The Ontario Securities Commission

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

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Table of Contents

Chapter 1

Notices

1.1 Notices

1.1.1 Notice of Ministerial Approval of Amendments to OSC Rule 13-502 Fees and OSC Rule 13-503 (Commodity Futures Act) Fees

NOTICE OF MINISTERIAL APPROVAL OF AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 13-502 *FEES* AND
ONTARIO SECURITIES COMMISSION RULE 13-503 *(COMMODITY FUTURES ACT) FEES*

On July 2, 2019 the Minister of Finance approved amendments (the **Amendments**) made by the Ontario Securities Commission (**OSC** or the **Commission**) to Ontario Securities Commission Rule 13-502 *Fees* and Ontario Securities Commission Rule 13-503 (*Commodity Futures Act*) *Fees*.

The Amendments were made by the Commission on April 30, 2019.

The Amendments were published on the OSC website at www.osc.gov.on.ca and in the OSC Bulletin at (2019), 42 OSCB 4479 on May 16, 2019.

The Amendments come into force on July 17, 2019.

The text of the Amendments is reproduced in Chapter 5 of this Bulletin.

1.2 Notices of Hearing

1.2.1 Martin Bernholtz – s. 144

FILE NO.: 2019-24

IN THE MATTER OF
MARTIN BERNHOLTZ

NOTICE OF HEARING
Section 144 of the *Securities Act*, RSO 1990, c S.5

PROCEEDING TYPE: Application for Revocation or Variation of a Decision

HEARING DATE AND TIME: In Writing

PURPOSE

The purpose of this proceeding is to consider an Application made by Martin Bernholtz to vary the terms of an Order issued by the Commission on May 21, 2019 relating to the Settlement Agreement entered into on May 16, 2019 between Staff of the Commission and Martin Bernholtz.

The parties have requested to proceed by written hearing pursuant to Rule 23(2) of the Commission's *Rules of Procedure and Forms*.

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 10th day of July, 2019.

"Grace Knakowski"
Secretary to the Commission

For more information

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

1.2.2 Caldwell Investment Management Ltd. – ss. 127(1), 127(2), 127.1

FILE NO.: 2018-36

IN THE MATTER OF
CALDWELL INVESTMENT MANAGEMENT LTD.

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

PROCEEDING TYPE: Public Settlement Hearing

HEARING DATE AND TIME: July 19, 2019 at 9:00am

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 July 10, 2019, between Staff of the Commission and Caldwell Investment Management Ltd. in respect of the Statement of Allegations filed by Staff of the Commission dated June 12, 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

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Dated at Toronto this 10th day of July 2019.

"Grace Knakowski"
Secretary to the Commission

For more information

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

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 Alan Braun et al. – ss. 127(1), 127(10)

FILE NO.: 2019-25

IN THE MATTER OF
ALAN BRAUN,
JERRY BRAUN,
STEVEN MAXWELL (aka STEVEN FASSMAN),
BRAUN DEVELOPMENTS (B.C.) LTD.,
8022275 CANADA INC. and
0985812 B.C. LTD. (dba TERRACORP INVESTMENT LTD.)

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

PROCEEDING TYPE: Inter-jurisdictional Enforcement Proceeding

HEARING DATE AND TIME: In Writing

PURPOSE

The purpose of this proceeding is to consider whether it is in the public interest for the Commission to make the order(s) requested in the Statement of Allegations filed by Staff of the Commission on July 15, 2019.

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

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

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

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

REPRESENTATION

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

FAILURE TO ATTEND

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

FRENCH HEARING

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

AVIS EN FRANÇAIS

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

Dated at Toronto this 16th day of July, 2019.

"Grace Knakowski"
Secretary to the Commission

For more information

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

IN THE MATTER OF
ALAN BRAUN,
JERRY BRAUN,
STEVEN MAXWELL (aka STEVEN FASSMAN),
BRAUN DEVELOPMENTS (B.C.) LTD.,
8022275 CANADA INC. and
0985812 B.C. LTD. (dba TERRACORP INVESTMENT LTD.)

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

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

A. ORDER SOUGHT

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

   (a) against Alan Braun (**Alan**) that:

      i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Alan cease permanently, except that he may trade securities or derivatives for his own account through a registered dealer, if he gives the registered dealer copies of the Order of the British Columbia Securities Commission (**BCSC**) dated February 19, 2019 (the **BCSC Order**) and the order of the Commission in this proceeding, if granted;

      ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Alan cease permanently, except that he may purchase securities for his own account through a registered dealer, if he gives the registered dealer copies of the BCSC Order and the order of the Commission in this proceeding, if granted;

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

      iv. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Alan resign any positions that he holds as a director or officer of any issuer or registrant;

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

      vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Alan be prohibited permanently from becoming or acting as a registrant or promoter;

   (b) against Jerry Braun (**Jerry**) that:

      until the later of February 19, 2034 and the date that Jerry satisfies the monetary orders as set out at subparagraphs 77(g) and 77(h) of the BCSC Order:

      i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Jerry cease, except that he may trade securities or derivatives for his own account through a registered dealer, if he gives the registered dealer copies of the BCSC Order and the order of the Commission in this proceeding, if granted;

      ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Jerry cease, except he may purchase securities for his own account through a registered dealer, if he gives the registered dealer copies of the BCSC Order and the order of the Commission in this proceeding, if granted;

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

iv. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Jerry resign any positions that he holds as a director or officer of any issuer or registrant, except that he may continue to act as a director or officer of August Stone Inc., for so long as that entity does not engage in capital raising activities, and that copies of the BCSC Order and the order of the Commission in this proceeding, if granted, is provided to all directors and securityholders of that company;

v. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Jerry be prohibited from becoming or acting as a director or officer of any issuer or registrant, except as set out above; and

vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Jerry be prohibited from becoming or acting as a registrant or promoter;

(c) against Steven Maxwell (aka Steven Fassman) (**Maxwell**) that:

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

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

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

iv. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Maxwell resign any positions that he holds as a director or officer of any issuer or registrant;

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

vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Maxwell be prohibited permanently from becoming or acting as a registrant or promoter;

(d) against each of Braun Developments (B.C.) Ltd. (**Braun Developments**), 8022275 Canada Inc. (**8022275**) and 0985812 B.C. Ltd. (dba TerraCorp Investment Ltd.) (**0985812**) that:

i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by, or of, Braun Developments, 8022275 and 0985812 (dba TerraCorp Investment Ltd.) cease permanently;

ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Braun Developments, 8022275 and 0985812 cease permanently; and

iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Braun Developments, 8022275 and 0985812permanently;

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

B. FACTS

Staff make the following allegations of fact:

3. Alan, Jerry, Maxwell, Braun Developments, 8022275 and 0985812 (collectively, the **Respondents**) are subject to the BCSC Order that imposes sanctions, conditions, restrictions or requirements upon them.

4. In its findings on liability dated October 24, 2018 (the **Findings**) a panel of the BCSC (the **BCSC Panel**) found that Alan, Jerry, Maxwell, Braun Developments and 8022275 perpetrated a fraud with respect to three investments by two investors in the amount of $450,000, contrary to section 57(b) of the British Columbia *Securities Act*, RSBC 1996 c 418 (the **BC Act**).

5. The BCSC Panel also found that 0985812 perpetrated a fraud with respect to two investments by one investor in the amount of $300,000, contrary to section 57(b) of the BC Act.

6. The BCSC Panel further found Alan and Jerry liable under section 168.2 of the BC Act for Braun Developments' and 0985812's contraventions of the BC Act, and found Maxwell liable under 168.2 of the BC Act for 8022275's contraventions of the BC Act.

(i) The BCSC Proceedings

Background

7. The conduct for which the Respondents were sanctioned occurred between approximately 2013 and 2014 (the **Material Time**).

8. During the Material Time, Alan was a resident of Surrey, British Columbia, and a church pastor. Alan has never been registered under the BC Act.

9. Jerry is Alan's son and, during the Material Time, was a resident of Surrey, British Columbia. Jerry has never been registered in any capacity under the BC Act.

10. During the Material Time, Maxwell was a resident of White Rock, British Columbia. Maxwell has never been registered in any capacity under the BC Act. The BCSC Panel noted that Maxwell has a significant history of criminal fraud.

11. Braun Developments was incorporated in British Columbia on September 17, 2009. Braun Developments has never been registered in any capacity under the BC Act, and has never filed a prospectus under the BC Act. During the Material Time, Alan and Jerry were directors of Braun Developments, and Alan and his wife were also officers of the company.

12. 8022275 was federally incorporated in Canada on November 14, 2011. 8022275 has never been registered in any capacity under the BC Act, and has never filed a prospectus under the BC Act. During the Material Time, Maxwell was a director, or *de facto* director, of 8022275.

13. 0985812 was incorporated in British Columbia on November 17, 2013. 0985812 has never been registered in any capacity under the BC Act, and has never filed a prospectus under the BC Act. During the Material Time, Alan and Jerry were officers and directors of 0985812.

Investor L

14. Investor L is an Ontario resident. Investor L met Alan in 2005 while working at a seminary, and Alan was on the Board of Trustees of that seminary. During the Material Time, Alan approached Investor L with an opportunity to invest in an Edmonton real estate project offering a very high rate of return in a short period of time. The investment was presented as an opportunity for Investor L to invest money to be used to acquire a specific house, and then receive his money back plus a 50% return in 60 days following the subsequent resale of the property.

15. Investor L exchanged communications with Jerry about the specifics of the investment. Jerry later sent Investor L a purchase sales agreement between "Braun Developments Ltd." as purchaser, and 8022275 as vendor, of a specific Edmonton property for the purchase price of $150,000, with Investor L's company as "investor." The agreement reflected that Investor L would receive a total repayment of $225,000, representing his initial $150,000 investment plus 50% interest, within 60 days of the date of the agreement. In default of the agreed payment date, Investor L would instead receive monthly default payments of $11,250.00, until both his investment and promised return were repaid.

16. Investor L provided Jerry with $1,000 to secure the investment, and borrowed the remaining $149,000 for the investment from a friend (Z). Z transferred $149,000 into 8022275's account on behalf of Investor L.

17. Following expiry of the 60-day payment period, Investor L received three payments from Alan: two payments of $2,500 and one payment of $1,000, as partial payment of the amount owed under the Purchase Sales Agreement. Neither Investor L, nor Z, have received any further payments.

18. The BCSC Panel found that of the $149,000 received from Z on behalf of Investor L, $116,000 was transferred from 8022275's account to Braun Developments. Within a short time, 8022275 spent $33,000 it had retained of those funds on matters unrelated to the property reflected in the purchase sales agreement. Further, Braun Developments spent $116,000 on unrelated matters, including personal living expenses of the Braun family.

19. The BCSC Panel further found that title records reflect that the Edmonton property described in Investor L's purchase sales agreement was never acquired during the Material Time by any of "Braun Developments Ltd.", Braun Developments or 8022275.

Investor ML

20. Investor ML is an Ontario resident. Investor L introduced Investor ML to the investment opportunity and to Alan and Jerry. The BCSC Panel noted that Investor ML was a vulnerable investor.

21. Investor ML entered into two purchase sales agreements, essentially similar to Investor L's. Each agreement provided Investor ML would invest $150,000, for a combined total of $300,000 with a return within 60 days. Investor ML's agreements were in respect of acquiring two other Edmonton properties, and listed the purchaser as 0985812.

22. Jerry and Maxwell assisted Investor ML in obtaining a bank draft in the amount of $300,000 payable to 8022275, and the draft was subsequently deposited into 8022275's bank account.

23. The BCSC Panel found bank records for that account reflect that on the date Investor ML's funds were deposited, 8022275 transferred $200,000 to Braun Developments, with an additional $12,500 also transferred to Braun Developments not long thereafter.

