consistent with the authorities we have cited above and is proportionate to the conduct at issue. It is also consistent with the IIROC Sanction Guidelines, which advise that a suspension should be considered where, as in this case, there has been one or more serious contraventions, or where, as in this case, the misconduct in question has caused some measure of harm to investors or the securities industry as a whole.[55]55

[194] We must determine the appropriate scope and length of that prohibition.

[195] As noted above, IIROC Staff's requested prohibition against approval as a registrant changed from the IIROC hearing to the hearing before us. IIROC Staff explicitly advised us that while it had sought a permanent prohibition before the IIROC panel, it now seeks a three- to five-year prohibition, which on further reflection it considers to be a sufficient sanction.

[196] On the other hand, despite this request for a shorter prohibition, the scope of the requested prohibition appears to have expanded, from one relating only to Mr. Sutton being a CFO, to one not confined to a particular role. While this broader scope is apparent from IIROC Staff's written submissions, it was not explicitly addressed during the hearing, and we received no written or oral submissions as to why this broader scope would be appropriate.

[197] Under the circumstances, we are not prepared to accede to IIROC Staff's request in this regard. In fairness to Mr. Sutton, he might have addressed this point had IIROC Staff argued it before us. Further, we are satisfied that a three-year prohibition against Mr. Sutton being a CFO with an IIROC Dealer Member serves the appropriate protective purposes, including both general and specific deterrence.

ii. Fine

[198] IIROC Staff requests a fine of $100,000. We conclude that a meaningful fine is warranted, but we consider $100,000 to be excessive, especially in light of the three-year prohibition we have decided to impose.

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51 2008 IIROC 24 (***Stevenson***).
52 *Stevenson* at para 12.
53 (2002), 25 OSCB 5741 (***Mark Bonham***).
54 *Mark Bonham* at para 6.
55 *IIROC Sanction Guidelines* at s 5.

[199] We observe that in enforcement cases before the Commission, administrative penalties of approximately $100,000 are sometimes imposed where a respondent has engaged in deliberate misconduct, including fraud. While the conduct here is serious, it lacks that character. In our view, a $50,000 fine is appropriate and is proportionate to the conduct at issue.

iii. Reprimand

[200] We grant IIROC Staff's request for a reprimand. We consider these reasons for decision as adequately expressing that reprimand.

F. Costs

[201] At the IIROC hearing, IIROC Staff requested a costs order in the amount of $50,000. In the Sanctions and Costs Decision, the IIROC panel declined to order any costs payable by Mr. Sutton, but gave no reasons for that conclusion. As part of IIROC Staff's application for a review of the Sanctions and Costs Decision, IIROC Staff asks us to order the costs originally requested. IIROC Staff advised that its recorded costs were $223,714, and Mr. Sutton does not take issue with that amount. He does submit that we ought not to order costs.

[202] Like the Commission, IIROC is a self-funded body. The Commission has regularly affirmed the principle that the cost of enforcement proceedings ought not to be borne in their entirety by the industry as a whole, and that it is appropriate for an unsuccessful respondent to bear a portion of the costs incurred.[56]

[203] The portion of costs that IIROC Staff requests in this case is consistent with costs orders typically made by the Commission in its own enforcement proceedings. IIROC Staff was entirely successful in the eight-day hearing before the IIROC panel and in the one-day hearing before us. We conclude that it is appropriate to order Mr. Sutton to pay costs in the amount of $50,000.

VI. CONCLUSION

[204] For the reasons set out above, we find that the IIROC panel erred in its conduct of the liability hearing before it, and that these flaws constituted an error of law that warrants our substituting our own decision for that of the IIROC panel.

[205] We conclude that Mr. Sutton breached IIROC Dealer Member Rule 38.6(c), and we will issue an order:

a. prohibiting, for a period of three years, Mr. Sutton's approval as a CFO with an IIROC dealer member firm;

b. requiring Mr. Sutton to pay a $50,000 fine to IIROC; and

c. requiring Mr. Sutton to pay costs in the amount of $50,000 to IIROC.

