The Ontario Securities Commission

OSC Bulletin

October 25, 2018

Volume 41, Issue 43

(2018), 41 OSCB

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

The Ontario Securities Commission
Cadillac Fairview Tower
22nd Floor, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

Contact Centre – Inquiries, Complaints:

Office of the Secretary:

Published under the authority of the Commission by:
Thomson Reuters
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

416-609-3800 or 1-800-387-5164

Fax: 416-593-8122
TTY: 1-866-827-1295

Fax: 416-593-2318

The OSC Bulletin is published weekly by Thomson Reuters Canada, under the authority of the Ontario Securities Commission.

ISSN 0226-9325

One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

Customer Support
1-416-609-3800 (Toronto & International)
1-800-387-5164 (Toll Free Canada & U.S.)
Fax 1-416-298-5082 (Toronto)
Fax 1-877-750-9041 (Toll Free Canada Only)
Email CustomerSupport.LegalTaxCanada@TR.com

Table of Contents

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 OSC Staff Notice 11-737 (Revised) –Securities Advisory Committee – Vacancies

OSC STAFF NOTICE 11-737 (Revised)

SECURITIES ADVISORY COMMITTEE – VACANCIES

The Securities Advisory Committee ("SAC") is a committee of industry experts established by the Commission to advise it and its staff on a variety of matters including policy initiatives and capital markets trends. The Commission seeks four prospective candidates to serve on SAC beginning in January 2019 for a three-year term ending December 2021. There is a one-third turnover of SAC membership each calendar year.

SAC members generally meet every other month and provide advice on a variety of matters, including legal and regulatory initiatives, as well as market implications of Commission rules, policies, operations, and administration. SAC members are also invited to provide their perspectives on emerging trends in the marketplace. Those who make a commitment to serve on SAC must be in a position to devote the time necessary to attend meetings and be an active participant at those meetings.

SAC members are expected to have excellent technical abilities and a strong interest in the development of securities regulatory policy. This includes having in-depth knowledge of the legislation and policies for which the Commission is responsible, as well as a significant practice and experience in the securities field. Expertise in an area of special interest to the Commission at the time of an appointment will also be a factor in selection. Diversification of membership on SAC continues to be a Commission priority in order to promote a broad perspective on the development of securities regulatory policy. In addition to candidates engaged in private practice, we continue to welcome the submission of applications from in-house counsel practicing in the securities area at an exchange, institutional investor or dealer.

Qualified individuals who have the support of their firms/employers for the commitment required to effectively participate on SAC, are invited to apply in writing for membership on SAC to the General Counsel's Office of the Commission, indicating areas of practice and relevant experience. Prospective candidates are encouraged to review OSC Policy 11-601 for further information about SAC.

SAC members whose terms continue past December 2018 are:

• Anita Anand	University of Toronto
• Rhonda Goldberg	IGM Financial Inc
• Margaret Gunawan	BlackRock Asset Management
• Barbara Hendrickson	Bax Securities Law
• Jeffrey Meade	TD Bank Group
• Ron Schwass	Wildeboer Dellelce LLP
• Julie Shin	Toronto Stock Exchange
• Blair Wiley	Osler, Hoskin & Harcourt LLP

The Commission wishes to thank the following members whose terms will expire at the end of December 2018:

• Thomas Fenton	Aird & Berlis LLP
• Ramandeep Grewal	Stikeman Elliott LLP
• Eric Moncik	Blake, Cassels & Graydon LLP
• Thomas Yeo	Torys LLP

The Commission is very grateful to outgoing members for their able assistance and valuable input.

Applications for SAC membership will be considered if received on or before **November 23, 2018**. Applications should be submitted by email to:

James Sinclair
General Counsel
Ontario Securities Commission
20 Queen Street West, 22th Floor
Toronto, Ontario, M5H 3S8
Tel: (416) 263-3870
jsinclair@osc.gov.on.ca

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 K2 & Associates Investment Management Inc. et al. – ss. 127(1), 127.1

FILE NO.: 2018-60

IN THE MATTER OF
K2 & ASSOCIATES INVESTMENT MANAGEMENT INC.,
SHAWN KIMEL and
DANIEL GOSSELIN

NOTICE OF HEARING
Subsection 127(1) and Section 127.1 of the
Securities Act, RSO 1990, c S.5

PROCEEDING TYPE: Public Settlement Hearing

HEARING DATE AND TIME: October 19, 2018 at 1:00 p.m.

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

PURPOSE

The purpose of this hearing is to consider whether it is in the public interest for the Commission to approve the Settlement Agreement dated October 16, 2018 between Staff of the Commission and K2 & Associates Investment Management Inc., Shawn Kimel and Daniel Gosselin in respect of the Statement of Allegations filed by Staff of the Commission dated October 16, 2018.

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

L'avis d'audience est disponible en français sur demande d'une partie, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Bureau du secrétaire par écrit le plut tôt si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

Dated at Toronto this 17th day of October, 2018.

"Grace Knakowski"
Secretary to the Commission

For more information

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

FILE NO.: 2018-60

IN THE MATTER OF
K2 & ASSOCIATES INVESTMENT MANAGEMENT INC.,
SHAWN KIMEL and
DANIEL GOSSELIN

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

A. ORDER SOUGHT

1. Staff of the Enforcement Branch ("**Enforcement Staff**") of the Ontario Securities Commission (the "**Commission**") request that the Commission make an order pursuant to subsection 127(1) and (2) and section 127.1 of the *Securities Act*, RSO 1990 c S.5 (the "**Act**") to approve the settlement agreement dated October 16, 2018 between Enforcement Staff and K2 & Associates Investment Management Inc. ("**K2**"), Shawn Kimel ("**Kimel**") and Daniel Gosselin ("**Gosselin**"), (collectively, the "**Respondents**").

B. FACTS

a. Overview

2. This matter concerns manipulative trading activity related to equity-listed options on the Montreal Exchange (the "**MX**") performed by the Respondents.

3. It is critical to the integrity of Ontario's capital markets, and investor confidence in those markets, that registrants – as market professionals – do not engage in manipulative trading activities that deceive counterparties and benefit themselves financially to the detriment of others in the marketplace. Spoofing, or quote manipulation, as practiced by the Respondents, resulted in artificial changes to bid-ask spreads in equity-listed options that the Respondents were seeking to purchase or sell on the MX. This then enabled the Respondents to buy or sell specific instruments at a better price than would otherwise have been available, but for the advanced non-bona fide, spoofing orders they made. By injecting false information into our markets, spoofers gain an unfair advantage over law-abiding market participants, impeding competition and undermining the integrity of Ontario's capital markets.

b. The Respondents

4. K2 is a Toronto based manager of two private funds, The K2 Principal Fund L.P. and the K2 Principal Trust (collectively, the "**Funds**"). K2 is registered with the Commission in the categories of Portfolio Manager, Investment Fund Manager and Exempt Market Dealer.

5. Kimel is K2's founder, a director and a shareholder of K2. Kimel is registered with the Commission in the categories of portfolio advisor and exempt market dealing representative. During the period of October 2016 to December 2016 (the "**Material Time**"), Kimel was, in addition to being a director and a shareholder, K2's president, ultimate designated person and chief compliance officer.

6. Gosselin is currently K2's president. Gosselin is also registered with the Commission in the category of exempt market dealing representative. During the Material Time, Gosselin was a trader at K2 who assisted Kimel and other registered portfolio managers at K2 by executing investment decisions made by Kimel and the other registered portfolio managers.

c. Background

7. The Respondents engaged in trading on behalf of the Funds, which resulted in or contributed to a false or misleading impression, as to the supply of, or demand for derivatives listed on the MX and allowed K2 through Kimel and Gosselin to trade in derivatives on the MX at artificial prices.

8. The Respondents engaged in approximately 60 incidents of impugned trading during the Material Time (the "**Spoofing Events**"). The Spoofing Events involved the use of non *bona fide* direct electronic access ("**DEA**") orders placed by K2 to increase or decrease the National Best Bid Offer ("**NBBO**") in order for K2 to receive a benefit on desk trade orders it made with Canadian financial institutions (the "**Financial Institutions**"). Through their misconduct, the Respondents wrongly benefited by approximately $250,000. The general pattern of the Spoofing Events observed by Staff is set out below.

(a) Kimel would place a DEA order to buy or sell small quantities of certain options on the MX. The effect of this order was to increase or decrease the NBBO to the advantage of K2.

(b) Soon after Kimel's order was placed (within minutes), Gosselin would initiate a chat session with one or more of the Financial Institutions. Gosselin would negotiate a larger desk trade on the opposite side of Kimel's previously made DEA order.

(c) Very soon after a desk trade had been confirmed by a Financial Institution (often within seconds) the opposite DEA order previously entered would be cancelled.

(d) In a variant situation observed by Staff, the chat was initiated with one or more of the Financial Institutions immediately prior to the DEA order being made. Similarly, once a desk trade had been confirmed by a Financial Institution the DEA order would be cancelled very soon after.

9. Kimel and Gosselin coordinated their conduct regarding the Spoofing Events. In certain circumstances, Gosselin would notify Kimel when the desk trade had been successfully negotiated so that Kimel could quickly cancel his DEA order.

10. Staff determined the potential aggregate benefit of approximately $250,000 by calculating, for each Spoofing Event, the monetary difference between the price at which K2 actually paid for the exchange-listed equity derivative (or the price at which K2 actually sold the exchange-listed equity derivative) and the price that K2 would have paid (or would have been paid) based on the NBBO immediately prior to the Respondents engaging in the spoofing activity.

11. As an example of this calculation methodology, on December 1, 2016, the Respondents' trading resulted in the Respondents purchasing 2,500 put options of a certain security at a price of $0.30 for an aggregate acquisition cost of $75,000. Immediately prior to the Respondents initiating their trading regarding these put options, the market spread for these put options was $0.10 / $0.50. If the Respondents had purchased the 2,500 put options prior to engaging in trading, all things being equal, the purchase price would have been at least $0.50, resulting in an aggregate acquisition cost of $125,000. This saved the Respondents $50,000 on this one transaction. The spoofing activity to achieve this calculated $50,000 acquisition cost saving comprised Kimel placing two DEA orders to sell the put options. Kimel first placed an order to sell the put options at $0.35 (which was never filled and cancelled after K2 successfully purchased 2,500 put options). Kimel immediately followed this by placing a second order to sell 10 put options at $0.25. Kimel cancelled this second sell order shortly after placing it and the market spread became $0.10 / $0.30. Within minutes, Gosselin negotiated a desk trade with a Financial Institution on the opposite side to buy 2,500 put options at the lower price of $0.30.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

12. By engaging in the conduct described above, the Respondents admit and acknowledge that they breached Ontario securities law by contravening subsection 126.1(1)(a) of the Act and that their actions were contrary to the public interest.

DATED this 16th day of October, 2018.

1.4 Notices from the Office of the Secretary

1.4.1 K2 & Associates Investment Management Inc. et al.

FOR IMMEDIATE RELEASE
October 17, 2018

K2 & ASSOCIATES INVESTMENT MANAGEMENT INC.,
SHAWN KIMEL, and
DANIEL GOSSELIN,
File No. 2018-60

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission, K2 & Associates Investment Management Inc., Shawn Kimel, and Daniel Gosselin in the above named matter.

The hearing will be held on October 19, 2018 at 1:00 p.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated October 17, 2018 and Statement of Allegations dated October 16, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.4.2 Caldwell Investment Management Ltd.

FOR IMMEDIATE RELEASE
October 18, 2018

CALDWELL INVESTMENT MANAGEMENT LTD.,
File No. 2018-36

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

A copy of the Order dated October 18, 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)

1.4.3 K2 & Associates Investment Management Inc. et al.

FOR IMMEDIATE RELEASE
October 19, 2018

K2 & ASSOCIATES INVESTMENT MANAGEMENT INC.,
SHAWN KIMEL, and
DANIEL GOSSELIN,
File No. 2018-60

TORONTO – Following a hearing held today, the Commission issued an Order approving the Settlement Agreement reached between Staff of the Commission and K2 & Associates Investment Management Inc., Shawn Kimel, and Daniel Gosselin in the above named matter.

A copy of the Order dated October 19, 2018, Settlement Agreement dated October 16, 2018 and Oral Reasons for Approval of a Settlement dated October 19, 2018 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

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

FOR IMMEDIATE RELEASE
October 22, 2018

DENNIS L. MEHARCHAND and
VALT.X HOLDINGS INC.

TORONTO – Following the hearing on the merits in the above noted matter, the Commission issued its Reasons and Decision.

A copy of the Reasons and Decision dated October 19, 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)

This page intentionally left blank

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 CIBC Asset Management Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from section 2.5(2)(a) of National Instrument 81-102 Investment Funds to allow mutual funds to invest up to 10% of net asset value in an alternative fund – the underlying alternative fund is subject to National Instrument 41-101 General Prospectus Requirements and will comply with the investment restrictions in the Alternative Funds Rule.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.5(2)(a), 19.1.

October 15, 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.
(CIBC AM)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from CIBC AM on behalf of the mutual funds subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**) that are, or may be, managed by CIBC AM or an affiliate or successor of CIBC AM (the **Filer**) from time to time (the **Top Funds** and, individually, a **Top Fund**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption (the Exemption Sought), pursuant to section 19.1 of NI 81-102, from the prohibition contained in paragraph 2.5(2)(a) of NI 81-102 against a mutual fund investing in another mutual fund that is not subject to NI 81-102 and National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) to permit each Top Fund to invest up to 10% of its net asset value, taken at market value at the time of the investment, in units of CIBC Multi-Asset Absolute Return Strategy (the **Underlying Alternative Fund**).

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 Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Quebec, Saskatchewan and Yukon (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.

Alternative Funds Proposal means the *CSA Notice and Request for Comment – Modernization of Investment Fund Product Regulation – Alternative Funds* (2016), 39 OSCB 8051 dated September 22, 2016.

Representations

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

The Filer

1. CIBC AM is a corporation with its head office located in Toronto, Ontario.

2. CIBC AM is registered as an investment fund manager, portfolio manager and commodity trading manager in the Province of Ontario, a portfolio manager in each of the other Jurisdictions, a derivatives portfolio manager in Québec and an investment fund manager in each of the Provinces of Québec and Newfoundland and Labrador.

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

4. The Filer is, or will be, the manager of each Top Fund and the Underlying Alternative Fund.

The Top Funds

5. Each Top Fund is, or will be, a "mutual fund", as such term is defined under the *Securities Act* (Ontario) (the **Act**).

6. Each Top Fund has, or will have, a simplified prospectus, annual information form and fund facts document prepared in accordance with NI 81-101, and securities of each Top Fund are, or will be, qualified for distribution in one or more Jurisdictions.

7. Each Top Fund is, or will be, a reporting issuer under the securities legislation of one or more Jurisdictions and is, or will be, subject to NI 81-102.

8. None of the existing Top Funds is in default of securities legislation in any of the Jurisdictions.

9. Subject to being granted the Exemption Sought, an investment by each Top Fund in the Underlying Alternative Fund will be consistent with each Top Fund's investment objectives and strategies.

The Underlying Alternative Fund

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

11. A preliminary prospectus, prepared in accordance with National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**), with respect to the proposed offering of Series A, Series F, Series S and Series O units of the Underlying Alternative Fund (the **Units**) was filed under SEDAR Project No 02786166.

12. Upon the filing of the final prospectus of the Underlying Alternative Fund, prepared in accordance with NI 41-101, and obtaining a receipt therefor, the Units will be qualified for distribution, and the Underlying Alternative Fund will be a reporting issuer in each of the Jurisdictions.

13. The investment objective of the Underlying Alternative Fund is to achieve a positive absolute return that exceeds the return of the Government of Canada 91-day treasury bills over a rolling three-year period, regardless of the prevailing economic conditions, by actively managing a diversified portfolio with direct and indirect exposure to primarily equity securities, fixed income securities, commodities, currencies, and derivatives investments. The investment strategies of the Underlying Alternative Fund provide that it may invest, directly or indirectly, in global equity securities, domestic and foreign fixed income securities, derivatives, exchange-traded funds, commodities, cash in various currencies and cash equivalents and other financial instruments to access alternative investment strategies. The Underlying Alternative Fund

will make significant use of derivative instruments for hedging and non-hedging purposes, including to provide leverage in the portfolio.

Effect on the Top Funds

14. An investment by the Top Funds in the Underlying Alternative Fund will be consistent with the investment objectives and strategies of those Top Funds that wish to access alternative asset classes and strategies through investments in global equity securities, domestic and foreign fixed income securities, derivatives, exchange-traded funds, commodities, cash in various currencies and cash equivalents and/or other financial instruments. The Filer believes that an investment in the Underlying Alternative Fund will provide an efficient and cost effective way for the Top Funds to achieve diversification and maximize absolute returns.

15. While it may be possible for the Filer to invest in other alternative products, the Filer believes it is in the best interests of the Top Funds to have the ability to invest in the Underlying Alternative Fund because the alternatives available to the Filer are not optimal relative to investing in the Underlying Alternative Fund. The Filer is the portfolio manager of the Underlying Alternative Fund, is comfortable with its portfolio management approach, leverage expertise, research and investment style and prefers it over any peers in the marketplace.

16. Each Top Fund will not purchase securities of the Underlying Alternative Fund if, immediately after the purchase, more than 10% of the net asset value of the Top Fund would consist of securities of the Underlying Alternative Fund.

17. Pursuant to a decision dated October 1, 2010 (the **Prior Decision**), CIBC AM and Canadian Imperial Bank of Commerce obtained exemptive relief from sections 2.3(h), 2.5(2)(a) and (c) of NI 81-102 that permits each Top Fund to invest up to 10% of its net asset value in securities of Underlying ETFs (as defined in the Prior Decision). The Underlying ETFs meet the definition of "alternative fund" in the Alternative Funds Proposal. Each Top Fund will reduce the maximum permitted exposure to the Underlying Alternative Fund by the amount of any investment in the Underlying ETFs.

18. A Top Fund will not invest in securities of the Underlying Alternative Fund if the Top Fund would be required to pay any management or incentive fees in respect of the investment that duplicate a fee payable by the Top Fund for the same service.

19. Other than the Exemption Sought, the Top Funds will comply fully with section 2.5 of NI 81-102 in their investments in the Underlying Alternative Fund and the prospectus of the Top Funds will provide all applicable disclosure mandated for mutual funds investing in other mutual funds.

20. Where applicable, a Top Fund's investment in the Underlying Alternative Fund will be disclosed to investors in such Top Fund's quarterly portfolio holding reports, financial statements and fund facts/ETF Facts documents.

General

21. The Alternative Funds Proposal proposes to permit conventional mutual funds to invest up to 10% of their net assets in securities of alternative funds, provided those alternative funds are subject to NI 81-102 (as it is proposed to be amended by the Alternative Funds Proposal), acknowledging "that some access to these types of products can be beneficial to a mutual fund's strategies".

22. The Underlying Alternative Fund will be managed in compliance with the investment restrictions applicable to alternative mutual funds published in the final rule implementing the Alternative Funds Proposal (the **Alternative Funds Rule**) (2018), 41 OSCB #40 (Supp-2) dated October 4, 2018, for so long as securities of the Underlying Alternative Fund are held by the Top Funds.

23. Securities of the Underlying Alternative Fund will be valued on the same dates as securities of the Top Funds. An investment by a Top Fund in the Underlying Alternative Fund will be effected based on the Underlying Alternative Fund's net asset value, which is calculated in accordance with Part 14 of NI 81-106. Securities of the Top Funds and the Underlying Alternative Fund are redeemable on each business day.

24. A preliminary long form prospectus, prepared in accordance with NI 41-101, has been filed in respect of the Units of the Underlying Alternative Fund. Once the Alternative Funds Rule comes into effect and following the expiry of any applicable transition period, a simplified prospectus, annual information form and fund facts documents, prepared in accordance with NI 81-101, will be filed in respect of the Units of the Underlying Alternative Fund when the current prospectus is renewed.

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) no Top Fund shall purchase or hold securities of the Underlying Alternative Fund unless the Underlying Alternative Fund is managed in compliance with the investment restrictions in the Alternative Funds Rule;

(b) each Top Fund will not purchase securities of the Underlying Alternative Fund if, immediately after the purchase, either:

(i) 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 Underlying Alternative Fund; or

(ii) the aggregate value of securities of the Underlying Alternative Fund and Underlying ETFs, taken at market value at the time of the transaction, would exceed 10% of the net asset value of the Top Fund; and

(c) this decision shall expire upon the earlier of: (i) the expiry of any transition period applicable to the Underlying Alternative Fund under the Alternative Funds Rule; and (ii) five years from the date of this decision.

"Darren McKall"
Manager, Investment Funds and Structured Products Branch

2.1.2 TerrAscend Corp.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer granted relief from certain restricted security requirements under National Instrument 41-101 General Prospectus Requirements, National Instrument 44-101 Short Form Prospectus Distributions, and National Instrument 51-102 Continuous Disclosure Obligations – relief granted subject to conditions.

OSC Rule 56-501 Restricted Shares – Issuer granted relief from certain restricted share requirements under OSC Rule 56-501 – relief granted subject to conditions.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 12.2, 12.3, 19.1.
Form 41-101F1 Information Required in a Prospectus, ss. 1.13, 10.6.
National Instrument 44-101 Short Form Prospectus Distributions, s. 8.1.
Form 44-101F1 Short Form Prospectus, ss. 1.12, 7.7.
National Instrument 51-102 Continuous Disclosure Obligations, Part 10 and s. 13.1.
OSC Rule 56-501 Restricted Shares, Parts 2 and 3, and s. 4.2.

October 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
TERRASCEND CORP.
(the Filer)

DECISION

Background

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

a) section 12.2 of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**), relating to the use of restricted security terms, sections 1.13 and 10.6 of Form 41-101F1 *Information Required in a Prospectus* (**Form 41-101F1**) and sections 1.12 and 7.7 of Form 44-101F1 *Short Form Prospectus* (**Form 44-101F1**) relating to restricted security disclosure shall not apply to the common shares in the capital of the Filer (the **Common Shares**) (the **Prospectus Disclosure Exemption**) in connection with prospectuses (Prospectuses) that may be filed by the Filer under NI 41-101 or National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**), including a prospectus filed under National Instrument 44-102 *Shelf Distributions*;

b) section 12.3 of NI 41-101 relating to prospectus filing eligibility for distributions of restricted securities shall not apply to distributions of Common Shares (the **Prospectus Eligibility Exemption**) in connection with Prospectuses;

c) Part 2 of OSC Rule 56-501 Restricted Shares (**OSC Rule 56-501**) relating to the use of restricted share terms and restricted share disclosure shall not apply to the Common Shares (the **OSC Rule 56-501 Disclosure Exemption**) in connection with dealer and adviser documentation, rights offering circulars and offering memoranda (**OSC Rule 56-501 Documents**) of the Filer;

d) Part 3 of OSC Rule 56-501 relating to the withdrawal of prospectus exemptions for distributions of restricted shares shall not apply to the distribution of the Common Shares (the **OSC Rule 56-501 Withdrawal Exemption**) in connection with stock distributions (as defined in OSC Rule 56-501) of the Filer; and

e) Part 10 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) relating to the use of restricted security terms and restricted security disclosure shall not apply to the Common Shares (the **CD Disclosure Exemption**) in connection with continuous disclosure documents (the **CD Documents**) that may be filed by the Filer under NI 51-102.

The aforementioned requirements are collectively referred to as the **Restricted Security Rules**. The Prospectus Disclosure Exemption, the Prospectus Eligibility Exemption, the OSC Rule 56-501 Disclosure Exemption, the OSC Rule 56-501 Withdrawal Exemption and the CD Disclosure Exemption are collectively referred to as the **Exemption Sought**.

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

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

b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia and Alberta (other than with respect to the OSC Rule 56-501 Disclosure Exemption and the OSC Rule 56-501 Withdrawal Exemption), which, pursuant to subsection 8.2(2) of National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions* (**NP 11-202**) and subsection 5.2(6) of National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (**NP 11-203**), also satisfies the notice requirement of Section 4.7(1)(c) of MI 11-102.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NP 11-202, NP 11-203, NI 41-101, NI 44-101, NI 51-102 and OSC Rule 56-501 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation incorporated under the *Business Corporations Act* (Ontario) (the **OBCA**) and is a reporting issuer in British Columbia, Alberta and Ontario.

2. The registered and head office of the Filer is located in Mississauga, Ontario.

3. The authorized capital of the Filer consists of an unlimited number of common shares (the **Common Shares**).

4. The Common Shares are currently listed on the Canadian Securities Exchange (the **CSE**) under the symbol “TER”.

5. As part of an arrangement under section 182 of the OBCA (the **Arrangement**), among other things, the articles of the Filer will be amended to authorize the issuance of an unlimited number of a new class of proportionate voting shares (the **PV Shares**), an unlimited number of a new class of exchangeable shares (the **Exchangeable Shares**) and an unlimited number of a new class of preferred shares, issuable in series (the **Preferred Shares**).

6. Upon completion of the Arrangement, the PV Shares will constitute subject securities (as defined in NI 41-101, NI 51-102 and OSC Rule 56-501) and the Filer’s only issued and outstanding subject securities will be the PV Shares.

7. Immediately upon completion of the Arrangement, the Filer’s authorized share capital will consist of (i) an unlimited number of Common Shares; (ii) an unlimited number of PV Shares; (iii) an unlimited number of Exchangeable Shares; and (iv) an unlimited number of Preferred Shares, issuable in series.

8. Following the Arrangement:

   a) The Common Shares may at any time, at the option of the holder thereof, be converted into PV Shares on the basis of one (1) Common Share for one one-thousandth (0.001) of a PV Share.

   b) The PV Shares may at any time, at the option of the holder thereof, be converted into Common Shares on the basis of one thousand (1,000) Common Shares for one (1) PV Share. If the board of directors of the Filer determines that it is no longer advisable to maintain the PV Shares as a separate class of shares, then the PV

Shares shall be converted into Common Shares on the basis of one thousand (1,000) Common Shares for one (1) PV Share.

c) Each PV Share is entitled to dividends if, as and when dividends are declared by the board of directors, with each PV Share being entitled to one thousand (1,000) times the amount paid or distributed per Common Share (or, if a stock dividend is declared, each PV Share shall be entitled to receive the same number of PV Shares per PV Share as the number of Common Shares entitled to be received per Common Share) and otherwise without preference or distinction among or between the shares.

d) In the event of the liquidation, dissolution or winding-up of the Filer, the holders of PV Shares are entitled to participate in the distribution of the remaining property and assets of the Filer, with each PV Share being entitled to one thousand (1,000) times the amount distributed per Common Share and otherwise without preference or distinction among or between the shares.

e) The holders of the Common Shares and PV Shares are entitled to receive notice of, attend and vote at any meeting of shareholders of the Filer, except those meetings at which holders of a specific class of shares are entitled to vote separately as a class under the OBCA.

f) The Common Shares will carry one (1) vote per share and the PV Shares will carry one thousand (1,000) votes per share.

9. The rights, privileges, conditions and restrictions attaching to the Shares may be modified if the amendment is authorized by not less than 66⅔% of the votes cast at a meeting of holders of the Shares duly held for that purpose. However, if the holders of PV Shares, as a class, or the holders of Common Shares, as a class, are to be affected in a manner materially different from such other class of Shares, the amendment must, in addition, be authorized by not less than 66⅔% of the votes cast at a meeting of the holders of the class of shares which is affected differently.

10. No subdivision or consolidation of the Common Shares or PV Shares may be carried out unless, at the same time, the Common Shares or PV Shares, as the case may be, are subdivided or consolidated in the same manner and on the same basis, so as to preserve the relative rights of the holders of each class of Shares.

11. The Exchangeable Shares will be non-voting, non-participating shares in the capital of the Filer that have the right, in certain circumstances, to be exchanged for Common Shares on a one-for-one basis.

12. The Preferred Shares will be issuable in series at the discretion of the board of directors of the Filer and each such series will have the terms and conditions determined by the Filer's board of directors. No Preferred Shares will be issued and outstanding immediately following completion of the Arrangement.

13. The Filer is seeking the Exemption Sought in respect of, among other things, references to the Common Shares in Prospectuses and CD Documents.

14. Section 12.2 of NI 41-101 requires that an issuer must not refer to a security in a prospectus by a term or a defined term that includes the word "common" unless the security is an equity security to which are attached voting rights exercisable in all circumstances, irrespective of the number or percentage of securities owned, that are not less, per security, than the voting rights attached to any other outstanding security of the issuer.

15. Section 12.3 of NI 41-101 requires that an issuer must not file a prospectus under which restricted securities, subject securities or securities that are, directly or indirectly, convertible into, or exercisable or exchangeable for, restricted securities or subject securities, are distributed unless:

a) the distribution has received prior majority approval of the securityholders of the issuer in accordance with applicable law, including approval on a class basis if required and excluding any votes attaching at the time to securities held, directly or indirectly, by affiliates of the issuer or control persons of the issuer, or

b) at the time of any restricted security reorganization related to the securities to be distributed:

i) the restricted security reorganization received prior majority approval of the securityholders of the issuer in accordance with applicable law, including approval on a class basis if required and excluding any votes attaching at the time to securities held, directly or indirectly, by affiliates of the issuer or control persons of the issuer,

ii) the issuer was a reporting issuer in at least one jurisdiction, and

iii) no purposes or business reasons for the creation of restricted securities were disclosed that are inconsistent with the purpose of the distribution.

16. Sections 1.13 and 10.6 of Form 41-101F1 and sections 1.12 and 7.7 of Form 44-101F1 require that an issuer provide certain restricted security disclosure.

17. Section 2.2 of OSC Rule 56-501 requires dealer and adviser documentation to include the appropriate restricted share term if restricted shares and the appropriate restricted share term or a code reference to restricted shares or the appropriate restricted share term are included in a trading record published by the Canadian Securities Exchange or other exchange listed in OSC Rule 56-501.

18. Section 2.3 of OSC Rule 56-501 requires that a rights offering circular or offering memorandum for a stock distribution prepared for a reporting issuer comply with certain requirements including, among others, the restricted shares may not be referred to by a term or a defined term that includes "common", "preference" or "preferred" and that such shares shall be referred to using a term or a defined term that includes the appropriate restricted share term.

19. Section 3.2 of OSC Rule 56-501 provides that the prospectus exemptions under Ontario securities law are not available for a stock distribution of securities of a reporting issuer or an issuer if the issuer will become a reporting issuer as a result of the stock distribution unless either the stock distribution received minority approval of shareholders or all the conditions set out in subsection 3.2(2) are satisfied and the information circular relating to the shareholders' meeting held to obtain such minority approval for the stock distribution included prescribed disclosure.