24. Within a short time, 8022275 spent $87,500 it had retained of Investor ML's funds on matters unrelated to the properties specified in her two purchase sales agreements. Within two weeks of having received a total of $212,500 of Investor ML's funds, Braun Developments also spent those funds on matters unrelated to the purpose of Investor ML's investment, including personal living expenses of the Braun family.

25. The BCSC Panel further found that title records reflect that the two properties referenced in Investor ML's purchase sales agreements were never acquired during the Material Time by any of 0985812, "Braun Developments Ltd." Braun Developments or 8022275.

BCSC Findings - Conclusions

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

    (a) Alan contravened section 57(b) of the BC Act with respect to three investments by two investors in the amount of $450,000;

    (b) Jerry contravened section 57(b) of the BC Act with respect to three investments by two investors in the amount of $450,000;

    (c) Maxwell contravened section 57(b) of the BC Act with respect to three investments by two investors in the amount of $450,000;

    (d) Braun Developments contravened section 57(b) of the BC Act with respect to three investments by two investors in the amount of $450,000;

    (e) 8022275 contravened section 57(b) of the BC Act with respect to three investments by two investors in the amount of $450,000;

    (f) 0985812 contravened section 57(b) of the BC Act with respect to two investments by one investor in the amount of $300,000;

    (g) Alan and Jerry are liable under section 168.2 of the BC Act with respect to each of Braun Developments' and 0985812's respective contraventions of section 57(b) of the BC Act; and

    (h) Maxwell is liable under section 168.2 of the BC Act with respect to each of 8022275's contraventions of section 57(b) of the BC Act.

(ii) The BCSC Order

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

    Alan:

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

(b) Alan is permanently prohibited:

i. under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts, except that he may trade and purchase securities or exchange contracts for his own account through a registered dealer, if he gives the registered dealer a copy of the BCSC Order;

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

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

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

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

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

(c) Alan pay to the BCSC $323,500 pursuant to section 161(1)(g) of the BC Act; and

(d) Alan pay to the BCSC an administrative penalty of $450,000 under section 162 of the BC Act;

Jerry:

(e) under section 161(1)(d)(i) of the BC Act, Jerry resign any position he holds as a director or officer of an issuer or registrant, except that he may continue to act as a director or officer of August Stone Inc., for so long as that entity does not engage in capital raising activities and that a copy of the BCSC Order is provided to all other directors and securityholders of that company;

(f) Jerry is prohibited for the longer of 15 years and the date that the obligations set out in subparagraphs 77(g) and 77(h) of the BCSC Order are paid:

i. under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts, except that he may trade and purchase securities or exchange contracts for his own account through a registered dealer, if he gives the registered dealer a copy of the BCSC Order;

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

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

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

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

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

(g) Jerry pay to the BCSC $156,919 pursuant to section 161(1)(g) of the BC Act; and

(h) Jerry pay to the BCSC an administrative penalty of $200,000 under section 162 of the BC Act;

Maxwell:

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

(j) Maxwell is permanently prohibited:

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

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

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

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

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

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

(k) Maxwell pay to the BCSC $120,500 pursuant to section 161(1)(g) of the BC Act; and

(l) Maxwell pay to the BCSC an administrative penalty of $300,000 under section 162 of the BC Act;

Braun Developments:

(m) Braun Developments is permanently prohibited:

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

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

(n) under section 161(1)(b)(i) of the BC Act, that all persons permanently cease trading in, and be prohibited from purchasing, any securities of Braun Developments; and

(o) Braun Developments pay to the BCSC $156,919 pursuant to section 161(1)(g) of the BC Act;

8022275:

(p) 8022275 is permanently prohibited:

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

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

(q) under section 161(1)(b)(i) of the BC Act, that all persons permanently cease trading in, and be prohibited from purchasing, any securities of 8022275;

0985812:

(r) 0985812 is permanently prohibited:

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

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

(s) under section 161(1)(b)(i) of the BC Act, that all persons permanently cease trading in, and be prohibited from purchasing, any securities of 0985812 (dba TerraCorp Investment Ltd.); and

(t) the obligations to pay the amounts set out in subparagraphs (g) and (o) and a portion of the amount in subparagraph (c) above are joint and several as between Alan, Jerry and Braun Developments, in the following manner:

i. Alan, Jerry and Braun Developments are jointly and severally liable to pay to the BCSC $156,919; and

ii. Alan is severally liable for $166,581, being the remainder of the amount set out in subparagraph (c) above.

C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

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

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

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

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

DATED at Toronto this 15th day of July, 2019.

Hanchu Chen
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1.4 Notices from the Office of the Secretary

1.4.1 Andrew Paul Rudensky

FOR IMMEDIATE RELEASE
July 10, 2019

ANDREW PAUL RUDENSKY,
File No. 2018-68

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

A copy of the Reasons and Decision dated July 9, 2019 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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For investor inquiries:

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

1.4.2 Martin Bernholtz

FOR IMMEDIATE RELEASE
July 10, 2019

MARTIN BERNHOLTZ,
File No. 2019-24

TORONTO – On July 10, 2019, the Commission issued a Notice of Hearing pursuant to Section 144 of the *Securities Act*, RSO 1990, c. S.5 to consider an Application made by Martin Bernholtz to vary the terms of an Order issued by the Commission on May 21, 2019 relating to the Settlement Agreement entered into on May 16, 2019 between Staff of the Commission and Martin Bernholtz.

The parties have requested to proceed by written hearing pursuant to Rule 23(2) of the Commission's Rules of Procedure and Forms.

A copy of the Notice of Hearing dated July 10, 2019 and the Application dated July 8, 2019 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)

1.4.3 Caldwell Investment Management Ltd.

FOR IMMEDIATE RELEASE
July 10, 2019

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

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Caldwell Investment Management Ltd. in the above named matter.

The hearing will be held on July 19, 2019 at 9:00 a.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated July 10, 2019 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)

1.4.4 Caldwell Investment Management Ltd.

FOR IMMEDIATE RELEASE
July 10, 2019

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

TORONTO – Take notice that the hearing in the above named matter scheduled to be heard on July 11, 2019 at 10:00 a.m. will not proceed as scheduled.

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)

1.4.5 Martin Bernholtz

FOR IMMEDIATE RELEASE
July 10, 2019

MARTIN BERNHOLTZ,
File No. 2019-24

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

A copy of the Order dated July 10, 2019 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)

1.4.6 Majd Kitmitto et al.

FOR IMMEDIATE RELEASE
July 15, 2019

MAJD KITMITTO,
STEVEN VANNATTA,
CHRISTOPHER CANDUSSO,
CLAUDIO CANDUSSO,
DONALD ALEXANDER (SANDY) GOSS,
JOHN FIELDING, and
FRANK FAKHRY,
File No. 2018-70

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

A copy of the Order dated July 15, 2019 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)

1.4.7 Alan Braun et al.

FOR IMMEDIATE RELEASE
July 16, 2019

ALAN BRAUN,
JERRY BRAUN,
STEVEN MAXWELL (aka STEVEN FASSMAN),
BRAUN DEVELOPMENTS (B.C.) LTD.,
8022275 CANADA INC. and
0985812 B.C. LTD. (dba TERRACORP INVESTMENT LTD.),
File No. 2019-25

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

A copy of the Notice of Hearing dated July 16, 2019 and Statement of Allegations dated July 15, 2019 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)

1.4.8 Issam El-Bouji

FOR IMMEDIATE RELEASE
July 16, 2019

ISSAM EL-BOUJI,
File No. 2018-28

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

A copy of the Order dated July 16, 2019 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)

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 IA Clarington Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to a fund manager as a "company providing services to the mutual fund" under paragraph 11.1(1)(b) of National Instrument 81-102 Investment Funds – Relief permits the investment fund manager to commingle client cash related to the manager's investment funds in the same trust account as client cash temporarily received by the fund manager for investment in deposits offered by an affiliate.

[TRANSLATION]

June 12, 2019

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

AND

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

AND

IN THE MATTER OF
IA CLARINGTON INVESTMENTS INC.
(the "Filer")

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the "**Decision Makers**") has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") for relief from the requirements of section 11.1(1)(b) of *Regulation 81-102 respecting Investment Funds*, CQLR, c. V-1.1, r. 39 ("**Regulation 81-102**") that cash received by a person providing services to a mutual fund (the "**Mutual Fund**"), for investment in, or on the redemption of, securities, of the Mutual Fund may be commingled only with cash received by the service provider for the sale or on the redemption of other investment fund securities (the "**Commingling Prohibition**") (the "**Exemption Sought**").

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

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

b) the Filer has provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System*, CQLR, c. V-1.1, r. 1 ("**Regulation 11-102**") is intended to be relied upon in each of the territories of Canada other than the Jurisdictions; and

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, CQLR, c. V-1.1, r. 3, Regulation 11-102 and Regulation 81-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

The Filer and the Funds

1. The Filer's head office is in Québec.

2. The Filer is registered as an investment fund manager in Québec, Ontario and Newfoundland and Labrador, as an exempt market dealer in Québec and Ontario, and as a portfolio manager in all of the jurisdictions of Canada.

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

4. The Filer acts as the manager of various open-end investment funds (the "**Funds**").

5. Securities of the Funds are sold through registered dealers (the "**Dealers**").

6. The Filer is a "person providing services to the mutual fund" under the provisions of section 11.1(1)(b) of Regulation 81-102. Accordingly, the Commingling Prohibition prohibits the Filer from commingling Mutual Fund Cash (as defined below) with Other Cash (as defined below).

The Trust Accounts

7. The Filer maintains clearing accounts on behalf of the Funds managed by it (the "**Trust Accounts**") with major Canadian financial institutions. All monies ("**Mutual Fund Cash**") invested by securityholders in the Funds managed by it ("**Investors**") are paid by way of cheque, wire transfer, electronic funds transfer and the FundServ electronic order entry system ("**Industry Standard Settlement Processes**") and from which redemption proceeds and or assets to be distributed are paid.

8. Each Trust Account is held on behalf of the Funds. The Filer has access to the Trust Accounts and has control over which of its employees have access to the Trust Accounts.

9. The Trust Accounts are interest bearing and all of the interest income earned in the Trust Accounts is paid to the Funds on a pro rata basis in compliance with subsection 11.1(4) of Regulation 81-102.

10. The Filer maintains separate Trust Accounts for Canadian monies and U.S. monies. The Filer ensure compliance with section 11.3 of Regulation 81-102 in the way in which the Trust Accounts are maintained.

11. Industrial Alliance Trust Inc. ("**IA Trust**") is a federally regulated trust company. IA Trust is an affiliate of the Filer.

The Deposits

12. IA Trust intends to accept Canadian dollar cash deposits into Canadian high interest savings accounts (the "**Canadian Deposits**") and, may in the future, accept U.S. dollar cash deposits in U.S. high interest savings account (the "**U.S. Deposits**") from Investors via Dealers (collectively, the "**Deposits**") by way of Industry Standard Settlement Processes. The Deposits will be offered by IA Trust through the Filer.

13. The Filer intends to provide the administrative infrastructure necessary to permit IA Trust to offer Deposits to Investors, specifically including the operational means by which Other Cash (as defined below) will be moved from the Dealers to IA Trust.

14. The Canadian Deposits offered by IA Trust will be savings accounts eligible for deposit insurance from the Canada Deposit Insurance Corporation ("**CDIC**") subject to maximum coverage limitations. The U.S. Deposits are ineligible for CDIC insurance as CDIC does not insure any accounts or products in U.S. Dollars. Investors who wish to invest in the Deposits may also purchase units of the Funds from their Dealers at the same time.