Dated at Toronto this 14th day of August, 2018.

"Timothy Moseley"

"Lawrence Haber"

"Deborah Leckman"

[56] See, *e.g.*, *2241153 Ontario Inc. (Re)* 2016 ONSEC 10, (2016), 39 OSCB 2733 at para 16.

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
THERE IS NOTHING TO REPORT THIS WEEK.		

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:
Desjardins RI Active Canadian Bond - Low CO2 ETF
Desjardins RI Canada - Low CO2 Index ETF
Desjardins RI Canada Multifactor - Low CO2 ETF
Desjardins RI Developed ex-USA ex-Canada Multifactor - Low CO2 ETF
Desjardins RI Emerging Markets Multifactor - Low CO2 ETF
Desjardins RI Global Multifactor - Fossil Fuel Reserves Free ETF
Desjardins RI USA - Low CO2 Index ETF
Desjardins RI USA Multifactor - Low CO2 ETF
Principal Regulator - Quebec
Type and Date:
Preliminary Long Form Prospectus dated August 13, 2018
NP 11-202 Preliminary Receipt dated August 16, 2018
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2807660

Issuer Name:
Dynamic Alpha Performance II Fund
Dynamic Premium Yield PLUS Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated August 17, 2018
NP 11-202 Preliminary Receipt dated August 20, 2018
Offering Price and Description:
Series A, F, FH, FT, H, I, O and T Units
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
Promoter(s):
1832 Asset Management L.P.
Project #2808545

Issuer Name:
imaxx Global Fixed Pay Fund (formerly, imaxx Global Equity Growth Fund)
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated August 20, 2018
Received on August 20, 2018
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Foresters Asset Management Inc.
Project #2757647

Issuer Name:
Steadyhand Global Equity Fund
Principal Regulator - British Columbia
Type and Date:
Amendment #1 to Final Simplified Prospectus dated August 20, 2018
Received on August 20, 2018
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Steadyhand Investment Funds Inc.
Promoter(s):
Steadyhand Investment Management Ltd.
Project #2707478

Issuer Name:
Capital Group Capital Income Builder (Canada)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated August 13, 2018
NP 11-202 Receipt dated August 14, 2018
Offering Price and Description:
Series A, AH, F, FH and I Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2795450

Issuer Name:
EHP Advantage Alternative Fund
EHP Advantage International Alternative Fund
EHP Global Arbitrage Alternative Fund
EHP Guardian Alternative Fund
EHP Guardian International Alternative Fund
EHP Select Alternative Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated August 10, 2018
NP 11-202 Receipt dated August 16, 2018
Offering Price and Description:
Serie A, F, UF and I units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
EdgeHill Partners
Project #2786290

Issuer Name:
Evolve Active Canadian Preferred Share ETF
Evolve Active Short Duration Bond ETF
Evolve Active US Core Equity ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated August 10, 2018
NP 11-202 Receipt dated August 14, 2018
Offering Price and Description:
Unhedged and Hedged Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2794934

Issuer Name:
Purpose Multi-Asset Income Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated August 10, 2018
NP 11-202 Receipt dated August 15, 2018
Offering Price and Description:
Series P
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Purpose Investments Inc.
Project #2764789

Issuer Name:
RBC 1-5 Year Laddered Canadian Bond ETF
RBC 1-5 Year Laddered Corporate Bond ETF
RBC Canadian Bank Yield Index ETF
RBC Canadian Bond Index ETF
RBC Canadian Equity Index ETF
RBC Canadian Short Term Bond Index ETF
RBC Emerging Markets Equity Index ETF
RBC Global Government Bond (CAD Hedged) Index ETF
RBC International Equity (CAD Hedged) Index ETF
RBC International Equity Index ETF
RBC Target 2018 Corporate Bond Index ETF
RBC Target 2019 Corporate Bond Index ETF
RBC Target 2020 Corporate Bond Index ETF
RBC Target 2021 Corporate Bond Index ETF
RBC Target 2022 Corporate Bond Index ETF
RBC Target 2023 Corporate Bond Index ETF
RBC Target 2024 Corporate Bond Index ETF
RBC Target 2025 Corporate Bond Index ETF
RBC U.S. Banks Yield (CAD Hedged) Index ETF
RBC U.S. Banks Yield Index ETF
RBC U.S. Equity (CAD Hedged) Index ETF
RBC U.S. Equity Index ETF
RBC Vision Women's Leadership MSCI Canada Index ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated August 16, 2018
NP 11-202 Receipt dated August 17, 2018
Offering Price and Description:
CAD and USD units @ net asset value
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #2793652