20. Section 10.1 of NI 51-102 requires a reporting issuer that has outstanding restricted securities, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted securities or securities that will, when issued, result in an existing class of outstanding securities being considered restricted securities, to provide specific disclosure with respect to such securities in its information circular, a document required by NI 51-102 to be delivered upon request by a reporting issuer to any of its securityholders, an annual information form prepared by the reporting issuer as well as any other documents that it sends to its securityholders.

21. Section 10.2 of NI 51-102 sets out the procedure to be followed with respect to the dissemination of disclosure documents to holders of restricted securities.

22. Pursuant to the Restricted Security Rules, a "restricted security" means an equity security of a reporting issuer if any of the following apply:

a) there is another class of securities of the reporting issuer that, to a reasonable person, appears to carry a greater number of votes per security relative to the equity security,

b) the conditions of the class of equity securities, the conditions attached to another class of securities of the reporting issuer, or the reporting issuer's constating documents have provisions that nullify or, to a reasonable person appear to significantly restrict the voting rights of the equity securities, or

c) the reporting issuer has issued another class of equity securities that, to a reasonable person, appears to entitle the owners of securities of that other class to participate in the earnings or assets of the reporting issuer to a greater extent, on a per security basis, than the owners of the first class of equity securities.

23. The multiple votes attaching to the PV Shares would, absent the Exemption Sought, have the following consequences in respect of the technical status of the Common Shares:

a) pursuant to NI 41-101 and NI 44-101, the Filer would be unable to use the word "common" to refer to the Common Shares in Prospectuses and the Filer would be required to provide the specific disclosure required by NI 41-101 and NI 44-101 because the PV Shares would represent a security to which are attached voting rights exercisable in all circumstances, irrespective of the number or percentage of securities owned, that are more, per security, than the voting rights attached to the Common Shares,

b) the Common Shares would be considered "restricted shares" pursuant to OSC Rule 56-501 and the Filer would be subject to the dealer and advisor documentary disclosure obligations and distribution restrictions in OSC Rule 56-501 because the PV Shares would represent a security to which is attached voting rights exercisable in all circumstances, irrespective of the number or percentage of shares owned, that are more, on a per share basis, than the voting rights attaching to the Common Shares of the Filer and the Filer would be unable to use the word "common" to refer to the Common Shares in a rights offering circular or offering memorandum for a stock distribution, and

c) the Common Shares could be considered "restricted securities" pursuant to para. (a) of the definition of the term in NI 51-102 and the Filer would be required to provide the specific disclosure required by NI 51-102 in respect of the Common Shares because the PV Shares would represent another class of securities of the Filer that, to a reasonable person, appears to carry a greater number of votes per security relative to the Common Shares.

24. The CSE advised the Filer on October 5, 2018 that it will permit the Filer to designate the Common Shares as common shares, provided that the Exemption Sought is granted.

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) in connection with the Prospectus Disclosure Exemption and the Prospectus Eligibility Exemption as they apply to Prospectuses, at the time the Filer relies on the Exemption Sought:

   i) the representations in paragraphs 6 to 12, above, continue to apply;

   ii) the Filer has no restricted securities (as defined in section 1.1 of NI 41-101) issued and outstanding other than the Common Shares; and

   iii) the Prospectuses include disclosure consistent with the representations in paragraphs 6 to 12 above;

b) in connection with the OSC Rule 56-501 Disclosure Exemption as it applies to the OSC Rule 56-501 Documents, at the time the Filer relies on the Exemption Sought:

   i) the representations in paragraphs 6 to 12, above, continue to apply; and

   ii) the Filer has no restricted shares (as defined in section 1.1 of OSC Rule 56 -501) issued and outstanding other than the Common Shares;

c) in connection with the OSC Rule 56-501 Withdrawal Exemption, at the time the Filer relies on the Exemption Sought:

   i) the representations in paragraphs 6 to 12, above, continue to apply; and

   ii) the Filer has no restricted shares (as defined in section 1.1 of OSC Rule 56-501) issued and outstanding other than the Common Shares;

d) in connection with the CD Disclosure Exemption as it applies to the CD Documents, at the time the Filer relies on the Exemption Sought:

   i) the representations in paragraphs 6 to 12, above, continue to apply; and

   ii) the Filer has no restricted securities (as defined in subsection 1.1(1) of NI 51-102) issued and outstanding other than the Common Shares.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

2.1.3 Desjardins Global Asset Management Inc. and the Desjardins Funds

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to investment funds subject to NI 81-102 to purchase securities non-exchange traded debt securities of related entities under primary offerings and in the secondary market - relief conditional on IRC approval, compliance with pricing requirements, and limits on the amount of a primary offering of a related entity a fund may purchase; relief also granted from the requirement to file reports with respect to purchases and sales effected by investment funds subject to NI 81-102 through related persons or companies to the funds – funds are subject to NI 81-102 which requires substantially similar disclosure.

Applicable Legislative Provisions

Securities Act (Ontario), ss. 111(2)(a), 111(2)(c)(ii), 111(4), 113, 117(1)3, 117(2).

August 24, 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
DESJARDINS GLOBAL ASSET MANAGEMENT INC.
(the Filer)

AND

THE DESJARDINS FUNDS
(as defined below)

DECISION

Background

The Principal Regulator (as defined below) in the Jurisdiction has received an application from the Filer on behalf of each of the Filer and the Desjardins Funds (as defined below) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Filer and the Desjardins Funds from:

(a) the restriction in the Legislation that prohibits an investment fund from knowingly making an investment in any person or company who is a substantial security holder of the investment fund, its management company or its distribution company;

(b) the restriction in the Legislation that prohibits an investment fund from knowingly making an investment in any person or company in which the investment fund, alone or together with one or more related investment funds, is a substantial security holder,

(c) the restriction in the Legislation that prohibits an investment fund from knowingly making an investment in an issuer in which any person or company who is a substantial security holder of the investment fund, its management company or its distribution company, has a significant interest;

(d) the restriction in the Legislation that prohibits an "investment fund", its management company or its distribution company from knowingly holding an investment described in (a), (b) or (c) above ((a), (b), (c) and (d) are collectively, the **Related Issuer Requirements**); and

(e) the requirement to file a report prepared in accordance with the Legislation of every transaction of purchase of securities from or sale of securities to any related person or company and every purchase or sale effected by the investment fund through any related person or company with respect to which the related person or company received a fee either from the investment fund or from the other party to the transaction or from both (specifically, the **Reporting Requirement**);

in order to allow purchases by the Desjardins Funds of NET Debt Securities (as defined below) of Related Issuers (as those expressions are defined below) (relief from the Related Issuer Requirements and the Reporting Requirement is collectively, the **Exemption Sought**).

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 (the **Principal Regulator**), 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 respect of the Requested Relief in all the provinces and territories of Canada (the Applicable Jurisdictions), except in the provinces and territories of Manitoba, Québec, Yukon, Northwest Territories and Nunavut.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 81-102 *Investment Funds* (**NI 81-102**) and National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**) have the same meaning if used in this decision, unless otherwise defined. Capitalized terms used in this decision have the following meanings:

Desjardins Funds means all existing investment funds, including mutual funds and exchange traded funds, subject to both NI 81-102 and NI 81-107 and any investment fund, including mutual funds and exchange traded funds, subject to both NI 81-102 and NI 81-107 subsequently established in the future for which the Filer or an affiliate of the Filer acts, or will act, as investment fund manager and/or portfolio manager.

IRC means the independent review committee established in accordance with NI 81-107.

NET Debt Securities means non-exchanged-trade debt securities of Related Issuers.

Related Issuer means (i) any person or company who is a substantial security holder of a Desjardins Fund, its management company (as defined in the *Securities Act* (Ontario) (**OSA**)) or its distribution company (as defined in the OSA); (ii) any person or company in which a Desjardins Fund, alone or together with one or more related Desjardins Funds, is a substantial security holder and/or (iii) an issuer in which any person or company who is a substantial security holder of a Desjardins Fund, its management company (as defined in the OSA) or its distribution company (as defined in the OSA) has a significant interest.

Primary Offering means a primary distribution or treasury offering of NET Debt Securities.

Representations

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

The Filer

1. The Filer is a corporation incorporated under the *Business Corporation Act* (Québec).

2. The Filer's head office is located at 1 Complexe Desjardins, 20th Floor, South Tower, Montréal, Québec, Canada, H5B 1B3.

3. The Filer is registered as a portfolio manager in all of the provinces and territories of Canada and as an exempt market dealer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec and Nova Scotia. The Filer is also registered as an investment fund manager in Alberta, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador. In addition, the Filer is registered as an adviser in Manitoba, commodity trading manager in Ontario and as derivatives portfolio manager in Québec.

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

FCDQ

5. Fédération des Caisses Desjardins du Québec (**FCDQ**) is a financial services cooperative established under the *Act respecting financial services cooperatives* (Québec).

6. Capital Desjardins Inc. (**CDI**), a wholly-owned subsidiary of FCDQ, is a corporation incorporated under the *Business Corporation Act* (Québec) whose purpose is to offer its own securities in the financial markets and to invest the proceeds in securities issued by the Desjardins "caisses". The Desjardins "caisses" may issue capital to raise liquidity. Rather than doing this on an individual basis, the Desjardins "caisses" do business with CDI which acts as a bridge between the Desjardins caisses and institutional investors by consolidating the securities they issue.

7. FCDQ, or an affiliate of FCDQ, including CDI, issued or may issue listed and non-listed debt securities as well as rated and non-rated debt securities.

8. The Filer intends to obtain the approval of the independent review committee (**IRC**) of each Desjardins Fund in order to, amongst other things, invest in listed securities of FCDQ, the whole in accordance with NI 81-107.

9. FCDQ is not in default of securities legislation in any of the Applicable Jurisdictions.

The Desjardins Funds

10. Each of the Desjardins Funds is or will be a mutual fund established under the laws of Québec.

11. The Filer or an affiliate of the Filer currently acts as investment fund manager and/or portfolio manager of the existing Desjardins Funds.

12. The Filer or an affiliate of the Filer will act as the investment fund manager and/or portfolio manager of each future Desjardins Fund.

13. Each Desjardins Fund is, or will be, a reporting issuer under the securities legislation of one or more Canadian provinces and territories whose securities are, or will be, qualified for distribution in accordance with applicable securities legislation.

14. Each Desjardins Fund is, or will be, a reporting issuer in one or more jurisdictions of Canada. As such, the NI 81-102 Funds are, or will be, mutual funds in Ontario, which, in the OSA, means either a mutual fund that is a reporting issuer or a mutual fund that is organized under the laws of Ontario, but does not include a private mutual fund.

15. A Desjardins Fund's reliance on the Exemption Sought will be compatible with its investment objectives and strategies.

16. None of the Desjardins Funds are in default of securities legislation in any jurisdiction of Canada.

Substantial Security Holders and Significant Interests

17. The Filer and Desjardins Investment Inc. (**DII**), who currently acts as investment fund manager for certain of the Desjardins Funds, are members of a group of entities which fall under the FCDQ umbrella and are wholly-owned subsidiaries of FCDQ. As such, FCDQ is a substantial security holder of the Filer and DII.

18. FCDQ also has a significant interest in CDI.

19. A Desjardins Fund may, alone or together with one or more other Desjardins Funds, be a substantial security holder of, notably, FCDQ and/or CDI.

IRC and Related Exemptive Reliefs

20. Each of the Desjardins Funds has an IRC appointed in a manner consistent with the requirements of NI 81-107.

21. Although it has not reviewed the application, the IRC will review the policies and procedures proposed by the Filer concerning the transactions contemplated by the Exemption Sought to determine whether they satisfy the standards set out in subsection 5.2(2) of NI 81-107, including whether they are appropriate to achieve a fair and reasonable result for the Desjardins Funds. In addition to the conditions of the Exemption Sought, the IRC may impose additional conditions that the IRC considers to be beneficial to the Desjardins Funds.

22. As of November 21, 2017, the Canadian Securities Authorities (**CSA**) granted relief from section 4.1(2) of NI 81-102 authorizing the Filer when acting on behalf of all investment funds, including mutual funds and exchange traded funds,

and any investment funds subject to NI 81-102 subsequently established in the future for which the Filer acts, or will act, as investment fund manager to invest in non-exchange-traded debt securities having a designated rating (as such term is defined in NI 81-102) of an issuer of which a partner, director, officer or employee of the dealer manager of the investment fund, or a partner, director, officer or employee of an affiliate or associate of the dealer manager, is a partner, director or officer (the **DGAM Subsection 4.1(2) NI 81-102 Relief**).

23. As of May 29, 2018, the CSA granted relief from section 4.1(2) of NI 81-102 authorizing DII when acting on behalf of all existing mutual funds (for which the Filer currently acts as portfolio manager) subject to NI 81-102 for which it acts as investment fund manager and any mutual fund subject to NI 81-102, subsequently established in the future for which DII will act as investment fund manager to permit such funds to invest in non-exchange-traded debt securities having a designated rating (as such term is defined in NI-81-102) of an issuer of which a partner, director, officer or employee of the dealer manager of the investment fund, or a partner, director, officer or employee of an affiliate or associate of the dealer manager, is a partner, director or officer (the **DII Subsection 4.1(2) NI 81-102 Relief**).

24. On July 11, 2018, the Filer obtained relief from section 13.5(2)(a) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) to authorize the Filer, or any affiliate of the Filer, to purchase non exchange-traded securities of issuers in which a responsible person (as defined in section 13.5(1) of NI 31-103) or an associate of a responsible person (as defined in section 13.5(1) of NI 31-103) of the Filer is a partner, officer or director on behalf of the Desjardins Funds for which the Filer or an affiliate of the Filer acts, or will act, as investment fund manager and/or portfolio manager (the NI 31-103 Relief, and collectively with the DGAM Subsection 4.1(2) NI 81-102 Relief and the DII Subsection 4.1(2) NI 81-102 Relief, the **Related Exemptive Relief**).

25. The Filer and DII follow and/or will follow, as applicable, the conditions and procedures contained in the Related Exemptive Relief when they enter into the above transactions on behalf of the applicable funds.

Regulatory Restrictions and Requirements to Invest in Securities of Related Issuers

26. According to the Legislation, no investment fund (which, for the purpose of section 111 of the OSA, means a mutual fund in Ontario or a non-redeemable investment fund that is a reporting issuer) shall knowingly make an investment in (i) any person or company who is a substantial security holder of the investment fund, its management company or its distribution company; (ii) in any person or company in which the investment fund, alone or together with one or more related investment funds, is a substantial security holder or (iii) in an issuer in which any person or company who is a substantial security holder of the investment fund, its management company or its distribution company has a significant interest (the **Investment Restriction**).

27. According to the Legislation, every management company shall, in respect of each investment fund to which it provides services or advice, file a report prepared in accordance with the OSA regulations of every transaction of purchase or sale of securities between the investment fund and any related person or company within 30 days after the end of the month in which it occurs.

28. Section 6.2 of NI 81-107 provides the Desjardins Funds with an exemption from the Investment Restriction in respect of purchasing exchange-traded securities, such as common shares and units of exchange-traded funds, in the secondary market if the purchase is made on an exchange and the Desjardins Fund's IRC has approved the investment under section 5.2(2) of NI 81-107. It does not permit the Desjardins Funds to purchase NET Debt Securities.

29. Accordingly, in the absence of the Exemption Sought, the Desjardins Funds may not purchase NET Debt Securities.

30. Moreover, in the absence of the Exemption Sought, the Reporting Requirement would require the Filer, or an affiliate of the Filer acting as the management company (as defined in the applicable securities laws) of the Desjardins Funds to file a report of every purchase and sale of NET Debt Securities by the Desjardins Funds or every purchase or sale effected by the Desjardins Funds through any related person or company with respect to which the related person or company received a fee either from the Desjardins Funds or from the other party to the transaction or from both within 30 days after the end of the month in which such purchase or sale occurs.

31. It would be costly and time-consuming for the Desjardins Funds to comply with the Reporting Requirement, the costs of which will ultimately be borne by the investors.

32. NI 81-106 requires the Funds to prepare and file annual and interim management reports of fund performance that include a discussion of transactions involving related parties to the Desjardins Funds. Such disclosure is similar to that required under the Reporting Requirement and fulfills its objective to inform the OSC and the general public about the transactions involving related parties to the Desjardins Funds.

Investments in NET Debt Securities by the Desjardins Funds

33. The Filer has determined that it would be in the best interests of the Desjardins Funds to be granted the Exemption Sought. This determination reflects the business judgement of responsible persons uninfluenced by considerations other than the best interests of the Desjardins Funds.

34. Certain Related Issuers, such as FCDQ or CDI are, or will be, significant issuers of securities and they are, or will be, issuers of debt instruments. The Filer considers that the Desjardins Funds should have access to securities of the Related Issuers for the following reasons:

    (a) there is a limited supply of highly rated corporate debt;

    (b) diversification is reduced to the extent that a Desjardins Fund is limited with respect to investment opportunities; and

    (c) to the extent that a Desjardins Fund seeks to track or outperform a benchmark, it is important for the Desjardins Fund to be able to purchase any securities included in the benchmark. NET Debt Securities of Related Issuers may be included in such Canadian debt indices.

35. Where the NET Debt Security is purchased by a Desjardins Fund in a Primary Offering pursuant to the Exemption Sought the NET Debt Security will be:

    (a) a non-exchange traded debt security, other than an asset backed commercial paper security, issued by a Related Issuer, with a term to maturity of 365 days or more, that has been given and continues to have, at the time of purchase, a designated rating by a designated rating organization, as such terms are defined in NI 81-102; and

    (b) the terms of the Primary Offering, such as the size and the pricing, will be a matter of public record, as evidenced in a prospectus, offering memorandum, press release or other public document.

36. Where the NET Debt Security is purchased by a Desjardins Fund in the secondary market pursuant to the Exemption Sought, and not in a Primary Offering, such NET Debt Security has been given and continues to have, at the time of purchase, a designated rating by a designated rating organization, as such terms are defined in NI 81-102.

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:

1. In the context of the relief from the Related Issuer Requirements:

    (a) the investment is made in accordance with, or is necessary to meet, the investment objective of the applicable Desjardins Fund;

    (b) at the time of the purchase, the IRC of the applicable Desjardins Fund has approved the transaction in accordance with Section 5.2(2) of NI 81-107;

    (c) the Filer or its affiliate, as the investment fund manager of the applicable Desjardins Fund, complies with section 5.1 of NI 81-107 and the Filer or its affiliate, as investment fund manager of the applicable Desjardins Fund and the IRC of the Desjardins Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;

    (d) the security has been given and continues, at the time of the purchase, to have a designated rating by a designated rating organization within the meaning of those terms in NI 81-102;

    (e) in the case of NET Debt Securities to be purchased in a Primary Offering:

        (i) the size of the Primary Offering is at least $100 million;

(ii) at least two purchasers who are independent, arm's length purchasers, which may include "independent underwriters" within the meaning of National Instrument 33-105 - Underwriting Conflicts collectively purchase at least 20% of the Primary Offering;

(iii) no Desjardins Fund shall participate in the Primary Offering if, following its purchase, the Desjardins Fund together with related Desjardins Funds will hold more than 20% of the securities issued in the Primary Offering;

(iv) no Desjardins Fund shall participate in the Primary Offering if, following its purchase, the Desjardins Fund would have more than 5% of its net assets invested in NET Debt Securities of a Related Issuer;

(v) the price paid for the securities by a Desjardins Fund in the Primary Offering shall be no higher than the lowest price paid by any of the arm's length purchasers who participate in the Primary Offering;

(f) in the case of NET Debt Securities to be purchased in the secondary market:

(i) the price payable for the security is not more than the ask price of the security;

(ii) the ask price of the security is determined as follows:

(A) if the purchase occurs on a marketplace, the price payable is determined in accordance with the requirements of that marketplace; or

(B) if the purchase does not occur on a marketplace,

(I) the Desjardins Fund may pay the price for the security at which an independent, arm's length seller is willing to sell the security, or

(II) if the Desjardins Fund does not purchase the security from an independent, arm's length seller, the Desjardins Fund must pay the price quoted publicly by an independent marketplace or obtain, immediately before the purchase, at least one quote from an independent, arm's length purchaser or seller and not pay more than that quote;

(iii) the transaction complies with any applicable "market integrity requirements" as defined in NI 81-107;

(g) no later than the time a Desjardins Fund files its annual financial statements, the Filer files with the securities regulatory authority or regulator the particulars of any investments made in reliance on the Exemption Sought; and

(h) the IRC of the Desjardins Fund complies with section 4.5 of NI 81-107 in connection with any instance of which it becomes aware that the Filer did not comply with any of the conditions of this decision;

2. In the context of the relief from the Reporting Requirements:

(a) the annual and interim management reports of fund performance for the Desjardins Fund disclose all of the following:

i) the name of each related person or company to which fees were paid;

ii) the amount of fees paid to each related person or company; and

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 the Desjardins Fund include, separately for every portfolio transaction effected by a Desjardins Fund through any affiliate of the Filer, all of the following:

i) the name of each related person or company to which fees were paid;

ii) the amount of fees paid to each related person or company;

iii) the person or company who paid the fees.

"Philip Anisman"
Commissioner

"Grant Vingoe"
Vice-Chair and Commissioner

2.1.4 First Asset Investment Management Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of investment fund mergers – approval required because mergers do not meet the criteria for pre-approved reorganizations and transfers in National Instrument 81-102 – the fundamental investment objective of the terminating funds and continuing fund are not substantially similar – unitholders of the terminating funds provided with timely and adequate disclosure regarding the mergers.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.5(1)(b), 19.1.

September 18, 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
FIRST ASSET INVESTMENT MANAGEMENT INC.
(the Filer)

AND

FIRST ASSET NORTH AMERICAN CONVERTIBLES FUND
(NCD)

AND

FIRST ASSET DIVERSIFIED CONVERTIBLE DEBENTURE FUND
(DCD and, together with NCD, the Terminating Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Terminating Funds for a decision under the securities legislation of the Jurisdiction (the **Legislation**) approving the proposed mergers (the **Mergers**) of the Terminating Funds into First Asset Canadian Convertible Bond ETF (the **Continuing Fund** and, together with the Terminating Funds, the **Funds**) pursuant to paragraph 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) (the **Merger Approval**).

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

1. the Ontario Securities Commission is the principal regulator for this application; and

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

The Manager and the Funds

1. The Filer is registered as a portfolio manager in Ontario and as an investment fund manager under the securities legislation of each of Ontario, Quebec and Newfoundland and Labrador. The Filer's head office is located in Ontario.

2. The Filer is the manager of each Fund.

3. Each Fund was established pursuant to a declaration of trust under the laws of Ontario.

4. Each Terminating Fund is a non-redeemable investment fund whose units are listed on the Toronto Stock Exchange (**TSX**).

5. The Continuing Fund is an exchange-traded mutual fund (**ETF**) whose units are listed on the TSX.

6. The Filer and each Fund is not in default of securities legislation in any Jurisdiction.

7. Each Fund is a reporting issuer (or the equivalent) under the securities legislation of each Jurisdiction and is subject to the requirements of NI 81-102.

8. Each of the Funds follows the standard investment restrictions and practices established under the Legislation, except to the extent that the Fund has received an exemption to deviate therefrom.

9. The net asset value (**NAV**) of each Fund is calculated on each day that the TSX is open for business in accordance with the Funds' valuation policy and as described in each Fund's prospectus.

Reason for Approval of the Mergers

10. Regulatory approval of the Mergers is required because the Mergers do not satisfy all the criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102. In particular, a reasonable person may not consider each Terminating Fund to have substantially similar fundamental investment objectives as the Continuing Fund.

11. The investment objectives of each Terminating Fund and the Continuing Fund are as follows:

NCD	DCD	Continuing Fund
To provide unitholders with quarterly cash distributions together with the opportunity for capital appreciation.	To provide unitholders with quarterly cash distributions together with the opportunity for capital appreciation.	To provide unitholders with (i) quarterly cash distributions, and (ii) the opportunity for capital appreciation by investing on a capitalization-weighted basis in a portfolio (the **CXF Portfolio)** of Convertible Bonds of Canadian issuers. Inclusion of a Convertible Bond in the CXF Portfolio is based upon the following criteria (the **Eligibility Criteria**): (i) minimum market capitalization outstanding of $50 million; (ii) minimum trailing 30 day average daily volume traded of $150 thousand (the **Liquidity Threshold**); (iii) publicly traded on a stock exchange in Canada; (iv) not currently in default of payment of either interest or principal; and (v) at least 31 days to maturity (either term or next call), provided that, to the extent that an index is developed and published which establishes criteria and methodologies, which are, in the opinion of the Portfolio Manager, similar to that of the Continuing Fund, the Portfolio Manager may decide, in its discretion, to track that index and invest pursuant to such index's methodology.

Convertible Bonds means unsecured, subordinated debentures of issuers that can be converted into equity securities of the issuers at a specified price at the option of the holder, and excludes Synthetic Convertible Securities.

Synthetic Convertible Security means a combination of a debt instrument and an equity option that when combined behave in a manner similar to a convertible debenture, and includes instruments issued by financial institutions which offer combined exposure to the credit and equity option of an issuer.

12. Other than the criterion described in paragraph 10, the Mergers comply with all the other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

The Proposed Mergers

13. The Filer intends to merge each Terminating Fund into the Continuing Fund.

14. The Mergers were announced in a press release dated September 12, 2018 and a material change report dated September 13, 2018, both of which have been filed on SEDAR.

15. As required by National Instrument 81-107 *Independent Review Committee for Investment Funds*, the Filer presented the terms of the Mergers to the independent review committee of each of the Funds (the **IRC**) for their review. The IRC determined that the Mergers, if implemented, will achieve a fair and reasonable result for each of the Funds.

16. The Filer is convening special meetings (each, a **Meeting**) of the unitholders of each Terminating Fund on or about October 22, 2018 in order to seek the approval of the unitholders to complete the Mergers, as required by paragraph 5.1(1)(f) of NI 81-102.

17. The Filer has concluded that the Mergers are not a material change to the Continuing Fund, and, accordingly, there is no intention to convene a meeting of unitholders of the Continuing Fund to approve the Mergers pursuant to paragraph 5.1(1)(g) of NI 81-102.

18. By way of order dated November 4, 2016, the Filer was granted relief (the **Notice-and-Access Relief**) from the requirement set out in paragraph 12.2(2)(a) of National Instrument 81-106 *Investment Fund Continuous Disclosure* to send a printed management information circular to unitholders while proxies are being solicited, and, subject to certain conditions, instead allows a notice-and-access document (as described in the Notice-and-Access Relief) to be sent to such unitholders. In accordance with the Filer's standard of care owed to the Funds pursuant to securities legislation, the Manager will only use the notice-and-access procedure for a particular meeting where it has concluded it is appropriate and consistent with the purposes of notice-and-access (as described in Companion Policy 54-101CP *Communication with Beneficial Owners of Securities of a Reporting Issuer*) to do so, also taking into account the purpose of the meeting and whether the Funds would obtain a better participation rate by sending the management information circular with the other proxy-related materials.

19. Pursuant to requirements of the Notice-and-Access Relief, a notice-and-access document and applicable proxies in connection with each Meeting and any adjournment thereof, along with the ETF Facts of the Continuing Fund will be mailed to unitholders of each Terminating Fund on or about September 21, 2018, and will be filed via SEDAR immediately prior to such mailing. A management information circular in respect of each Meeting (each, a **Circular**), which the notice-and-access document provided a link to, will also be filed via SEDAR at the same time.

20. If all required approvals for the Mergers are obtained, it is intended that the Mergers will occur on a date in mid-December 2018. (the **Effective Date**). The Filer therefore anticipates that each unitholder of each Terminating Fund will become a unitholder of the Continuing Fund after the close of business on the Effective Date. The Terminating Funds will be wound-up within 30 days following the Mergers.

21. Each Merger will be a "qualifying exchange" under the *Income Tax Act* (Canada) and will therefore be effected on a tax-deferred basis.

22. The tax implications of the Mergers as well as the differences between the investment objectives, fee structure and other features of each Terminating Fund and the Continuing Fund will be described in the applicable Circular, so that unitholders may make an informed decision before voting on whether to approve the Mergers. Each Circular will also

describe the various ways in which unitholders can obtain a copy of the prospectus of the Continuing Fund and its most recent interim and annual financial statements and management reports of fund performance.

23. Unitholders of each Terminating Fund will continue to have the right to trade their units of each Terminating Fund on the TSX at any time until the units are delisted, which will occur shortly prior to the Mergers being implemented. If unitholders of the Terminating Funds approve the Mergers at the Meetings, unitholders of each Terminating Fund who do not wish to participate in the Mergers will have the opportunity to redeem their units of the applicable Terminating Fund at a price equal to the NAV of the units of the applicable Terminating Fund prior to the Effective Date.

24. The costs of effecting the Mergers (consisting of primarily legal and regulatory fees, and proxy solicitation, printing and mailing costs) will be borne by the Filer.

25. No sales charges will be payable by unitholders of the Funds in connection with the Mergers.

26. The investment portfolio and other assets of each Terminating Fund to be acquired by the Continuing Fund in order to effect the Mergers are currently, or will be on or prior to the Effective Date, acceptable to the portfolio manager of the Continuing Fund and are, or will be, consistent with the investment objectives of the Continuing Fund.

Steps of the Mergers

27. The specific steps to implement the Mergers are expected to be as follows:

    (a) as soon as reasonably practicable, prior to the Effective Date, each Terminating Fund will liquidate a portion of its portfolio into cash;

    (b) prior to the Mergers, each of the Terminating Funds and the Continuing Fund will distribute any net income and net realized capital gains for their current taxation years to the extent necessary to eliminate their liability for non-refundable income tax;

    (c) the exchange ratio at which each Merger will be effected (the **Exchange Ratio**) will be calculated by dividing the NAV of the units of the applicable Terminating Fund by the NAV of the units of the Continuing Fund, each as determined at the close of business on the business day prior to the Effective Date;

    (d) prior to the effective time of the Mergers, each Terminating Fund will transfer all of its assets to the Continuing Fund in consideration for an amount (the **Purchase Price**) at the effective time of the Mergers on the Effective Date;

    (e) the Continuing Fund will satisfy the Purchase Price by assuming each Terminating Fund's liabilities and by issuing to each Terminating Fund that number of units of the Continuing Fund equal to the number of units of the applicable Terminating Fund then outstanding multiplied by the Exchange Ratio. Such issued units of the Continuing Fund will be listed on the TSX at all times while they are held by the Terminating Funds;

    (f) immediately thereafter, all of the units of the Terminating Funds that are listed on the TSX will be redeemed and the redemption price therefore will be paid by delivering the applicable number of units of the Continuing Fund to unitholders of each Terminating Fund based on the number of units of the applicable Terminating Fund then held, with each unitholder of a Terminating Fund receiving that number of units of the Continuing Fund (rounded down to the nearest whole unit) as is equal to the Exchange Ratio multiplied by the number of units of the Terminating Fund held by such unitholder prior to the completion of the applicable Merger;

    (g) each Terminating Fund and the Continuing Fund will file a joint tax election in respect of the transfer to the Continuing Fund of all of the assets of the applicable Terminating Fund;

    (h) the Terminating Funds' units will be de-listed from the TSX and the Terminating Funds will cease to be reporting issuers in each of the provinces and territories of Canada; and

    (i) the Terminating Funds will be terminated within 30 days following the Mergers.