The Proposed Commingling

15. Dealers who accept cash from Investors for investment in the Deposits ("**Other Cash**") and for investment in the Funds (as noted above, Mutual Fund Cash, together the "**Cash**") will forward such Cash to the Filer via Industry Standard Settlement Processes. Once received, the Filer proposes to hold the Cash temporarily in Trust Accounts. Investors' Other Cash will then be forwarded by the Filer form its Trust Accounts to IA Trust, while the Investors' Mutual Fund Cash will be forwarded by the Filer from the Trust Account to the Funds' custodian that will apply it to the individual Fund accounts in the custodian's name. For a brief time, the Filer anticipates that Mutual Fund Cash and Other Cash will be temporarily commingled in the Trust Accounts.

Interest of the Funds and the Investors

16. As manager of the Funds, the Filer is subject to the standard of care set forth in subsection 159.3 of *Securities Act*, CQLR, c.V-1.1 and to similar provisions contained in the legislation of all the jurisdictions of Canada. As a federally regulated trust company, IA Trust accepts the Deposits as guaranteed trust money and the Filer, acting as agent of IA Trust, will comply with the fiduciary standard of care and applicable customer protection legislation and regulations which apply to IA Trust in respect of the Deposits.

17. The temporary commingling of Cash in the Trust Accounts will permit a seamless method to move Cash from Dealers to the Funds and IA Trust, and in reverse, will facilitate significant administrative and systems economies that will enable the Filer to enhance its level of service to its clients.

18. In the absence of the Exemption Sought, the commingling of Cash would contravene the Commingling Prohibition and would require the Filer to establish separate trust accounts for the Funds and the Deposits. This would effectively not permit the offering of the Deposits to Investor alongside Mutual Fund investments within the same nominee-name accounts, which the Filer believe to be of significant value to Investors.

Cash Clearing

19. Commingled Cash will be forwarded to individual Fund accounts in the name of the Funds' custodian and to IA Trust, as applicable, no less frequently than following overnight processing of Fund purchase and Deposit orders. Commingled Cash will be forwarded from the Trust Accounts to the relevant dealers or dealer trust accounts which redeem Funds or order withdrawals from the Deposits no less frequently than following overnight processing of redemption or withdrawal orders, subject to the time it may take for an

Investor to redeem a cheque issued in respect of redeemed Fund securities or withdrawn Deposits. Accordingly, all monies held in the Trust Accounts will be cleared no less frequently than on a daily basis at the beginning of each business day following the previous business day's overnight processing of all purchase and deposit transaction involving the Funds and Deposits and most redemptions from the Funds and withdrawals from the Deposits.

20. The Filer believes that the commingling of Cash in the Trust Accounts will not be detrimental to the protection of Investors.

Internal Controls

21. In providing services, the Filer is able to account for all monies received into and all monies that are to be paid out of its Trust Account in order to meet the policy objectives of sections 11.1 and 11.2 of Regulation 81-102.

22. The Filer will ensure that proper records with respect to the Cash in a commingled account are kept and will ensure that its respective Trust Account is reconciled, and that Cash are properly accounted for daily.

23. The Filer will ensure that all transactions in its Trust Account are manually reviewed on a daily basis in order to monitor the Trust Account for discrepancies in handling of Cash in the Trust Account.

24. Any error in the handling of monies in a Filer's Trust Account as a result of the commingling of Cash identified through such daily review process will promptly be corrected by the Filer.

25. Except for the Commingling Prohibition, the Filer will comply with all other requirements prescribed in Part 11 of Regulation 81-102 with respect to the separate accounting and handling of Cash.

Decision

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

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

Hugo Lacroix
Superintendent, Securities Markets (interim)

2.1.2 iAnthus Capital Holdings, Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer granted relief from the requirement in National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards that acquisition statements required by securities legislation to be audited must be accompanied by an auditor's report that expresses an unqualified opinion – Issuer made a significant acquisition, but underlying information needed to support an unqualified auditor's opinion on the acquisition statements is not available – Issuer can otherwise comply with the acquisition statement requirements for a business acquisition report and the business acquisition report will contain sufficient alternative information about the acquisition.

Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards, ss. 3.12(2) and 5.1.

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
IANTHUS CAPITAL HOLDINGS, INC.
(THE "FILER")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") exempting the Filer from the requirement in subsection 3.12(2) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* ("**NI 52-107**") that an auditor's report accompanying audited acquisition statements must express an unmodified opinion (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, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador.

Interpretation

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

Representations

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

1. The Filer was incorporated on November 15, 2013 pursuant to the *Business Corporations Act* (British Columbia) (the "**BCBCA**").

2. The Filer's head office is located at Suite 414, 420 Lexington Avenue, New York, New York, 10170. The Filer's principal place of business in Canada and its management are located at Suite 2740, 22 Adelaide Street West, Toronto, Ontario, M5H 4E3.

3. The Filer is a reporting issuer in the provinces of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador. Except for the failure to file the business acquisition report (the "**BAR**") for the Transaction (as defined below), the Filer is not in default of securities legislation in any jurisdiction in which it is a reporting issuer.

4. The Filer's authorized share capital consists of an unlimited number of common shares (the "**Common Shares**") and an unlimited number of Class A convertible restricted voting shares (the "**Class A Shares**"). As at July 3, 2019, 156,041,678 Common Shares and 15,528,928 Class A Shares were issued and outstanding.

5. The Filer's Common Shares are listed on the Canadian Securities Exchange (the "**CSE**") under the trading symbol "IAN" and on the OTCQX Best Market (the "**OTCQX**") under the trading symbol "ITHUF". The Class A Shares are not listed on any stock exchange.

6. MPX Bioceutical Corporation ("**MPX**") was incorporated on April 2, 1974 pursuant to the *Business Corporations Act* (Ontario) and was continued into British Columbia on January 15, 2019. Prior to the completion of the Transaction (as defined below), MPX was a reporting issuer in the provinces of British Columbia, Alberta and Ontario, and its common shares (the "**MPX Shares**") were listed on the CSE under the trading symbol "MPX" and on the OTCQX under the trading symbol "MPXEF".

7. On February 5, 2019, the Filer acquired all of the issued and outstanding MPX Shares pursuant to a statutory plan of arrangement under the BCBCA in accordance with the terms of an arrangement agreement dated October 18, 2018, as amended by an amending agreement dated January 31, 2019 (the "**Transaction**"). Pursuant to the Transaction, each MPX Share was acquired in exchange for 0.1673 of a Common Share and 0.1 of a common share in the capital of MPX International Corporation ("**MPX International**"), a newly formed company that holds all of the non-U.S. businesses (the "**MPX International Assets**") of MPX.

8. Following the completion of the Transaction, the MPX Shares were delisted from both the CSE and the OTCQX. Pursuant to the Transaction, MPX amalgamated with a wholly-owned subsidiary of the Filer to form MPX Bioceutical ULC ("**MPX ULC**"). On March 8, 2019, the Ontario Securities Commission ordered that MPX ULC had ceased to be a reporting issuer in the provinces of British Columbia, Alberta and Ontario.

9. MPX International is a reporting issuer in the provinces of British Columbia, Alberta and Ontario and its common shares are listed on the CSE under the trading symbol "MPXI". Following the completion of the Transaction, MPX International holds all of the MPX International Assets. MPX International is not affiliated with the Filer or with MPX ULC.

10. The Transaction constituted a "significant acquisition" by the Filer pursuant to section 8.3 of National Instrument 51-102 *Continuous Disclosure Obligations* ("**NI 51-102**"). Accordingly, pursuant to section 8.4 of NI 51-102, the Filer was required to file the BAR within 75 days of the completion of the Transaction. Accordingly, the BAR was required to be filed by April 22, 2019. The Filer was noted in default for its failure to file the BAR on April 23, 2019.

11. To comply with section 8.4 of NI 51-102, the Filer's BAR must include, among other things, audited annual financial statements of MPX, less the MPX International Assets (the "**Acquired MPX Business**") for the financial year ended March 31, 2018 (the "**2018 Annual Financial Statements**").

12. Pursuant to section 3.12 of NI 52-107, acquisition statements that are required by securities legislation to be audited must be accompanied by an auditor's report that expresses an unmodified opinion.

13. Separate financial statements of the Acquired MPX Business have never been prepared by MPX's management and MPX historically prepared its financial statements on a consolidated basis with MPX and all of its subsidiaries.

14. Although the Filer has prepared the 2018 Annual Financial Statements to the best of its knowledge using information that is presently available from MPX and its former management, the Filer's auditor has represented to the Filer that it is unable to obtain sufficient comfort with respect to the Acquired MPX Business due to the lack of sufficient underlying information and the passage of time. The Filer's auditor was not present during the relevant periods to conduct a physical observation of the inventory and the biological assets and has been unable to satisfy itself by alternative means of the quantities of inventory and biological assets held as at March 31, 2018.

15. The Filer expects the following items will result in a modified opinion from the auditor in respect of the 2018 Annual Financial Statements:

    (a) *Biological Assets*: Supporting documentation and schedules required in order to validate the quantity of the biological assets and the key inputs used for the valuation of biological assets are not available for the year ended March 31, 2018. The Filer also noted issues with the historic biological asset valuation models for the period ended March 31, 2018. Despite best efforts, the Filer's auditor will not be able to obtain sufficient comfort to verify the key inputs to the historic biological asset valuation models;

    (b) *Inventory*: Supporting documentation and schedules required in order to validate the costing and quantity of inventory are not available for and as of the year ended March 31, 2018. The Filer has also noted challenges in reconciling the inventory schedules to the accounting records and obtaining a complete population to provide to the Filer's auditor for testing; and

    (c) *Cost of Sales and Fair Value Gains and Losses*: Because inventory impacts the determination of cost of sales and biological assets impact the determination of fair value gains and losses on the statement of profit and loss, the Filer's auditor cannot perform sufficient audit procedures on these items (collectively, the "**Modified Matters**").

16. Apart from the requirement to provide an unmodified audit opinion on the 2018 Annual Financial Statements, the Filer is otherwise able to prepare and file the BAR in accordance with NI 51-102 and NI 52-107.

17. The Filer anticipates that its auditor will be able to issue an unmodified opinion with respect to inventory and biological assets for its year ended December 31, 2019.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the Filer includes the following financial information in the BAR for the Transaction:

(a) the 2018 Annual Financial Statements accompanied by an auditor's report that expresses an unmodified opinion other than with respect to the Modified Matters;

(b) an audited statement of assets acquired and liabilities assumed, without qualification, by the Filer as at the closing date of the Transaction;

(c) unaudited annual financial statements of the Acquired MPX Business for the financial year ended March 31, 2017, in accordance with subsection 8.4(1) of NI 51-102; and

(d) unaudited interim financial statements of the Acquired MPX Business for the nine-month period ended December 31, 2018, and comparative period in the immediately preceding financial year.

DATED at Toronto on this 10th day of July, 2019.

"Cameron McInnis"
Chief Accountant
Ontario Securities Commission

2.1.3 Mackenzie Financial Corporation and Mackenzie Anti-Benchmark Global Investment Grade Fund

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from section 2.1(1) of National Instrument 81-102 – Investment Funds to permit a global fixed income fund to invest more than 10 percent of net assets in debt securities issued, or guaranteed fully as to principal and interest, by foreign supranational agencies or governments, subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 – Investment Funds, ss. 2.1(1) and 19.1.

July 9, 2019

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
MACKENZIE FINANCIAL CORPORATION
(the Filer)

AND

IN THE MATTER OF
MACKENZIE ANTI-BENCHMARK GLOBAL
INVESTMENT GRADE FUND
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Fund for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**), for an exemption (the **Exemption Sought**) pursuant to section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**), from subsection 2.1(1) of NI 81-102 (the **Concentration Restriction**) to permit the Fund to invest up to:

(a) 20% of its net asset value immediately after the transaction in evidences of indebtedness of any one issuer if those evidences of indebtedness are issued, or guaranteed fully as to principal and interest, by supranational agencies or governments, other than the government of Canada, the government of a jurisdiction in Canada or the government of the United States of America, and are rated "**AA**" by S&P Global Ratings Canada (**S&P**) or its DRO affiliate (as defined in NI 81-102), or have an equivalent rating by one or more other designated rating organizations or their DRO affiliates; and

(b) 35% of its net asset value immediately after the transaction in evidences of indebtedness of any one issuer if those evidences of indebtedness are issued, or guaranteed fully as to principal and interest, by supranational agencies or governments, other than the government of Canada, the government of a jurisdiction in Canada or the government of the United States of America, and are rated "**AAA**" by S&P or its DRO affiliate, or have an equivalent rating by one or more other designated rating organizations or their DRO affiliates

(such evidences of indebtedness are collectively referred to as **Foreign Government Securities**).