Issuer Name:
Ridgewood Canadian Bond Fund
Ridgewood Tactical Yield Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated to Final Simplified Prospectus dated July 1, 2018
NP 11-202 Receipt dated August 15, 2018
Offering Price and Description:
Series A Units
Underwriter(s) or Distributor(s):
Ridgewood Capital Asset Management Inc.
Promoter(s):
Ridgewood Capital Asset Management Inc.
Project #2725831

Issuer Name:
Stone Dividend Growth Class
Stone Europlus Fund
Stone Global Balanced Fund
Stone Global Growth Fund
Stone Growth Fund
Stone Select Growth Class
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated August 20, 2018
NP 11-202 Receipt dated August 20, 2018
Offering Price and Description:
Series A, Series B, Series C, Series F, Series L, Series AA, Series BB, Series FF, Series T8A, Series T8B and Series T8C @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2797233

NON-INVESTMENT FUNDS

Issuer Name:
Asia Cannabis Corp.
Principal Regulator - Alberta (ASC)
Type and Date:
Amendment dated August 15, 2018 to Preliminary Long Form Prospectus dated May 17, 2018
NP 11-202 Preliminary Receipt dated August 15, 2018
Offering Price and Description:
5,000,000 Common Shares at a Price of $0.25 Per Share
Underwriter(s) or Distributor(s):
Emerging Equities Inc.
Promoter(s):
Johannes J. Kingma
Project #2773780

Issuer Name:
BB1 Acquisition Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus (TSX-V) dated August 17, 2018
NP 11-202 Preliminary Receipt dated August 20, 2018
Offering Price and Description:
Offering: $500,000.00 or 5,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
Stephen Shefsky
Project #2808419

Issuer Name:
Canaccord Genuity Growth Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated August 14, 2018
NP 11-202 Preliminary Receipt dated August 15, 2018
Offering Price and Description:
$*
* Class A Restricted Voting Units
Price: $3.00 per Class A Restricted Voting Unit
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Cormark Securities Inc.
Promoter(s):
CG Investments Inc.
Project #2807490

Issuer Name:
ChaiNode Opportunities Corp.
Principal Regulator - Alberta (ASC)
Type and Date:
Preliminary CPC Prospectus (TSX-V) dated August 17, 2018
NP 11-202 Preliminary Receipt dated August 17, 2018
Offering Price and Description:
$300,000.00
3,000,000 common shares
Price: $0.10 per common share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
Kenneth L. DeWyn
Project #2808463

Issuer Name:
County Capital One Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus (TSX-V) dated August 14, 2018
NP 11-202 Preliminary Receipt dated August 15, 2018
Offering Price and Description:
Offering: $500,000.00 (5,000,000 Common Shares)
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
-
Project #2806827

ERMG Capital Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus (TSX-V) dated August 15, 2018
NP 11-202 Preliminary Receipt dated August 20, 2018
Offering Price and Description:
Minimum of $300,000.00
3,000,000 Common Shares
Maximum of $1,000,000.00
10,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Promoter(s):
-
Project #2808375

Issuer Name:
NUVISTA ENERGY LTD.
Principal Regulator - Alberta (ASC)
Type and Date:
Preliminary Short Form Prospectus dated August 14, 2018
NP 11-202 Preliminary Receipt dated August 14, 2018
Offering Price and Description:
20,990,000 Subscription Receipts each
representing the right to receive one Common Share
Price $8.10 per Subscription Receipt
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Peters & Co. Limited
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
Altacorp Capital Inc.
Cormark Securities Inc.
GMP Securities L.P.
Credit Suisse Securities (Canada), Inc.
Desjardins Securities Inc.
Raymond James Ltd.
Tudor, Pickering, Holt & Co. Securities - Canada, ULC
Promoter(s):
-
Project #2805074