Benefits of the Mergers

28. In the opinion of the Filer, the Mergers will be beneficial to unitholders of the Funds for the following reasons:

    (a) the Continuing Fund, an ETF, will maintain its stock exchange listing and will therefore offer intra-day market liquidity for its units, but with the added benefit of posted two-way markets as a result of the market-making

function provided by the designated broker and dealers. Accordingly, the units can be expected to trade at a market price approximately equal to their intrinsic net asset value;

(b) both the Terminating Funds and the Continuing Fund seek to provide unitholders with exposure to portfolios consisting primarily of bonds and debentures which can be converted into equity securities at the option of the holder and/or issuer at a specified price. Therefore, unitholders of the Terminating Funds will continue to have exposure to similar securities after completion of the Mergers;

(c) unlike the Terminating Funds, the Continuing Fund does not charge a trustee fee or a service fee. In addition, the annual management fee payable by the Continuing Fund is lower than the annual management fee payable by each of the Terminating Funds, at 0.65% of the NAV of the Continuing Fund as compared to 1.35% of NAV for NCD and 1.20% of NAV for DCD;

(d) the Terminating Funds are currently responsible for all ordinary expenses incurred in connection with their operation and administration, whereas the Filer is responsible for paying certain substantial operating expenses incurred by the Continuing Fund, including fees payable to the custodian, registrar, transfer agent and plan agent of the Continuing Fund; and

(e) due to the continuous offering of the Continuing Fund's units, the Continuing Fund's asset base has the potential to grow, thereby further increasing economies of scale and the ability to share any expenses borne by the Continuing Fund over a greater number of units.

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 Merger Approval is granted, provided that the Filer obtains the prior approval of the unitholders of each Terminating Fund for the applicable Merger at the applicable Meeting, or any adjournments thereof.

"Stephen Paglia"
Manager, Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.5 Tilt Holdings Inc. and Santé Veritas Holdings Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer granted relief from certain restricted security requirements under National Instrument 41-101 General Prospectus Requirements, National Instrument 44-101 Short Form Prospectus Distributions, and National Instrument 51-102 Continuous Disclosure Obligations – relief granted subject to conditions.

OSC Rule 56-501 Restricted Shares – Issuer granted relief from certain restricted share requirements under OSC Rule 56-501 – relief granted subject to conditions.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 12.2, 12.3, 19.1.
Form 41-101F1 Information Required in a Prospectus, ss. 1.13, 10.6.
National Instrument 44-101 Short Form Prospectus Distributions, s. 8.1.
Form 44-101F1 Short Form Prospectus, ss. 1.12, 7.7.
National Instrument 51-102 Continuous Disclosure Obligations, Part 10 and s. 13.1.
OSC Rule 56-501 Restricted Shares, Parts 2 and 3, and s. 4.2.

October 17, 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
TILT HOLDINGS INC.
(NEVADA HOLDCO)

AND

SANTÉ VERITAS HOLDINGS INC.
(SVH) (TOGETHER, THE FILER)

DECISION

Background

The regulator in the Jurisdiction has received a dual application from the Filer for:

(a) a decision under the securities legislation of the Jurisdiction of the regulator (the **Legislation**) that:

i) the requirements under Part 10 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) relating to the use of restricted security terms and restricted security disclosure shall not apply to the common shares in the capital of the Resulting Issuer (as defined below) (the **Common Shares**) in connection with continuous disclosure documents (**Continuous Disclosure Documents**) that may be filed by the Resulting Issuer under NI 51-102 (the **Continuous Disclosure Exemption**);

ii) s. 12.2 and s. 12.3 of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) relating to the use of restricted security terms and eligibility to file a prospectus shall not apply to the Common Shares in connection with long form or short form prospectuses (including a prospectus filed

under National Instrument 44-102 *Shelf Distributions*) that may be filed by the Resulting Issuer (the **Prospectus Eligibility Exemption**);

iii) the requirements under s. 1.13 and 10.6 of Form 41-101F1 *Information Required in a Prospectus* (**Form 41-101F1**) related to restricted security disclosure shall not apply to the Common Shares in connection with long form prospectuses that may be filed by the Resulting Issuer (the **41-101 Exemption**); and

iii) the requirements under s. 1.12 and 7.7 of Form 44-101F1 *Short Form Prospectus* (**Form 44-101F1**) pursuant to s. 8.1 of National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**) related to restricted security disclosure shall not apply to the Common Shares in connection with short form prospectuses (including a prospectus filed under National Instrument 44-102 *Shelf Distributions*) that may be filed by the Resulting Issuer (the **44-101 Exemption**); and

(b) a decision under the securities legislation of Ontario that:

i) the requirements under Part 2 of Ontario Securities Commission Rule 56-501 *Restricted Shares* (**Rule 56-501**) relating to the use of restricted share terms and restricted share disclosure shall not apply to the Common Shares (the **56-501 Disclosure Exemption**) in connection with dealer and adviser documentation, rights offering circulars and offering memoranda (**Rule 56-501 Documents**); and

ii) the requirements under Part 3 of Rule 56-501 relating to the withdrawal of prospectus exemptions for distributions of restricted shares shall not apply to stock distributions (as defined in Rule 56-501) related to securities of the Resulting Issuer (the **56-501 Withdrawal Exemption**).

The Continuous Disclosure Exemption, Prospectus Eligibility Exemption, the 41-101 Exemption and the 44-101 Exemption, the 56-501 Disclosure Exemption and the 56-501 Withdrawal Exemption are collectively referred to as the **Exemption Sought**.

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

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

b) the Filer has provided notice that section 4.7(1)(c) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Quebec, Saskatchewan and the Yukon Territory (other than in respect of the 56-501 Disclosure Exemption and 56-501 Withdrawal Exemption).

Interpretation

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

Representations

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

1. Nevada Holdco is a corporation existing under the laws of the State of Nevada and will be continued out of Nevada and into British Columbia and will exist under the *Business Corporations Act* (British Columbia) (**BCBCA**) prior to the effective date of the proposed arrangement (the **Business Combination**) of SVH with Nevada Holdco and TILT Holdings US, Inc., a corporation existing under the BCBCA, as a wholly-owned subsidiary of Nevada Holdco, pursuant to Section 288 of the BCBCA.

2. SVH is a corporation existing under the *Canada Business Corporations Act*, is a reporting issuer in British Columbia, Alberta and Ontario listed on the CSE under the symbol “SV”. In connection with the Business Combination, SVH will make an application to continue under the BCBCA.

3. SVH’s registered office is located at 2200 HSBC Building, 885 W. Georgia St., Vancouver, British Columbia, V6C 3E8. Following the completion of the Business Combination, the registered office of the resulting issuer (the **Resulting Issuer**) will be located at that same address.

4. Following completion of the Business Combination, the Resulting Issuer will be a corporation existing under the BCBCA and will be a reporting issuer in the Provinces of British Columbia, Alberta and Ontario. The Resulting Issuer is making an application to list the Common Shares on the CSE.

5. The head office of the Resulting issuer will be located in West Palm Beach, Florida.

6. The Resulting Issuer's authorized share capital will consist of a fixed number of Resulting Issuer Compressed Shares (the **Compressed Shares**), the fixed number to be determined, an unlimited number of Resulting Issuer Class A Common Shares (the **Class A Shares**), an unlimited number of Resulting Issuer Class B Common Shares (the **Class B Shares**) and an unlimited number of Common Shares (together with the Compressed Shares, the **Shares**). Following completion of the Business Combination, including the conversion of all Class A Shares and Class B Shares into Compressed Shares, no Class A Shares or Class B Shares will be outstanding and no further Class A Shares or Class B Shares may be issued by the Resulting Issuer under its articles.

7. The Compressed Shares may, at any time, at the option of the holder thereof, be converted into Common Shares on the basis of one hundred (100) Common Shares for one Compressed Share, subject to certain limitations on conversion that maintain the Resulting Issuer's status as a "foreign private issuer" as defined in Rule 405 of the United States *Securities Act of 1933*, as amended (the **US Securities Act**), and subject to adjustment in such ratio from time to time in accordance with the terms thereof in the event of certain corporate changes, recapitalizations or distributions involving the Common Shares in order to maintain relative equivalency between the Shares (the **Conversion Ratio**).

8. The Resulting Issuer shall not effect any conversion of Compressed Shares, and the holders of Compressed Shares shall not have the right to convert any portion of the Compressed Shares to the extent that after giving effect to such issuance after conversions, the aggregate number of Common Shares and Compressed Shares held of record, directly or indirectly, by residents of the United States (as determined in accordance with Rule 3b-4 under the United States Securities Exchange Act of 1934, as amended) would exceed forty percent (40%) of the aggregate number of Common Shares and Compressed Shares issued and outstanding.

9. Each Compressed Share shall automatically be converted without further action by the Compressed Shareholder or any other person into Common Shares at the applicable Conversion Ratio immediately upon the earliest of:

   (i) (a) any voluntary or involuntary liquidation, dissolution or winding up of the Resulting Issuer; (b) the acquisition of the Resulting Issuer by or the combination, merger or consolidation of the Resulting Issuer with, another entity by means of any transaction or series of related transactions (including, without limitation, any sale, acquisition, reorganization, merger or consolidation but, excluding any transaction effected exclusively for the purpose of changing the domicile of the Resulting Issuer); (c) a sale of all or substantially all of the assets of the Company; unless, in the case of (b) or (c), the Company's shareholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration for the Company's acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity (a **Liquidation Event**);

   (ii) the date such automatic conversion is designated to occur by the unanimous written consent or affirmative vote of the holders of at least 66-2/3% of the then outstanding aggregate number of Compressed Shares, given in writing by all of the holders of Compressed Shares or by vote at a meeting, consenting or voting (as the case may be) separately as a class of the holders of Compressed Shares (a **Compressed Super Majority Vote**); or

   (iii) a Mandatory Conversion (as defined below).

10. The Company may require (a **Mandatory Conversion**) each holder of Compressed Shares to, and each holder of Compressed Shares may, convert all, and not less than all, the Compressed Shares at the applicable Conversion Ratio if at any time all the following conditions are satisfied (or otherwise waived by the Compressed Super Majority Vote):

    (i) the Common Shares issuable upon conversion of all the Compressed Shares are registered for resale and may be sold by the Compressed Shareholder pursuant to an effective registration statement and/or prospectus covering the Common Shares under the United States *Securities Act of 1933*, as amended;

    (ii) the Company is subject to the reporting requirements of Section 13 or 15(d) of the United States *Securities Exchange Act of 1934*, as amended; and

    (iii) the Common Shares are listed or quoted (and are not suspended from trading) on a national securities exchange in the United States.

11. Each Compressed Share is entitled to dividends if, as and when dividends are declared by the board of directors of the Resulting Issuer on the Common Shares, distributed among the holders of the Compressed Shares and the Common Shares, based on the number of Common Shares into which the Compressed Shares are converted at the applicable Conversion Ratio (disregarding any limitations on conversion as described above).

12. In the event of the liquidation, dissolution or winding-up of the Resulting Issuer, the assets of the Resulting Issuer, or other consideration payable or distributable as a result of the liquidation, dissolution or winding-up will be distributed among the holders of the Compressed Shares and the Common Shares, based on the number of Common Shares into which the Compressed Shares are converted at the applicable Conversion Ratio (disregarding any limitations on conversion as described above).

13. The holders of the Compressed Shares and Common Shares will be entitled to receive notice of, attend and vote at any meeting of shareholders of the Resulting Issuer, except those meetings at which holders of a specific class of shares are entitled to vote separately as a class under the BCBCA. The Common Shares will carry one vote per share for all matters coming before the shareholders of the Resulting Issuer and the Compressed Shares will carry one vote for each Common Share into which such Compressed Shares are convertible (disregarding any limitations on conversion as described above) for all matters coming before shareholders of the Resulting Issuer.

14. The rights, privileges, conditions and restrictions attaching to the Shares may be modified if the amendment is authorized by not less than 66 2/3% of the votes cast at a meeting of holders of the Shares duly held for that purpose.

15. In addition to any other rights provided by law, no amendment, alteration or repeal of the preferences, special rights or other powers of the Compressed Shares or any other provision of the Resulting Issuer's Notice of Articles or Articles that would adversely affect the rights of the Compressed Shareholders, without a Compressed Super Majority Vote.

16. In addition to any other rights provided by law, the Resulting Issuer shall not amend, alter or repeal the preferences, special rights or other powers of the Common Shares or any other provision of the Company's Notice of Articles or Articles that would adversely affect the rights of the holders of Common Share, without the unanimous written consent or affirmative vote of the holders of at least 66-2/3% of the then outstanding aggregate number of Common Shares, given in writing by all of the holders of Common Shares or by vote at a meeting, consenting or voting (as the case may be) separately as a class of the holders of Common Shares.

17. In order to maintain the relative rights of the holders of Shares, if the Resulting Issuer shall (i) effect a recapitalization of the Common Shares; (ii) issue Common Shares as a dividend or other distribution on outstanding Common Shares; (iii) subdivide the outstanding Common Shares into a greater number of Common Shares; (iv) consolidate the outstanding Common Shares into a smaller number of Common Shares; or (v) effect any similar transaction or action that does not itself also require adjustment to the Conversion Ratio (each, a **Common Share Recapitalization**), the Conversion Ratio shall be multiplied by a fraction of which the numerator shall be the number of Common Shares outstanding immediately after such event and of which the denominator shall be the number of Common Shares outstanding immediately before such event. If at any time or from time-to-time, the Company shall (i) effect a recapitalization of the Compressed Shares; (ii) issue Compressed Shares as a dividend or other distribution on outstanding Compressed Shares; (iii) subdivide the outstanding Compressed Shares into a greater number of Compressed Shares; (iv) consolidate the outstanding Compressed Shares into a smaller number of Compressed Shares; or (v) effect any similar transaction or action that does not itself also require adjustment to the Conversion Ratio (each, a **Compressed Share Recapitalization**), the Conversion Ratio shall be multiplied by a fraction of which the numerator shall be the number of Compressed Shares outstanding immediately before such event and of which the denominator shall be the number of Compressed Shares outstanding immediately after such event.

18. In the event that an offer is made to purchase Compressed Shares, and the offer is one which is required, pursuant to applicable securities legislation or the rules of a stock exchange, if any, on which the Common Shares are then listed, to be made to all or substantially all the holders of Compressed Shares in a province or territory of Canada to which the requirement applies, each Common Share shall become convertible at the option of the holder into Compressed Shares at the inverse of the Conversion Ratio then in effect, at any time while the offer is in effect until one day after the time prescribed by applicable securities legislation for the offeror to take up and pay for such shares as are to be acquired pursuant to the offer. The conversion right may only be exercised in respect of Common Shares for the purpose of depositing the resulting Compressed Shares under the offer, and for no other reason. In such event, the transfer agent for the Common Shares shall deposit under the offer the resulting Compressed Shares, on behalf of the holder.

19. In the event that holders of Common Shares are entitled to convert their Common Shares into Compressed Shares in connection with an offer, holders of an aggregate of Common Shares of less than 100 (an **Odd Lot**), subject to any adjustments to the initial Conversion Ratio pursuant to the adjustment provisions of the Shares designed to preserve their relative rights, will be entitled to convert all but not less than all of such Odd Lot of Common Shares into a fraction of one Compressed Share, at the inverse of the Conversion Ratio then in effect, provided that such conversion into a

fractional Compressed Share will be solely for the purpose of tendering the fractional Compressed Share to the offer in question and that any fraction of a Compressed Share that is tendered to the Offer but that is not, for any reason, taken up and paid for by the offeror will automatically be reconverted into the Common Shares that existed prior to such conversion.

20. In the event that an offer is made to purchase Common Shares, and the offer is one which is required, pursuant to applicable securities legislation or the rules of a stock exchange, if any, on which the Common Shares are then listed, to be made to all or substantially all the holders of Common Shares in a province or territory of Canada to which the requirement applies, each Compressed Share shall become convertible at the option of the holder into Common Shares at the Conversion Ratio then in effect, at any time while the offer is in effect until one day after the time prescribed by applicable securities legislation for the offeror to take up and pay for such shares as are to be acquired pursuant to the offer. The conversion right in this section may only be exercised in respect of Compressed Shares for the purpose of depositing the resulting Common Shares under the offer, and for no other reason. In such event, the transfer agent for the Common Shares shall deposit under the offer the resulting Common Shares, on behalf of the holder.

21. The Compressed Shares are being issued in order for the Resulting Issuer to meet the definition of "foreign private issuer" as defined in Rule 405 of the United States *Securities Act of 1933*, as amended.

22. Pursuant to NI 51-102 and NI 41-101, a "restricted security" means an equity security of a reporting issuer if any of the following apply: (a) there is another class of securities of the reporting issuer that carries a greater number of votes per security relative to the equity security; (b) the conditions of the class of equity securities, the conditions attached to another class of securities of the reporting issuer, or the reporting issuer's constating documents have provisions that nullify or significantly restrict the voting rights of the equity securities; (c) the reporting issuer has issued another class of equity securities that entitle the owners of securities of that other class to participate in the earnings or assets of the reporting issuer to a greater extent, on a per-security basis, than the owners of the first class of equity securities or (d) as further required in NI 41-101, except in Ontario and British Columbia, the regulator determines the equity security is a restricted security.

23. Rule 56-501 imposes certain disclosure requirements on issuers distributing securities that are considered to be restricted shares (as such term is defined in Rule 56-601), prohibits the reference to a share that includes the word "common" if such share is not a "common share" as such term is defined in Rule 56-601, and, subject to available exemptions, removes the availability of prospectus exemptions under Ontario securities law for certain distributions of securities that are considered to be restricted shares, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted shares (as such term is defined in Rule 56-601).

24. Pursuant to Rule 56-501, "common shares" means shares to which are attached voting rights exercisable in all circumstances, irrespective of the number or percentage of shares owned, that are not less, on a per share basis, than the voting rights attaching to any other shares of an outstanding class of shares of the issuer, unless the Director makes a determination under section 4.1 that the shares are restricted shares.

25. Part 10 of NI 51-102 requires a reporting issuer that has outstanding restricted securities, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted securities or securities that will, when issued, result in an existing class of outstanding securities being considered restricted securities, to provide specific disclosure with respect to such securities in its information circular, a document required by NI 51-102 to be delivered upon request by a reporting issuer to any of its securityholders as well as in any other document that it sends to its securityholders.

26. Sections 1.13 and 10.6 of Form 41-101F1 requires a reporting issuer that has outstanding restricted securities, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted securities or securities that will, when issued, result in an existing class of outstanding securities being considered restricted securities, to provide specific disclosure with respect to such securities in its long form prospectus. Section 12.2 of NI 41-101 requires restricted securities to be referred to in a prospectus using a term or a defined term that includes the appropriate "restricted security term" (as defined in NI 41-101) and section 12.3 requires, subject to available exemptions, an issuer to obtain prior majority approval of issuer's securityholders in order to file a prospectus under which restricted securities are distributed.

27. Sections 1.12 and 7.7 of Form 44-101F1 requires a reporting issuer that has outstanding restricted securities, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted securities or securities that will, when issued, result in an existing class of outstanding securities being considered restricted securities, to provide specific disclosure with respect to such securities in its short form prospectus.

28. As a result of the multiple votes attached to the Compressed Shares, the Common Shares would be restricted securities as defined in NI 41-101 and NI 51-102, and restricted shares as defined in Rule 56-501.

29. Absent the Exemption Sought, the above provisions described in paragraphs 22 to 27 above would apply to the Common Shares and securities convertible into Common Shares.

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) In connection with the Continuous Disclosure Exemption as it applies to the Continuous Disclosure Documents, at the time the Resulting Issuer relies on the Exemption Sought:

  (i) representations 6 to 20 above continue to apply; and

  (ii) the Resulting Issuer has no restricted securities (as defined in section 1.1(1) of NI 51-102) issued and outstanding other than the Common Shares;

(b) in connection with the Prospectus Eligibility Exemption, 41-101 Exemption and 44-101 Exemption, at the time that the Resulting Issuer relies on the Exemption Sought:

  (i) representations 6 to 20 above continue to apply;

  (ii) the Resulting Issuer has no restricted securities (as defined in section 1.1 of NI 41-101) issued and outstanding other than the Common Shares; and

  (iii) any prospectus includes disclosure consistent with representations 6 to 20 above;

(c) in connection with the 56-501 Disclosure Exemption as it applies to the 56-501 Documents and the 56-501 Withdrawal Exemption, at the time that the Resulting Issuer relies on the Exemption Sought:

  (i) representations 6 to 20 above continue to apply; and

  (ii) the Resulting Issuer has no restricted shares (as defined in section 1.1 of Rule 56-501 issued and outstanding other than the Common Shares.

“Winnie Sanjoto”
Manager, Corporate Finance Branch
Ontario Securities Commission

2.1.6 Ian Robertson et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – reporting insider granted relief from the requirement in subsection 107(2) of the Securities Act (Ontario) to file and insider report within five days of each disposition of securities occurring pursuant to an automatic securities disposition plan, provided that the insider files an insider report in respect of all dispositions under the automatic securities disposition plan on an annual basis.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990. c. S.5. ss. 107(2), 121(2)(a)(ii).
National Instrument 55-104 Insider Reporting Requirements and Exemptions, ss. 2.2, 3.3.

October 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
IAN ROBERTSON AND
CHRIS JARRATT
(each, an "Insider" and together, the "Insiders")

AND ALGONQUIN POWER & UTILITIES CORP.
("APUC" and together with the "Insiders", 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 an exemption from the requirement of the Legislation that the Insiders file an insider report within 5 days of a disposition of common shares of APUC (**Common Shares**) pursuant to automatic securities disposition plans (the **Exemption Sought**), subject to certain conditions.

In accordance with National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*:

(a) the Ontario Securities Commission (the **OSC**) is the principal regulator for this application; and

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

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:

APUC

1. APUC is a corporation existing under the *Canada Business Corporations Act* with its head office in Ontario. APUC is a reporting issuer in each of the provinces of Canada. APUC is not in default of securities legislation in any jurisdiction of Canada.

2. The authorized capital of APUC consists of an unlimited number Common Shares and an unlimited number of preferred shares issuable in series of which, as of September 30, 2018, 473,900,515 Common Shares, 4,800,000 Cumulative Rate Reset Series A Preferred Shares (the **Series A Shares**), 100 Cumulative Rate Reset Series C Preferred Shares, and 4,000,000 Cumulative Rate Reset Series D Preferred Shares (the **Series D Shares**) were validly issued and outstanding as fully paid and non-assessable.

3. The Common Shares are listed on the Toronto Stock Exchange and the New York Stock Exchange under the trading symbol "AQN".

The Insiders

4. Mr. Robertson is the Chief Executive Officer of APUC and is a reporting insider. Mr. Robertson is not in default of securities legislation in any jurisdiction.

5. Mr. Robertson is, as of September 30, 2018, the owner, directly or indirectly, of (i) 1,676,743 Common Shares (representing approximately 0.35% of the outstanding Common Shares), (ii) 1,000 Series A Shares, (iii) 18 Series C Shares, (iv) 1,000 Series D Shares, (v) 2,431,995 stock options to purchase Common Shares (**Options**), (vi) 243,467 performance share units (**PSUs**), and (vii) 46,183 restricted share units (**RSUs**) issued by APUC and granted to Mr. Robertson as a part of APUC's long-term incentive program for certain members of APUC's management (the **LTIP**).

6. Mr. Robertson's ownership, directly and indirectly, of Common Shares and PSUs, calculated as of January 2, 2018 for the purpose of disclosure in APUC's Management Information Circular dated May 1, 2018, represented 11.2 times the ownership required of Mr. Robertson under APUC's Executive Share Ownership Guidelines.

7. Mr. Jarratt is the Vice Chair of APUC and is a reporting insider. Mr. Jarratt is not in default of securities legislation in any jurisdiction.

8. Mr. Jarratt is, as of September 30, 2018, the owner, directly or indirectly, of (i) 1,505,119 Common Shares (representing approximately 0.32% of the outstanding Common Shares), (ii) 18 Series C Shares, (iii) 1,000 Series D Shares, (iv) 1,742,683 Options, (v) 169,614 PSUs, and (vi) 43,674 RSUs issued by APUC and granted to Mr. Jarratt as a part of the LTIP.

9. Mr. Jarratt's ownership, directly and indirectly, of Common Shares and PSUs, calculated as of January 2, 2018 for the purpose of disclosure in APUC's Management Information Circular dated May 1, 2018, represented approximately 13.5 times the ownership required of Mr. Jarratt under APUC's Executive Share Ownership Guidelines.

The Insiders' Automatic Share Disposition Plans

10. On April 5, 2018, each of the Insiders made, on the System for Electronic Disclosure by Insiders (**SEDI**), filings in respect of Options and PSUs received by the applicable Insider as a part of the annual grants under the LTIP made on March 31, 2018 (the **2018 LTIP Grants**). These filings contained the following general remarks:

    (a) with respect to the Options – "The filer will enter into an automatic securities disposition plan pursuant to which common shs. will be disposed of over the balance of 2018 in an amount up to the number of common shs. to be received by the filer upon the exercise of these options"; and

    (b) with respect to the PSUs – "The filer will enter into an automatic securities disposition plan pursuant to which common shs. will be disposed over the balance of 2018 of in an amount up to the nominal number of common shs. to be received by the filer upon the vesting of these PSUs".

11. Each of the Insiders has entered into an ASDP agreement dated April 20, 2018 with the ASDP Administrator pursuant to which such Insider has instructed the ASDP Administrator to sell, over the balance of 2018, up to the number of Common Shares being approximately equal to the number of Common Shares to be acquired pursuant to the 2018 LTIP Grants, being 534,112 Common Shares for Mr. Robertson and 373,878 Common Shares for Mr. Jarratt.

12. The ASDPs were amended on May 22, 2018 to extend the date on which sales under the ASDPs could commence from 30 days to 60 days after the ASDPs were initially entered into, and further amended on June 18, 2018 to again extend

such date an additional 30 days to the date that was 90 days after the ASDPs were initially entered into, being July 19, 2018. These amendments were made substantially in accordance with the procedures described in paragraph 21 below.

13. In accordance with the parameters of the ASDPs, sales commenced on July 19, 2018.

14. As of September 30, 2018, a total of 303,366 Common Shares had been sold pursuant to the ASDP between Mr. Robertson and the ASDP Administrator, and such sales have been reported on Mr. Robertson's SEDI profile, in each case within five days of the automatic disposition of such Common Shares, in accordance with the requirements set forth in Section 107(2) of the *Securities Act* (Ontario) (the **Act**).

15. As of September 30, 2018, a total of 212,334 Common Shares had been sold pursuant to the ASDP between Mr. Jarratt and the ASDP Administrator, and such sales have been reported on Mr. Jarratt's SEDI profile, in each case within five days of the automatic disposition of such Common Shares, in accordance with the requirements set forth in Section 107(2) of the Act.

16. Each ASDP is structured to comply with applicable securities legislation and guidance, including Clause 175(2) of Regulation 1015 under the Act and OSC Staff Notice 55-701 *Automatic Securities Disposition Plans and Automatic Securities Purchase Plans* (**OSC Staff Notice 55-701**). Pursuant to the Exemption Sought, it is the intention of APUC and each Insider that all sales under the ASDPs be exempt from Subsection 76(1) of the Act and from liability under Section 134 of the Act regarding trades in securities of a reporting issuer with knowledge of a material fact or change that has not been generally disclosed, and corresponding law and regulations across Canada.

17. The ASDP Administrator is a registered investment dealer and a member of the Investment Industry Regulatory Organization of Canada. The ASDP Administrator is at arm's length to APUC and the Insiders and is appointed as an independent broker to effect the sales of the Common Shares pursuant to the terms and conditions of each ASDP.

18. Each of the Insiders had a pre-existing broker-client relationship with the ASDP Administrator but the representatives responsible for administering the ASDPs are not the same representatives who act as the investment advisors to the Insiders in the normal course for any non-ASDP transactions. The representatives administering the ASDPs may, from time to time, communicate with the Insiders' investment advisors for administrative purposes but during the life of the ASDPs there is no trading communication between the representatives administering the ASDPs and the Insiders' investment advisors.

19. Each ASDP operates automatically such that the ASDP Administrator sells Common Shares on behalf of each Insider with limited discretionary ability for each Insider to vary, suspend or terminate its ASDP. Accordingly, the Insiders are not aided by or in a position to profit or avoid losses from any material undisclosed information of APUC in respect of trades made by the ASDP Administrator under the ASDP.

20. In furtherance of the Exemption Sought, as per guidance contained in OSC Staff Notice 55-701, each Insider has ensured that, regarding its ASDP:

    (a) at the time of entry into the ASDP, the Insider represented to the broker that it was not in possession of any undisclosed material fact or material change (as such terms are defined in the Act) in relation to APUC or any securities of APUC and that it was entering into the ASDP in good faith and not as part of a plan or scheme to evade prohibitions against trading while in possession of material undisclosed information contained in applicable Canadian securities legislation;

    (b) at the time of entry into the ASDP, the Insider provided the ASDP Administrator with a certificate from the Chief Legal Officer and Chair of the Corporate Disclosure Committee of APUC confirming, on behalf of the Corporate Disclosure Committee of APUC, (i) that APUC has pre-cleared, in accordance with its Insider Trading Policy, the ASDPs, and (ii) that, to the best of APUC's knowledge, the Insider was not aware of or in possession of material non-public or material undisclosed information about the APUC or any securities of APUC at such time;

    (c) the trading parameters and other instructions were set out in writing as Annex A to the ASDP at the time of entry into the ASDP and may not be amended or modified except in accordance with the ASDP (as described below);

    (d) the ASDP contains meaningful restrictions on the ability of the Insider to vary, suspend or terminate the ASDP, such restrictions having the effect of ensuring that the Insider cannot profit or avoid losses from material undisclosed information in respect of trades made by the ASDP Administrator under the ASDP through a decision to vary, suspend or terminate the ASDP (as described in detail below); and

(e) the ASDP provides that the ASDP Administrator is not permitted to and shall not consult or communicate with the Insider regarding any disposition of Common Shares under the ASDP, except to send the Insider trade confirmations of sale or transfer, periodic account statements and general account-related material in the ordinary course of business, and the Insider shall not inform or disclose to Broker any information concerning APUC that might influence the execution of the ASDP or otherwise.