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 each of the other provinces and territories of Canada (the **Other Jurisdictions**).

Interpretation

Terms defined in NI 81-102, National Instrument 14-101 *Definitions*, and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation amalgamated under the laws of Ontario. The head office of the Filer is in Toronto, Ontario.

2. The Filer is registered as an investment fund manager, portfolio manager, exempt market dealer and commodity trading manager in Ontario. The Filer is also registered as a portfolio manager and exempt market dealer in all other Canadian provinces and territories and as an investment fund manager in Newfoundland and Labrador and Québec.

3. The Filer is the manager, trustee and portfolio manager of the Fund.

4. The Fund will be an open-ended mutual fund trust established under the laws of Ontario.

5. Securities of the Fund will be offered pursuant to a simplified prospectus filed in all the provinces and territories of Canada and, accordingly the Fund will be a reporting issuer in one or more provinces and territories of Canada. A preliminary simplified prospectus was filed for the Fund via SEDAR in all the provinces and territories on June 7, 2019 (the **Simplified Prospectus**).

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

7. The investment objectives of the Fund are expected to be substantially similar to the following: "The Fund seeks long-term capital growth by investing primarily in a diversified portfolio of investment-grade fixed-income securities issued by companies or governments of any size, anywhere in the world."

8. To achieve the investment objective of the Fund, the investment team will follow the Anti-Benchmark® Global Investment Grade strategy. The Fund will use a long-only portfolio that is generally fully invested, well-diversified and composed of securities that are attractive from a fundamental and technical standpoint.

9. Although the Fund aims to invest primarily in a diversified portfolio of fixed-income securities, the Fund's portfolio managers seek the discretion to gain exposure to any one issuer of Foreign Government Securities in excess of the Concentration Restriction.

10. The portfolio managers of the Fund will allocate assets across credit quality, duration, structures, sectors, currencies and countries in a risk-efficient manner. In following this style, in conjunction with fundamental investment analysis, there may be periods where the portfolio managers believe that Foreign Government Securities are better suited to the Fund's investment objectives.

11. Allowing the Fund to hold highly rated fixed-income securities issued by governments will enable the Fund to preserve capital in foreign markets during adverse market conditions, have access to assets with minimal credit risk and enable the portfolio manager to assess its views on interest rates and duration.

12. The increased flexibility to hold Foreign Government Securities may also yield higher returns than Canadian or United States of America shorter-term government fixed-income alternatives.

13. Subsection 2.1(1) of NI 81-102 prohibits the Fund from purchasing a security of an issuer if, immediately after the transaction, more than 10% of the net asset value of the Fund, taken at market value at the time of the transaction, would be invested in securities of that issuer. Subsection 2.1(2) of NI 81-102 sets out certain exceptions, including in respect of a "government security", as defined in NI 81-102.

14. The Filer believes that the ability to purchase Foreign Government Securities in excess of the limit in subsection 2.1(1) of NI 81-102 will better enable the Fund to achieve its fundamental investment objectives, thereby benefitting the Fund's investors.

15. The Foreign Government Securities are not within the meaning of "government securities" as such term is defined in NI 81-102.

16. The Fund will only purchase Foreign Government Securities if the purchase is consistent with the Fund's fundamental investment objectives.

17. The Simplified Prospectus for the Fund will disclose the risks associated with the concentration of assets of the Fund in securities of a limited number of issuers.

18. The Fund seeks the Requested Relief to enhance its ability to pursue and achieve its investment objectives.

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. paragraphs (a) and (b) of the Exemption Sought cannot be combined for any one issuer;

2. any security purchased pursuant to this decision is traded on a mature and liquid market;

3. the acquisition of the securities purchased pursuant to this decision is consistent with the fundamental investment objectives of the Fund;

4. the Simplified Prospectus of the Fund discloses the additional risks associated with the concentration of the net asset value of the Fund in securities of fewer issuers, such as the potential additional exposure to the risk of default of the issuer in which the Fund has so invested and the risks, including foreign exchange risk, of investing in the country in which the issuer is located; and

5. the Simplified Prospectus of the Fund discloses, in the investment strategies section, a summary of the nature and terms of the Exemption Sought, along with the conditions imposed and the type of securities covered by this decision.

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

2.1.4 Mackenzie Financial Corporation and Quadrus Investment Services Ltd.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Revocation of prior relief – Relief granted from the requirement in s. 3.2(2) of NI 81-101 to deliver a fund facts document to investors for purchases of mutual fund securities of certain series under automatic switching programs – High net worth series offering lower combined management and administration fees than the retail series, as applicable, based on the size of a fund investment – Investment fund manager initiating automatic switches between series on behalf of investors when their investments satisfy or cease to meet eligibility requirements of High net worth series – Automatic switches between series of a fund triggering a distribution of securities which requires delivery of a fund facts document – Relief granted from the requirement to deliver a fund facts document to investors for purchases of series securities made under automatic switching programs subject to compliance with certain notification and disclosure requirements in the simplified prospectus and fund facts document – Relief granted from the requirement to prepare a fund facts document for each series of securities of a mutual fund in accordance with the form requirements in Form 81-101F3 and the requirement that the fund facts document contain only information that is specifically required or permitted to be in Form 81-101F3 so that fund facts document delivered to investors in the automatic switching program will provide disclosure relating to the automatic switching program and both series, subject to certain conditions – National Instrument 81-101 Mutual Fund Prospectus Disclosure.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, sections 2.1, 3.2.01(1) and 6.1.

June 28, 2019

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
MACKENZIE FINANCIAL CORPORATION
(Mackenzie)

AND

QUADRUS INVESTMENT SERVICES LTD.
(the Principal Distributor, and together with Mackenzie, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from Mackenzie on behalf of the Funds (as defined below) and the Principal Distributor for a decision under the securities legislation of the Jurisdiction (the **Legislation**):

(a) revoking the decision granted by the principal regulator (the **Revocation**) on June 28, 2018 (the **Prior Decision**);

(b) exempting the Principal Distributor from the requirement in subsection 3.2.01(1) of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) to deliver or send the most recently filed fund facts document (a **Fund Facts**) in the manner as required under the Legislation (the **Fund Facts Delivery Requirement**) in respect of the purchases of High Net Worth Series (as defined below) or Retail Series (as defined below) securities of the Quadrus Funds that are made pursuant to Switches (as defined below) (the **Fund Facts Delivery Relief**); and

(c) exempting the Funds from the requirement in section 2.1 of NI 81-101 to prepare a Fund Facts in the form of Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**), to permit the Funds to deviate from certain requirements in Form 81-101F3 in order to prepare a Consolidated Fund Facts Document (as defined below) that includes the Switching Disclosure (as defined below) (the **Consolidated Fund Facts Relief**, and together with the Fund Facts Delivery Relief, 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 Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador (the **Other Jurisdictions**).

Interpretation

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

Representations

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

Mackenzie

1. Mackenzie is a corporation amalgamated under the laws of Ontario with its head office in Toronto, Ontario.

2. Mackenzie is registered as an investment fund manager, portfolio manager, exempt market dealer and commodity trading manager in Ontario. Mackenzie is also registered as: (a) a portfolio manager and exempt market dealer in the Other Jurisdictions and each of the territories of Canada; and (b) an investment fund manager in Newfoundland and Labrador, and Québec.

3. Mackenzie is not in default of the securities legislation of any of the provinces and territories of Canada.

The Principal Distributor

4. The Principal Distributor is a member of the Mutual Fund Dealers Association of Canada and is registered in the category of mutual fund dealer in each of the provinces and territories of Canada.

5. The Principal Distributor is not in default of the securities legislation of any of the provinces and territories of Canada.

The Quadrus Funds

6. Mackenzie is the manager of mutual funds (the **Existing Funds**), each of which is subject to the requirements of National Instrument 81-102 – *Investment Funds* (**NI 81-102**). Mackenzie may, in the future, become the manager of additional mutual funds (the **Future Funds**, and together with the Existing Funds, the **Funds**) that are subject to the requirements of NI 81-102.

7. Certain of the Funds are, or will be, available for purchase only through the Principal Distributor (the **Quadrus Funds**).

8. Each Quadrus Fund is, or will be, a reporting issuer under the laws of all of the provinces and territories of Canada. The securities of the Quadrus Funds are, or will be, qualified for distribution pursuant to a simplified prospectus, Fund Facts and annual information form that have been, or will be, prepared and filed in accordance with NI 81-101.

9. Each Quadrus Fund is, or will be, an open-end mutual fund trust created under the laws of Ontario or an open-end mutual fund that is a class of shares of a mutual fund corporation incorporated under the laws of Ontario.

10. The Quadrus Funds are not in default of the securities legislation of any of the provinces and territories of Canada.

11. The Quadrus Funds currently offer up to 22 series of securities – D5 series, D8 series, H series, H5 series, H8 series, HW series, HW5 series, HW8 series, L series, L5 series, L8 series, N series, N5 series, N8 series, Quadrus series, QF series, QF5 series, QFW series, QFW5 series, RB series, I series and Series R – under simplified prospectuses,

annual information forms and Fund Facts dated June 28, 2018 and October 12, 2018, as amended. Mackenzie may also offer additional series of the Quadrus Funds in the future.

12. Securities in L series, L5 series, L8 series, HW series, HW5 series, HW8 series, QFW series, QFW5 series, and any future applicable preferred pricing series (the **High Net Worth Series**) of the Quadrus Funds have, or will have, lower combined management and administration fees than securities in their corresponding retail series, specifically, Quadrus series, D5 series, D8 series, H series, H5 series, H8 series, QF series and QF5 series, and any future applicable retail series of the Quadrus Funds (the **Retail Series**). Securities in the High Net Worth Series are only available to investors who have invested at least $100,000 in the High Net Worth Series and who also have a minimum total holdings amount of $500,000 across a group of accounts of which the investor is a member, including segregated fund policies with London Life Insurance Company, The Great-West Life Assurance Company and/or The Canada Life Assurance Company (the **Eligibility Criteria**).

13. Each pair of series, namely Quadrus series and L series, D5 series and L5 series, D8 series and L8 series, H series and HW series, H5 series and HW5 series, H8 series and HW8 series, QF series and QFW series, QF5 series and QFW5 series, and any future pairs of series (each, a **Pair**) are each made up of a Retail Series and a High Net Worth Series. Each High Net Worth Series in a Pair is identical to its corresponding Retail Series but for the Eligibility Criteria and the fact that it has lower combined management and administration fees than the Retail Series.

Switches

14. Mackenzie currently has a program whereby investors holding Retail Series securities are automatically switched into the corresponding High Net Worth Series if they meet the Eligibility Criteria (the **Lower Fee Switches**), without the Principal Distributor or investor having to initiate the trade. If an investor holding High Net Worth Series securities ceases to meet the Eligibility Criteria, Mackenzie may switch the applicable High Net Worth Series securities into the applicable Retail Series securities without the Principal Distributor or investor initiating the trade (the **Higher Fee Switches**, and together with the Lower Fee Switches, the **Switches**).

15. Lower Fee Switches take place when the investor purchases additional securities of the Quadrus Funds or when positive market movement moves the investor into High Net Worth Series eligibility.