Issuer Name:
Sernova Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated August 14, 2018
NP 11-202 Preliminary Receipt dated August 14, 2018
Offering Price and Description:
$2,754,000.00
11,016,000 Units issuable upon Exercise of 11,016,000 Special Warrants
Price Per Special Warrant: $0.25
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2806836

Issuer Name:
Zekelman Industries, Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated August 17, 2018
NP 11-202 Preliminary Receipt dated August 17, 2018
Offering Price and Description:
US$*
* Shares of Class A Subordinate Voting Stock
Price: US$* per share of Class A subordinate voting stock
Underwriter(s) or Distributor(s):
Goldman Sachs Canada Inc.
Merrill Lynch Canada Inc.
BMO Nesbitt Burns Inc.
Credit Suisse Securities (Canada) Inc.
GMP Securities L.P.
Promoter(s):
-
Project #2808302

Issuer Name:
Australis Capital Inc.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated August 14, 2018
NP 11-202 Receipt dated August 16, 2018
Offering Price and Description:
Distribution by Aurora Cannabis Inc. of Units of the Company as a Return of Capital
Underwriter(s) or Distributor(s):
-
Promoter(s):
Aurora Cannabis Inc.
Project #2787218

Issuer Name:
Battery Road Capital Corp.
Principal Regulator - Nova Scotia
Type and Date:
Final CPC Prospectus (TSX-V) dated August 10, 2018
NP 11-202 Receipt dated August 14, 2018
Offering Price and Description:
$400,000.00
(4,000,000 Common Shares)
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities
Promoter(s):
Wade Dawe
Project #2785947

Issuer Name:
Bluewater Acquisition Corp.
Principal Regulator - Alberta (ASC)
Type and Date:
Final CPC Prospectus (TSX-V) dated August 14, 2018
NP 11-202 Receipt dated August 15, 2018
Offering Price and Description:
Minimum Offering: $300,000.00 (3,000,000 Common Shares)
Maximum Offering: $750,000.00 (7,500,000 Common Shares)
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Peter Karos
Project #2783280

Issuer Name:
Goldcorp Inc.
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated August 16, 2018
NP 11-202 Receipt dated August 16, 2018
Offering Price and Description:
US$3,000,000,000.00
Common Shares
Debt Securities
Subscription Receipts
Units
Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2804789

Issuer Name:
iCo Therapeutics Inc.
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated August 14, 2018
NP 11-202 Receipt dated August 15, 2018
Offering Price and Description:

$25,000,000.00
Common Shares Preferred Shares
Debt Securities
Subscription Receipts
Units
Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2803145

Issuer Name:
Xanadu Mines Ltd
Type and Date:
Final Long Form Prospectus dated August 14, 2018
Receipted on August 14, 2018
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2797788

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	KAIOG Capital Partners Inc.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	August 13, 2018
Voluntary Surrender	MidStar Management Corp.	Exempt Market Dealer and Restricted Portfolio Manager	August 13, 2018
New Registration	EHP Funds Inc.	Investment Fund Manager, Portfolio Manager	August 16, 2018
Change of Registration Category	Gestion Financiere Cape Cove Inc./Cape Cove Financial Management Inc.	From: Exempt Market Dealer To: Exempt Market Dealer and Portfolio Manager	August 17, 2018

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 Canadian Investor Protection Fund – Request for Comment – Proposed Amendments to CIPF By-Law No. 1

CANADIAN INVESTOR PROTECTION FUND (CIPF)

REQUEST FOR COMMENT

PROPOSED AMENDMENTS TO CIPF BY-LAW NO. 1

The Canadian Investor Protection Fund (**CIPF**) is proposing amendments to its By-law No. 1 (**Proposed Amendments**). The Proposed Amendments seek to:

- clarify and streamline the definitions of Industry Director and Public Director
- achieve greater consistency with the concept of industry director currently employed by IIROC and the MFDA IPC

Any comments on the Proposed Amendments should be sent to the OSC.