21. Each Insider can only modify, terminate or amend its ASDP (other than in accordance with the termination provisions of the ASDP, as described in paragraph 21 below) by an instrument in writing, signed by the Insider and the ASDP Administrator and provided that any such modification, termination or amendment shall only be permitted at a time when the Insider is otherwise permitted to modify, terminate or amend the ASDP under APUC's disclosure or insider trading policies and at a time when the Insider is not aware of or in possession of material non-public information concerning APUC or any securities of APUC. In order to modify, terminate or amend the ASDP (other than in accordance the termination provisions of the ASDP, as described in paragraph 21 below), the Insider must contemporaneously:

(a) instruct the ASDP Administrator to modify, terminate or amend the ASDP;

(b) notify the public of such instruction by way of a SEDI filing or a press release, which shall include a representation that at the time of the modification, termination or amendment the Insider was not aware of or in possession of any material non-public information about APUC or any securities of APUC; and

(c) provide the ASDP Administrator with a certificate from APUC confirming that APUC has pre-cleared the modification, termination or amendment of the ASDP in accordance with APUC's Insider Trading Policy.

22. Each Insider's ASDP shall terminate upon the earliest to occur of:

(a) 4:00 p.m. Eastern Time on December 31, 2018;

(b) 4:00 p.m. Eastern Time on the date the ASDP Administrator receives notice of the Insider's death;

(c) in the case where the Insider's employment with APUC should cease for any reason, 9:30 a.m. Eastern Time on the 30th day after the date such employment ceases;

(d) the completion of the sale of all of the Common Shares subject to the ASDP; or

(e) the date on which the ASDP Administrator receives notice of (i) a publicly announced take-over bid or exchange offer with respect to the Common Shares or merger, amalgamation, arrangement, acquisition, reorganization, recapitalization or comparable transaction affecting the securities of APUC as a result of which the Common Shares are to be exchanged or converted into cash and/or securities of another entity, or (ii) the commencement or impending commencement of any proceedings in respect of or triggered by the Insider's bankruptcy.

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 in respect of an Insider provided that at the time of relying on the Exemption Sought the Insider is in compliance with the representations in paragraphs 18, 20, 21 and 22 of this decision and that by March 31 of each calendar year the Insider files a report through SEDI of all acquisitions and dispositions under the ASDP during the prior calendar year not previously disclosed in a SEDI filing, disclosing either of the following:

(a) each acquisition and disposition on a transaction-by-transaction basis;

(b) all acquisitions as a single transaction using the average unit price of the securities, and all dispositions as a single transaction using the average unit price of the securities.

"AnneMarie Ryan"
Commissioner
Ontario Securities Commissioner

"Poonam Puri"
Commissioner
Ontario Securities Commissioner

2.2 Decisions

2.2.1 Franklin Advisers, Inc. et al. – s. 80 of the CFA

Headnote

Section 80 of the Commodity Futures Act (Ontario) – Foreign adviser exempted from the adviser registration requirement in paragraph 22(1)(b) of the CFA where such adviser acts as an adviser in respect of commodity futures contracts or commodity futures options (Contracts) for certain investors in Ontario who meet the definition of "permitted client" in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Contracts are primarily traded on commodity futures exchanges outside of Canada and primarily cleared outside of Canada

Terms and conditions of exemption correspond to the relevant terms and conditions of the comparable exemption from the adviser registration requirement available to international advisers in respect of securities set out in section 8.26 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Exemption also subject to a "sunset clause" condition

Applicable Legislative Provisions

Commodity Futures Act, R.S.O. 1990, c. C.20. as am., ss. 1(1), 22(1)(b), 80.
Securities Act, R.S.O. 1990, c. S.5, as am., s. 25(3).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 1.1, 8.26.
Ontario Securities Commission Rule 13-502 Fees.

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

AND

IN THE MATTER OF
FRANKLIN ADVISERS, INC., (FAI),
FRANKLIN TEMPLETON INSTITUTIONAL, LLC (FTI LLC),
FRANKLIN MUTUAL ADVISERS, LLC (FMA),
TEMPLETON GLOBAL ADVISORS LIMITED (TGAL),
K2/D&S MANAGEMENT CO., LLC (K2),
FRANKLIN TEMPLETON INVESTMENT MANAGEMENT LIMITED (FTIML),
TEMPLETON INVESTMENT COUNSEL, LLC (TIC),
AND
FRANKLIN TEMPLETON INTERNATIONAL SERVICES S.à.r.l.
(FTIS) (each an "Applicant", and collectively, the "Applicants")

ORDER
(Section 80 of the CFA)

UPON the application (the **Application**) of the Applicants to the Ontario Securities Commission (the Commission) for an order, pursuant to section 80 of the CFA, that the Applicants and any individuals engaging in, or holding themselves out as engaging in, the business of advising others as to trading in Contracts (as defined below) on the Applicants' behalf (the **Representatives**) be exempt, for a specified period of time, from the adviser registration requirement in paragraph 22(1)(b) of the CFA, subject to certain terms and conditions;

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

AND WHEREAS for the purposes of this FAI Order, FTI LLC Order, FMA Order, TGAL Order, K2 Order, FTIML Order, TIC Order, and FTIS Order (Collectively, the **Order**):

"CFA Adviser Registration Requirement" means the provisions of section 22 of the CFA that prohibit a person or company from acting as an adviser with respect to trading in Contracts unless the person or company is registered in the appropriate category of registration under the CFA;

"CFTC" means the Commodity Futures Trading Commission of the United States;

"Contract" has the meaning ascribed to that term in subsection 1(1) of the CFA;

"Foreign Contract" means a Contract that is primarily traded on one or more organized exchanges that are located outside of Canada and primarily cleared through one or more clearing corporations that are located outside of Canada;

"Home Jurisdiction" means the jurisdiction in which each Applicant's head office is located;

"International Adviser Exemption" means the exemption set out in section 8.26 of NI 31-103 from the OSA Adviser Registration Requirement;

"NI 31-103" means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, as amended from time to time;

"OSA" means the *Securities Act*, R.S.O. 1990, c. S.5, as amended from time to time;

"OSA Adviser Registration Requirement" means the provisions of section 25 of the OSA that prohibit a person or company from acting as an adviser with respect to investing in, buying or selling securities unless the person or company is registered in the appropriate category of registration under the OSA;

"Permitted Client" means a client in Ontario that is a "permitted client" as that term is defined in section 1.1 of NI 31-103, except that for purposes of this Order such definition shall exclude a person or company registered under the securities or commodities legislation of a jurisdiction of Canada as an adviser or dealer;

"Previous Applicants" means Franklin Advisers, Inc., Franklin Templeton Institutional, LLC, and Franklin Mutual Advisers, LLC;

"Previous Order" means the exemption order granted by the Commission to the Previous Applicants on April 30, 2013;

"SEC" means the Securities and Exchange Commission of the United States;

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

"United States" means the United States of America; and

"United States Advisers Act" means the *Investment Advisers Act of 1940* of the United States, as amended from time to time.

AND UPON the Applicants having represented to the Commission that:

1. Franklin Advisers, Inc. (**FAI**) is a corporation incorporated under the laws of the State of California. FAI is resident in the United States of America, with a principal office and place of business at One Franklin Parkway, San Mateo, California, USA. FAI provides a variety of discretionary advisory services including but not limited to: (1) certain investment companies registered under the *Investment Company Act of 1940*, as amended; (2) unregistered funds and other pooled investment vehicles; and (3) institutions, such as insurance companies, other financial institutions, pension and profit sharing plans, and governmental entities. FAI offers advice with respect to a broad range of securities, derivatives and other financial instruments.

2. FAI is registered as an investment adviser with the SEC and as a commodity trading advisor and commodity pool operator with the CFTC.

3. Franklin Templeton Institutional, LLC (**FTI LLC**) is a limited liability company organized and existing under the laws of the State of Delaware. FTI LLC is resident in the United States of America, with a principal office and place of business at 600 Fifth Avenue, New York, New York, USA. FTI LLC provides a variety of discretionary advisory services including but not limited to: (1) certain investment companies registered under the *Investment Company Act of 1940*, as amended; (2) unregistered funds and other pooled investment vehicles; and (3) institutions, such as insurance companies, pension and profit sharing plans, and governmental entities. FTI LLC offers advice with respect to a broad range of securities, derivatives and other financial instruments.

4. FTI LLC is registered as an investment adviser with the SEC and is exempted from registration as a commodity trading adviser and commodity pool operator with the CFTC.

5. Franklin Mutual Advisers, LLC (**FMA**) is a limited liability company organized and existing under the laws of the State of Delaware. FMA is resident in the United States of America, with a principal office and place of business at 51 John F. Kennedy Parkway, Short Hills, New Jersey, USA. FMA provides a variety of discretionary advisory services including but

not limited to: (1) certain investment companies registered under the *Investment Company Act of 1940*, as amended; (2) unregistered funds and other pooled investment vehicles; and (3) institutions, such as insurance companies. FMA offers advice with respect to a broad range of securities, derivatives and other financial instruments.

6. FMA is registered as an investment adviser with the SEC and is exempted from registration as a commodity trading adviser and commodity pool operator with the CFTC.

7. Templeton Global Advisors Limited (**TGAL**) is a company organized and existing under the laws of the Commonwealth of the Bahamas. TGAL is resident in the Bahamas, with a principal office and place of business at Lyford Cay, Nassau, Bahamas. TGAL provides a variety of discretionary advisory services including but not limited to: (1) certain investment companies registered under the *Investment Company Act of 1940*, as amended; (2) unregistered funds and other pooled investment vehicles; and (3) institutions, such as insurance companies and charitable organizations. TGAL offers advice with respect to a broad range of securities, derivatives and other financial instruments.

8. TGAL is registered as an investment fund administrator with the Securities Commission of the Bahamas, as an investment adviser with the SEC, and it is exempted from registration as a commodity trading adviser and commodity pool operator with the CFTC.

9. K2/D&S Management Co. (**K2**) is a limited liability company organized and existing under the laws of the State of Delaware. K2 is resident in the United States of America, with a principal office and place of business at 300 Atlantic Street, 12th Floor, Stamford, Connecticut, USA. K2 provides a variety of discretionary advisory services including but not limited to: (1) certain investment companies registered under the *Investment Company Act of 1940*, as amended; (2) unregistered funds and other pooled investment vehicles; and (3) institutions, such as banking and thrift institutions, pension and profit sharing plans, and governmental entities. K2 offers advice with respect to a broad range of securities, derivatives and other financial instruments.

10. K2 is registered as an investment adviser with the SEC and is registered as a commodity trading adviser and commodity pool operator with the CFTC.

11. Franklin Templeton Investment Management Limited (**FTIML**) is a company organized and existing under the laws of England. FTIML is resident in England with a principal office and place of business at Cannon Place, 78 Cannon Street, London, England. FTIML provides a variety of discretionary advisory services including but not limited to: (1) certain investment companies registered under the *Investment Company Act of 1940*, as amended; (2) unregistered funds and other pooled investment vehicles; and (3) institutions, such as insurance companies, other financial institutions, and governmental entities. FTIML offers advice with respect to a broad range of securities, derivatives and other financial instruments.

12. FTIML is an investment management company registered as an investment adviser with the SEC and is exempted from registration as a commodity trading adviser and commodity pool operator with the CFTC. FTIML is a foreign equivalent of an investment advisor in England and is regulated by the Financial Conduct Authority of the United Kingdom.

13. Templeton Investment Counsel, LLC (**TIC**) is a limited liability company organized and existing under the laws of the State of Delaware. TIC is a resident of the United States of America, with a principal office and place of business at 300 Southeast 2nd Street, Fort Lauderdale, Florida, USA. TIC provides a variety of discretionary advisory services including but not limited to: (1) certain investment companies registered under the *Investment Company Act of 1940*, as amended; (2) unregistered funds and other pooled investment vehicles; and (3) institutions, such as insurance companies, other financial institutions, pension and profit sharing plans, and governmental entities. TIC offers advice with respect to a broad range of securities, derivatives and other financial instruments.

14. TIC is registered as an investment adviser with the SEC and it is exempted from registration as a commodity trading adviser and commodity pool operator with the CFTC.

15. Franklin Templeton International Services S.à.r.l. (FTIS) is a limited liability company with its registered office at 8A, rue Albert Borschette, L-1246 Luxembourg, Grand-Duchy of Luxembourg.

16. FTIS creates, promotes, administers and manages investment in transferable securities (UCITS) and alternative investment funds and provides services such as discretionary portfolio management, investment advice and reception and transmission of orders in relation to financial instruments.

17. FTIS is exempt from registration as an investment adviser with the SEC, but pursuant to such exemption does report limited information to the SEC as an Exempt Reporting Adviser. Additionally, FTIS is exempt from registration as a commodity trading adviser and commodity pool operator with the CFTC.

18. FTIS is registered with the Luxembourg Trade and Companies Register and is authorized by the Commission de Surveillance du Secteur Financier (Luxembourg) through an undertaking for UCITS management company and alternative investment fund manager.

19. The Applicants are affiliates, as defined in the OSA. Each Applicant, including FTIC (defined below) is either directly or indirectly wholly-owned by its parent company, Franklin Resources, Inc.

20. Franklin Templeton Investments, as a global corporate group, offers specialized investment management expertise, with various investment teams that have their own approaches and processes, which teams reside within various Franklin Templeton Investments affiliates, including the Applicants. The Canadian business of Franklin Templeton Investments is directed principally by its principal Canadian affiliate, Franklin Templeton Investments Corp. (**FTIC**), which is registered under the OSA as an investment fund manager, portfolio manager, mutual fund dealer and exempt market dealer. FTIC facilitates the engagement of the Applicants as needed and where appropriate to serve client needs.

21. The Applicants are not registered in any capacity under the CFA or the OSA.

22. The Previous Applicants relied on the Previous Order which expired on April 30, 2018. The Previous Applicants have complied with all the terms and conditions of the Previous Order. In respect of the Previous Applicants, any registrable activity, as contemplated under paragraph 22(1)(b) of the CFA and in the Previous Order, ceased on May 1, 2018.

23. The Applicants are not in default of securities legislation, commodity futures legislation or derivatives legislation of any jurisdiction in Canada. The Applicants are in compliance in all material respects with securities laws, commodity futures laws and derivatives laws of their Home Jurisdiction.

24. Certain investment funds in Ontario that are Permitted Clients engage, or may in the future engage, the Applicants as discretionary portfolio managers for purposes of implementing certain specialized investment strategies.

25. The Applicants act, or in the future may act, as discretionary portfolio managers on behalf of Permitted Clients. The proposed advisory services would include the use of specialized investment strategies employing Foreign Contracts.

26. Were the proposed advisory services limited to securities (as defined in subsection 1(1) of the OSA), the Applicants would be able to rely on the International Adviser Exemption and carry out such activities for Permitted Clients on a basis that would be exempt from the OSA Adviser Registration Requirement.

27. There is currently no exemption from the CFA Adviser Registration Requirement that is equivalent to the International Adviser Exemption. Consequently, in order to advise Permitted Clients as to trading in Foreign Contracts, in the absence of this Order, the Applicant would be required to satisfy the CFA Adviser Registration Requirement by applying for and obtaining registration in Ontario as an adviser under the CFA in the category of commodity trading manager.

28. To the best of each Applicant's knowledge, the Applicants confirm that there are currently no regulatory actions of the type contemplated by the Notice of Regulatory Action attached as Appendix "B,' other than those previously filed with the Commission in respect of the Previous Applicants.

AND UPON being satisfied that it would not be prejudicial to the public interest for the Commission to make this FAI Order, FTI LLC Order, FMA Order, TGAL Order, K2 Order, FTIML Order, TIC Order, and FTIS Order;

IT IS ORDERED, pursuant to section 80 of the CFA, that each Applicant and its Representatives are exempt from the adviser registration requirement in paragraph 22(1)(b) of the CFA in respect of providing advice to Permitted Clients as to the trading of Foreign Contracts provided that:

(a) each Applicant provides advice to Permitted Clients only as to trading in Foreign Contracts and do not advise Permitted Clients as to trading in Contracts that are not Foreign Contracts, unless providing such advice is incidental to their providing advice on Foreign Contracts;

(b) each Applicant's head office or principal place of business of each of the Applicants is in their Home Jurisdiction;

(c) each of the Applicants is registered in a category of registration, or operates under an exemption from registration, under the applicable securities or commodity futures legislation of their Home Jurisdiction that permits it to carry on the activities in their Home Jurisdiction that registration under the CFA as an adviser in the category of commodity trading manager would permit it to carry on in Ontario;

(d) each of the Applicants continues to engage in the business of an adviser (as defined in the CFA) in the United States;

(e) as at the end of each Applicant's most recently completed financial year, not more than 10% of the aggregate consolidated gross revenue of each Applicant, its affiliates and its affiliated partnerships (excluding the gross revenue of an affiliate or affiliated partnership of an Applicant if the affiliate or affiliated partnership is registered under securities legislation, commodity futures legislation or derivatives legislation of a jurisdiction of Canada) was derived from the portfolio management activities of each Applicant, its affiliates and its affiliated partnerships in Canada (which, for greater certainty, includes both securities-related and commodity-futures-related activities);

(f) before advising a Permitted Client with respect to Foreign Contracts, each Applicant notifies the Permitted Clients of all of the following:

(i) the Applicant is not registered in Ontario to provide the advice described in paragraph (a) of this Order;

(ii) the foreign jurisdiction in which the Applicant's head office or principal place of business is located;

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

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

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

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

(h) each Applicant notifies the Commission of any regulatory action after the date of this Order with respect to the Applicant, or to the best of each Applicant's knowledge and after reasonable inquiry, any predecessors or the specified affiliates of each Applicant by filing Appendix "B" within 10 days of the commencement of each such action, provided that each Applicant may also satisfy this condition by filing with the Commission,

i. within 10 days of the date of this Order, a notice making reference to and incorporating by reference the disclosure made by each Applicant pursuant to federal securities laws of the United States that is identified on the Investment Adviser Public Disclosure Website, and

ii. Promptly, a notification of any Form ADV amendment and/or filing with the SEC that relates to legal and/or regulatory actions; and

(i) if each Applicant is not subject to the requirement to pay a participation fee in Ontario because it is not registered under the OSA and does not rely on the International Adviser Exemption, by December 31st of each year, each Applicant pays a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of Ontario Securities Commission Rule 13-502 *Fees* as if each Applicant relied on the International Adviser Exemption; and

IT IS FURTHER ORDERED that each of the FAI Order, FTI LLC Order, FMA Order, TGAL Order, K2 Order, FTIML Order, TIC Order, and FTIS Order will terminate on the earliest of:

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

(b) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the ability of an Applicant to act as an adviser to a Permitted Client; and

(c) five years after the date of the FAI Order, FTI LLC Order, FMA Order, TGAL Order, K2 Order, FTIML Order, TIC Order, and FTIS Order.

DATED at Toronto, Ontario, this 11th day of October, 2018.

"Deborah Leckman"
Commissioner

"Lawrence Haber"
Commissioner

APPENDIX "A"

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

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

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

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

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

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

   Name:
   E-mail address:
   Phone:
   Fax:

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

   ☐ Section 8.18 [*international dealer*]

   ☐ Section 8.26 [*international adviser*]

   ☐ Other [specify]:

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

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

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

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator

    a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated;

    b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service;

    c. a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 30th day after the change.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ [*Insert name of International Firm*] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of the Agent for Service or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

APPENDIX "B"

NOTICE OF REGULATORY ACTION

1. Settlement agreements

Has the firm, or any predecessors or specified affiliates[1] of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes _____ No _____

If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Disciplinary history

Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

		Yes	No
(a)	Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?	___	___
(b)	Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?	___	___
(c)	Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?	___	___
(d)	Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?	___	___
(e)	Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?	___	___
(f)	Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?	___	___
(g)	Issued an order (other than an exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?	___	___

If yes, provide the following information for each action:

Name of entity	
Type of action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

[1] In this Appendix, the term "specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*.

3. Ongoing investigations

Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliates is the subject?

Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm:
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

2.2.2 Caldwell Investment Management Ltd.

FILE NO.: 2018-36

IN THE MATTER OF
CALDWELL INVESTMENT MANAGEMENT LTD.

Robert P. Hutchison, Commissioner and Chair of the Panel

October 18, 2018

ORDER

WHEREAS on October 18, 2018, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON HEARING the submissions of the representatives for Staff of the Commission and for Caldwell Investment Management Ltd. (the **Respondent**);

IT IS ORDERED THAT:

1. the Respondent shall file and serve a witness list, serve a summary of each witness's anticipated evidence on Staff, and indicate any intention to call an expert witness no later than November 16, 2018;

2. the parties shall file the e-hearing checklist for the hearing on the merits no later than December 7, 2018; and

3. the third attendance in this matter is scheduled for December 17, 2018 at 10:00 a.m., or such other dates and times as provided by the Office of the Secretary and agreed to by the parties.

"Robert P. Hutchison"

2.2.3 ValGold Resources Ltd.

Headnote

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

Applicable Legislative Provisions

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

October 16, 2018

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

AND

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

AND

IN THE MATTER OF
VALGOLD RESOURCES LTD.
(The Filer)

ORDER

Background

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

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Decision

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

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

John Hinze
Director, Corporate Finance
British Columbia Securities Commission

2.2.4 PHH Corporation

Headnote

OSC Staff Notice 12-703 Applications for a Decision that an Issuer is not a Reporting Issuer – issuer deemed to no longer be a reporting issuer under applicable securities legislation – issuer has fewer than 15 security holders in Ontario but more than 50 security holders worldwide.

Applicable Legislative Provisions

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

October 5, 2018

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

AND

IN THE MATTER OF
PHH CORPORATION
(the Filer)

ORDER

Background

The Ontario Securities Commission has received an application from the Filer for an order pursuant to subparagraph 1(10)(a)(ii) of the Act that the Filer is no longer a reporting issuer (the **Order Sought**).

Interpretation

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

Representations

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

1. The Filer was formed under the laws of Maryland and its head office is located at 3000 Leadenhall Road, Mt. Laurel, New Jersey, USA, 08054.

2. The Filer is a reporting issuer under the laws of Ontario alone and is not a reporting issuer in any other jurisdiction of Canada.

3. Prior to the effectiveness of the de-registration of the Filer's issued and outstanding shares of common stock (the **Common Stock**) with the U.S. Securities and Exchange Commission (the **SEC**), the Filer is also subject to reporting requirements under U.S. securities laws as a registrant under the United States *Securities Exchange Act of 1934*, as amended (the **Exchange Act**).

4. Prior to the effective date of the Merger (as defined herein), there were 32,581,485 issued and outstanding shares of Common Stock which were listed on the New York Stock Exchange (**NYSE**).

5. At a special meeting of stockholders of the Filer held on June 11, 2018, requisite stockholder approval was received in connection with the merger (the **Merger**) of POMS Corp (**Merger Sub**), a wholly-owned subsidiary of Ocwen Financial Corporation (**Ocwen**), a registrant under the Exchange Act that is listed on the NYSE, with and into the Filer, with the Filer surviving the merger and becoming a wholly-owned subsidiary of Ocwen pursuant to the terms and conditions of the Agreement and Plan of Merger (the **Merger Agreement**) dated February 27, 2018, by and among Ocwen, Merger Sub and the Filer. The holders of Notes (as defined below) were not required to vote in respect of the Merger. The Merger closed on October 4, 2018.

6. Pursuant to the Merger Agreement, at closing of the Merger, each share of Common Stock issued and outstanding immediately prior to the closing of the Merger (other than shares that are held in the treasury of the Filer or owned by Ocwen or Merger Sub (subject to certain exceptions)) was converted into the right to receive US$11.00 in cash, without interest. Upon closing of the Merger, each outstanding option, time-based restricted stock unit and performance-based restricted stock unit vested and was cancelled in exchange for the right of the holder thereof to receive the merger consideration (or, in the case of options, the excess, if any, of the merger consideration over the exercise price) in respect of each share of Filer's common stock subject to such award (in the case of performance-based restricted stock units, if any shares of Filer's common stock were earned under such award based on the actual performance of the Filer through immediately prior to the Merger).

7. Immediately following closing of the Merger and as at the date hereof, the Filer only has the following two classes of securities outstanding (excluding any securities owned by Ocwen):

   (a) US$97.521 million aggregate principal amount of 7.375% Senior Notes due 2019 (the **2019 Notes**). The 2019 Notes were issued pursuant to an indenture dated as of January 17, 2012, between the Filer and The Bank of New York Mellon Trust Company, N.A., as trustee (the **Trust Indenture**), as supplemented by the second supplemental indenture dated as of August 23, 2012 between the Filer and The Bank of New York Mellon Trust Company, N.A. (**BNY**), and the fourth supplemental indenture, dated as of July 3, 2017 between the Filer and BNY(collectively, the **2019 Notes Indenture**); and

   (b) US$21.543 million aggregate principal amount of 6.375% Senior Notes due 2021 (the **2021 Notes**, and together with the 2019 Notes, the **Notes**). The 2021 Notes were issued pursuant to the Indenture, as supplemented by the third supplemental indenture dated as of August 20, 2013 between the Filer and BNY, and the fifth supplemental indenture, dated as of July 3, 2017 between the Filer and BNY (the **2021 Notes Indenture**, and collectively with the 2019 Notes Indenture, the **Notes Indenture**).

8. The Notes are not convertible or exchangeable into any other securities of the Filer.

9. The Notes were sold to investors in the United States pursuant to a registered offering under U.S. securities laws, and a small portion of the Notes were sold to "accredited investors" in Canada as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions* pursuant to available prospectus exemptions.

10. The Notes have never been listed for trading on any stock exchange or other marketplace (as that term is defined in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**)).

11. The Notes are issued in book-entry form and are represented by global certificates registered in a nominee name of The Depository Trust Company (**DTC**), with beneficial interests therein recorded in records maintained by DTC and its participants as financial intermediaries that hold securities on behalf of their clients. In accordance with industry practice and custom, the Filer has obtained from Broadridge Financial Solutions Inc. geographic surveys of beneficial holders of Notes as of June 4, 2018 (collectively, the **Geographic Report**), which provides information as to the number of Noteholders and aggregate principal amount of Notes held in Canada, the United States and elsewhere.

12. The Geographic Report covers approximately 100% of the outstanding US$97.521 million principal amount of the 2019 Notes and reports a total of 218 holders of the 2019 Notes residing in the following jurisdictions:

   (a) 3 in Ontario holding 6.96% of the principal amount of the 2019 Notes;

   (b) 204 in the United States holding 76.06% of the principal amount of the 2019 Notes; and

   (c) 11 in jurisdictions outside of Canada and the United States holding 16.98% of the principal amount of the 2019 Notes.

13. The Geographic Report covers approximately 100% of the outstanding US$21.543 million principal amount of the 2021 Notes and reports a total of 543 holders of the 2021 Notes residing in the following jurisdictions:

   (a) 1 in Québec holding 2.00% of the principal amount of the 2021 Notes;

   (b) 1 in British Columbia holding 0.01% of the principal amount of the 2021 Notes;

   (c) 502 in the United States holding 76.58% of the principal amount of the 2021 Notes; and

   (d) 39 in jurisdictions outside of Canada and the United States holding 21.41% of the principal amount of the 2021 Notes.

14. The Filer is an "SEC foreign issuer" within the meaning of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* and, pursuant to that instrument and other accommodations available to foreign reporting issuers under Ontario securities law, generally satisfies its continuous disclosure requirements under Ontario securities law through compliance with corresponding reporting obligations under U.S. federal securities law, filing its U.S. disclosure documents with Canadian regulators, and sending to its Canadian shareholders the same materials it sends to U.S. shareholders.

15. On the closing date of the Merger and within approximately 10 calendar days thereafter, the Filer made or will make certain filings with the SEC to terminate the Filer's reporting obligations with respect to the Common Stock and the Notes pursuant to the Exchange Act and de-list the Common Stock from the NYSE.

16. There is no obligation or covenant in the Notes Indenture for the Filer to maintain its status as a reporting issuer or the equivalent in Ontario, nor does the Notes Indenture contain any provision requiring ongoing reporting to holders of Notes or to the trustees for the Notes once the Filer is no longer subject to reporting requirements under applicable securities law.

17. The Filer is not eligible to use the simplified procedure under OSC Staff Notice 12-703 *Applications for a Decision that an Issuer is not a Reporting Issuer*, as the Notes are beneficially owned, directly or indirectly, by more than 51 securityholders in total worldwide.

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

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

20. The Filer is not in default of securities legislation in any jurisdiction where it is a reporting issuer.

21. In the 12 months before applying for the Order Sought, the Filer has not taken any steps that indicate there is a market for its securities in Canada.

22. The Filer issued a news release on July 24, 2018 specifying that the Filer had applied for the Order Sought.

23. The Filer has no current intention to distribute any securities to the public in Canada, nor to seek financing by way of a public offering or private offering or private placement of its securities in Canada.

24. Upon the grant of the Order Sought, the Filer will no longer be a reporting issuer in any jurisdiction in Canada.

Order

The Commission is satisfied that the order meets the test set out in the Act for the Commission to make the order.

The order of the Commission under the Act is that the Order Sought is granted.

"William Furlong"
Commissioner
Ontario Securities Commission

"Laurence P. Haber"
Commissioner
Ontario Securities Commission

2.3 Orders with Related Settlement Agreements

2.3.1 K2 & Associates Investment Management Inc. et al. – ss. 127(1), 127.1

FILE NO.: 2018-60

IN THE MATTER OF
K2 & ASSOCIATES INVESTMENT MANAGEMENT INC.,
SHAWN KIMEL and
DANIEL GOSSELIN

D. Grant Vingoe, Vice Chair and Chair of the Panel
AnneMarie Ryan, Commissioner
Lawrence P. Haber, Commissioner

October 19, 2018

ORDER
(Subsection 127(1) and Section 127.1 of the
Securities Act, RSO 1990, c S.5)

WHEREAS on October 19, 2018, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider the approval of a settlement agreement dated October 16, 2018 (the **Settlement Agreement**) between K2 & Associates Investment Management Inc., Shawn Kimel, Daniel Gosselin (the **Respondents**) and Staff of the Commission (**Staff**);

ON READING the Statement of Allegations dated October 16, 2018, the Settlement Agreement and on hearing the submissions of the representatives of Staff and the Respondents;

IT IS ORDERED THAT:

1. this Settlement Agreement be approved;

2. K2 shall pay an administrative penalty in the amount of $400,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

3. Kimel shall pay an administrative penalty in the amount of $550,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

4. Gosselin shall pay an administrative penalty in the amount of $20,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

5. Kimel is prohibited from becoming or acting as a chief compliance officer or an ultimate designated person for a period of 10 years from the date of the Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

6. Gosselin is prohibited from becoming or acting as a chief compliance officer or an ultimate designated person for a period of 5 years from the date of the Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

7. Kimel is prohibited from trading in any securities or derivatives and from acquiring any securities, in a personal or professional capacity, for a period of 9 months, from the date of the Order and shall be required to have all trades pre-approved by the chief compliance officer of K2 for an additional 18 months, pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act;

8. Gosselin is prohibited from trading in any securities or derivatives and from acquiring any securities, in a personal or professional capacity, for a period of 6 months, from the date of the Order and shall be required to have all trades pre-approved by the chief compliance officer of K2 for an additional 12 months, pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act;

9. any exemptions contained in Ontario securities law shall not apply to Kimel for a period of 9 months from the date of the Order, pursuant to paragraph 3 of subsection 127(1) of the Act;

10. any exemptions contained in Ontario securities law shall not apply Gosselin for a period of 6 months from the date of the Order, pursuant to paragraph 3 of subsection 127(1) of the Act;

11. K2 shall submit to a review of its trading practices and procedures, which shall be performed by a third party acceptable to staff, and which shall be completed within 6 months from the date of the Order; pursuant to paragraph 4 of subsection 127(1) of the Act;

12. K2 shall pay costs in the amount of $30,000, pursuant to section 127.1 of the Act; and

13. notwithstanding any other provision contained in the Order, Kimel and Gosselin are permitted to redeem units of The K2 Principal Fund LP in which they have sole legal and beneficial ownership.