16. Higher Fee Switches may occur because of redemptions that decrease the amount of total investments with the Filer for purposes of calculating the investor's eligibility for High Net Worth Series securities. However, market value declines will not trigger Higher Fee Switches.

17. Mackenzie will aggregate total investments across the group of eligible accounts in order to determine whether investors are eligible to purchase and to continue to hold High Net Worth Series securities. London Life Insurance Company, as a service provider to Mackenzie, will monitor investors' investments in each particular series and monitor the total investments across the group of eligible accounts in order to provide Mackenzie with the information necessary to determine whether investors are eligible to purchase and continue to hold High Net Worth Series securities. If an investor is no longer eligible to hold High Net Worth Series securities, Mackenzie may effect a Higher Fee Switch.

18. Once an account has qualified for High Net Worth Series, the account will continue to enjoy the benefit of lower combined management and administration fees associated with the applicable High Net Worth Series, even if fund performance reduces the account value below the Eligibility Criteria.

19. Investors may access High Net Worth Series securities by (a) initially investing in High Net Worth Series securities if they meet the Eligibility Criteria, or (b) initially investing in Retail Series securities and then, upon meeting the Eligibility Criteria, having those Retail Series securities switched into High Net Worth Series securities by way of a Lower Fee Switch.

20. Investors may access Retail Series securities by (a) initially investing in Retail Series securities, or (b) initially investing in High Net Worth Series securities and then, upon no longer meeting the Eligibility Criteria for the High Net Worth Series securities, having those High Net Worth Series securities switched into Retail Series securities by way of a Higher Fee Switch.

21. Further to each Lower Fee Switch, an investor's account would continue to hold securities of the same Quadrus Fund(s) as before the Lower Fee Switch, with the only material difference to the investor being that the combined management and administration fees charged for the High Net Worth Series securities would be lower than those charged for Retail Series securities.

22. Further to each Higher Fee Switch, an investor's account would continue to hold securities of the same Quadrus Fund(s) as before the Higher Fee Switch, with the only material difference to the investor being that the combined management and administration fees charged for the Retail Series securities would be higher than those charged for High Net Worth Series securities.

23. The trailing commissions for High Net Worth Series and Retail Series securities are, or will be, identical.

24. There are no sales charges, switch fees or other fees payable by the investor upon a Switch.

25. The Switches have no adverse tax consequences on investors under current Canadian tax legislation.

Consolidated Fund Facts Relief

26. Mackenzie proposes to prepare, for each of the Quadrus Funds, a consolidated Fund Facts for each Pair (a Consolidated **Fund Facts Document**).

27. Each Consolidated Fund Facts Document will include the information required by Form 81-101F3 for both of the series in the applicable Pair, except as set out below in paragraph 28.

28. Specifically, for each Consolidated Fund Facts Document, Mackenzie proposes to deviate from the following requirements in Form 81-101F3:

    (a) General Instructions (10) and (16), to permit the Consolidated Fund Facts Document to be the Fund Facts for, and disclose information relating to, both of the series in the applicable Pair, except as further described below;

    (b) Item 1(c.1) of Part I, to permit the Consolidated Fund Facts Document to name both of the series in the applicable Pair in the heading;

    (c) Item 1(e) of Part I, to permit the Consolidated Fund Facts Document to name both of the series in the applicable Pair in the introduction to the Fund Facts;

    (d) Instruction (0.1) of Part I, to permit the Consolidated Fund Facts Document to identify the fund codes of both of the series in the applicable Pair;

    (e) Instruction (1) of Item 2 of Part I, to permit the Consolidated Fund Facts Document to list the date that both of the series in the applicable Pair first became available to the public;

    (f) Instruction (3) of Item 2 of Part I, to permit the Consolidated Fund Facts Document to disclose the management expense ratio (the **MER**) of only the applicable Retail Series within the applicable Pair;

    (g) Instruction (6) of Item 2 of Part I, to permit the Consolidated Fund Facts Document to specify the minimum investment amount and additional investment amount of only the Retail Series within the applicable Pair;

    (h) General Instruction (8), to permit the Consolidated Fund Facts Document to include a footnote under the "Quick Facts" table that:

        (i) states that the Fund Facts pertains to both of the series in the applicable Pair;

        (ii) cross-references the "How much does it cost?" section of the Fund Facts for further details about the Switches;

        (iii) cross-references the fee decrease table under the subheading "Fund Expenses" of the Fund Facts for further details about the minimum investment amount for both series in the applicable Pair; and

        (iv) cross-references the "Fund Expenses" subsection of the Fund Facts for further details about the MER for both of the series in the applicable Pair;

    (i) Item 5(1) of Part I, to permit the Consolidated Fund Facts Document to:

        (i) reference only the applicable Retail Series in the introduction under the heading "How has the fund performed?"; and

(ii) include, as a part of the introduction, disclosure explaining that the performance of the High Net Worth Series of the applicable Pair would be similar to the performance of the corresponding Retail Series, but would vary as a result of the difference in fees compared to the corresponding Retail Series, as set out in the fee decrease table under the subheading "Fund expenses";

(j) Instruction (4) of Item 5 of Part I, to permit a Consolidated Fund Facts Document to show the required performance data under the subheadings "Year-by-year returns", "Best and worst 3-month returns", and "Average return" relating only to the applicable Retail Series;

(k) Item 1(1.1) of Part II, to permit a Consolidated Fund Facts Document to:

(i) refer to both series in the applicable Pair in the introductory statement under the heading "How much does it cost?"; and

(ii) include, as part of the introductory statement, a summary of the Switches, consisting of:

a. a statement explaining that the High Net Worth Series charges lower combined management and administration fees than the corresponding Retail Series;

b. a statement explaining the scenarios in which the Switches will be made, including Switches that may be made due to the investor no longer meeting the Eligibility Criteria for the applicable High Net Worth Series;

c. a cross-reference to the fee decrease table under the subheading "Fund expenses";

d. a cross-reference to specific sections of the simplified prospectus of the Funds for more details about the Switches; and

e. a statement disclosing that investors should speak to their representative for more details about the Switches;

(l) Item 1(1.2)(1) of Part II, to permit a Consolidated Fund Facts Document to refer to both of the series in the applicable Pair in the introduction under the subheading "Sales charges", if applicable;

(m) Instruction (1) of Item 1 of Part II, to permit a Consolidated Fund Facts Document to disclose all sales charge options for both of the series in the applicable Pair.

(n) Item 1(1.3)(2) of Part II, to permit a Consolidated Fund Facts Document, where the applicable Quadrus Fund is not new, to:

(i) disclose the MER, trading expense ratio and fund expenses of both series in the particular Pair, and where certain information is not available for a particular series, to state "not available" in the corresponding part of the table; and

(ii) add a row in the table:

a. in which the first column states "For every $1,000 invested, this equals"; and

b. which discloses the respective equivalent dollar amounts of the fund expenses of each series included in the table for each $1,000 investment;

(o) Item 1(1.3)(3) of Part II, to permit a Consolidated Fund Facts Document, where the applicable Quadrus Fund and both of the series in the applicable Pair are not new, to include, instead of the mandated statement above the fund expenses table:

(i) a statement explaining that the applicable Retail Series has higher combined management and administration fees than the applicable High Net Worth Series; and

(ii) a statement stating "As of [the date of the most recently filed management report of fund performance], the fund expenses were as follows:";

(p) Item 1(1.3)(3) of Part II, to permit a Consolidated Fund Facts Document, where the applicable Quadrus Fund is not new but where one of the series in the applicable Pair is new, to include, instead of the mandated statement above the fund expenses table:

(i) a statement explaining that the applicable Retail Series has higher combined management and administration fees than the applicable High Net Worth Series;

(ii) a statement disclosing that the fund expenses information below is not available for one of the series because it is new, as indicated below; and

(iii) a statement stating "As of [the date of the most recently filed management report of fund performance], the fund expenses were as follows:";

(q) Item 1(1.3)(4) of Part II, to permit a Consolidated Fund Facts Document, where the applicable Quadrus Fund is new, to:

(i) include a statement explaining that the applicable Retail Series has higher combined management and administration fees than the applicable High Net Worth Series;

(ii) disclose the rates of the management fee and administration fee of only the applicable Retail Series; and

(iii) for only the applicable Retail Series, disclose that the operating expenses and trading costs are not available because it is new;

(r) General Instruction (8), to permit a Consolidated Fund Facts Document to include, at the end of the disclosure under the sub-heading "Fund expenses":

(i) a table that discloses:

a. the name of, and qualifying investment amounts associated with each of the series in the applicable Pair; and

b. the combined management and administration fee decrease of the applicable High Net Worth Series from the combined management and administration fee of the applicable Retail Series, shown in percentage terms; and

(ii) an introduction to the table stating that the table sets out the combined management and administration fee decrease of the applicable High Net Worth Series from the combined management and administration fee of the applicable Retail Series.

(collectively, the **Switching Disclosure**).

29. Mackenzie submits that, given that each of the Retail Series and High Net Worth Series are a part of the Switches, and an investor in either series would make one investment decision at the outset by purchasing securities of a Retail Series of a Quadrus Fund or, if eligible, of a High Net Worth Series of a Quadrus Fund, a Consolidated Fund Facts Document containing the Switching Disclosure will provide investors with more comprehensive disclosure about the Switches and each of the series in the applicable Pair as compared to disclosure in separate Fund Facts for each of the series in the applicable Pair.

30. Since, if the Fund Facts Delivery Relief described below is granted, the Fund Facts for the series that is being switched into pursuant to a Switch would not be delivered in connection with the Switch, Mackenzie submits that there is little benefit to preparing separate Fund Facts for each of the series in the applicable Pair. Mackenzie submits that the Consolidated Fund Facts Document containing the Switching Disclosure, which would be delivered to investors before the initial investment in Retail Series securities or, if eligible, High Net Worth Series securities, provides investors with better disclosure than if investors received the Fund Facts pertaining only to the applicable Retail Series or High Net Worth Series.

31. In the absence of the Consolidated Fund Facts Relief, Mackenzie would be required to prepare separate Fund Facts for each of the series within each Pair.

Fund Facts Delivery Relief

32. Each Switch entails (a) a redemption of the Retail Series security, immediately followed by a purchase of the corresponding High Net Worth Series security, or (b) a redemption of the High Net Worth Series security, immediately followed by a purchase of the corresponding Retail Series security. Each purchase of securities done as part of a Switch is a "distribution" under the Legislation, which triggers the Fund Facts Delivery Requirement.

33. Pursuant to the Fund Facts Delivery Requirement, a dealer is required to deliver the most recently filed Fund Facts of a series of a fund to an investor before the dealer accepts an instruction from the investor for the purchase of securities of that series of the fund.

34. The Filers previously obtained relief from the Fund Facts Delivery Requirement in respect of purchases of High Net Worth Series securities that are made pursuant to the Lower Fee Switches in the Prior Decision (the **Prior Relief**).

35. The Filers request that, starting on or about November 1, 2019 (the **Implementation Date**), the Prior Relief be extended to purchases of Retail Series securities that are made pursuant to the Higher Fee Switches through the granting of the Revocation and the Fund Facts Delivery Relief.

36. While Mackenzie will initiate each trade done as part of a Switch, Mackenzie and the Principal Distributor do not propose to deliver a Fund Facts to investors in connection with the purchase of securities made pursuant to a Switch since, after the Implementation Date, investors will receive a Consolidated Fund Facts Document containing the Switching Disclosure before their first purchase of Retail Series or High Net Worth Series securities in accordance with the Fund Facts Delivery Requirement. The Consolidated Fund Facts Document will provide investors with disclosure about the Switches and both of the series in the applicable Pair, and investors would derive little benefit from receiving a further Consolidated Fund Facts Document in conjunction with each Switch.