An overview of the Proposed Amendments, together with a blacklined copy of the Proposed Amendments to CIPF By-law No. 1 and details of how to submit comments, is published on our website at www.osc.gov.on.ca. The comment period ends on October 9, 2018.

13.2 Marketplaces

13.2.1 Thomson Reuters Multilateral Facility – Application for Exemptive Relief -- Notice of Commission Interim Order

THOMSON REUTERS MULTILATERAL FACILITY ("TR MTF")

APPLICATION FOR EXEMPTIVE RELIEF

NOTICE OF COMMISSION INTERIM ORDER

On August 17, 2018, the Commission issued an order (**Order**) to TR MTF pursuant to section 147 of the *Securities Act* (Ontario) (the **Act**) exempting TR MTF on an interim basis from the requirement to be recognized as an exchange under section 21 of the Act. The Order expires on the earlier of (i) August 16, 2019 and (ii) the effective date of a subsequent order exempting the Facility from the requirement to be recognized as an exchange under section 147 of the Act.

A copy of the Order is published in Chapter 2 of this Bulletin.

13.2.2 ICE Futures Canada, Inc. – Notice of Revocation Order

ICE FUTURES CANADA, INC.

NOTICE OF REVOCATION ORDER

On August 17, 2018 and effective upon August 21, 2018, at the request of ICE Futures Canada, Inc. (**IFCA**), the Commission revoked an exemption order issued to IFCA on September 25, 2012 (**Exemption Order**). The Exemption Order granted exemptions to IFCA from the requirement to be recognized as an exchange under subsection 21 of the *Securities Act* (Ontario) (**OSA**) and from registration as a commodity futures exchange under section 15 of the *Commodity Futures Act* (Ontario) (**CFA**). The Exemption Order also granted exemptions to IFCA from the requirements of sections 22 and 33 of the CFA.

A copy of the revocation order is published in Chapter 2 of this Bulletin.

13.2.3 ICE Clear Canada, Inc. – Notice of Revocation Order

ICE CLEAR CANADA, INC.

NOTICE OF REVOCATION ORDER

On August 17, 2018, upon the application from ICE Clear Canada, Inc. (**ICCA**), the Commission revoked an exemption order issued to ICCA on February 1, 2011 and effective March 1, 2011 (**Exemption Order**). The Exemption Order granted an exemption to ICCA from the requirement to be recognized as a clearing agency under subsection 21.2 (0.1) of the *Securities Act* (Ontario).

A copy of the revocation order is published in Chapter 2 of this Bulletin.

13.3 Clearing Agencies

13.3.1 CDCC – Amendments to Risk Manual of the Canadian Derivatives Clearing Corporation, Introducing an Amended Methodology to Compute Mismatched Settlement Risk

CANADIAN DERIVATIVES CLEARING CORPORATION (CDCC)

AMENDMENTS TO RISK MANUAL OF THE CANADIAN DERIVATIVES CLEARING CORPORATION, INTRODUCING AN AMENDED METHODOLOGY TO COMPUTE MISMATCHED SETTLEMENT RISK

NOTICE OF COMMISSION APPROVAL

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and The Canadian Derivatives Clearing Corporation (CDCC), the Commission approved on August 17, 2018, amendments related to introducing an amended methodology to compute mismatched settlement.

A copy of the CDCC notice was published for comment on April 26, 2018 on the Commission's website at: http://www.osc.gov.on.ca. No comments were received.

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Chapter 25

Other Information

25.1 Consents

25.1.1 Focused Capital II Corp. – s. 4(b) of the Regulation

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the Business Corporations Act (British Columbia).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c.B.16, as am., s. 181.
Securities Act, R.S.O. 1990, c.S.5, as am.

Regulations Cited

R.R.O. 1990, Regulation 289/00, as am., s. 4(b), made under the Business Corporations Act, R.S.O. 1990, c.B.16, as am.