“D. Grant Vingoe”

“AnneMarie Ryan”

“Lawrence P. Haber”

IN THE MATTER OF
K2 & ASSOCIATES INVESTMENT MANAGEMENT INC.,
SHAWN KIMEL and
DANIEL GOSSELIN

SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION,
K2 & ASSOCIATES INVESTMENT MANAGEMENT INC.,
SHAWN KIMEL and
DANIEL GOSSELIN

PART I – INTRODUCTION

1. This matter concerns manipulative trading activity related to equity-listed options on the Montreal Exchange (the "MX") performed by K2 & Associates Investment Management Inc. ("K2"), through Shawn Kimel ("Kimel") and Daniel Gosselin ("Gosselin"), (collectively, the "Respondents").

2. It is critical to the integrity of Ontario's capital markets, and investor confidence in those markets, that registrants – as market professionals – do not engage in manipulative trading activities that deceive counterparties and benefit themselves financially to the detriment of others in the marketplace. Spoofing, or quote manipulation, as practiced by the Respondents, resulted in artificial changes to bid-ask spreads in equity-listed options that the Respondents were seeking to purchase or sell on the MX. This then enabled the Respondents to buy or sell specific instruments at a better price than would otherwise have been available, but for the advanced non-*bona fide*, spoofing orders they made. By injecting false information into our markets, spoofers gain an unfair advantage over law-abiding market participants, impeding competition and undermining the integrity of Ontario's capital markets.

3. The parties shall jointly file a request that the Ontario Securities Commission (the "Commission") issue a Notice of Hearing (the "Notice of Hearing") to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5 (the "Act"), it is in the public interest for the Commission to make certain orders against the Respondents in respect of the conduct described herein.

PART II – JOINT SETTLEMENT RECOMMENDATION

4. Staff of the Commission ("Staff") recommend settlement of the proceeding (the "Proceeding") against the Respondents commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part V of this Settlement Agreement. Staff and the Respondents consent to the making of an order (the "Order") in the form attached as Schedule "A" to this Settlement Agreement based on the facts set out herein.

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

PART III – AGREED FACTS

A. THE RESPONDENTS

6. K2 is a Toronto based manager of two private funds, The K2 Principal Fund L.P. and the K2 Principal Trust (collectively, the "Funds"). K2 is registered with the Commission in the categories of Portfolio Manager, Investment Fund Manager and Exempt Market Dealer.

7. Kimel is K2's founder, a director and a shareholder of K2. Kimel is registered with the Commission in the categories of portfolio advisor and exempt market dealing representative. During the period of October 2016 to December 2016 (the "Material Time"), Kimel was, in addition to being a director and a shareholder, K2's president, ultimate designated person ("UDP") and chief compliance officer ("CCO").

8. Gosselin is currently K2's president. Gosselin is also registered with the Commission in the category of exempt market dealing representative. During the Material Time, Gosselin was a trader at K2 who assisted Kimel and other registered portfolio managers at K2 by executing investment decisions made by Kimel and the other registered portfolio managers.

B. BACKGROUND

9. The Respondents engaged in trading on behalf of the Funds, which resulted in or contributed to a false or misleading impression, as to the supply of, or demand for derivatives listed on the MX and allowed K2 through Kimel and Gosselin to trade in derivatives on the MX at artificial prices.

10. The Respondents engaged in approximately 60 incidents of impugned trading during the Material Time (the "Spoofing Events"). The Spoofing Events involved the use of non *bona fide* direct electronic access ("DEA") orders placed by K2 to increase or decrease the National Best Bid Offer ("NBBO") in order for K2 to receive a benefit on desk trade orders it made with Canadian financial institutions (the "Financial Institutions"). Through their misconduct, the Respondents wrongly benefited by approximately $250,000. The general pattern of the Spoofing Events observed by Staff is set out below.

    (a) Kimel would place a DEA order to buy or sell small quantities of certain options on the MX. The effect of this order was to increase or decrease the NBBO to the advantage of K2.

    (b) Soon after Kimel's order was placed (within minutes), Gosselin would initiate a chat session with one or more of the Financial Institutions. Gosselin would negotiate a larger desk trade on the opposite side of Kimel's previously made DEA order.

    (c) Very soon after a desk trade had been confirmed by a Financial Institution (often within seconds) the opposite DEA order previously entered would be cancelled.

    (d) In a variant situation observed by Staff, the chat was initiated with one or more of the Financial Institutions immediately prior to the DEA order being made. Similarly, once a desk trade had been confirmed by a Financial Institution the DEA order would be cancelled very soon after.

11. Kimel and Gosselin coordinated their conduct regarding the Spoofing Events. In certain circumstances, Gosselin would notify Kimel when the desk trade had been successfully negotiated so that Kimel could quickly cancel his DEA order.

12. Staff determined the potential aggregate benefit of approximately $250,000 by calculating, for each Spoofing Event, the monetary difference between the price at which K2 actually paid for the exchange-listed equity derivative (or the price at which K2 actually sold the exchange-listed equity derivative) and the price that K2 would have paid (or would have been paid) based on the NBBO immediately prior to the Respondents engaging in the spoofing activity.

13. As an example of this calculation methodology, on December 1, 2016, the Respondents' trading resulted in the Respondents purchasing 2,500 put options of a certain security at a price of $0.30 for an aggregate acquisition cost of $75,000. Immediately prior to the Respondents initiating their trading regarding these put options, the market spread for these put options was $0.10 / $0.50. If the Respondents had purchased the 2,500 put options prior to engaging in trading, all things being equal, the purchase price would have been at least $0.50, resulting in an aggregate acquisition cost of $125,000. This saved the Respondents $50,000 on this one transaction. The spoofing activity to achieve this calculated $50,000 acquisition cost saving comprised Kimel placing two DEA orders to sell the put options. Kimel first placed an order to sell the put options at $0.35 (which was never filled and cancelled after K2 successfully purchased 2,500 put options). Kimel immediately followed this by placing a second order to sell 10 put options at $0.25. Kimel cancelled this second sell order shortly after placing it and the market spread became $0.10 / $0.30. Within minutes, Gosselin negotiated a desk trade with a Financial Institution on the opposite side to buy 2,500 put options at the lower price of $0.30.

PART IV – BREACHES OF THE ACT AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

14. By engaging in the conduct described above, the Respondents admit and acknowledge that they breached Ontario securities law by contravening subsection 126.1(1)(a) of the Act and that their actions were contrary to the public interest.

PART V – RESPONDENTS' POSITION

15. The Respondents intend to request that the panel at the Settlement Hearing (as defined below) consider the following mitigating circumstances:

    (a) **No prior record.** The Respondents have no prior record of securities regulatory misconduct.

    (b) **Cooperation with Staff.** The Respondents cooperated with Staff at all times during the course of Staff's investigation.

(c) **No Retail Investor Harm.** The counterparties to the trading described above were sophisticated institutional derivative traders.

(d) **Remediation Steps Taken by K2.** After learning of the conduct described above, K2 took the following corrective measures:

(i) **Offer to Compensate Counterparty.** K2 offered to compensate a counterparty to the trading described, which offer was declined.

(ii) **New CCO and UDP Appointed.** In March 2017, K2 appointed a new individual to be the CCO of the firm. The same individual was appointed UDP in October 2017.

(iii) **Internal Sanctions Imposed.** After the appointment of the new CCO and UDP, Kimel and Gosselin were both subject to internal sanctions. Kimel was subject to a three month ban on options trading, and Gosselin was subject to a three month trading ban on all securities. Kimel and Gosselin were also required to complete the CSI Trader Training Course program.

PART VI – TERMS OF SETTLEMENT

16. The Respondents agree to the terms of settlement set forth below.

17. The Respondents consent to the Order, pursuant to which it is ordered that:

(a) this Settlement Agreement be approved;

(b) K2 shall pay an administrative penalty in the amount of $400,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

(c) Kimel shall pay an administrative penalty in the amount of $550,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

(d) Gosselin shall pay an administrative penalty in the amount of $20,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

(e) Kimel is prohibited from becoming or acting as a chief compliance officer or an ultimate designated person for a period of 10 years from the date of the Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

(f) Gosselin is prohibited from becoming or acting as a chief compliance officer or an ultimate designated person for a period of 5 years from the date of the Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

(g) Kimel is prohibited from trading in any securities or derivatives and from acquiring any securities, in a personal or professional capacity, for a period of 9 months, from the date of the Order and shall be required to have all trades pre-approved by the chief compliance officer of K2 for an additional 18 months, pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act;

(h) Gosselin is prohibited from trading in any securities or derivatives and from acquiring any securities, in a personal or professional capacity, for a period of 6 months, from the date of the Order and shall be required to have all trades pre-approved by the chief compliance officer of K2 for an additional 12 months, pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act;

(i) any exemptions contained in Ontario securities law shall not apply to Kimel for a period of 9 months from the date of the Order, pursuant to paragraph 3 of subsection 127(1) of the Act;

(j) any exemptions contained in Ontario securities law shall not apply Gosselin for a period of 6 months from the date of the Order, pursuant to paragraph 3 of subsection 127(1) of the Act;

(k) K2 shall submit to a review of its trading practices and procedures, which shall be performed by a third party acceptable to staff, and which shall be completed within 6 months from the date of the Order; pursuant to paragraph 4 of subsection 127(1) of the Act;

(l) K2 shall pay costs in the amount of $30,000, pursuant to section 127.1 of the Act; and

(m) notwithstanding any other provision contained in the Order, Kimel and Gosselin are permitted to redeem units of The K2 Principal Fund LP in which they have sole legal and beneficial ownership.

18. The Respondents agree that the amounts set out in sub-paragraphs 15(b), 15(c), 15(d) and 15(l) shall be paid by the Respondents by separate certified cheques, bank drafts or wire transfer, at the hearing before the Commission to approve this Settlement Agreement, if this Settlement Agreement is approved.

PART VII – FURTHER PROCEEDINGS

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

20. The Respondents acknowledge that, if the Commission approves this Settlement Agreement and the Respondents fail to comply with any term in it, the Commission is entitled to bring any proceedings necessary.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

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

22. K2, through a representative, and Gosselin will attend the Settlement Hearing in person. Kimel will attend the Settlement Hearing by phone.

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

24. If the Commission approves this Settlement Agreement:

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

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

25. Whether or not the Commission approves this Settlement Agreement, the Respondents will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

26. If the Commission does not make the Order:

(a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondents before the Settlement Hearing will be without prejudice to Staff and the Respondents; and

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

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

PART X – EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED at Toronto, Ontario this 16th day of October, 2018.

"Kelly Davies"
Witness (print name): Kelly Davies

"Shawn Kimel"
Shawn Kimel

DATED at Toronto, Ontario this 16th day of October, 2018.

"Brittany Gallagher"
Witness (print name): Brittany Gallagher

"Daniel Gosselin"
Daniel Gosselin

DATED at Toronto, Ontario this 16th day of October, 2018.

K2 & ASSOCIATES INVESTMENT MANAGEMENT INC.

By: *"Josef Vejvoda"*
Josef Vejvoda
Chief Compliance Officer

DATED at Toronto, Ontario this 16th day of October, 2018.

STAFF OF THE ONTARIO SECURITIES COMMISSION

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

SCHEDULE "A"

FILE NO.: _____

IN THE MATTER OF
K2 & ASSOCIATES INVESTMENT MANAGEMENT INC.,
SHAWN KIMEL and
DANIEL GOSSELIN

(Names of panelists comprising the panel)

(Day and date order made)

ORDER
(Section 127 of the *Securities Act*, RSO 1990, c S.5)

WHEREAS on ___, 2018, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider the approval of a settlement agreement dated ____, 2018 (the **Settlement Agreement**) between K2 & Associates Investment Management Inc., Shawn Kimel, Daniel Gosselin (the **Respondents**) and Staff of the Commission (**Staff**);

ON READING the Statement of Allegations dated [**date**], the Settlement Agreement and on hearing the submissions of the representatives of Staff and the Respondents;

IT IS ORDERED THAT:

(a) this Settlement Agreement be approved;

(b) K2 shall pay an administrative penalty in the amount of $400,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

(c) Kimel shall pay an administrative penalty in the amount of $550,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

(d) Gosselin shall pay an administrative penalty in the amount of $20,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

(e) Kimel is prohibited from becoming or acting as a chief compliance officer or an ultimate designated person for a period of 10 years from the date of the Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

(f) Gosselin is prohibited from becoming or acting as a chief compliance officer or an ultimate designated person for a period of 5 years from the date of the Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

(g) Kimel is prohibited from trading in any securities or derivatives and from acquiring any securities, in a personal or professional capacity, for a period of 9 months, from the date of the Order and shall be required to have all trades pre-approved by the chief compliance officer of K2 for an additional 18 months, pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act;

(h) Gosselin is prohibited from trading in any securities or derivatives and from acquiring any securities, in a personal or professional capacity, for a period of 6 months, from the date of the Order and shall be required to have all trades pre-approved by the chief compliance officer of K2 for an additional 12 months, pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act;

(i) any exemptions contained in Ontario securities law shall not apply to Kimel for a period of 9 months from the date of the Order, pursuant to paragraph 3 of subsection 127(1) of the Act;

(j) any exemptions contained in Ontario securities law shall not apply Gosselin for a period of 6 months from the date of the Order, pursuant to paragraph 3 of subsection 127(1) of the Act;

(k) K2 shall submit to a review of its trading practices and procedures, which shall be performed by a third party acceptable to staff, and which shall be completed within 6 months from the date of the Order; pursuant to paragraph 4 of subsection 127(1) of the Act;

(l) K2 shall pay costs in the amount of $30,000, pursuant to section 127.1 of the Act; and

(m) notwithstanding any other provision contained in the Order, Kimel and Gosselin are permitted to redeem units of The K2 Principal Fund LP in which they have sole legal and beneficial ownership.

_____
[Commissioner]

_____
[Commissioner]

_____
[Commissioner]

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 K2 & Associates Investment Management Inc. et al. – ss. 127(1), 127.1

IN THE MATTER OF
K2 & ASSOCIATES INVESTMENT MANAGEMENT INC.,
SHAWN KIMEL and
DANIEL GOSSELIN

ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Subsection 127(1) and Section 127.1 of the
***Securities Act*, RSO 1990, c S.5)**

Citation: *K2 & Associates Investment Management Inc (Re)*, 2018 ONSEC 52
Date: 2018-10-19
File No.: 2018-60

Hearing:	October 19, 2018	
Decision:	October 19, 2018	
Panel:	D. Grant Vingoe	Vice-Chair and Chair of the Panel
	AnneMarie Ryan	Commissioner
	Lawrence P. Haber	Commissioner
Appearances:	Raphael T. Eghan	For Staff of the Commission
	Caitlin Sainsbury James Douglas	For K2 & Associates Investment Management Inc., Shawn Kimel and Daniel Gosselin

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on reasons delivered orally in the hearing, and as edited and approved by the Panel, to provide a public record.

[1] This hearing concerns a settlement agreement (the **Settlement Agreement**) between Staff of the Ontario Securities Commission and K2 & Associates Investment Management Inc., Shawn Kimel and Daniel Gosselin (the **Respondents**). After considering the submissions of the parties, and for the following reasons, we agree that the requested order is in the public interest.

[2] The Settlement Agreement includes a summary of facts with which the Respondents agree. A detailed description of the facts is provided in the Settlement Agreement, which is publicly available, so we will be brief in describing the background of the conduct at issue.

[3] K2 is a Toronto based manager of two private funds. K2 is registered with the Commission in the categories of Portfolio Manager, Investment Fund Manager and Exempt Market Dealer.

[4] Mr. Kimel is K2's founder, a director and a shareholder of K2. Kimel is registered with the Commission in the categories of portfolio advisor and exempt market dealing representative. During the period of October 2016 to December 2016 (the **Material Time**), Kimel was also K2's president, ultimate designated person and chief compliance officer. Mr. Gosselin is currently K2's president. Gosselin is also registered with the Commission in the category of exempt market dealing representative.

[5] During the Material Time, the Respondents engaged in trading on behalf of the two funds that resulted in, or contributed to a false or misleading impression, as to the supply of, or demand for, listed equity options traded on the Montreal Exchange (**MX**) and allowed K2 through Kimel and Gosselin to trade in such options on the MX at artificial prices.

[6] The Respondents engaged in approximately 60 incidents of improper trading during the Material Time, known as "spoofing". The spoofing involved the use of non *bona fide* direct electronic access orders placed by K2 to increase or decrease the National Best Bid or Offer in order for K2 to trade with Canadian financial institutions on an advantageous basis after the prices had moved and concurrently cancelling the initial orders.

[7] The Respondents coordinated their spoofing conduct and through their misconduct wrongly profited by approximately $250,000.

[8] The Respondents admit and acknowledge that they have breached Ontario securities law by contravening subsection 126.1(1)(a) of the Act and engaged in conduct contrary to the public interest.

[9] As part of the Settlement Agreement, the Respondents agree to the following sanctions and costs:

a. K2 shall pay an administrative penalty in the amount of $400,000;

b. Kimel shall pay an administrative penalty in the amount of $550,000;

c. Gosselin shall pay an administrative penalty in the amount of $20,000;

d. Kimel is prohibited from becoming or acting as a chief compliance officer or an ultimate designated person for a period of 10 years from the date of this Order;

e. Gosselin is prohibited from becoming or acting as a chief compliance officer or an ultimate designated person for a period of 5 years from the date of the Order;

f. Kimel is prohibited from trading in any securities or derivatives and from acquiring any securities, in a personal or professional capacity, for a period of 9 months from the date of the Order and shall be required to have all trades pre-approved by the chief compliance officer of K2 for an additional 18 months;

g. Gosselin is prohibited from trading in any securities or derivatives and from acquiring any securities, in a personal or professional capacity, for a period of 6 months from the date of the Order and shall be required to have all trades pre-approved by the chief compliance officer of K2 for an additional 12 months;

h. any exemptions contained in Ontario securities law shall not apply to Kimel for a period of 9 months from the date of the Order;

i. any exemptions contained in Ontario securities law shall not apply to Gosselin for a period of 6 months from the date of the Order;

j. K2 shall submit to a review of its trading practices and procedures, which shall be performed by a third party acceptable to Staff, and which shall be completed within 6 months from the date of the Order;

k. K2 shall pay costs in the amount of $30,000; and

l. notwithstanding any other provision contained in the Order, Kimel and Gosselin are permitted to redeem units of The K2 Principal Fund LP in which they have sole legal and beneficial ownership.

[10] The role of the Panel in considering a settlement agreement is to determine whether the sanctions proposed fall within a range of reasonable outcomes and should be approved as being in the public interest. It is important to note that a negotiated settlement will not generally yield the same sanctions that might follow a fully contested hearing. A settlement is based on the facts agreed to by the parties, which may or may not be the facts that the Panel would find after a contested hearing.

[11] In determining that the approval of the Settlement Agreement is in the public interest, we acknowledge that the Respondents cooperated with Staff in its investigation and that changes in the roles of the individual Respondents were made and additional training required of them as part of an internal disciplinary process.

[12] The conduct of the Respondents resulted in manipulation of market prices so that they profited from the establishment of artificial market prices. This type of conduct by registrants is serious because it undermines the integrity of our capital markets and reduces confidence in our markets.

[13] We find that it is in the public interest to approve this Settlement Agreement. We trust that the public nature of this settlement, including the admitted facts, together with the sanctions that have been agreed to, will ensure compliance by the Respondents in the future, as well as deterring others.

[14] We find that the settlement is reasonable and its approval is in the public interest. An order will be issued following the hearing in substantially the form proposed by the parties.

Approved by the Panel on this 19th day of October, 2018.

"D. Grant Vingoe"

"AnneMarie Ryan"

"Lawrence P. Haber"

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

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

REASONS AND DECISION
(Subsection 127(1) of the
***Securities Act*, RSO 1990, c S.5)**

Citation: *Meharchand (Re)*, 2018 ONSEC 51
Date: 2018-10-19

Hearing:	May 14, 17, 22, 24, 28 and 31, 2018	
Decision:	October 19, 2018	
Panel:	Timothy Moseley	Vice-Chair and Chair of the Panel
	Deborah Leckman	Commissioner
	Robert Hutchison	Commissioner
Appearances:	Dennis L. Meharchand	For himself and Valt.X Holdings Inc.
	Kate McGrann	For Staff of the Commission

TABLE OF CONTENTS

REASONS AND DECISION

I. OVERVIEW

[1] Staff of the Commission (**Staff**) alleges that from January 2012 to December 2016 (the **Material Time**):

a. Dennis Meharchand and Valt.X Holdings Inc. (**Valt.X Holdings**), of which Mr. Meharchand is the principal and directing mind, illegally distributed securities of Valt.X Holdings, contrary to subsection 53(1) of the *Securities Act* (the **Act**);[1]

b. Mr. Meharchand and Valt.X Holdings (together referred to as the **Respondents**) engaged in the business of trading in securities of Valt.X Holdings without being registered, contrary to subsection 25(1) of the Act; and

c. Mr. Meharchand engaged in fraudulent conduct contrary to clause 126.1(b) of the Act, by making misleading or untrue statements to investors regarding the use of their funds, in that he used a significant portion of investor funds for his personal benefit.

[2] For the reasons set out below, we find that the Respondents breached the Act as alleged above.

[3] Staff also alleges that as an officer or director of Valt.X Holdings, Mr. Meharchand authorized, permitted or acquiesced in the non-compliance of Valt.X Holdings with Ontario securities law, and that he should therefore be deemed also to have not complied with Ontario securities law, pursuant to section 129.2 of the Act. As we explain below, we find that Mr. Meharchand himself was a principal in all of the breaches committed by Valt.X Holdings. Accordingly, the requested finding is unnecessary.

[4] The Respondents were represented by legal counsel at most of the preliminary attendances leading up to the merits hearing. At the merits hearing itself, the Respondents were unrepresented by counsel. Mr. Meharchand appeared as the representative of Valt.X Holdings.

II. BACKGROUND FACTS

A. Valt.X companies and Mr. Meharchand

[5] Valt.X Holdings was established as the parent of, and the source of funds for, Valt.X Technologies Inc. (**Valt.X Technologies**), the operating company that purportedly developed, produced and sold cybersecurity hardware and software products. Valt.X Technologies owned all the patents and intellectual property in those products.

[6] Both Valt.X Holdings and Valt.X Technologies are Ontario corporations. We sometimes refer to them together as **Valt.X** when describing the activities that Mr. Meharchand carried on through the two corporations.

[7] During the Material Time, Mr. Meharchand was the chief executive officer, secretary, and a director of Valt.X Holdings. He was the president, secretary and a director of Valt.X Technologies. He was the directing mind of both corporations.

[8] None of Valt.X Holdings, Valt.X Technologies or Mr. Meharchand has ever been registered with the Commission.

[9] The Respondents say that Valt.X has been in the cybersecurity business since 2001. Mr. Meharchand testified, and told existing and potential investors, that during the Material Time the Respondents were primarily attempting to commercialize their cybersecurity products.

B. Funds

[10] The Valt.X companies derived virtually all of their funding from investors who bought shares of Valt.X Holdings. Some investors also contributed funds as a loan, or in return for convertible notes, or to participate in a licensing program known as “CrowdBuy”, described in more detail below.

[11] Investors were located in both Canada and the United States of America. All dollar amounts referred to in these reasons are in Canadian funds unless otherwise indicated.

[12] Prior to the Material Time, investors had contributed approximately $7 million, according to the Respondents. During the Material Time, investors contributed at least an additional $1.6 million (C$1.5 million and US$140,000), compared to total sales of less than $15,000 during that same four-year period.

[1] RSO 1990, c S.5.

[13] During the Material Time, Valt.X Holdings, Valt.X Technologies and Mr. Meharchand used more than ten bank accounts at four different banks, although not all of those accounts were open for the entire period. Mr. Meharchand controlled all the accounts. Mr. Meharchand testified that Valt.X Holdings dealt in cash "a lot"[2] and that the banks he dealt with had closed accounts because of their concern about the volume of cash withdrawals.

[14] Mr. Meharchand also testified that he routinely commingled his own personal funds and those of the Valt.X companies. According to him, any particular incoming funds could have been either personal loans to him, or investments in Valt.X, and we have only Mr. Meharchand's testimony as to whether a particular transaction fell into one category or the other. Mr. Meharchand himself was not always certain.

[15] Mr. Meharchand used the Valt.X Holdings accounts for Valt.X Holdings, for Valt.X Technologies, and for his own personal purposes. He testified that during the Material Time, no accounting was done at all. He agreed that it would be accurate to describe the state of affairs as "a shoe box" of invoices and other information.[3]

[16] A review of transactions in the various accounts reveals significant transfers among the accounts (more than $600,000 during the Material Time) and significant cash transactions (cash deposits of more than $115,000 and cash withdrawals of more than $250,000). Some transfers were to personal credit card accounts and cannot clearly be attributed to business expenses.

[17] Mr. Meharchand testified that he invested his own funds into Valt.X ("I am the main funder of the company and we are constantly throwing money into it"[4]), although the Respondents adduced no other evidence to support his contention. Staff's financial analysis reveals that $191,550 was contributed by Mr. Meharchand's spouse during the Material Time. However, as we explain below, the commingling of funds, the many improper payments, and the absence of records mean that we cannot conclude that funds from his spouse were in fact investments in Valt.X, as opposed to repayment of funds owed, for example.

[18] According to Mr. Meharchand, cash from the accounts was used for, among other things:

a. placing bets on horses at Woodbine Racetrack;

b. paying "black hat hackers", a team of individuals he says were doing development work for him or for Valt.X Technologies;

c. repayment of short-term loans; and

d. payments to noteholders, consultants and others.

[19] In addition to placing bets on horses using cash, Mr. Meharchand also used an online account in the name of Valt.X Holdings to fund off-track betting at Woodbine Racetrack. During the Material Time, that account received more than $450,000, at least $380,000 of which were transfers from the bank accounts referred to above. The online account at Woodbine Racetrack showed a loss of more than $275,000 over the Material Time.

III. PRELIMINARY MATTERS

A. 2015 Temporary Order

1. Issuance and expiry of the order

[20] Before addressing the issues that arise in this proceeding, we refer to an earlier proceeding, in which the Commission issued a temporary order against the Respondents and another individual (the **Temporary Order**),[5] pursuant to subsections 127(1) and 127(5) of the Act. The Temporary Order stated that it appeared to the Commission that, among other things:

a. the named parties (including the Respondents) may have engaged in, or held themselves out as engaging in, the business of trading in securities, without being registered as required, contrary to subsection 25(1) of the Act; and

2 Hearing Transcript, May 22, 2018, p 31.

3 Hearing Transcript, May 17, 2018, pp 92-3.

4 Hearing Transcript, May 28, 2018, p 23.

5 *Meharchand (Re),* (2015) 38 OSCB 8055.

b. the Respondents may have engaged in an illegal distribution of securities, contrary to subsection 53(1) of the Act.

[21] The Temporary Order provided that trading in securities of Valt.X Holdings was to cease, that trading in any securities by the named parties was to cease, and that the exemptions contained in Ontario securities law were not to apply to them. The Temporary Order was originally to expire on September 26, 2015. The Commission extended the Temporary Order twice, but the order ultimately expired on October 15, 2015, following a hearing at which the Commission denied Staff's request for a further extension.[6]

[22] In February 2017, Staff filed a Statement of Allegations against the Respondents and the current proceeding was commenced. This decision and these reasons relate to that enforcement proceeding.

2. Did the Temporary Order proceeding dispose of any issues raised in this proceeding?

[23] The Respondents submit that the allegations of unregistered trading and illegal distribution raised by Staff in this proceeding were "substantially dealt with" in 2015, when the Commission denied Staff's request to extend the Temporary Order.[7] The Respondents submit that Staff's arguments in the Temporary Order proceeding are repeated in this proceeding and should not be reconsidered.

[24] We do not accept that submission. The underlying allegations in the Temporary Order proceeding do overlap with those in the current proceeding, but the relevant time period is different, and the questions to be resolved are not identical. A temporary order under subsection 127(5) of the Act, or an extension of such an order under subsections 127(7) or 127(8), is an extraordinary measure used in some cases to prevent ongoing harm to investors or to the capital markets.

[25] When Staff seeks a temporary order, it is often true, as it was in this case, that the application comes at an early stage of Staff's investigation. In such a situation, the Commission is not required to make conclusive and wide-ranging findings about a respondent's conduct. The Commission merely determines whether it is in the public interest to issue or extend a temporary order.

[26] In considering an application for an extension under subsection 127(8), the Commission may take into account whether "satisfactory information" has been provided by a respondent. In the Commission's decision refusing to extend the Temporary Order against the Respondents, and based on the limited evidence available to the Commission at that time, the Commission held:[8]

> It is clear that Valt.X [Holdings] did not fully comply with Ontario securities law, given its failure to file reports of exempt distribution on time. However, for the reasons set out above, I find that Valt.X [Holdings] and Meharchand have adduced "satisfactory information" and therefore it is not in the public interest to extend the Temporary Order against them.

[27] The allegations in the current proceeding are broader than in the Temporary Order proceeding. For example, Staff now alleges fraud. Staff seeks a final determination about the Respondents' conduct, as opposed to an interim measure designed to protect investors during an ongoing investigation. In refusing to extend the Temporary Order, the Commission did not conclude that the Respondents were compliant with Ontario securities law. Instead, the Commission concluded that Staff had failed to establish, at that time and based on that evidence, that a temporary order was warranted pending further investigation. Staff then had to determine whether to seek sanctions through an enforcement proceeding. Staff decided to do so, and this proceeding is the result. We therefore reject the Respondents' submission that some of the issues in this proceeding have previously been decided.