37. To ensure that existing investors in both the Retail Series and High Net Worth Series prior to the Implementation Date receive sufficient disclosure of the changes that will be implemented on the Implementation Date, Mackenzie will liaise with the Principal Distributor to devise and implement a notification plan for such investors to notify them about the Switches, as further described below in condition 3(a) below.

38. Mackenzie will communicate extensively with the Principal Distributor and London Life Insurance Company about the Switches so that Mackenzie will be equipped to appropriately notify existing investors in the Retail Series and High Net Worth Series of the changes applying to their Quadrus Funds investments, and appropriately advise new investors about the Switches.

39. Mackenzie or the Principal Distributor will deliver, or will arrange for the delivery of, trade confirmations to investors in connection with each trade done further to a Switch. Furthermore, details of the changes in series of securities held will be reflected in the account statements sent to investors for the quarter in which the change occurred.

40. The most recently filed Consolidated Fund Facts Document for each series will be available to investors on the Principal Distributor's website.

41. In the absence of the Fund Facts Delivery Relief, the Principal Distributor would be required to deliver the applicable Fund Facts to investors in connection with the purchase of securities made pursuant to each Switch.

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:

1. the Revocation is granted;

2. the Consolidated Fund Facts Relief is granted provided that each Consolidated Fund Facts Document contains the Switching Disclosure; and

3. the Fund Facts Delivery Relief is granted provided that:

    (a) for investors invested in the Retail Series or High Net Worth Series prior to the Implementation Date, Mackenzie will liaise with the Principal Distributor to devise and implement a notification plan for such investors regarding the Switches to communicate the following:

(i) that their investment may be switched to the High Net Worth Series with lower management and administration fees upon meeting the Eligibility Criteria;

(ii) that, other than a difference in management and administration fees, there will be no other material difference between the Retail Series and the High Net Worth Series;

(iii) that if they cease to meet the Eligibility Criteria, their investment may be switched into the Retail Series, which has higher management and administration fees; and

(iv) that they will not receive the Consolidated Fund Facts Document when they purchase securities in connection with a Switch, but that:

1. they may request the most recently filed Consolidated Fund Facts Document for the relevant series by calling a specified toll-free number or by sending a request via email to a specified address;

2. the most recently filed Consolidated Fund Facts Document will be sent or delivered to them at no cost, if requested;

3. the most recently filed Consolidated Fund Facts Document may be found either on the SEDAR website or on the Principal Distributor's website; and

4. they will not have the right to withdraw from an agreement of purchase and sale (a **Withdrawal Right**) in respect of a purchase of securities made pursuant to a Switch, but they will have the right of action for damages or rescission in the event any Fund Facts or document incorporated by reference into a simplified prospectus for the relevant series contains a misrepresentation, whether or not they request the Fund Facts;

(b) Mackenzie incorporates disclosure in the simplified prospectus for each Quadrus Fund participating in the Switches that describes the Switches, including setting out:

(i) the Eligibility Criteria;

(ii) the fees applicable to investments in the applicable Retail Series and High Net Worth Series; and

(iii) that if investors cease to meet the Eligibility Criteria, their investment may be switched back to the corresponding Retail Series, which has higher management and administration fees; and

(c) for Retail Series and High Net Worth Series investors, Mackenzie sends these investors an annual reminder notice advising that they will not receive a Fund Facts when they purchase Retail Series or High Net Worth Series securities pursuant to a Switch, but that:

(i) they may request the most recently filed Consolidated Fund Facts Document for the relevant series by calling a specified toll-free number or by sending a request via email to a specified address;

(ii) the most recently filed Consolidated Fund Facts Document will be sent or delivered to them at no cost, if requested;

(iii) the most recently filed Consolidated Fund Facts Document may be found either on the SEDAR website or on the Principal Distributor's website; and

(iv) they will not have a Withdrawal Right in respect of a purchase of series securities made pursuant to a Switch, but they will have a right of action for damages or rescission in the event any Fund Facts or document incorporated by reference into a simplified prospectus for the relevant series contains a misrepresentation, whether or not they request the Fund Facts.

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

2.1.5 Gestion FÉRIQUE

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds managed by the Filer or an affiliate of the Filer granted relief from paragraph 15.3(4)(c) and (f) of NI 81-102 Investment Funds to permit references to FundGrade A+ Awards and FundGrade Ratings in sales communications – Relief subject to conditions requiring specified disclosure and the requirement that the FundGrade A+ Awards being referenced not have been awarded more than 365 days before the date of the sales communication.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss.15.3(4)(c) and (f), and 19.1.

(Translation)

July 15, 2019

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

AND

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

AND

IN THE MATTER OF
GESTION FÉRIQUE
(the Filer)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer on the behalf of the Funds (as defined below) for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption under section 19.1 of Regulation 81-102 *respecting Investment Funds*, RSQ, c. V-1.1, r.39 (**Regulation 81-102**) from the requirements set out in paragraphs 15.3(4)(c) (in respect of both the FundGrade A+ Awards and the FundGrade Ratings) and 15.3(4)(f) (in respect of the FundGrade A+ Awards only) of Regulation 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

A) the rating or ranking is provided for each period for which standard performance data is required to be given, except the period since the inception of the mutual fund; and

B) the rating or ranking is to the same calendar month end that is

(i) not more than 45 days before the date of the appearance or use of the advertisement in which it is included, and

(ii) not more than three months before the date of first publication of any other sales communication in which it is included;

(together, the **Exemption Sought**), in order to permit the FundGrade A+ Awards and the FundGrade Ratings to be referenced in sales communications relating to the Funds (as definied below).

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

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

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

Interpretation

Terms defined in Regulation 14-101 *respecting Definitions*, RSQ, c. V-1, r.3 and Regulation 81-102 have the same meaning if used in this decision, unless otherwise defined.

Fund or **Funds** means, individually or collectively, the existing mutual funds for which the Filer or a duly registered affiliate of the Filer acts as investment fund manager and any mutual fund subsequently established for which the Filer, or a duly registered affiliate of the Filer, will act as the investment fund manager.

Representations

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

The Filer and the Funds

1. The Filer is registered as an investment fund manager in the provinces of Québec and Ontario. The head office of the Filer is in Québec.

2. The Filer or an affiliate of the Filer, acts or will act as the investment fund manager of the Funds.

3. Each of the Funds is, or will be, a reporting issuer in the Jurisdictions. Each of the Funds is, or will be, subject to Regulation 81-102, including Part 15 thereof which governs sales communications.

4. Neither the Filer nor any of the Funds are in default of securities legislation in any of the Jurisdictions.

Fundata FundGrade A+ Awards and FundGrade Ratings

5. FundGrade A+ Awards and FundGrade Ratings are awarded by Fundata Canada Inc (**Fundata**), a company that is not a member of the Funds' organization. Fundata is a "mutual fund rating entity", as that term is defined in Regulation 81-102. Fundata is a supplier of mutual fund information and analytical tools to advisors, media and investors worldwide.

6. The FundGrade A+ Awards are awarded to funds in most individual fund classifications for the previous calendar year, and the awards are announced in January of each year. The categories for fund classification used by Fundata are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to CIFSC), a Canadian organization that is independent of Fundata.

7. The FundGrade A+ Awards are based on a rating methodology, the FundGrade Rating system which evaluates funds based on their risk-adjusted performance. The metrics for evaluating fund performance are calculated for the two through ten year time periods for each fund. The FundGrade Ratings are letter grades determined each month and are released on the seventh business day of the following month. Because the overall score of a fund is calculated by equally weighting the periodic rankings, to receive an A grade, a fund must show consistently high scores for all ratios across all time periods.

8. At the end of each calendar year, Fundata calculates a fund grade point average or "GPA" for each fund based on the full year's performance. The fund GPA is calculated by converting each month's FundGrade Rating letter grade into a numerical score. Any fund earning a GPA of 3.5 or greater earns a FundGrade A+ Award.

9. When a fund is awarded a FundGrade A+ Award, Fundata will permit such fund to make reference to the award in its sales communications.

Reasons for the Exemption Sought

10. The FundGrade Ratings fall within the definition of "performance data" under Regulation 81-102, as they constitute "a rating, ranking, quotation, discussion or analysis regarding an aspect of the investment performance of an investment fund". Therefore, references to FundGrade Ratings and FundGrade A+ Awards in sales communications relating to the funds need to meet the applicable requirements in Part 15 of Regulation 81-102.

11. Paragraph 15.3(4)(c) of Regulation 81-102 imposes a "matching" requirement, for performance ratings or rankings that are included in sales communications for mutual funds, it must be provided for, or "match", each period for which

standard performance data is required to be given for the fund, except for the period since the inception of the fund (i.e., for one, three, five and ten year periods, as applicable).

12. While FundGrade Ratings are based on calculations for a minimum of two years through to a maximum of ten years, and the FundGrade A+ Awards are based on a yearly average of monthly FundGrade Ratings, specific ratings for the three, five and ten year periods within the two to ten year measurement period are not given. This means that a sales communication referencing FundGrade Ratings and the FundGrade A+ Awards cannot comply with the "matching" requirement contained in paragraph 15.3(4)(c) of Regulation 81-102. Relief from paragraph 15.3(4)(c) of Regulation 81-102 is, therefore, required in order for a fund to use FundGrade Ratings and the FundGrade A+ Awards in sales communications.

13. Paragraph 15.3(4)(f) of Regulation 81-102 provides that in order for a rating or ranking such as a FundGrade A+ Award to be used in an advertisement, it must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.

14. Because the evaluation of funds for the FundGrade A+ Awards will be based on data aggregated until the end of December in any given year and the results will be published in January of the following year, by the time a fund receives a FundGrade A+ Award in January, paragraph 15.3(4)(f) of Regulation 81-102 will only allow the FundGrade A+ Award to be used in an advertisement until the middle of February and in other sales communications until the end of March.

15. The Filer wishes to include, in sales communications of the Funds, references to the FundGrade Ratings and the FundGrade A+ Awards, where such Funds have been awarded a FundGrade A+ Award.

16. The Filer submits that the Exemption Sought is not detrimental to the protection of investors.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted to permit the FundGrade A+ Awards and the FundGrade Ratings to be referenced in sales communications relating to the Funds, provided that:

1. the sales communication that refers to the FundGrade A+ Awards and the FundGrade Ratings complies with Part 15 of Regulation 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

    a) the name of the category for which the Fund has received the award or rating;

    b) the number of mutual funds in the category for the applicable period;

    c) the name of the ranking entity, *i.e.*, Fundata;

    d) the length of period and the ending date, or, the first day of the period and the ending date on which the FundGrade A+ Awards or the FundGrade Rating is based;

    e) a statement that FundGrade Ratings are subject to change every month;

    f) in the case of a FundGrade A+ Award, a brief overview of the FundGrade A+ Awards;

    g) in the case of a FundGrade Rating (other than FundGrade Ratings referenced in connection with a FundGrade A+ Award), a brief overview of the FundGrade Rating;

    h) disclosure of the meaning of the FundGrade Ratings from A to E (e.g., rating of A indicates a fund is in the top 10% of its category); and

    i) reference to Fundata's website (www.fundata.com) for greater detail on the FundGrade A+ Awards and the FundGrade Ratings;

2. The FundGrade A+ Award being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. The FundGrade A+ Awards and the FundGrade Ratings being referenced are calculated based on comparisons of performance of mutual funds within a specified category established by the CIFSC (or a successor to CIFSC).