IN THE MATTER OF
R.R.O. 1990, REGULATION 289/00, AS AMENDED
(the Regulation)
UNDER THE BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990, c. B.16, AS AMENDED
(the OBCA)

AND

IN THE MATTER OF
FOCUSED CAPITAL II CORP.

CONSENT
(Subsection 4(b) of the Regulation)

UPON the application (the Application) of Focused Capital II Corp. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) requesting the Commission's consent to the Applicant continuing in another jurisdiction pursuant to section 181 of the OBCA (the **Continuance**);

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is an offering corporation existing under the provisions of the OBCA.

2. The Applicant has applied to the Director under the OBCA for authorization to continue as a corporation under the *Business Corporations Act* (British Columbia), S.B.C. 2002, c.57 (the BCBCA) pursuant to section 181 of the OBCA (the **Application for Continuance**).

3. This application is being made in connection with the proposed business combination structured as a 'three cornered' amalgamation (the **Proposed Transaction**) involving the Applicant, Fortress Blockchain Corp., a corporation incorporated under the laws of British Columbia (**Fortress**), and a wholly-owned subsidiary of the Applicant (**Subco**) incorporated under the laws of British Columbia, pursuant to which Fortress and Subco will amalgamate and the amalgamated company (**Amalco**) will become a wholly owned subsidiary of the Applicant and the Fortress shareholders will receive shares of the Applicant.

4. The name of the Applicant is Focused Capital II Corp. Pursuant to the Proposed Transaction the name of the Applicant will be changed to Fortress Blockchain Corp.

5. The Applicant was incorporated under the OBCA pursuant to a Certificate of Incorporation dated July 13, 2011.

6. The Applicant's common shares are listed on the "NEX" board of the TSX Venture Exchange (the **Exchange**), under the symbol "FAV.H"; as at August 1, 2018, the Applicant had 6,176,470 common shares issued and outstanding. The Applicant does not have any securities listed on any other exchange.

7. The Applicant is a reporting issuer under the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the **Act**), the *Securities Act* (British Columbia), R.S.B.C. 1996, c.418 (the **BCSA**) and the *Securities Act* (Alberta), R.S.A. 2000, c. S-4 (together with the BCSA, the **Legislation**) and will remain a reporting issuer in these jurisdictions following the proposed Continuance.

8. The Applicant is not in default of any of the provisions of the OBCA, the Act or the Legislation, including the regulations made thereunder.

9. The Applicant is not subject to any proceeding under the OBCA, the Act or the Legislation.

10. The Applicant is not in default of any provision of the rules, regulations or policies of the Exchange, except as previously publicly disclosed.

11. The Commission is the principal regulator for the Applicant. Following the proposed Continuance, the Applicant's registered office, which is currently located in Ontario, will be relocated to British Columbia, and the Applicant intends to have the British Columbia Securities Commission be its principal regulator.

12. The Applicant's management information circular dated May 20, 2018 (the **Information Circular**) for its annual and special meeting of shareholders on June 22, 2018 (the **Shareholders' Meeting**) described the proposed Continuance and disclosed the reasons for it and its implications. The Information Circular disclosed to the shareholders their dissent rights in connection with the proposed Continuance pursuant to section 185 of the OBCA.

13. The Applicant's shareholders authorized the proposed Continuance at the Shareholders' Meeting by a special resolution that was approved by 100% of the votes cast; no shareholder exercised dissent rights pursuant to section 185 of the OBCA.

14. The material rights, duties and obligations of a corporation governed by the BCBCA are substantially similar to those under the OBCA, with the exception that there is not a Canadian residency requirement for the members of the board of directors under the BCBCA.

15. Pursuant to subsection 4(b) of the Regulation, where a corporation is an offering corporation under the OBCA, the Application for Continuance must be accompanied by a consent from the Commission.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

THE COMMISSION CONSENTS to the continuance of the Applicant under the BCBCA.

DATED at Toronto, Ontario this 13th day of August, 2018.

"Grant Vingoe"
Commissioner

"Frances Kordyback"
Commissioner

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