B. Standard of proof

[28] The standard of proof in proceedings before the Commission is the civil standard of proof on a balance of probabilities.[9]

[29] The standard of proof for fraud under s. 126.1(1)(b) of the Act is the same as for any other allegation of a breach of Ontario securities law. While an allegation of fraud is very serious, the seriousness of the allegation does not alter the standard of proof. The question we must ask ourselves is whether, based on evidence before us that is sufficiently clear, convincing and cogent, it is more likely than not that the elements of the various allegations (including fraud) have been made out.[10]

---

6 *Meharchand (Re)*, 2015 ONSEC 43, (2015) 38 OSCB 10761 (***Meharchand 2015***).

7 Respondents' written submissions at para 19.

8 *Meharchand 2015* at para 64.

9 *F.H. v McDougall*, 2008 SCC 53 at para 40 (***McDougall***).

10 *McDougall* at para 46.

C. Extended and missed deadlines

[30] Below, in our analysis of the evidence, we note numerous instances in which the Respondents failed to produce any documents in support of their position, or instances in which the Respondents created documents while the hearing was underway without proper notice to Staff, as required by the Commission's *Practice Guideline*[11] and orders of the Commission made in this proceeding. We make our evidentiary findings in the context of the Respondents' overall conduct during the proceeding, which we summarize here.

[31] Throughout the preliminary steps leading up to the merits hearing, the Respondents had little or no regard for deadlines. They repeatedly asked for extensions of deadlines and typically missed deadlines (original or extended) without communicating with Staff or the Registrar.

1. Witness list, summaries of evidence, and affidavits

[32] For example, rule 27(3) of the Commission's *Rules of Procedure and Forms*[12] and subsection 5(1) of the Commission's *Practice Guideline* require that respondents file and serve a list of witnesses, and serve a summary of each witness's anticipated evidence on Staff, on or before a date set by the Commission. At a preliminary attendance in this proceeding on June 26, 2017, the panel ordered that the Respondents deliver their witness list and summaries by July 21, 2017. The Respondents failed to deliver anything by that deadline.

[33] At the next preliminary attendance on August 21, 2017, by which time the Respondents had still not complied with their obligation, Mr. Meharchand advised that the Respondents had missed the deadline due to difficulties reviewing Staff's disclosure. The panel accepted Mr. Meharchand's proposal that December 1, 2017 be the new deadline, and the panel urged Mr. Meharchand to communicate with Staff and to meet all deadlines. Nonetheless, the December 1, 2017 deadline passed without any materials from the Respondents.

[34] In December 2017, the Respondents had still not complied with their obligation. However, the parties requested that the hearing on the merits be conducted as a written hearing. The Commission declined to order that the hearing proceed in writing, ordering instead that each party adduce its own evidence by way of affidavits.

[35] The requirement for the Respondents to deliver a witness list and witness summaries was therefore replaced by a requirement to deliver affidavit evidence. Mr. Meharchand indicated that he intended to deliver his own affidavit and potentially affidavits from others, a decision he would make upon reviewing Staff's evidence. The Commission ordered a schedule for the exchange of affidavits. The Respondents committed to deliver their affidavit evidence by January 29, 2018, three weeks after Staff was to deliver its affidavits. The Panel inquired whether the Respondents needed more time. Mr. Meharchand said no, assuring the Panel that the affidavits would be delivered as ordered.

[36] Staff delivered its affidavit evidence as required. Shortly thereafter, Mr. Meharchand requested an extension of one month for medical reasons, though he provided no evidence in support of his request. Following submissions from the parties, the Commission granted a two-week extension, giving the Respondents until February 12, 2018, to deliver their affidavit evidence.

[37] After the revised deadline had passed and no affidavits had been delivered by the Respondents, Mr. Meharchand emailed the Registrar to request a one-week extension. No response to that request was given, but another week passed without any evidence from the Respondents. The Panel convened a hearing on February 27, 2018, to address the issue of outstanding materials, among other things. At that attendance, Mr. Meharchand requested a further 90 days to deliver affidavit evidence. He indicated, for the first time, that he would be the only witness to testify in response to Staff's allegations. He also stated his preference to deliver his evidence orally, despite the previous order requiring that evidence be adduced by way of affidavits. After hearing submissions from the parties, and in the interest of ensuring that the hearing proceed without further unnecessary delay, the Commission ordered that Mr. Meharchand be permitted to give oral evidence at the merits hearing, and ordered that he serve his summary of anticipated evidence by April 2, 2018.

[38] On April 2, 2018, Mr. Meharchand advised that he would be seeking a further two-week extension, citing late changes to Staff's affidavit exhibits as the reason. Those changes were inconsequential, but at an attendance on April 9, 2018, and with Staff's consent, the Commission ordered that Mr. Meharchand serve a summary of his anticipated evidence by April 23, 2018.

[39] On April 23, 2018, three weeks before the merits hearing began, Mr. Meharchand provided Staff with a summary of his anticipated evidence.

---

11 *Ontario Securities Commission Practice Guideline,* (2017) 40 OSCB 9009.

12 (2017) 40 OSCB 8988.

2. Documentary evidence

[40] The Respondents also delivered documentary evidence well past the deadlines to do so.

[41] On August 22, 2017, the Commission ordered that the parties deliver to each other, by December 1, 2017, copies of the documents that they intended to produce or enter as evidence at the merits hearing. As with the deadlines for witness summaries and affidavits referred to above, the December 1 deadline for documents was extended for the Respondents multiple times. Ultimately, the Respondents provided Staff with only two documents prior to the merits hearing and did not do so until April 23, 2018.

[42] Before the merits hearing commenced, Staff advised the Respondents that it would oppose the introduction of documents not specifically identified as documents the Respondents intended to rely on. Despite that, during the merits hearing the Respondents sought to rely on several documents not previously provided to Staff. In most instances, we allowed the documents to be tendered, subject to our later assessment as to what weight, if any, we should place on them. We address the relevant documents in more detail in our analysis below.

3. Conclusion regarding deadlines

[43] The Commission warned the Respondents on at least one occasion, months before the merits hearing, that a failure to comply with the requirement to deliver a proper summary of anticipated evidence might have serious consequences, including Staff's right to object to the admission of evidence not reflected in the summary. Mr. Meharchand expressly confirmed that he understood. However, the summary of Mr. Meharchand's expected evidence was limited in scope, and it included nowhere near the detail that Staff was entitled to expect.

[44] Throughout this proceeding, the Commission repeatedly exercised its discretion in favour of the Respondents. Among other things, the Commission allowed a mid-stream change in the procedure, by permitting the Respondents to adduce Mr. Meharchand's oral evidence, despite the Respondents' previous commitment to file affidavits, and even after Staff had already complied with its obligation to deliver affidavits.

[45] On several occasions, Mr. Meharchand asserted that he was having medical difficulties that interfered with his ability to comply with his obligations and to prepare for the merits hearing. These assertions were vague and wholly unsubstantiated. They often came only after a deadline had already been missed. We are unable to find, on a balance of probabilities, that these assertions were true. Even if they were, the various extensions of time and changes in procedure fully accommodated the concerns that we heard.

[46] We have taken all the above circumstances into account in our analysis below. We have made our decisions about what weight to place on the Respondents' evidence in the context of our conclusion that the Respondents had a full opportunity to prepare and present their case.

D. Geographical jurisdiction

[47] The Respondents argue that the Act applies only to Ontario residents and, therefore, all allegations relating to investors residing outside of Ontario should be dismissed.

[48] We disagree. The Commission's authority over securities regulation is not limited to the protection of investors who are inside Ontario. The Act allows for the regulation of corporations and individuals within the province in order to protect investors outside the province from unfair, improper or fraudulent activity. The relevant question is not whether investors were located in Ontario but "whether there is a sufficient connection between Ontario and the impugned activities and entities involved to justify regulatory action by the Commission".[13] The Act applies where the circumstances of the misconduct have a "real and substantial connection" to Ontario.[14]

[49] There is a real and substantial connection to Ontario in this case. Valt.X Holdings and Valt.X Technologies are Ontario corporations, and they operated out of Mr. Meharchand's house in Toronto. The Valt.X Holdings share subscription agreements stated that notice to the company should be addressed to Mr. Meharchand's home address. Mr. Meharchand prepared and distributed promotional and other material from Ontario and he deposited investor funds into bank accounts in Ontario.

[50] We find that the Commission has jurisdiction over all the matters alleged by Staff, whether or not some or all of the investors resided outside of Ontario.

---

13 *Crowe v Ontario Securities Commission*, 2011 ONSC 6918 (Div Ct) at para 32.

14 *Ontario (Securities Commission) v DaSilva*, 2017 ONSC 4576 (Sup Ct) at paras 54-57.

E. Hearsay evidence

[51] Some of the evidence admitted in this proceeding was hearsay. The *Statutory Powers Procedure Act*[15] allows the admission of hearsay evidence, whether or not that evidence would be admissible in court, provided the evidence is relevant to the subject matter of the proceeding.

[52] We must determine what weight we should give to admissible hearsay evidence (as we do with all evidence), while taking into account the importance of procedural fairness. We must avoid placing undue weight on uncorroborated evidence and on hearsay evidence that lacks sufficient indicia of reliability.[16] In these reasons, where we have assessed the appropriate weight to give to hearsay evidence, we have considered whether that evidence is corroborated or is consistent with available documentary evidence.

F. Transcripts of compelled evidence

[53] Transcripts of compelled interviews of Mr. Meharchand, conducted during Staff's investigation pursuant to section 13 of the Act, were filed by Staff as appendices to its affidavit evidence. The Respondents argued that the transcripts should not be admitted because the testimony was compelled, and Mr. Meharchand had thought that the purpose of the testimony was only to determine whether enforcement proceedings should be brought, not for use as evidence. In response, Staff submitted that exclusion of the transcripts would be unfair and would undermine the efficiency of the hearing.

[54] Transcripts of compelled testimony are a form of hearsay evidence. As the Commission has found in the past, there is no inherent reason why transcripts cannot be admitted.[17] It is for the panel to determine which portions of a transcript may be admitted and what use may be made of the admitted portions. The reliability concerns set out in paragraph [52] above would not apply under these circumstances.

[55] After hearing submissions from the parties at the outset of the merits hearing, we ruled that we would admit into evidence those portions of the transcripts that are cited in Staff's written submissions or in the affidavits filed by Staff, as well as any other portions that were referred to in the course of the hearing, whether for cross-examination purposes or otherwise.

G. Summary of Mr. Meharchand's anticipated evidence

[56] As explained earlier, the Commission's *Rules of Procedure and Forms* and *Practice Guideline* require that prior to a hearing, each party must serve on the other parties a summary of the anticipated evidence of each of the party's witnesses. The summaries, which help the parties prepare for the hearing, are not normally provided to the hearing panel.

[57] In this case, however, Staff asked to tender the summary of Mr. Meharchand's anticipated evidence. We accepted the summary, and marked it as an exhibit, for the following reasons.

[58] Mr. Meharchand was the Respondents' only witness. As he began to testify, Staff expressed the concern that much of his testimony included information that was not reflected in his summary. Following submissions on the point, we decided to accept the summary so that we could use it to determine what prejudice, if any, Staff would suffer if Mr. Meharchand continued to give evidence not reflected in the summary. We marked the summary as an exhibit for that purpose alone. We relied on it to help us determine what weight to give to elements of the Respondents' evidence, but we have not relied on its contents in support of any of our factual findings.

H. Mr. Meharchand's credibility and reliability

[59] Because Mr. Meharchand was the only witness for the Respondents, his credibility, and the reliability of his testimony, are particularly important issues in this proceeding. His testimony conflicted in material respects with Staff's evidence. We must therefore assess his credibility and reliability, to determine what weight we should attach to his testimony.

[60] In conducting that assessment, we are guided by the decision of the Ontario Superior Court of Justice in *Springer v Aird & Berlis LLP*,[18] in which Newbould J. adopted the following words from a British Columbia Court of Appeal decision:

---

15 RSO 1990, c S.22, s 15(1).

16 *Sunwide Finance Inc. (Re)*, 2009 ONSEC 20, (2009) 32 OSCB 4671 at para 22, citing *Starson v Swayze*, [2003] 1 SCR 722 at para 115.

17 See, *e.g.*, *Sextant Capital Management Inc. (Re)*, 2010 ONSEC 25, (2011) 34 OSCB 5829 at paras 8-9, *York Rio Resources Inc. (Re)*, 2011 ONSEC 37, (2012) 35 OSCB 99 at para 76.

18 2009 CanLII 15661 (ON SC), (2009) 96 OR (3d) 325 at para 14.

> The most satisfactory judicial test of truth lies in its harmony or lack of harmony with the preponderance of probabilities disclosed by the facts and circumstances in the conditions of the particular case.[19]

[61] Our assessment includes consideration of:

a. Mr. Meharchand's capacity to remember, and the accuracy of his statements;

b. the extent to which Mr. Meharchand's evidence is internally consistent, *i.e.*, not self-contradictory; and

c. the extent to which Mr. Meharchand's evidence is consistent with other proven or undisputed facts.[20]

[62] We are mindful of the fact that we need not necessarily come to one overarching conclusion about Mr. Meharchand's credibility and reliability, to be applied to all his testimony. It is open to us to find him to be credible in some respects but not in others. We may conclude that some aspects of his testimony are reliable, but that other aspects are not. We should be cautious about making a general finding based on isolated instances of questionable evidence. Having said that, this caution does not preclude an overall assessment of his credibility and reliability.

[63] In the circumstances of this case, even with that caution in mind, we are highly skeptical of Mr. Meharchand's evidence about any contentious issue. This is especially true where his evidence is uncorroborated, as almost all of it is. Mr. Meharchand's testimony changed in material respects from his sworn evidence in 2016 during the investigation of this matter, to the hearing before us. It also frequently evolved during the hearing itself, especially in response to troublesome issues that Mr. Meharchand was called upon to explain. It was rife with internal inconsistencies. It was directly contradicted by documentary evidence. In some respects, it was simply fanciful.

[64] The instances that give rise to our skepticism are too numerous to catalogue exhaustively. We mention the following examples briefly here, and we address each one in greater detail below:

a. Mr. Meharchand's evidence regarding the origin of funds received by the Respondents changed several times. (See paragraphs [156] to [158] below.)

b. Mr. Meharchand testified at the hearing that a team of "black hat hackers" was doing development work and that he paid them in cash. His evidence was unclear and inconsistent about for whom the black hat hackers were working, and about who paid them. (See paragraphs [152] to [155] below.)

c. With respect to the "CrowdBuy" program, by which participants could purchase Valt.X software licenses at a discount and earn returns through resale of the licences, Mr. Meharchand gave inconsistent answers about the number of participants. (See paragraph [90] below.)

d. Mr. Meharchand gave several different explanations as to the fate of the CrowdBuy program. (See paragraph [91] below.)

e. Mr. Meharchand's evidence changed regarding what happened to investor funds received following the Temporary Order. In addition, one such explanation, involving strangers coming to his home and asking for cash under threat of violence, was inherently fanciful, illogical, and unworthy of belief. (See paragraphs [159] to [165] below.)

f. Mr. Meharchand gave inconsistent and illogical evidence about debts, owing from Valt.X to investors, that he claimed were assigned to him. (See paragraphs [169] to [171] below.)

[65] Other examples, which we need not review in detail, bear the same characteristics and lead us to the same conclusion about Mr. Meharchand's reliability as a witness:

a. Mr. Meharchand's evidence changed regarding the use of an online account for betting on horse races.

b. Mr. Meharchand's evidence was not consistent regarding debts (including salary) owing to, and subsequently assigned by, L.A., Valt.X's former senior vice-president of sales and marketing.

---

19 *R v Pressley*, [1948] BCJ No 63, 94 CCC 29 (BC CA) at para 12.

20 *North American Financial Group (Re)*, 2013 ONSEC 43, (2013) 36 OSCB 12095 at para 258, citing *CED (Ont 4th)*, Vol. 31, Title 82, at s 126.

c. Mr. Meharchand gave varying evidence about the financial arrangements involving Maxlink Developments, the company run by a co-founder of Valt.X.

[66] The number, breadth and significance of the inconsistencies are compelling reasons for us to disbelieve Mr. Meharchand's uncorroborated evidence.

[67] Our skepticism is compounded by Mr. Meharchand's apparent disregard for the serious obligation to be truthful when testifying under oath. That disregard was illustrated by his testimony during his compelled examination in October 2016, during which he gave numerous undertakings to provide additional information or produce further documents. He fulfilled none of the undertakings.

[68] During the hearing before us, Mr. Meharchand first testified that he had given no undertakings to Staff. He later acknowledged that he had given undertakings, although he said that he had been "under duress" when giving them. Later in his testimony he gave yet a third explanation:

> … I would like to provide an explanation of what the undertakings were … The undertakings were never really me agreeing to things … We wound up in a situation where we had an antagonistic relationship with the people involved from Staff … And so essentially when I said to them in the meetings, for the most part, when I said things like, "yeah, sure," it was actually said very sarcastically. In fact, what I was telling them is "fuck you, fuck off." And so I never provided anything for them. You can take all the undertakings to mean that.[21]

[69] This most recent evidence is inconsistent with Mr. Meharchand's remarks at the time. During the 2016 examination, Mr. Meharchand often asked, politely, for clarification as to what information he was required to provide, or he negotiated the scope of a particular undertaking (*e.g.*, whether he would have to copy numerous documents or could provide originals to Staff so they could copy them). At one point, Mr. Meharchand stated, "I am writing things down here, but for the undertakings, I would appreciate it if you could send me a list."[22]

[70] If, from among Mr. Meharchand's various characterizations of the undertakings, we were to accept his most recent description, it would demonstrate his disregard for the oath he swore. However, we do not accept that characterization. Instead, we see his most recent testimony as one more example of Mr. Meharchand's willingness to say whatever he thinks will serve his interests at the time.

[71] For all of these reasons, we conclude that where Mr. Meharchand's testimony conflicts with other evidence, or is uncorroborated and self-serving, it is unreliable.

IV. ANALYSIS

A. Introduction

[72] Staff's allegations present the following primary issues:

a. Did the Respondents illegally distribute securities of Valt.X Holdings?

b. Did the Respondents engage in the business of trading in securities, without being registered?

c. Did Mr. Meharchand commit fraud?

[73] Staff adduced its evidence by way of two affidavits, each of which attached multiple documents. Mr. Meharchand cross-examined both witnesses at the hearing, but in doing so did not undermine their evidence in any consequential respect. We found no reason not to accept Staff's evidence as presented.

[74] We begin with our analysis of Staff's allegation that the Respondents illegally distributed securities of Valt.X Holdings.

B. Did the Respondents illegally distribute securities of Valt.X Holdings?

1. Introduction

[75] Subsection 53(1) of the Act prohibits a person or company from trading in a security if the trade would be "a distribution of the security", unless a prospectus has been filed or an exemption is available. The requirement to file a prospectus is

[21] Hearing Transcript, May 28, 2018, p 139.

[22] Examination Transcript, October 12, 2016, p 122.

a cornerstone of Ontario securities law.[23] A prospectus is fundamental to investor protection because it ensures that investors have full, true and plain disclosure of the information needed for them to properly assess the risks of an investment and to make an informed investment decision.

[76] Staff alleges that during the Material Time, the Respondents distributed three different securities without filing a prospectus and without an available exemption:

a. common shares of Valt.X Holdings;

b. convertible notes; and

c. investment in the CrowdBuy program.

[77] An analysis of the transactions in the various bank accounts identified above, taken together with records that Valt.X Holdings filed with the Commission, establishes that during the Material Time, the company raised at least C$1.5 million and US$140,000 from more than 100 investors. Due to the complete lack of accounting records, it is impossible to be precise about the total amount raised.

[78] The Respondents admit that they sold shares of Valt.X Holdings, that they issued convertible notes, and that they offered opportunities to invest in the CrowdBuy program. The Respondents do not dispute that these were securities or that they did not file a prospectus. They claim that they were entitled to rely on an exemption from the prospectus requirement.

[79] We consider the claimed exemption below. We first deal with each of the three different securities in turn.

2. Common shares of Valt.X Holdings

[80] The Respondents sold common shares of Valt.X Holdings using a twenty-page subscription agreement.

[81] Valt.X Holdings offered its common shares at $1.00 per share but typically issued them to investors at prices between $0.10 and $0.50 per share. Valt.X Holdings issued its shares on average four times per month and issued an additional 3,689,326 shares to investors who converted previously issued convertible notes into shares.

[82] The Respondents' trades of the Valt.X Holdings common shares were "distributions" as defined in subsection 1(1) of the Act, since the shares had not previously been issued. Because the Respondents did not file a prospectus, each trade was therefore a breach of subsection 53(1) of the Act unless the Respondents could properly rely on an exemption.

3. Conversion of existing loans to convertible notes

[83] Prior to the Material Time, Valt.X Holdings issued promissory notes to approximately seven or eight investors. Mr. Meharchand testified that while there may still be some promissory notes outstanding, most investors exchanged their promissory notes for convertible notes, either before or during the Material Time. The conversion ratio ranged between $0.19 and $1.00 per share. If an investor elected not to convert, the notes paid an annual 15% interest rate.

[84] With respect to those investors who did elect to convert their notes into shares during the Material Time, Valt.X Holdings filed reports suggesting that the conversions yielded $1.4 million. However, Mr. Meharchand explained that those were the funds initially provided by the investors when they loaned the money to Valt.X, as early as 2005. Investors were not required to provide additional funds on conversion, so no additional funds were raised during the Material Time from these transactions.

[85] In addition, Valt.X Holdings issued convertible notes during the Material Time. As noted above, the Respondents do not dispute that the convertible notes were securities[24] or that they filed no prospectus.

[86] We find that each issuance of common shares on conversion was a distribution of those shares, and that each issuance of a convertible note was a distribution of the note. All of these transactions would therefore be in breach of subsection 53(1) of the Act unless an exemption was available.

4. CrowdBuy program

[87] Beginning in early 2016, in response to the Temporary Order, the Respondents initiated their CrowdBuy program. The Respondents solicited participants in the program via the Valt.X website and through emails. The Respondents claimed

[23] *Jones v FH Deacon Hodgson Inc,* 1986 CanLII 2559 (ON SC), (1986) 9 OSCB 5579 at para 10.

[24] Clause (e) of the definition of "security" in subsection 1(1) of the Act.

participants could purchase Valt.X software licenses at a discount and, through the resale of those licenses, could earn guaranteed returns of 20-50% in the first year. Participants could either sell the licenses themselves or use sales agents hired by Valt.X. Participants could subscribe online using a credit card or PayPal. A video accessible on Valt.X's website stated that anyone could participate for a minimum of $500.

[88] Participants were offered the option to convert their CrowdBuy subscriptions into Valt.X Holdings common shares. There was no mention that investors would have to qualify as accredited investors.

[89] Mr. Meharchand made exaggerated statements regarding the program's progress and success. In February 2016, he stated that Valt.X was in the process of hiring 50 full-time sales representatives and 50 support technicians. In March 2016, Mr. Meharchand emailed an investor stating, "initial reactions (are) that the Valt.X CrowdBuy Program will be a success." In an email to investors dated August 2016, he referred to a "Send Your House to Work Program", which was an invitation to investors to borrow against their homes to invest. Mr. Meharchand stated he was participating for $500,000 personally and referred to the "other 50 potential participants".

[90] The program attracted little interest, although Mr. Meharchand's evidence varied with respect to the number of subscriptions sold. During his 2016 examination, he testified that only his daughter's friend participated, by investing $10,000 in cash. At the merits hearing, Mr. Meharchand initially confirmed that there had been only the one participant and that her subscription had later been converted to a loan that was repaid. Later in the hearing, when shown an email he had written to an investor, referring to the "first CrowdBuy participants", he changed his evidence to advise that his son had also been a participant. He produced no evidence to corroborate that claim. He stated that both subscriptions were later cancelled.

[91] Mr. Meharchand's evidence as to what happened to the program changed during the merits hearing. He initially testified that he withdrew the program after he received legal advice that it likely involved an investment contract, and that it was therefore a security. He later said that he withdrew the program, "redefined" it, and transferred it to a related U.S. company, and that he has accepted "deals" under the "redefined" program.

[92] In our view, the Respondents properly conceded that participation in the CrowdBuy program constituted a "security" under the Act, by virtue of being an "investment contract".[25] The Commission has repeatedly applied the direction of the Supreme Court of Canada that an investment contract involves an investment of funds with a view to profit, in a common enterprise, where the profit is to be derived largely from the efforts of the person or entity that controls the enterprise.[26]

[93] In this case, the CrowdBuy program contemplated that investors would provide funds to the Respondents, who were to hire sales agents to re-sell software licenses to third parties. The investors were passive and dependent on the Respondents to generate profits resulting from the sale of the licenses. As the Respondents admit, the program therefore meets all the necessary criteria of an investment contract. Every issuance of an opportunity to participate in the program was a distribution and would be a breach of subsection 53(1) of the Act, absent an exemption.

5. Accredited investor exemption

[94] Having determined that the Respondents effected distributions of common shares, convertible notes, and CrowdBuy program participation, all without a prospectus, we now consider whether the Respondents are entitled to rely on an exemption from the prospectus requirement.

[95] The burden of establishing entitlement to an exemption lies on the party claiming the benefit of that exemption.[27]

[96] Numerous exemptions to the prospectus requirement are potentially available under Ontario securities law. The Respondents refer only to one. They submit that they are entitled to rely on subsection 73.3(2) of the Act, which provides that the prospectus requirement does not apply to a distribution where the purchaser purchases the security as principal and is an "accredited investor". In the context of this proceeding, "accredited investor" is defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**). The term includes, among others:

a. an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000;[28] and

b. an individual whose net income before taxes exceeded $200,000 in each of the two most recent calendar years, or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of the two most

[25] Clause (n) of the definition of "security" in subsection 1(1) of the Act.

[26] *Pacific Coast Coin Exchange of Canada Ltd v Ontario (Securities Commission)*, [1978] 2 SCR 112 at 128-30.

[27] *Lydia Diamond Exploration of Canada Ltd. (Re)* (2003), 26 OSCB 2511 at para 83.

[28] Clause (j) of the definition of "accredited investor".

recent calendar years, and who reasonably expects to exceed that net income level in the current calendar year.[29]

[97] The share subscription agreement used by Valt.X Holdings included, as an appendix, an accredited investor certification. In at least some cases, the investor appears to have certified that she/he qualified as an accredited investor. Check marks appear on the forms, indicating which component of the exemption (*e.g.*, assets or income) applies to the investor.

[98] The evidence is not clear, however, that the writing on all the forms was actually placed there by, or with the knowledge or understanding of, the particular investor. Mr. Meharchand had little interaction with investors – he distributed subscription agreements, but he rarely met or communicated with investors before they made their investments. Not surprisingly, a number of investors told Staff that they misunderstood the requirements and that they therefore incorrectly certified their status as accredited investors. In fact, of the nine investors contacted by Staff, none met the test for the accredited investor exemption.

[99] While Staff's evidence about what the investors reported is hearsay, we have no reason to doubt its accuracy or reliability. The Respondents did not adduce any evidence to contradict that of Staff. We accept Staff's evidence as presented.

[100] In late 2015, Valt.X Holdings filed sixteen Form 45-106F1 Reports of Exempt Distribution with the Commission. These filings represented that 160 distributions of Valt.X Holdings securities to approximately 100 individuals and companies between February 2012 and August 2015 qualified under the accredited investor exemption.

[101] A seller of securities who seeks to rely on the accredited investor exemption cannot simply accept, without discussion, an investor's self-certification that the investor falls within the definition. The seller must explain the exemption to the purchaser, and through reasonable diligence must determine facts upon which the seller can conclude that the purchaser qualifies as an accredited investor and that the exemption is available.[30]

[102] Mr. Meharchand undertook no such inquiry. As he admitted in his 2016 examination, "As long as the things came in and they were signed, we accepted them. I did not do any due diligence beyond that."[31] The Respondents therefore fully relied on the investors' self-certification as to their accredited investor status. In the Respondents' submission, that is all they were required to do. For the reasons explained above, we reject that submission.

[103] Before leaving our analysis of the Respondents' purported reliance on the accredited investor exemption, we note the Respondents' submission that Staff relies on versions of NI 45-106 and/or its Companion Policy that were not in force throughout the Material Time. Some of the revisions to the Companion Policy do address the obligations borne by a seller of securities who relies on a prospectus exemption.

[104] In our view, however, those revisions merely explain rather than change a seller's obligations. We do not rely on the Companion Policy in reaching any of the findings in this decision. We need not so rely, because, as we have noted above, Commission decisions dating back before the beginning of the Material Time make clear what a seller's obligations are in connection with an exemption from the prospectus requirement.

[105] We conclude that the Respondents distributed securities of Valt.X Holdings without a prospectus and without an available exemption. In doing so, they breached subsection 53(1) of the Act.

C. Did the Respondents engage in the business of trading in securities, without being registered?

[106] Having confirmed that the Valt.X Holdings common shares, the convertible notes, and participation in the CrowdBuy program all constituted securities, we turn to our consideration of whether the Respondents breached subsection 25(1) of the Act, which prohibits a person or company from "engaging in the business of trading in securities", or from holding themselves out as doing so, unless the person or company is properly registered or is exempt under Ontario securities law.

[107] Like the prospectus requirement, registration is also a cornerstone of Ontario securities law. The registration regime protects investors and promotes confidence in Ontario's capital markets by seeking to ensure that anyone who is in the business of selling or promoting securities meets the necessary standards of proficiency, solvency and integrity, among

[29] Clause (k) of the definition of "accredited investor".

[30] *MRS Sciences Inc. (Re)*, 2011 ONSEC 5, (2011) 34 OSCB 1547 at para 189; *Goldpoint Resources Corp. (Re)*, 2011 ONSEC 12, (2011) 34 OSCB 5478 at para 100.

[31] Examination Transcript, October 12, 2016, p 84.

others.[32] The requirement also affords the Commission and self-regulatory organizations the necessary opportunity to monitor registrants' conduct and to act where appropriate in order to achieve the purposes of the Act.[33]

[108] As noted above, neither Respondent has ever been registered. The Respondents did not suggest that they were entitled to an exemption from the prohibition in subsection 25(1) of the Act, and there is no evidence that they purported to rely on an exemption. We therefore need consider only whether they engaged in the business of trading in securities or held themselves out as doing so.