Hugo Lacroix
Superintendent, Securities Markets (interim)
Investment Funds

2.2 Orders

2.2.1 Martin Bernholtz – s. 144

FILE NO.: 2019-24

IN THE MATTER OF
MARTIN BERNHOLTZ

Timothy Moseley, Vice-Chair and Chair of the Panel

July 10, 2019

ORDER (Section 144 of the *Securities Act*, RSO 1990, c. S.5)

WHEREAS the Ontario Securities Commission held a hearing in writing to consider an Application made by Martin Bernholtz (**Bernholtz**) to vary the terms of the Order issued by the Commission on May 21, 2019, (the **May 21 Order**) relating to the Settlement Agreement entered into on May 16, 2019, between Staff of the Commission and Bernholtz;

ON READING the Application dated July 8, 2019, and considering the consent of Staff of the Commission to an order in substantially this form;

IT IS ORDERED, pursuant to subsection 144(1) of the *Securities Act*, that paragraph 3 of the May 21 Order is varied to read "trading in any securities or derivatives by the Respondent cease for a period of three years commencing on the date that is 45 days from the date of this Order, pursuant to paragraph 2 of subsection 127(1) of the Act, with the exception that the transfers of shares from the Respondent, or companies under his control, to his son David Bernholtz, as listed on Schedule "A" to the order dated July 10, 2019, previously requested but not yet completed, may be completed and the Respondent may provide any necessary direction to complete these transfers;"

"Timothy Moseley"

SCHEDULE "A"

Martin Bernholtz

Symbol	CUSIP	Quantity	Security Name
WAW	05149Q103	500,000	AUGUSTINE VENTURES INC*
AUAG	05334L109	200,000	AUXICO RES CDA INC
BDR	090823105	300,000	BIRD RIVER RESOURCES INC
BBL.A	10511J109	9,250	BRAMPTON BRICK LTD CL A
CHV	135101103	80,000	CANADA HOUSE WELLNESS GROUP
	13643T201	350,000	CANADIAN OREBODIES INC*
CZQ.H	211906300	200,000	CONTINENTAL PRECIOUS MINERALS
DM	23809L108	300,000	DATAMETREX AI LTD
FTEC	31810H107	670,000	FINTECH SELECT LTD
FGD	32037R100	44,440	FIRST GLOBAL DATA LTD
	360929103	50,000	GAR LTD CL A*
GSP	37252X104	833,333	GENSOURCE POTASH CORP
GLDN	38116T107	75,000	GOLDEN RIDGE RES LTD
GOG	38121P108	400,000	GLDN TAG RES LTD
GLK	39062T109	1,000,000	GREAT LAKES GRAPHITE INC
GTMS	393704101	100,000	GREENBROOK TMS INC
HBOR	411620107	5	HARBORSIDE INC SUB VTG
ITT	46063M108	450,000	INTERNET OF THINGS INC
LND	45781J207	67,636	INSPIRA FINANCIAL INC
KNT	499113108	30,000	K92 MINING INC
	512171208	97,680	LAKESIDE MINERALS INC*
	512171406	48,840	LAKESIDE MINERALS*
LM	535744106	5,000	LINGO MEDIA CORP
	554234104	5,000	MACCABI VENTURES INC*
MN	562678102	200,000	MANGANESE X ENERGY CORP
	62945U101	100,000	NRG METALS INC*
EAT	670684109	200,000	NUTRITIONAL HIGH INTL
PCG.H	71647C103	32,986,885	PETROCORP GROUP INC*
	733152102	100,000	POPLAR POINT ENGY INC
	74839Q104	1,000,000	QUIA RESOURCES INC*
RFR	75971C209	1,000,000	RENFORTH RESOURCES INC
	76156V103	25,667	REWARDSTREAM SOLUTIONS INC*
REW	76156V202	1,400	REWARDSTREAM SOLUTIONS
SPN	83306Y102	200,000	SNIPP INTERACTIVE INC

TJRC	87253T107	400,000	TJR COATINGS INC
TILT	88688R104	90,000	TILT HLDGS INC
TMD.WT.F	88830X215	37,500	WT-TITAN MEDICAL INC 16NOV20
TMD.WT.H	88830X231	191,000	WT-TITAN MEDICAL INC 31MAR21
	88830X298	300,000	WT-TITAN MED INC 05DEC22
	88830X314	1,003,962	WT-TITAN MEDICAL INC 10APR23
	88830X322	94,110	WT-TITAN MED INC 10AUG2023
TMD	88830X819	16	TITAN MEDICAL INC
TML	894647106	35,000	TREASURY METALS INC
WMD	948525100	25,000	WEEDMD INC
	948525126	12,500	WT-WEEDMD INC 11JAN2020
	CCAT01943	200,000	WT TJR COATINGS 33L 02MAR20
	CCCK64247	250,000	WT GGX GOLD CORP 27JUN19
	CCCK64688	500,000	WT GGX GOLD CORP F/T 10OCT20
	CCCN81520	3,937,500	ISKANDER ENERGY CORP PVT/R
	CCCN97341	500,000	GGX GOLD CORP. F/T 11AUG19
	CCCT07182	400,000	WT GOLDEN TAG 33L 27JUL21
US			
TMD.WT.F	88830X215	75	WT-TITAN MEDICAL INC 16NOV20
	88830X330	94,140	WT-TITAN MED INC 21MAR2024
TMD	88830X819	94,140	TITAN MEDICAL INC

Martin Bernholtz ITF Rachel

Symbol	CUSIP	Quantity	Security Name
APLI	03783R107	35,608	APPILI THERAPEUTICS INC CL A
AUSA.WT	05259R115	294	WT-AUSTRALIS CAP INC 19SEP2019
	093706109	1,920	BLOOM BURTON HEALTHCARE RSTUT
CLSH	12565J100	178,000	CLS HOLDINGS USA INC
CZQ.H	211906300	100,000	CONTINENTAL PRECIOUS MINERALS
DCA.P	23307R102	100,000	DC ACQUISITION CORP
FGD	32037R100	333	FIRST GLOBAL DATA LTD
APP	37956B101	100,000	GLOBAL CANNABIS APPL
	38109W166	49,950	WT-GOLDEN LEAF HLDGS RS 16NV20
	38109WAB5	30,000	GOLDEN LEAF REST 12% 04OCT21
SPOT	38155A100	149,956	GOLDSPOT DISCOVERIES CORP
HBOR	411620107	5	HARBORSIDE INC SUB VTG
ITT	46063M108	105,000	INTERNET OF THINGS INC

JLR	47759R104	200,000	JIULIAN RES INC
LRN	48190B104	100,000	KGIC INC*
JANE	60841W106	200,000	MOJAVE JANE BRANDS INC
NUR	67059X106	500,000	NURAN WIRELESS INC
	748747110	17,500	WT-QUINSAM CAP CORP 11DEC19
SPN	83306Y102	150,000	SNIPP INTERACTIVE INC
TMD.WT.F	88830X215	112,500	WT-TITAN MEDICAL INC 16NOV20
TMD.WT.I	88830X249	50,000	WT-TITAN MEDICAL INC 20SEP21
	88830X264	125,000	WT-TITAN MEDICAL INC 16MAR21
TMD	88830X819	66	TITAN MEDICAL INC
TRM	89785W301	500,000	TRUECLAIM EXPL INC NO PAR
WWT	941188104	40,000	WATER WAYS TECHNOLOGIES INC
	941188112	20,000	WT-WATER WAYS TECHLGS 06MAR21
	CCCK64255	500,000	WT JIULIAN RESOURC 33L 15JUN21
	CCCN91116	28,312	GREY WOLF ANIMAL HEALTH PVT
	CCCN91117	10,000	TRIUMVIRA IMMUNOLOGICS PVT
	CCCN95000	541,102	AVANA CANADA INC PVT TBA
	CCCN95428	500,000	ALKALINE SPRING INC CL A PVT
	CCCT08153	500,000	WT TRUECLAIM EXPL 33L 3MAY23
	CCCT08283	200,000	WT HIGH HAMPTON 33L 13MAR20
	CCCT08385	500,000	WT NURAN WIRELESS 33L 01JUN20
	CCCT08562	100,000	WT GLOBAL CANNABIS 33L 18JUL20
	CCCT08794	368,500	WT CLS HLDNGS USA 33L 07JAN22
US			
	12565JAA8	80,337	CLS HOLDINGS 8% CNV DB 12DEC21

Martin Bernholtz ITF Charlotte

Symbol	CUSIP	Quantity	Security Name
DCA.P	23307R102	100,000	DC ACQUISITION CORP
ITT	46063M108	400,000	INTERNET OF THINGS INC
POND	73238C104	5,000	POND TECHNOLOGIES HLDG INC
	88830X264	125,000	WT-TITAN MEDICAL INC 16MAR21
TMD	88830X819	8,333	TITAN MEDICAL INC
	CCCN95000	75,000	AVANA CANADA INC PVT TBA
	CCCT08174	200,000	WT INTERNET OF THIN33L 26JAN20
	CCCT08223	5,000	WT POND TECH HLDGS 33L 30JAN20
US			
	12565JAA8	40,168	CLS HOLDINGS 8% CNV DB 12DEC21

935476 ONTARIO LIMITED

Symbol	CUSIP	Quantity	Security Name
BBL.A	10511J109	9,400	BRAMPTON BRICK LTD CL A
DVR	251632105	200,000	DEVERON UAS CORP
IMEX	452478100	53,407	IMEX SYSTEM INC
LRN	48190B104	150,000	KGIC INC*
PAX	736401100	3,262,519	PORTEX MINERALS INC*
	748747110	17,500	WT-QUINSAM CAP CORP 11DEC19
	CCCT07919	60,000	WT HIGH HAMPTON HLGS33L29AUG19

Coming in from RBC Online Brokerage

34,400	**Brampton Brick Limited Cl A Sub**
6,150	**Covalon Technologies LTD**
30,833	**Continental Precious Minerals**
250,000	**EQ Inc.**
687,002	**Internet of Things Inc.**
47,000	**Lingo Media**
120,000	**Petrocorp Group Inc.**
10,900	**Titan Medical Inc.**
100,000	**Titan Medical Inc. Warrants (Mar 21, 2021)**

2.2.2 TransCanada PipeLines Limited

Headnote

OSC Rule 13-502 Fees – s. 8.1 – application for exemptive relief by a wholly-owned subsidiary of a reporting issuer from the requirement to pay participation fees – subsidiary previously granted an exemption from many of the requirements of National Instrument 51-102 – Continuous Disclosure Obligations, including the requirement to file annual and interim financial statements and the related management's discussion and analysis, as well as an annual information form – capitalization of applicant included in capitalization of parent reporting issuer – relief granted.

Applicable Legislative Provisions

OSC Rule 13-502, s. 8.1.

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION
RULE 13-502 *FEES*

AND

IN THE MATTER OF
TRANSCANADA PIPELINES LIMITED

ORDER

WHEREAS the Ontario Securities Commission (the "**Commission**") has received an application from TransCanada PipeLines Limited (the "**Applicant**") for an order, pursuant to section 8.1 of OSC Rule 13-502 *Fees* (the "**Fees Rule**"), that the requirement to pay a participation fee under section 2.2 of the Fees Rule shall not apply to the Applicant with respect to its fiscal year ended December 31, 2018 (the **Exemption Sought**).

AND WHEREAS the Applicant has represented to the Commission that:

1. The Applicant is a corporation incorporated under the Canada *Business Corporations Act* (the "**CBCA**"). The registered and head office of the Applicant is located at 450 1 Street S.W., Calgary, Alberta, Canada T2P 5H1.

2. The Applicant is a North American energy infrastructure company whose business is focused on natural gas pipelines, liquid pipelines and energy.

3. The Applicant's authorized share capital consists of an unlimited number of (i) common shares (the "**TCPL Common Shares**"), (ii) First Preferred Shares, and (iii) Second Preferred Shares (collectively, the "**TCPL Preferred Shares**"). As of the date of the application, all of the TCPL Common Shares are owned directly by TC Energy Corporation ("**TCE**") and are not listed on a public market. No TCPL Preferred Shares are currently outstanding.

4. TCE is a corporation governed by the CBCA. The registered and head office of TCE is located at 450 1 Street S.W., Calgary, Alberta, Canada T2P 5H1. TCE's common shares are listed on the Toronto Stock Exchange ("**TSX**") and the New York Stock Exchange under the symbol "TRP". TCE also currently has outstanding eleven series of cumulative redeemable first preferred shares, which are also listed on the TSX.