[109] The Commission has adopted Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**31-103CP**), which, among other things, sets out criteria to be considered in determining whether a person or company is engaged in a business when trading or advising in securities.[34]

[110] The Respondents submit that Staff relies on a version of 31-103CP that post-dates some of the impugned conduct. We note that 31-103CP is not part of Ontario securities law, and we agree with Staff's submission that the amendments to 31-103CP did not create any new requirements. While our conclusions in this matter are consistent with the guidance set out in 31-103CP, we do not rely on that instrument as the foundation for our findings.

[111] The "business purpose" test in section 1.3 of 31-103CP includes the following factors, which we adopt:

a. directly or indirectly carrying on the activity with repetition, regularity or continuity;

b. directly or indirectly soliciting, including contacting anyone by any means to solicit securities transactions; and

c. receiving, or expecting to receive, compensation for carrying on the trading.

[112] All three criteria are satisfied in this case.

[113] Using various means of communication during the Material Time, the Respondents repeatedly solicited members of the public to invest in Valt.X Holdings. Those efforts included the following:

a. maintaining a publicly accessible website containing promotional materials regarding investment opportunities, and providing a mechanism by which investors could pay for their shares of Valt.X Holdings after submitting subscription documents;

b. maintaining an online presence on other platforms, in which Mr. Meharchand indicated that he was hoping to connect with potential investors, since Valt.X Holdings was seeking to raise capital;

c. attending, among other things, trade shows, conferences (including of anesthesiologists, whom Mr. Meharchand regarded as likely accredited investors), a real estate investment training event, and meetings of a not-for-profit inventors' co-operative and of an investment group;

d. distributing (through email, the Valt.X website, and in-person contact) materials that solicited investment in Valt.X Holdings by making exaggerated claims such as "huge market opportunity," "opportunity to earn 100x principal," "double your money in one year or less," and "returns up to 50% in 1 year";

e. actively encouraging existing investors to refer new investors and offering compensation to those who were successful in doing so; and

f. engaging consultants to make introductions to large institutional investors.

[114] By carrying out those activities, and by providing and accepting subscription agreements, issuing share certificates, and accepting investor funds for the purchase of securities, the Respondents regularly and continuously engaged in "trading", as that term is defined in subsection 1(1) of the Act.

[115] As the Commission has previously held, we "must determine whether the activities in this case cross the line between permissible solicitation and the business of trading."[35] 31-103CP provides, and we agree, that if the subject trading is

---

[32] *Gregory & Co. Inc. v Quebec (Securities Commission)*, [1961] SCR 584 at 588, 1961 CanLII 75; clause 27(2)(a) of the Act.

[33] *Limelight Entertainment Inc (Re)*, 2008 ONSEC 4, (2008) 31 OSCB 1727 at para 135; *Momentas Corporation (Re)*, 2006 ONSEC 15, (2006) 29 OSCB 7408 at para 46.

[34] *Moncasa Capital Corp. (Re)*, 2013 ONSEC 20, (2013) 36 OSCB 5320 at para 40; *Rezwealth Financial Services Inc. (Re)*, 2013 ONSEC 28, (2013) 36 OSCB 7446 at para 211.

[35] *Blue Gold Holdings (Re)*, 2016 ONSEC 24, (2016) 39 OSCB 6947 at para 20 (***Blue Gold***).

incidental to a firm's primary business, it may not constitute the business of trading. However, in this case, we find that during the Material Time, the primary business, and virtually the entire business, of Valt.X Holdings was to trade its securities.

[116] Whatever Mr. Meharchand's original intentions may have been for the Valt.X companies, by the beginning of the Material Time (about ten years after the inception of the business), and throughout the Material Time, investors were the only real source of funds. The fact that sales revenue over the five-year period was less than $15,000, in contrast to the more than $1.6 million raised from investors, is compelling evidence to that effect.

[117] We conclude that whatever legitimate cybersecurity business might have existed well before the Material Time did not meaningfully persist. During the Material Time, the Respondents were primarily engaged in the business of trading securities and therefore contravened subsection 25(1) of the Act.[36]

D. Did Mr. Meharchand commit fraud?

1. Introduction

[118] We turn now to Staff's third principal allegation. Staff alleges that during the Material Time, Mr. Meharchand engaged in or participated in acts, practices, or courses of conduct relating to securities that he knew perpetrated a fraud on existing and potential investors in Valt.X Holdings, contrary to clause 126.1(1)(b) of the Act.

[119] It is well established that the elements of fraud under the Act are:

a. the *actus reus*, or objective element, which must consist of:

   i. an act of deceit, falsehood, or some other fraudulent means; and

   ii. deprivation caused by that act; and

b. the *mens rea*, or subjective element, which must consist of:

   i. subjective knowledge of the act referred to above; and

   ii. subjective knowledge that the act could have as a consequence the deprivation of another.[37]

2. *Actus reus*, or objective element

[120] Clause 126.1(1)(b) of the Act prohibits acts "of deceit, a falsehood or some other fraudulent means".[38] An act is of deceit or is a falsehood if the person who committed it "as a matter of fact, represented that a situation was of a certain character, when, in reality it was not." The third category, "other fraudulent means", includes acts that a reasonable person would consider to be dishonest, such as "the use of corporate funds for personal purposes, non-disclosure of important facts… [and] unauthorized diversion of funds."[39]

[121] The second component of the *actus reus*, deprivation, is satisfied on proof of actual loss to one or more investors, actual prejudice to investors' economic interests, or even the risk of prejudice to those interests.[40]

3. *Mens rea*, or subjective element

[122] In order to establish the necessary subjective element for a finding under clause 126.1(1)(b) of the Act, Staff must show that the person who has allegedly committed the offence "knows or ought reasonably to know" that the conduct involved perpetrates a fraud. As the Supreme Court of Canada has held, the "accused must have subjective awareness, at the very least, that his or her conduct will put the property or economic expectations at risk."[41]

[123] The Court further stated that "where the accused tells a lie knowing others will act on it and thereby puts their property at risk, the inference of subjective knowledge that the property of another would be put at risk is clear."[42]

---

36 *Blue Gold* at paras 21-22.

37 *R v Théroux*, [1993] 2 SCR 5 at 21 (***Théroux***), cited in *Richvale Resource Corp (Re)*, 2012 ONSEC 13, (2012) 35 OSCB 4286 at para 102.

38 *Théroux* at 21.

39 *Théroux* at 15.

40 *Théroux* at 15-16.

41 *Théroux* at 26.

42 *Théroux* at 26.

[124] It is no answer for a person accused of fraud to maintain that she or he did not think the acts were wrong, or that she or he hoped that no deprivation would occur.[43]

4. Analysis of the fraud allegation

(a) Introduction

[125] We must determine the following issues:

a. Did Mr. Meharchand's actions with respect to existing or potential investors in Valt.X Holdings constitute prohibited acts of deceit, falsehood or other fraudulent means?

b. If so, did those actions result in deprivation to existing or potential investors by causing them actual loss or by placing their pecuniary interests at risk?

c. If the first two questions are answered affirmatively, did Mr. Meharchand have the required subjective knowledge of the prohibited acts?

d. If so, did Mr. Meharchand's subjective knowledge include the actual or possible consequence of deprivation to existing or potential investors?

[126] With respect to the acts that are the subject of Staff's allegations, we find that there is no basis whatsoever to distinguish between acts of Valt.X Holdings and acts of Mr. Meharchand. All of the evidence established that the two Respondents were, as a practical matter, one and the same, even to the extent of the commingling of funds. Further, there is no credible evidence that any activities of Valt.X Holdings were carried out by anyone other than Mr. Meharchand. He was the sole directing mind of the company.

(b) Did Mr. Meharchand's actions with respect to existing or potential investors in Valt.X Holdings constitute prohibited acts of deceit, falsehood or other fraudulent means?

i. Introduction

[127] Staff's allegations focus on Mr. Meharchand soliciting and accepting funds, purportedly for use by Valt.X Holdings in its operations. Mr. Meharchand, or individuals at his direction, used four main methods of solicitation: (i) direct solicitations by him, (ii) referrals from existing investors, (iii) individuals engaged and compensated for referring potential investors, and (iv) materials and communications available to investors online.

[128] Once the Respondents received solicited funds, those funds were typically used for purposes different from those Mr. Meharchand described in his testimony as "legitimate" corporate uses. In considering whether Mr. Meharchand's acts constituted prohibited acts under clause 126.1(1)(b) of the Act, we pay particular attention to:

a. the nature and content of Mr. Meharchand's statements about the investments, including whether those statements were truthful; and

b. the actual use to which accepted funds were put.

ii. Mr. Meharchand's statements

[129] Regardless of the form of solicitation adopted by Mr. Meharchand or the nature of the investment offered, the predominant, if not sole, message of his statements was that the funds received would be used in various aspects of Valt.X's operations. These included the acquisition of patents, research and development, product manufacturing, additional staff and business opportunities associated with the commercialization of its cybersecurity products. We received extensive evidence about these many statements, which Mr. Meharchand made frequently and to many audiences.

[130] Staff alleges that Mr. Meharchand's statements were untrue and misleading in the sense that the Valt.X companies did not carry on any real commercial business, and the statements were exaggerated.

[131] As explained above, the evidence was consistent with Staff's position regarding the Valt.X companies' activities. Staff's thorough review of the transactions in the various bank accounts reveals little that suggests any real commercial activity.

[43] *R v Drabinsky*, [2009] 242 CCC (3d) 449 (ON SC) at para 473.

[132] The following examples are numerous, but illustrate the frequency and extent of the statements:

a. A presentation deck posted on the Valt.X website and provided to investors stated that the use of a $10 million capital raise would include "strengthening business development, support and R&D teams, marketing investment to increase sales, expand operations and delivery resourcing, expand training and customer support, and software licensing and incremental server infrastructure leases."

b. An executive summary posted on the Valt.X website and provided to investors stated that funds would be used to "facilitate launch of Valt.X Absolute Security for Windows to generate $3.75 million in launch revenue, $100,000 Internet Sales Licensing Servers and Infrastructure, $900,000 Sales, Marketing, R&D and General Working Capital."

c. An email update sent to investors in April 2012 stated: "Current Investment Opportunity: We are looking to place up to $ 1.5 million in Shares or Convertible Notes – First Security available. If interested in acquiring more shares or participating in Convertible Notes let me know. Use of Funds: A portion of the funds will be used to payout [sic] current Debt/Noteholders. Additional uses are: Valt.X Cyber Secure Notebook Production, R&D Notebook S Chip conversion kit being developed and general working capital."

d. An email update sent to investors in February 2013 stated: "I am looking to place a funding amount of $550K to $1 million as a bridge to a future round of $3M+ (planned $10M). We are offering 12% Annual Interest, Convertible at 20% Discount to the next funding round with first security – effectively a 50% upside to next round. Primary use of funds is to bring in a sales team to recruit Value Added Resellers and approach Education Sector and Government accounts."

e. An email update sent to investors in June 2013 stated: "It is imperative that we continue to get support from current investors in the short term to upkeep our Patent Portfolio and R&D team. The Company is in the process of placing a $1 -2 million round with the first $1 million expected to close in 60-90 days ... Share price is $0.50 per Share – Acquisition goal $20+ – IPO Goal $ 10 minimum – $80-100 possible."

f. An email update sent to investors in March 2014 stated: "I am requesting that all current investors participate in the round for whatever they can. The placement will be Shares at $0.50 per share… Use of funds is as follows: A) Sales and Marketing Staff – $250K B) Complete development of in-Development products – $250K."

g. An email sent to investors in April 2014 stated: "On the funding side we could use another $100K to produce more Valt.X Cyber Secure Notebook samples and samples of the Valt.X Cyber Secure Solid State Drives…".

h. An email update sent to investors in August 2014 stated: "I am looking to place up to $100K – short term 2-3 month loan or equity to cover business development activity – shows and Lobby groups. Can do 15% annual interest."

i. An email update sent to investors in August 2014 stated: "Valt.X is looking to place $100,000 in Interim Funding to cover additional urgent R&D and Business Development expenses in the short term."

j. An email update sent to investors in October 2015 stated: "Valt.X is in urgent need of funding to cover expenses – including Patent maintenance, legal, accounting expenses, R&D and evaluation products and systems …"

[133] Staff's evidence, by itself, would lead to the conclusion that it is more likely than not that the Valt.X companies were not carrying on a meaningful cybersecurity business, and that the representations set out above with respect to the companies' activities were false. Mr. Meharchand had every opportunity to produce records to displace that inference; indeed, he frequently promised to do so (*e.g.*, he said he would produce 2011 financial statements that had been professionally prepared). He produced no such records.

[134] Mr. Meharchand also had every opportunity to call witnesses to support his position. He chose not to. Absent any cogent evidence to contradict Staff's position, we reach the conclusions contemplated in paragraph [133] above.

[135] Having said that, even if Valt.X was carrying on a legitimate cybersecurity business throughout the Material Time, we must consider whether the statements were misleading and untruthful in that they failed to describe the actual use of the majority of the funds collected from investors.

[136] In responding to the allegations that his statements were fraudulent, Mr. Meharchand submits that, in effect, investors were told all they needed to know, and that various payees were merely being paid what they were owed. We will review some of these payments in more detail below, but bank records show many significant payments with respect to which investors had no information. These included withdrawals of money for betting on horses, cash transactions for which no

record was kept, the satisfaction of alleged debts to Mr. Meharchand, and other payments to him in priority to other Valt.X debt or expenses. While some of the above-cited statements to investors referred to the repayment of debt or other obligations of the business (*e.g.*, paragraph [132](c)), such disclosure was vague and intermittent. It would not satisfy by any measure what an investor could reasonably expect to receive and understand.

[137] The following examples illustrate the solicitation that Mr. Meharchand undertook, and the manner in which he communicated to existing and potential investors.

[138] Mr. Meharchand actively solicited investors, including by attending the various events referred to in paragraph [113](c) above. Some of the events may have had as their primary purpose the exchange of technical knowledge. However, according to attendees, Mr. Meharchand used some of the meetings to aggressively promote investments in Valt.X Holdings. In each of these venues, Mr. Meharchand disseminated the above-described information about Valt.X's supposed business activities, through PowerPoint presentations, videos and/or reference to the Valt.X website.

[139] In addition, Mr. Meharchand sought referrals both by requests made to specific investors and by general communications to all investors, referring to the need for funds. For example, two investors in Saskatchewan (G.K. and G.H.) were solicited in this manner by two existing shareholders (I.M. and D.H.). The investors expected that the funds would be used solely for Valt.X's business and not by Mr. Meharchand personally or for any other purpose. At least one of the recruited investors had done some research via Valt.X's website and reviewed some of the materials made available to investors and the public from time to time.

[140] Mr. Meharchand made extensive use of email, Valt.X's website, and social media to solicit investors. While the modes, platforms and content varied over time, there was usually a link to information about Valt.X's investment programs. We saw no mention of the possibility that funds would be used for purposes unrelated to Valt.X's business.

iii. Use of funds

[141] With respect to the use of investor funds, Staff's evidence described in detail and categorized the transactions that occurred in the various bank accounts, as well as in some related credit card accounts in the name of Mr. Meharchand and his family. Even though Staff's analysis was thorough and coherent, we are challenged in our ability to form a clear and complete picture of the flow of funds during the Material Time, because of the Respondents' failure to keep records or to engage even rudimentary bookkeeping assistance.

[142] Just three weeks before the merits hearing began, when the Respondents delivered to Staff the summary of Mr. Meharchand's anticipated evidence, the Respondents included with that summary an Excel worksheet that purported to show, at a high level, the Respondents' version of the sources and uses of funds. No supporting documentation was included.

[143] The Respondents produced a revised version of the worksheet at the beginning of the merits hearing, and made further revisions as the hearing progressed. The assertions contained in the financial summary continued to be unsupported by documentary evidence. Further, the high-level nature of the summary, and the Respondents' failure to deliver it in a timely way, denied Staff a proper opportunity to challenge it. For these reasons, either of which is sufficient by itself, we attach no weight to the different versions of the summary.

[144] We also reject Mr. Meharchand's testimony about what he described as "legitimate expenses" that Valt.X incurred. He began by taking Staff's analysis, and then for each line item that summarized expenditures (*e.g.*, $736,077 "paid to companies") he specified a percentage that he said was legitimately attributable to Valt.X (100%, in the case of "paid to companies"). Once again, he produced no original or source documentation to corroborate these claims. He generated an additional worksheet, adduced only at the hearing itself, that listed various transactions along with payee names.

[145] In his testimony, he explained the reason for the payments. For example, he identified approximately $175,000 in payments as being completely or partially attributable to an entity he described as being patent attorneys in Taiwan. He produced no retainer letter, invoices, emails, correspondence, or patent documentation to substantiate that assertion. Further, his failure to comply with his pre-hearing obligations denied Staff any proper opportunity to challenge the testimony. Once again, either reason alone is sufficient for us to reject his testimony in this regard.

[146] Mr. Meharchand's primary purpose in establishing these payments is to show that at all times, Valt.X Holdings owed him substantial amounts of money and that virtually all of the expenditures were legitimately on behalf of the company. According to the last version of his financial summary, tendered at the merits hearing, legitimate expenses during the Material Time totaled more than $2.5 million.

[147] In addition to that amount, Mr. Meharchand claims entitlement to salary of "up to" $20,000 per month, but in respect of which he "never [took] a cent",[44] resulting in an additional debt of $1.2 million from Valt.X to him in respect of the Material Time. Again, we have neither documentary evidence nor any other form of corroboration to support this claim. Indeed, Mr. Meharchand himself testified that investors "deserve to be paid first before we get paid."[45] The investors have not been paid. We therefore cannot accept Mr. Meharchand's contention that Valt.X Holdings owes him $1.2 million in compensation. In any event, given Mr. Meharchand's assertion that he has never actually taken any salary, this claimed entitlement has no effect on any analysis of the cash flow, including the payments out of the various bank accounts.

[148] We therefore return to Staff's analysis, which disclosed numerous recurring payments or credits. Mr. Meharchand explained some of these as follows:

a. mortgage payments on the home in which Mr. Meharchand and his wife lived, explained in more detail at paragraph [168] below;

b. satisfaction of indebtedness to Mr. Meharchand personally as a result of his acceptance of the assignment of debts owed by Valt.X Holdings to certain third parties; and

c. payments relating to betting on horses by Mr. Meharchand and by third parties who used Mr. Meharchand's access to an online account with Woodbine Racetrack.

[149] Staff alleges these to be improper payments that resulted in deprivation to investors.

[150] There may have been other significant payments that were made from investor funds, in cash, that have no reasonable connection to Valt.X's business. Once again, we are prevented from having a clear picture of these cash payments by the complete absence of any records to support them. Our uncertainty is aggravated by the Respondents' failure to comply with their pre-hearing disclosure obligations, and especially by Mr. Meharchand's propensity to offer varying and contradictory explanations for certain events.

[151] This propensity is best illustrated by two examples. The first relates to the black hat hackers. The second relates to funds received after the issuance of the Temporary Order in the fall of 2015.

[152] In his October 2016 examination, Mr. Meharchand made no mention of the black hat hackers. He introduced the topic during his testimony at the merits hearing, without having previously disclosed the idea through documents or the summary of his anticipated evidence. At the merits hearing, he testified that he formed "a new development team" in early 2013 but "they don't get on the books. They get paid in cash for the work that they do…".[46]

[153] While he stated that "I am not claiming their work" on the financial summary that he produced,[47] he later stated that Valt.X Holdings was paying money to him "over a period of time" because of his "need for use of funds [for] black hat development teams that I needed to fund."[48] He also stated that "We needed to generate cash no matter how the money came into the company because we were dealing with a hacking team."[49] [emphasis added]

[154] Mr. Meharchand explained that he was not attributing the cost of the black hat hackers to Valt.X Holdings because "the technology belongs to me and I am going to put it … into my U.S. company."[50]

[155] Mr. Meharchand produced no records of any kind that would corroborate the existence of the black hat hackers or that would shed any light on the nature of their relationship with Mr. Meharchand or Valt.X Holdings. His oral evidence on the point came late in the proceeding, and was confusing and contradictory.

[156] The second example relates to funds that Mr. Meharchand or Valt.X Holdings received after the issuance of the Temporary Order. Mr. Meharchand testified that he placed a hold on accepting new investments until resolution of matters before the Commission, that he had therefore declined nine investors' attempts to invest, and that he had placed their funds "in limbo".

[157] Staff's analysis shows the funds coming into a Valt.X Holdings bank account, and some of the funds then being disbursed to his account at Woodbine Racetrack. Mr. Meharchand later conceded that he may have been wrong when he said that

44 Hearing Transcript, May 22, 2018, p 73.
45 Hearing Transcript, May 22, 2018, p 73.
46 Hearing Transcript, May 22, 2018, p 59.
47 Hearing Transcript, May 22, 2018, pp 59-60.
48 Hearing Transcript, May 22, 2018, p 81.
49 Hearing Transcript, May 28, 2018, p 90.
50 Hearing Transcript, May 28, 2018, p 30.

all of the attempted investments had been placed in limbo. With respect to funds from at least one individual (M.D.), Mr. Meharchand could not be sure whether the funds were an attempted investment, or a loan to Mr. Meharchand personally.

[158] Still later during the hearing, Mr. Meharchand amended the summary he had produced at the beginning of the hearing. He testified that he had in fact accepted $141,000 from investor J.B., in the form of three payments, only two of which were shown on his revised summary.

[159] As to the use of the so-called "limbo funds", Mr. Meharchand testified that the funds "were now sitting in cash".[51] When pressed, Mr. Meharchand claimed that he no longer had the cash, because of three "wise guys" (to use Mr. Meharchand's words)[52] who appeared unannounced at his home in December 2017. According to Mr. Meharchand, the three men, of whom one or three had guns (Mr. Meharchand gave different evidence at different points), said that they were there on behalf of investors in Valt.X Holdings. They demanded to be paid $1,250,000, but Mr. Meharchand was able to convince them that he should be responsible for only one fifth of that amount, because there were four members of Staff involved in the matter who, according to Mr. Meharchand, should bear equal responsibility for the funds. In response to a request by the "wise guys" for home addresses for the four members of Staff, Mr. Meharchand says he provided two, which he believed to be accurate.

[160] Mr. Meharchand testified that he had $150,000 in cash in his home at the time. At first, Mr. Meharchand testified that he told that to the three men, although shortly afterwards in his testimony, Mr. Meharchand said that he didn't. In any event, Mr. Meharchand says that they left without taking any of the cash, after Mr. Meharchand promised to pay $250,000 within one week. The three men were to return to Mr. Meharchand's house, but did not fix a time at which they would do so.

[161] Mr. Meharchand stated definitively that the three men came by car, but then when Staff counsel began to question him about the car, Mr. Meharchand quickly stated that he never looked outside, and never saw a car. He just assumed they had come by car. This exchange was one of many examples where it appeared to us that Mr. Meharchand changed his evidence on the fly when he realized that the imaginary road down which he was taking counsel and the panel was going to be problematic for him.

[162] Mr. Meharchand testified that in order to raise the additional $100,000, he brought $50,000 in cash to Woodbine, and placed about a dozen bets not with the racetrack itself, but with an individual whose name he does not know, whom Mr. Meharchand described as "essentially" a bookie.[53] Mr. Meharchand further testified that he won $100,000 at the racetrack that day, using the $50,000, which included investor funds.

[163] According to Mr. Meharchand, two of the three "wise guys" came to his house to collect the money. Mr. Meharchand placed $250,000 in cash in a duffel bag, which he gave to the "wise guys". He said, implausibly, that they left without counting the cash.

[164] Several days later during his merits hearing testimony, when Mr. Meharchand was asked to identify which investors he believed were behind the "wise guys", he changed the story entirely. He testified that on further reflection he believed that the visit had nothing to do with Valt.X, but rather was related to his gambling activities.

[165] This most recent evidence is illogical and confirms that his entire testimony about the "wise guy" visit is unworthy of belief. Any speculation on his part that the visit may relate to gambling and not to Valt.X is irreconcilably inconsistent with his earlier evidence about how he negotiated a reduction in the amount from $1,250,000 to $250,000 because four members of Staff should share responsibility, and about how he provided home addresses for two members of Staff.

[166] While the supposed visit by the "wise guys" took place one year after the end of the Material Time, we cite the example as representative of a pattern that we observed in Mr. Meharchand's testimony, leading us to conclude that we cannot accept his uncorroborated evidence about matters in dispute.

[167] Other explanations that we are unable to accept include rent for premises used by Valt.X in Mr. Meharchand's home, and the purported assignment of certain debts.

[168] Mr. Meharchand testified that Valt.X conducted its operations from the basement and garage of the home in Toronto that he jointly owned and occupied with his wife. Mr. Meharchand claimed that he expected to be able to book a rental charge of $1000 per month, although the Respondents produced no records to support this. Staff's transaction analysis showed no periodic payments of $1000, but did show payments during the Material Time to the mortgagee of the house in the aggregate amount of $67,641. We find that this is an example of Mr. Meharchand using available funds to make payments

[51] Hearing Transcript, May 28, 2018, p 88.

[52] Hearing Transcript, May 28, 2018, p 108.

[53] Hearing Transcript, May 28, 2018, p 124.

to his or his wife's benefit as and when convenient. We do not accept the after-the-fact attribution of such payments to rental costs.

[169] Regarding the assignment of certain debts, Mr. Meharchand testified that third parties, to whom Valt.X Holdings was indebted, assigned those debts to him. Mr. Meharchand's evidence varied regarding these assignments. Three weeks before the merits hearing began, Mr. Meharchand provided Staff with a summary document purporting to show that three individuals and two consultants had assigned debts totaling $1,258,060. On the second day of the merits hearing, Mr. Meharchand revised this information to say that two individuals and one consultant had assigned debts totaling $930,689. He later explained that two of the five parties had asked him, sometime in the preceding several weeks, to "rip up… the assignment agreements".[54]

[170] Mr. Meharchand produced four assignment agreements that purported to account for most of the revised amount:

a. two agreements dated January 1, 2012, and December 31, 2015, respectively, with C.B., totaling C$145,647.63;

b. one agreement with L.A., in the amount of US$507,000, and dated January 1, 2015, although Mr. Meharchand testified that the date was an error and should have been January 1, 2016; and

c. one agreement with J.S. in the amount of C$100,000, and dated September 18, 2016.

[171] Mr. Meharchand testified that the documents were signed by the parties on the exact dates shown on the documents. We do not accept that evidence. We find that Mr. Meharchand created the documents after the fact, in an effort to justify payments from Valt.X Holdings to him. We reach that conclusion for a number of reasons:

a. we reject as implausible Mr. Meharchand's contention that the purpose of the assignments was to relieve Valt.X Holdings of debt, for capital-raising purposes – in fact, the assignments would not achieve that effect;

b. there was no apparent legitimate commercial purpose for Valt.X Holdings to enter into the assignments;

c. there was no apparent reason that the three individuals would enter into the assignments, substituting Mr. Meharchand for Valt.X Holdings as the debtor, and accepting longer repayment periods and significantly lower interest rates; and

d. the documents purporting to evidence the assignments contained errors and characteristics that suggest that they were created in response to Staff having brought this proceeding against the Respondents – for example:

   i. the document dated January 1, 2012, refers to C.B. investing funds "prior to 31st Dec 2011", which we conclude was drafted keeping in mind the Material Time, a period that was not defined until several years later upon issuance of the Statement of Allegations; and

   ii. an error with respect to an individual's gender is not explained by Mr. Meharchand's testimony as to the sequence of events, but rather was more consistent with the documents having been prepared at or around the same time as each other, in preparation for the merits hearing; and

   iii. Mr. Meharchand made no mention of the assignments during his 2016 examination by Staff, even though he claimed at the hearing that all four assignments pre-dated that examination.

[172] We are therefore left without any evidentiary support for the Respondents' contentions about "legitimate" use of investor funds. Given the Respondents' lack of records, Staff's analysis of bank transactions does not, and could not, tell the whole story regarding the purpose of various payments. In some cases, payee names made it highly unlikely that the payment is for legitimate business purposes. In other cases, however, we cannot be certain. The Respondents produced no records – at all – to establish any payments that might be considered legitimate operating expenses or capital expenditures. Mr. Meharchand's oral testimony was, as we have explained, incoherent, inconsistent, uncorroborated, and not credible.

iv. Terms of subscription agreements

[173] In closing written submissions responding to the fraud allegation, Mr. Meharchand asserts: "Investors agree in their subscription documents that they are not relying on any information given to them by anyone."

[54] Hearing Transcript, May 28, 2018, p 49.

[174] We reject this submission as being inapplicable in cases of fraud,[55] and incompatible with the Commission's mandate to protect investors from those who seek their funds by deceit.

v. Conclusion regarding Mr. Meharchand's actions

[175] We therefore conclude that Mr. Meharchand's actions constituted prohibited acts of deceit and falsehood.

(c) Did those actions result in deprivation to existing or potential investors by causing them actual loss or by placing their pecuniary interests at risk?

[176] We have no difficulty concluding that the actions described above deprived investors, at least by putting their pecuniary interests at risk, if not by causing them actual loss. According to Staff's analysis, less than $50,000 of the funds raised during the Material Time has been returned to investors.

[177] Whatever may have actually happened to investors' funds – whether they were spent on gambling, or were given to "wise guys", or were used for other purposes – none of the actual uses was disclosed to investors in any meaningful way. Absent any cogent explanation as to why funds were paid as they were, payments represent a loss to investors, or at a minimum the placing at risk of the investors' pecuniary interests as holders of shares or debt of Valt.X Holdings.

[178] The Respondents submit that because (according to them) Mr. Meharchand applied more funds to "legitimate" corporate uses than the investors contributed, there was no deprivation. We reject this submission. As discussed above, the Respondents have adduced no reliable evidence to support that position. Although Valt.X Holdings may have legitimately owed Mr. Meharchand some money and some funds may have been applied to legitimate business purposes, the evidence does not justify those payments that we have found were made for improper purposes.

(d) Did Mr. Meharchand have the required subjective knowledge of the prohibited acts?

[179] There is no serious issue about Mr. Meharchand's knowledge of the impugned acts. Mr. Meharchand himself made the statements to investors regarding the use of funds. He himself made the disbursements described above. Where Mr. Meharchand and Staff differ is with respect to the truth of his oral and written statements and the character of the payments.

(e) Did Mr. Meharchand's subjective knowledge include the actual or possible consequence of deprivation to existing or potential investors?

[180] Staff led no evidence that Mr. Meharchand had actual knowledge that his actions would result in a deprivation to existing or potential investors. This is not surprising. Unless a respondent were to admit such knowledge, it is unlikely that direct evidence of knowledge would exist. However, as the Supreme Court of Canada has held, the requisite knowledge can, in appropriate cases, be inferred:

> The accused must have subjective awareness, at the very least, that his or her conduct will put the property or economic expectations of others at risk … In certain cases, the inference of subjective knowledge of the risk may be drawn from the facts as the accused believed them to be. The accused may introduce evidence negating that inference, such as evidence that his deceit was part of an innocent prank, or evidence of circumstances which led him to believe that no one would act on his lie or deceitful or dishonest act. But … where the accused tells a lie knowing others will act on it and thereby puts their property at risk, the inference of subjective knowledge that the property of another would be put at risk is clear.[56]

[181] We find that this is such a case. Mr. Meharchand made the statements cited above deliberately, in an effort to solicit investment. He hoped that investors would act on them. The investors entrusted their funds to the Respondents for the advancement of the advertised business objectives of Valt.X Holdings. We therefore infer from the very nature of Mr. Meharchand's acts that he knew of the potential deprivation, if not that actual loss was likely to occur. Absent any credible explanation to the contrary, and there was none, we conclude on a balance of probabilities that Mr. Meharchand's mental state meets the necessary test for fraud.

---

[55] *Incanore Resources Ltd v High River Gold Mines Ltd*, [2008] OJ No 3338 (Sup Ct) at para 31; *1565831 Ontario Ltd v Klupt*, [2005] OJ No 4946 (Sup Ct Comm List) at paras 155-6, aff'd 2007 ONCA 440 (CA).

[56] *Théroux* at 26.

5. Conclusion regarding fraud

[182] We find that Mr. Meharchand committed numerous acts of deceit, by making false statements to existing and potential investors about the use to which invested funds would be put, and by using invested funds for improper purposes.

[183] In doing so, Mr. Meharchand knowingly put investors' funds at risk, thereby causing them a deprivation, as he knew his actions would.

[184] We therefore conclude that Mr. Meharchand perpetrated a fraud on investors, contrary to clause 126.1(b) of the Act.

V. CONCLUSION

[185] Staff has established that:

a. Mr. Meharchand and Valt.X Holdings distributed securities of Valt.X Holdings without a prospectus, contrary to subsection 53(1) of the Act;

b. Mr. Meharchand and Valt.X Holdings engaged in the business of trading in securities of Valt.X Holdings without being registered, contrary to subsection 25(1) of the Act; and

c. Mr. Meharchand perpetrated a fraud on investors, contrary to clause 126.1(b) of the Act.

[186] We therefore require that the parties contact the Registrar on or before October 30, 2018, to arrange a first attendance in respect of a hearing regarding sanctions and costs. That first attendance is to take place on a date that is mutually convenient, that is fixed by the Secretary, and that is no later than November 9, 2018.

[187] If the parties are unable to present a mutually convenient date to the Registrar, then each of Staff and the Respondents may submit to the Registrar, for consideration by a panel of the Commission, a one-page written submission regarding a date for the first attendance. Any such submission shall be submitted on or before October 30, 2018, and no submission received after that date will be considered.

Dated at Toronto this 19th day of October, 2018.

"Timothy Moseley"

3.2 Director's Decision

3.2.1 Glenn Coulson

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

AND

IN THE MATTER OF
THE REGISTRATION OF
GLENN COULSON

DECISION OF THE DIRECTOR

Having reviewed and considered the agreed statement of facts, the admissions by Glenn Coulson ("Coulson"), and the joint recommendation to the Director by Coulson and staff of the Ontario Securities Commission ("Staff") contained in the settlement agreement signed by Coulson on October 3, 2018, and by Staff on October 4, 2018 (the "Settlement Agreement"), a copy of which is attached as Schedule "A" to this Decision, and on the basis of those agreed facts and admissions, I, Pat Chaukos, in my capacity as Director under the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), accept the joint recommendation of the parties, and make the following decision:

(a) Coulson's registration shall be suspended pursuant to section 28 of the Act, effective immediately, and Coulson may apply to reinstate his registration after a period of two months from the date of his suspension, and Staff will not recommend to the Director that his application be refused unless Staff becomes aware after the date of the Settlement Agreement of conduct impugning Coulson's suitability for registration or rendering his registration objectionable, and provided that he meets all applicable criteria for registration at the time.

October 16, 2018
Date

"Pat Chaukos"
Pat Chaukos

Schedule "A"

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

AND

IN THE MATTER OF
THE REGISTRATION OF
GLENN COULSON

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. This settlement agreement (the "Settlement Agreement") relates to the registration status of Glenn Coulson ("Coulson") as a mutual fund dealing representative under the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act").

2. As more particularly described in this Settlement Agreement, Coulson has failed to comply with Ontario securities law by not reporting to the Ontario Securities Commission (the "OSC") criminal charges or an absolute discharge against him within the time prescribed by National Instrument 33-109 Registration Information ("NI 33-109"). Coulson and staff of the OSC ("Staff") agree that it is appropriate that his registration be suspended, and the parties have agreed to make a joint recommendation to the Director regarding the suspension of Coulson's registration.

II. AGREED STATEMENT OF FACTS

3. The parties agree to the facts as stated below.

A. The Registrant

4. Coulson has been registered under the Act as a mutual fund dealing representative since August 19, 2015. Coulson's registration is sponsored by Investors Group Financial Services Inc. ("IG").

5. Coulson's mutual fund practice is located in Barrie, Ontario.

6. Coulson has not previously been the subject of disciplinary action by any provincial or territorial securities commission, or any securities self-regulatory organization.

B. Criminal Charges Against Coulson

7. On or around September 24, 2015, Coulson was charged with three counts of fraud over $5,000, contrary to s. 380(1) of the *Criminal Code*, R.S.C. 1985, c. C-46 (the "Code"), and three counts of conspiracy to commit fraud over $5,000, contrary to s. 465(1)(c) of the Code.

8. The events giving rise to the charges against Coulson occurred between 2012 and 2014, prior to him becoming registered.

9. WA, a friend of Coulson and a former employee of the Ontario Lottery and Gaming Corporation ("OLGC"), recruited Coulson to perform work for OLGC as an independent contractor. Coulson's primary role under this arrangement was to distribute OLGC marketing materials at local establishments and events.

10. At WA's direction, Coulson invoiced OLGC for the cost of preparing the marketing materials and for the cost of his time spent distributing those materials. WA directed Coulson as to the content of these invoices, and in particular, the amounts charged and the description of the services rendered.

11. Although Coulson invoiced OLGC for the cost of preparing the marketing materials, in fact WA provided Coulson with those materials, and it was Coulson's understanding that WA had the materials prepared himself. Pursuant to his arrangement with WA, when Coulson received payment for an invoice from OLGC, he remitted to WA that portion relating to the preparation of the marketing materials, and kept for himself that portion relating to the distribution of the marketing materials.

12. WA did not in fact prepare the marketing materials he had been providing to Coulson. Instead, WA kept the money he received from OLGC via Coulson, and provided Coulson with old OLGC marketing materials instead.

13. Coulson did not intend to commit fraud. However, Coulson admitted that he had been wilfully blind to WA's wrongdoing, and had thereby allowed himself to become involved in the fraudulent scheme. As a result, on August 30, 2017, Coulson agreed to plead guilty to one charge of fraud under $5,000, contrary to s. 380(1) of the Code and received an absolute discharge. All remaining charges against Coulson were withdrawn. The resolution of the matter reflected Coulson's lower level of responsibility for the fraudulent scheme, and his high degree of cooperation with the police and the Crown in the investigation and prosecution.

C. Disclosure of Charges and Court Disposition

14. Section 4.1 of NI 33-109 required Coulson to disclose to the OSC both the charges laid against him and his absolute discharge, within ten days of those events occurring.

15. On December 1, 2017, Coulson informed his branch manager about the charges that had been laid against him in September 2015, and about the absolute discharge he had received in August 2017. At no time prior to December 1, 2017 had Coulson disclosed anything about criminal charges or their resolution to IG or the OSC.

16. IG disclosed the charges and the absolute discharge to the OSC on Coulson's behalf on June 19, 2018.

17. Between the date he was charged and the date of his absolute discharge, Coulson completed two IG "Annual Consultant Certifications" in which he indicated that his regulatory disclosure was up-to-date. The information that Coulson provided to IG in these forms was incorrect because his regulatory disclosure was in fact out of date as he had not reported his criminal charges.

18. Coulson states that he did not disclose anything about his criminal charges or his absolute discharge to IG or to the OSC at the time those events occurred because his criminal defence lawyer had instructed him not to discuss the matter with anyone, including his employer. However, Coulson's criminal defence lawyer had no experience in securities law, Coulson did not discuss with his criminal lawyer his specific disclosure obligation under NI 33-109, and Coulson did not request or receive a legal opinion from his criminal defence lawyer regarding his disclosure obligations under NI 33-109.

III. ADMISSIONS AND REPRESENTATIONS BY COULSON

19. Coulson admits that by failing to disclose his criminal charges to the OSC within 10 days of the date those charges were laid, Coulson failed to comply with s. 4.1 of NI 33-109.

20. Coulson admits that by failing to disclose his absolute discharge to the OSC within 10 days of the date that disposition was ordered, Coulson failed to comply with s. 4.1 of NI 33-109.

21. Coulson admits that by indicating on his IG "Annual Consultant Certifications" that his regulatory disclosure was up-to-date, he failed to cooperate with IG's supervisory activities.

22. Coulson admits that, based on the facts set out in paragraph 18 above, his reliance on the advice of his legal counsel as a basis for not disclosing his criminal matter to either IG or the OSC was not reasonable.

IV. JOINT RECOMMENDATION

23. The parties make the following joint recommendation to the Director regarding Coulson's registration status:

    (a) Coulson's registration shall be suspended pursuant to section 28 of the Act, effective immediately, and Coulson may apply to reinstate his registration after a period of two months from the date of his suspension, and Staff will not recommend to the Director that his application be refused unless Staff becomes aware after the date of this Settlement Agreement of conduct impugning Coulson's suitability for registration or rendering his registration objectionable, and provided he meets all applicable criteria for registration at the time.

24. The parties submit that their joint recommendation is appropriate for the following reasons:

    (a) Coulson has no disciplinary history in the securities industry;

    (b) Coulson admits his non-compliance with Ontario securities law and is remorseful for his conduct;

(c) Coulson rectified his non-compliance with Ontario securities law by self-reporting his criminal charges and his absolute discharge;

(d) By agreeing to this Settlement Agreement, Coulson has saved Staff and the Director the time and resources that would have been required for an opportunity to be heard (an "OTBH") under s. 31 of the Act to consider a recommendation by Staff that Coulson's registration should be suspended.

25. The parties acknowledge that if the Director does not accept this joint recommendation:

(a) This settlement agreement and all related negotiations between the parties shall be without prejudice.

(b) Coulson will be entitled to an OTBH in accordance with s. 31 of the Act in respect of Staff's recommendation that his registration be suspended by the Director.

"Glenn Coulson"	*"Elizabeth King"*
Glenn Coulson	Elizabeth King Deputy Director Compliance and Registrant Regulation
October 3, 2018	*October 4, 2018*
Date	Date

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	

This page intentionally left blank

Chapter 6

Request for Comments

6.1.1 CSA Notice and Request for Comment – Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Custody-Related Amendments

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment

Proposed Amendments to National Instrument 31-103
Registration Requirements, Exemptions and Ongoing Registrant Obligations

Custody-Related Amendments

October 25, 2018

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 60-day comment period proposed amendments (the **Proposed Custody Amendments**) to certain custody-related provisions of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) as a consequence of recent custody-related amendments to National Instrument 81-102 *Investment Funds* (**NI 81-102**) which were made as part of the "Modernization of Investment Fund Product Regulation – Alternative Funds" project (the **NI 81-102 Amendments**). The NI 81-102 Amendments were published in final form on October 4, 2018[1].

The text of the Proposed Custody Amendments is contained in Annex A of this notice and will also be available on the websites of certain CSA jurisdictions, including:

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

Substance and Purpose

We are proposing amendments to section 14.6.1 of NI 31-103 to reflect the recent amendments to subsection 6.8(2) of NI 81-102.

The NI 81-102 Amendments codify existing relief granted to investment funds subject to NI 81-102 regarding the use of cleared derivatives. Specifically, section 6.8 of NI 81-102 was amended to allow these investment funds to deal with futures commission merchants and clearing corporations in accordance with the rules of those organizations for cleared over-the-counter derivatives.

Section 14.6.1 of NI 31-103 sets out acceptable custodial practices for certain margin and security interests which codified existing custodial best practices of registered firms. The permissible activities in this section are similar to the custodial practices for investment funds permitted under NI 81-102 in respect of portfolio assets being held as margin for certain derivatives transactions outside of Canada. For this reason, we are proposing amendments to section 14.6.1 of NI 31-103 to align with the amendments to subsection 6.8(2) of NI 81-102 described above.

[1] Provided all necessary ministerial approvals are obtained, the NI 81-102 Amendments will come into force on January 3, 2019 in all CSA jurisdictions.

The intent of the Proposed Custody Amendments is to give all clients and investment funds of registered firms the same ability to deposit assets with certain dealers in respect of cleared over-the-counter derivatives. In the absence of making the Proposed Custody Amendments, this option would only be available to investment funds that are subject to NI 81-102.

Background

On July 27, 2017 custody-related amendments to NI 31-103 were published in final form, and these amendments came into force on June 4, 2018. In the CSA notice[2] that accompanied those amendments, we indicated that additional changes might be made to these custody-related provisions as a consequence of the work being done by the CSA as part of the NI 81-102 Amendments. The Proposed Custody Amendments are being proposed as a result of the NI 81-102 Amendments.

Summary of the Proposed Custody Amendments

Subsection 14.6.1(1) of NI 31-103 is being amended to add the following two definitions: "cleared specified derivative" and "regulated clearing agency".

Subsection 14.6.1(2) is being expanded to permit clients or investment funds of a registered firm to deposit cash or securities with members of regulated clearing agencies in respect of certain prescribed margin transactions outside of Canada. Subsection 14.6.1(2) is also being expanded to include an additional type of permitted margin transaction, namely, transactions involving cleared specified derivatives.

Local Matters

Annex B includes, where applicable, additional information that is relevant in a local jurisdiction only.

Request for comments

We welcome your comments on the Proposed Custody Amendments.

Please submit your comments in writing on or before **December 24, 2018**. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Thank you in advance for your comments.

Where to send your comments

Please address your comments to all CSA members, as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

[2] Notice of Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, National Instrument 33-109 *Registration Information*, and Companion Policy 33-109CP *Registration Information*.

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other CSA members.

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, ON M5H 3S8
Fax: 416-593-2318
E-mail: comments@osc.gov.on.caa

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax : 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Contents of Annexes

Annex A – Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Annex B – Local Matters

Questions

Please refer your questions to any of the following CSA staff:

Ami Iaria
Senior Legal Counsel, Legal Services
Capital Markets Regulation Division
British Columbia Securities Commission
Tel: 604-899-6594
1-800-373-6393
aiaria@bcsc.bc.ca

Eniko Molnar
Legal Counsel, Market Regulation
Alberta Securities Commission
Tel: 403-297-4890
eniko.molnar@asc.ca

Liz Kutarna
Deputy Director, Capital Markets
Securities Division
Financial and Consumer Affairs Authority of Saskatchewan
Tel: 306-787-5871
liz.kutarna@gov.sk.ca

Chris Besko
Director, General Counsel
The Manitoba Securities Commission
Tel. 204-945-2561
Toll Free (Manitoba only) 1-800-655-5244
chris.besko@gov.mb.ca

Leigh-Ann Ronen
Legal Counsel, Compliance and Registrant Regulation
Ontario Securities Commission
Tel: 416-204-8954
lronen@osc.gov.on.ca

Sophie Jean
Directrice de l'encadrement des intermédiaires
Autorité des marchés financiers
Tel: 514-395-0337, ext. 4801
Toll-free: 1-877-525-0337
sophie.jean@lautorite.qc.ca

Brian W. Murphy
Manager, Registration & Compliance
Nova Scotia Securities Commission
Tel: 902-424-4592
brian.murphy@novascotia.ca

Jason L. Alcorn
Senior Legal Counsel
Financial and Consumer Services Commission of New Brunswick
Tel: 506-643-7857
jason.alcorn@fcnb.ca

Steven Dowling
Acting Director
Consumer, Labour and Financial Services Division
Justice and Public Safety
Government of Prince Edward Island
Tel: 902-368-4551
sddowling@gov.pe.ca

Renee Dyer
Superintendent of Securities
Service NL
Government of Newfoundland and Labrador
Tel: 709-729-4909
reneedyer@gov.nl.ca

Jeff Mason
Director of Legal Registries
Department of Justice, Government of Nunavut
Tel: 867-975-6591
jmason@gov.nu.ca

Thomas Hall
Superintendent of Securities
Office of the Superintendent of Securities
Department of Justice
Government of the Northwest Territories
Tel: 867-767-9305
tom_hall@gov.nt.ca

Rhonda Horte
Deputy Superintendent
Office of the Yukon Superintendent of Securities
Tel: 867-667-5466
rhonda.horte@gov.yk.ca

ANNEX A

PROPOSED AMENDMENTS TO

NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS

1. National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.

2. Subsection 14.6.1(1) is replaced with the following:

(1) In this section

"cleared specified derivative", "clearing corporation option", "futures exchange", "option on futures", "specified derivative" and "standardized future" have the same meaning as in section 1.1 of National Instrument 81-102 *Investment Funds*;

"regulated clearing agency" has the same meaning as in section 1.1 of National Instrument 94-101 *Mandatory Central Counterparty Clearing Derivatives*.*.*

3. Subsection 14.6.1(2) is amended

(a) by adding "member of a regulated clearing agency or a***" after "***cash or securities of a client or investment fund deposited with a***", by replacing "***or***" with "***,***" after "***options on futures***" and by adding "***or cleared specified derivatives***" after "***standardized futures***",***

(b) in paragraph (a) by replacing "in the case of standardized futures and options on futures, the***" with "***the member or***", by adding "***regulated clearing agency,***" before "***futures exchange***", by deleting "***, in the case of clearing corporation options, is a member of a***", and by replacing "***either case***" with "***any case***",***

(c) in paragraph (b) by adding "member or***" before "***dealer***", and***

(d) in paragraph (c) by adding "member or***" before "***dealer***".***

Effective Date

4. This Instrument comes into force on ●.

ANNEX B

ONTARIO LOCAL MATTERS

1. Introduction

The purpose of this Annex is to cover, to the extent not already covered in the main body of this notice, matters required by subsection 143.2(2) of the *Securities Act* (Ontario) (the **Act**).

2. Authority for the Proposed Custody Amendments

Rule-making authority for the Proposed Custody Amendments is in paragraph 2 and subparagraph 31iii of subsection 143(1) of the Act.

3. Alternatives considered

Given that the Proposed Custody Amendments represent minor changes to a provision of an existing rule, no alternative to rule-making was considered.

4. Unpublished Materials

In proposing the Proposed Custody Amendments, we have not relied on any significant unpublished study, report or other written materials.

5. Anticipated costs and benefits

The Proposed Custody Amendments decrease regulatory burden and reflect the relevant custody-related NI 81-102 Amendments. The intent of the Proposed Custody Amendments is to give all clients and investment funds of registered firms the same ability to deposit assets with certain dealers in respect of cleared over-the-counter derivatives. If the Proposed Custody Amendments are not made, this option would only be available to investment funds that are subject to NI 81-102.

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:
AGFiQ Enhanced Core Global Multi-Sector Bond ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated October 19, 2018
Received on October 19, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
AGF Investments Inc.
Project #2710668

Issuer Name:
BMO SIA Focused Canadian Equity Fund
BMO SIA Focused North American Equity Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 19, 2018
NP 11-202 Preliminary Receipt dated October 22, 2018
Offering Price and Description:
series A, F, D, I, ETF Series and Advisor Series
Underwriter(s) or Distributor(s):
BMO Investments Inc.
Promoter(s):
BMO Investments Inc.
Project #2832377

Issuer Name:
Canoe EIT Income Fund
Principal Regulator – Alberta (ASC)
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated October 18, 2018
NP 11-202 Preliminary Receipt dated October 19, 2018
Offering Price and Description:
Units and Preferred Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2832102

Issuer Name:
Purpose Premium Yield Fund
Principal Regulator – Ontario
Type and Date:
Amendment #4 to Final Simplified Prospectus and Amendment #5 to Annual Information Form dated October 19, 2018
Received on October 19, 2018
Offering Price and Description:
Series XUA shares and Series XUF Shares
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Purpose Investments Inc.
Project #2674554

Issuer Name:
Veritas Canadian Equity Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated October 19, 2018
Received on October 19, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Veritas Asset Management Inc.
Project #2738107

Issuer Name:
Vertex Bond Alpha Fund
Vertex Canadian Equity Alpha Fund
Vertex Liquid Alternative Fund
Vertex Liquid Alternative Fund Plus
Vertex U.S. Equity Alpha Fund
Principal Regulator – British Columbia
Type and Date:
Preliminary Simplified Prospectus dated October 15, 2018
NP 11-202 Preliminary Receipt dated October 17, 2018
Offering Price and Description:
CLASS B, F and O UNITS
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Vertex One Asset Management Inc.
Project #2831383

Issuer Name:
Ag Growth International Inc.
Principal Regulator – Manitoba
Type and Date:
Final Short Form Prospectus (NI 44-101) dated October 17, 2018
NP 11-202 Receipt dated October 17, 2018
Offering Price and Description:
$100,245,000.00
1,630,000 Common Shares
Price: $61.50 per Common Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
National Bank Financial Inc.
TD Securities Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
Raymond James Ltd.
HSBC Securities (Canada) Inc.
Cormark Securities Inc.
Laurentian Bank Securities Inc.
Promoter(s):
N/A
Project #2828352

Issuer Name:
Sionna Opportunities Fund
Sionna Canadian Equity Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated September 27, 2018
NP 11-202 Receipt dated October 22, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Brandes Investment Partners & Co.
Project #2752128

Issuer Name:
Dynamic Active Core Bond Private Pool
Dynamic Active Credit Strategies Private Pool
Dynamic Alternative Managed Risk Private Pool Class
Dynamic Asset Allocation Private Pool
Dynamic Canadian Equity Private Pool Class
Dynamic Conservative Yield Private Pool
Dynamic Conservative Yield Private Pool Class
Dynamic Global Equity Private Pool Class
Dynamic Global Yield Private Pool
Dynamic Global Yield Private Pool Class
Dynamic International Dividend Private Pool
Dynamic North American Dividend Private Pool
Dynamic Premium Bond Private Pool
Dynamic Premium Bond Private Pool Class
Dynamic Tactical Bond Private Pool
Dynamic U.S. Equity Private Pool Class
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated October 3, 2018
NP 11-202 Receipt dated October 16, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
Promoter(s):
1832 Asset Management L.P.
Project #2757005

Issuer Name:
Franklin Bissett Canadian Bond Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus and Amendment #2 to Annual Information Form dated October 15, 2018
NP 11-202 Receipt dated October 18, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
Franklin Templeton Investments Corp.
Bissett Investment Management, a division of Franklin Templeton Investments Corp.
Promoter(s):
N/A
Project #2758148

Issuer Name:
iShares Balanced Income CorePortfolio™ Index ETF
iShares Balanced Growth CorePortfolio™ Index ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated September 28, 2018
NP 11-202 Receipt dated October 17, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
BlackRock Asset Management Canada Limited
Promoter(s):
N/A
Project #2762670

Issuer Name:
London Life Pathways Canadian Concentrated Equity Fund
London Life Pathways Canadian Equity Fund
London Life Pathways Core Bond Fund
London Life Pathways Core Plus Bond Fund
London Life Pathways Emerging Markets Equity Fund
London Life Pathways Emerging Markets Large Cap Equity Fund
London Life Pathways Global Core Plus Bond Fund
London Life Pathways Global Multi Sector Bond Fund
London Life Pathways Global Tactical Fund
London Life Pathways International Concentrated Equity Fund
London Life Pathways International Equity Fund
London Life Pathways Money Market Fund
London Life Pathways U.S. Concentrated Equity Fund
London Life Pathways U.S. Equity Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated October 12, 2018
NP 11-202 Receipt dated October 17, 2018
Offering Price and Description:
Quadrus series, H series, L series, HW series and I series securities
Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd
Promoter(s):
Mackenzie Financial Corporation
Project #2813915

Issuer Name:
Ninepoint Core Bond Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated October 10, 2018
NP 11-202 Receipt dated October 18, 2018
Offering Price and Description:
–
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Ninepoint Partners L.P.
Project #2793186

Issuer Name:
Purpose Gold Bullion Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated October 15, 2018
NP 11-202 Receipt dated October 19, 2018
Offering Price and Description:
ETF units, ETF non-currency hedged units, U.S. dollar denominated ETF non-currency hedged units and Class F units @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Purpose Investments Inc.
Project #2799348

Issuer Name:
Sun Life Tactical Balanced ETF Portfolio
Sun Life Tactical Conservative ETF Portfolio
Sun Life Tactical Equity ETF Portfolio
Sun Life Tactical Fixed Income ETF Portfolio
Sun Life Tactical Growth ETF Portfolio
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated October 19, 2018
NP 11-202 Receipt dated October 19, 2018
Offering Price and Description:
Series A, Series T5, Series F, Series F5 and Series I securities
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Sun Life Global Investments (Canada) Inc.
Project #2820579

NON-INVESTMENT FUNDS

Issuer Name:
Ascent Industries Corp. (formerly Paget Minerals Corp.)
Principal Regulator – British Columbia
Type and Date:
Preliminary Shelf Prospectus dated October 12, 2018
NP 11-202 Preliminary Receipt dated October 16, 2018
Offering Price and Description:
$100,000,000.00 – Common Shares, Warrants, Subscription Receipts, Units, Debt Securities
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2830610

Issuer Name:
Dye & Durham Corporation
Principal Regulator – Ontario
Type and Date:
Amendment dated October 19, 2018 to Preliminary Long Form Prospectus dated September 28, 2018
NP 11-202 Preliminary Receipt dated October 19, 2018
Offering Price and Description:
$125,000,000.00 – * Common Shares
Price: $* per Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
RBC Dominion Securities Inc.
TD Securities Inc.
Raymond James Ltd.
Promoter(s):
–
Project #2827095

Issuer Name:
First Capital Realty Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated October 19, 2018
NP 11-202 Preliminary Receipt dated October 22, 2018
Offering Price and Description:
$2,000,000,000.00 – Common Shares, Warrants to Purchase Common Shares, Debt Securities
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2832371

Issuer Name:
First Majestic Silver Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Shelf Prospectus dated October 15, 2018
NP 11-202 Preliminary Receipt dated October 16, 2018
Offering Price and Description:
US$300,000,000.00
Common Shares
Subscription Receipts
Units
Warrants
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2831024

Issuer Name:
Integra Resources Corp. (formerly, Mag Copper Limited)
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Prospectus dated October 19, 2018
NP 11-202 Preliminary Receipt dated October 19, 2018
Offering Price and Description:
12,500,000 Shares – $10,000,000.00
Price: $0.80 per Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
PI Financial Corp.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Promoter(s):
–
Project #2832276

Issuer Name:
NBS Capital Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary CPC Prospectus (TSX-V) dated October 12, 2018
NP 11-202 Preliminary Receipt dated October 17, 2018
Offering Price and Description:
Offering of $500,000.00 – 5,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Industrial Alliance Securities Inc.
Promoter(s):
–
Project #2830482

Issuer Name:
POET Technologies Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated October 15, 2018
NP 11-202 Preliminary Receipt dated October 17, 2018
Offering Price and Description:
US$50,000,000.00
Common Shares
Debt Securities
Convertible Securities
Subscription Receipts
Warrants
Rights
Units
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2831324

Issuer Name:
Pulse Oil Corp.
Principal Regulator – British Columbia
Type and Date:
Amendment dated October 17, 2018 to Preliminary Short Form Prospectus dated October 15, 2018
NP 11-202 Preliminary Receipt dated October 18, 2018
Offering Price and Description:
Up to $2,499,992.00 – Up to 11,363,600 Flow-Through Shares and
Up to $2,999,997.00 – Up to 14,285,700 Units
Price: $0.22 per Flow-Through Shares
Price: $0.21 per Unit
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Promoter(s):
–
Project #2830836

Issuer Name:
White Gold Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 22, 2018
NP 11-202 Preliminary Receipt dated October 22, 2018
Offering Price and Description:
$10,000,000.00
5,000,000 Common Shares
Price: $2.00 per FT Share
Underwriter(s) or Distributor(s):
Clarus Securities Inc.
GMP Securities L.P.
Canaccord Genuity Corp.
Sprott Private Wealth L.P.
Promoter(s):
–
Project #2831495

Issuer Name:
AIM3 Ventures Inc.
Principal Regulator – Ontario
Type and Date:
Final CPC Prospectus (TSX-V) dated October 17, 2018
NP 11-202 Receipt dated October 17, 2018
Offering Price and Description:
Minimum Offering: $450,000.00 or 4,500,000 Common Shares
Maximum Offering: $500,000.00 or 5,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
–
Project #2822412

Issuer Name:
NorthWest Healthcare Properties Real Estate Investment Trust
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated October 19, 2018
NP 11-202 Receipt dated October 19, 2018
Offering Price and Description:
C$1,000,000,000.00
Units
Debt Securities
Warrants
Subscription Receipts
Underwriter(s) or Distributor(s):
–
Promoter(s):
–
Project #2830090

Issuer Name:
The Green Organic Dutchman Holdings Ltd.
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated October 15, 2018
NP 11-202 Receipt dated October 16, 2018
Offering Price and Description:
$75,007,500.00 – 10,950,000 Units
Price: $6.85 per Unit
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
PI Financial Corp.
Laurentian Bank Securities Inc.
Promoter(s):
–
Project #2828694

This page intentionally left blank

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Layline Capital Inc.	Portfolio Manager	October 17, 2018

This page intentionally left blank

Chapter 25

Other Information

25.1 Approvals

25.1.1 Ullman Wealth Management Inc. – ss. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with no prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be established and managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

October 15, 2018

AUM Law
175 Bloor Street East
Suite 303, South Tower
Toronto, ON M4W 3R8
Attn: Sandy Psarras

Dear Sirs/Mesdames:

Re: Ullman Wealth Management Inc. (the Applicant)

Application pursuant to clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario) for approval to act as trustee

Application No. 2018/0441

Further to your application dated August 3, 2018 (the **Application**) filed on behalf of the Applicant and based on the facts set out in the Application and the representation by the Applicant that the assets of UWM Disciplined Growth Fund and any future mutual fund trusts that the Applicant may establish and manage from time to time, the securities of which will be offered pursuant to prospectus exemptions, will be held in the custody of a trust company incorporated, and licensed or registered, under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II, or III of the *Bank Act* (Canada) or a qualified affiliate of such bank or trust company, the Ontario Securities Commission (the **Commission**) makes the following order:

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of UWM Disciplined Growth Fund and any future mutual fund trusts that may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to prospectus exemptions.

Yours truly,

"Frances Kordyback"
Commissioner

"Deborah Leckman"
Commissioner

This page intentionally left blank

Index