5. Each of the Applicant and TCE is a reporting issuer, or the equivalent, in each province and territory of Canada. The Applicant is not in default of securities legislation in any jurisdiction and to the best of the Applicant's knowledge, TCE is not in default of securities legislation in any jurisdiction. Each of TCE and the Applicant has a fiscal year-end of December 31.

6. TCE is a Class 1 Reporting Issuer as defined by the Fees Rule and pays participation fees under subsection 2.2(1) of the Fees Rule. Pursuant to the Fees Rule, for the year ended December 31, 2018, TCE paid participation fees of $100,500 to the Commission.

7. The Applicant is a Class 2 Reporting Issuer as defined by the Fees Rule. Except for the year ended December 31, 2018, for each year following the amendments to the Fees Rules effective January 10, 2010, the Applicant has relied on the participation fees paid by TCE, pursuant to the exemption granted under section 2.4, or equivalent, of the Fees Rule.

8. Pursuant to the Fees Rule, for the fiscal year ended December 31, 2018, the Applicant was not able to rely on the exemption set forth in section 2.4 of the Fees Rule, and as such, on February 14, 2019 the Applicant paid participation fees of $100,500 to the Commission for the year ended December 31, 2018.

9. Pursuant to a decision dated January 3, 2019 (the "**Continuous Disclosure Exemption Decision**") subject to certain conditions, the Applicant was granted, among other things, an exemption from:

   a. many of the filing requirements of National Instrument 51-102 – *Continuous Disclosure Obligations* ("**NI 51-102**"), including the requirement to file interim financial statements and audited annual financial statements; and

   b. the requirement to file interim and annual certificates pursuant National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings*.

10. The Continuous Disclosure Exemption Decision is subject to certain conditions, including that TCE hold no assets or liabilities of more than a nominal value, other than its holding of the outstanding securities of the Applicant and amounts outstanding under inter-affiliate lending agreements with the Applicant.

11. The Applicant relied on the Continuous Disclosure Exemption Decision to exempt it from filing its 2018 year-end continuous disclosure filings.

12. Except as set out in the Continuous Disclosure Exemption Decision, the Applicant does not anticipate filing continuous disclosure documents concerning only the Applicant for the upcoming year.

13. The Fees Rule includes an exemption for "subsidiary entities" in subsection 2.4(1) of the Fees Rule, provided that certain requirements are met. For the year ended December 31, 2018, the Applicant met all of the substantive requirements to rely on the exemption in subsection 2.4(1) of the Fees Rule, but for the requirement under subsection 2.4(1)(e) that either: (i) in the year ended December 31, 2018, the net assets and total revenues of the Applicant represent more than 90% of the consolidated net assets and total revenues of TCE; or (ii) in the year ended December 31, 2018, the Applicant was entitled to rely on an exemption from the requirements of subsections 4.1(1), 4.3(1), 5.1(1) or section 5.2 and section 6.1 of NI 51-102.

14. The Applicant is unable to rely on the exemption in subsection 2.4(1)(e)(i) of the Fees Rule because for the year ended December 31, 2018 the net assets and total revenues of the Applicant represented 88% of TCE's consolidated net assets and total revenues.

15. The total discrepancy between the Applicant and TCE's financial statements, with respect to net assets and total revenues, is primarily a result of the way intercompany transactions between the Applicant and TCE are presented in the financial statements.

16. The Applicant is also unable to rely on the exemption in subsection 2.4(1)(e)(ii) of the Fees Rule, despite having been granted the Continuous Disclosure Exemption Decision, as the Continuous Disclosure Exemption Decision is dated three days after the fiscal year ended December 31, 2018.

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

AND UPON being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED pursuant to Section 8.1 of Rule 13-502 that the Exemption Sought is granted.

DATED this 28th day of June, 2019

"Marie-France Bourret"
Manager, Corporate Finance
Ontario Securities Commission

2.2.3 Majd Kitmitto et al.

FILE NO.: 2018-70

IN THE MATTER OF
MAJD KITMITTO,
STEVEN VANNATTA,
CHRISTOPHER CANDUSSO,
CLAUDIO CANDUSSO,
DONALD ALEXANDER (SANDY) GOSS,
JOHN FIELDING AND
FRANK FAKHRY

M. Cecilia Williams, Commissioner and Chair of the Panel

July 15, 2019

ORDER

WHEREAS on July 15, 2019 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 (**Staff**) and the representatives for Majd Kitmitto, Steven Vannatta, Christopher Candusso, Claudio Candusso, Donald Alexander (Sandy) Goss, John Fielding and Frank Fakhry (the **Respondents**);

IT IS ORDERED THAT:

1. each Respondent, except Mr. Vannatta, 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 August 19, 2019;

2. Mr. Vannatta 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 September 16, 2019;

3. a confidential conference in this matter will be heard on September 20, 2019 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; and

4. an attendance in this matter will be heard on September 25, 2019 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.

"M. Cecilia Williams"

2.2.4 Soundvest Split Trust

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for an order than the issuer is not a reporting issuer under applicable securities laws – issuer in default of securities legislation – relief granted.

Applicable Legislative Provisions

Securities Act (Ontario), s. 1(10)(a)(ii).

July 15, 2019

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

AND

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

AND

IN THE MATTER OF
SOUNDVEST SPLIT TRUST
(the Fund)

ORDER

Background

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

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

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

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in all the Provinces of Canada (other than Ontario).

Interpretation

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

Representations

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

1. the Fund 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 Fund, 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 Fund, 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 Fund has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

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

Order

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

The decision of the Principal Regulator under the Legislation is that the Order Sought is granted.

"Neeti Varma"
Manager
Investment Funds and Structured Products Branch
Ontario Securities Commission

2.2.5 Issam El-Bouji

FILE NO.: 2018-28

IN THE MATTER OF
ISSAM EL-BOUJI

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

July 16, 2019

ORDER

WHEREAS on July 16, 2019, 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 a motion brought by the Respondent, Issam El-Bouji, seeking, among other things, an order confirming that the Commission has no jurisdiction to hear some or all of the allegations in this proceeding (the **Jurisdiction Motion**);

ON HEARING the submissions of the representatives for the Respondent and Staff, and considering the consent of the parties to the schedule provided for in this order;

IT IS ORDERED THAT:

1. the hearing date of July 17, 2019 is vacated;

2. the hearing of the Jurisdiction Motion shall continue on August 29, 2019 at 10:00 a.m.;

3. the Respondent shall serve and file any further written submissions on the Jurisdiction Motion by no later than July 29, 2019; and

4. Staff shall serve and file any further written submissions on the Jurisdiction Motion by no later than August 12, 2019.

"D. Grant Vingoe"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Andrew Paul Rudensky – s. 21.7

Citation: *Rudensky (Re)*, 2019 ONSEC 24
Date: 2019-07-09
File No. 2018-68

IN THE MATTER OF
ANDREW PAUL RUDENSKY

REASONS AND DECISION
(Section 21.7 of the *Securities Act*, RSO 1990, c S.5)

Hearing:	March 26, 2019	
Decision:	July 9, 2019	
Panel:	M. Cecilia Williams	Commissioner and Chair of the Panel
Appearances:	Kevin Richard Martin Mendelzon	For Andrew Paul Rudensky
	Sally Kwon Robert DelFrate	For the Investment Industry Regulatory Organization of Canada
	Christina Galbraith	For Staff of the Ontario Securities Commission

TABLE OF CONTENTS

REASONS AND DECISION

I. OVERVIEW

[1] Andrew Paul Rudensky was a Registered Representative with Richardson GMP (**RGMP**) and was regulated by the Investment Industry Regulatory Organization of Canada (**IIROC**).

[2] In a decision issued on July 23, 2018 (the **Merits Decision**),[1] an IIROC hearing panel (the **IIROC Panel**) concluded that Mr. Rudensky had:

a. engaged in personal financial dealings with a client of RGMP, contrary to IIROC Dealer Member Rule 43 (**Rule 43**); and

b. made a false and misleading representation to RGMP contrary to IIROC Dealer Member Rule 29.1 (**Rule 29.1**).

[3] In a subsequent decision issued on October 17, 2018 (the **Sanctions and Costs Decision**),[2] the IIROC Panel ordered:

a. a suspension of Mr. Rudensky's IIROC registration for 2 years, commencing on July 23, 2018;

b. a $5,000 fine for contravening Rule 43;

c. a $25,000 fine for contravening Rule 29.1;

d. a $25,923 fine representing disgorgement of the net profits Mr. Rudensky gained from his personal financial dealings with the client;

e. Mr. Rudensky to rewrite and pass the Conduct and Practices Handbook Course prior to any registration with IIROC; and

f. costs in the amount of $24,500.

[4] Mr. Rudensky applies to the Commission for a hearing and review of the Merits Decision and the Sanctions and Costs Decision. He asks that both decisions be set aside.

[5] With regards to the Merits Decision, Mr. Rudensky asserts that the IIROC Panel erred in several ways, including by:

a. finding that Mr. Rudensky made admissions that he didn't make;

b. finding that an allegation of a breach of Rule 29.1 could proceed in an enforcement hearing commenced after September 1, 2016, when Rule 29.1 had been repealed as of September 1, 2016;

c. failing to consider material evidence;

d. failing to interpret Rule 43 in a flexible manner that reflects the intention of Rule 43, including by finding a breach of Rule 43 despite finding that the client at issue did not need the protection of Rule 43; and

e. finding that a manager’s question about a source of the funds required a response that included every relevant fact or else it was false and misleading, in breach of Rule 29.1.

[6] As regards the Sanctions and Costs Decision, Mr. Rudensky asserts that the IIROC Panel erred in several ways, including:

a. ordering a disproportionate fine and disgorgement from a transaction that was a technical contravention of the IIROC Dealer Member Rules (the **IIROC Rules**);

b. ordering that a significant fine be imposed because the suspension being imposed would not have enough financial impact on Mr. Rudensky; and

c. finding that Mr. Rudensky's conduct had harmed market integrity and the reputation of the marketplace, without any evidence of such harm.

[1] *Rudensky (Re)*, 2018 IIROC 28
[2] *Rudensky (Re)*, 2018 IIROC 38

[7] Mr. Rudensky raised an issue about the potential conflict created by industry members serving on IIROC panels, which I address as a preliminary matter. For the reasons set out below, I conclude that, as a general principle, the presence of industry members on IIROC panels does not create a conflict of interest.

[8] For the reasons that follow, I conclude that in conducting the analysis that led to the finding that Rule 29.1 was available in an enforcement hearing commenced after September 1, 2016, the IIROC Panel made an error in law that leads me to set aside the portion of the Merits Decision that relates to the IIROC Panel's ruling on that point. Having said that, once I complete my own analysis to substitute the Commission's own decision, I reach the same result as the IIROC Panel; that is, Rule 29.1 remained in effect for conduct that occurred prior to September 1, 2016 but which was the subject of an enforcement hearing commenced on or after that date.

[9] The error of law I identified relates to the IIROC Panel's interpretation of whether Rule 29.1 remained in effect for the proceeding in the first instance against Mr. Rudensky. I find that the evidence related to that issue and the IIROC Panel's analysis supporting it are entirely separable from the evidence and analysis underlying the IIROC Panel's findings that Mr. Rudensky breached Rule 43 and Rule 29.1.

[10] Having reached the conclusion that the proceeding against Mr. Rudensky was proper despite the repeal of Rule 29.1, I must go on to consider as a separate issue whether Mr. Rudensky established any grounds under the Canada Malting Co (Re)[3] test to interfere in the substance of the Merits Decision. I found no such grounds.

[11] I also considered whether the Canada Malting test was satisfied with respect to the alleged errors of law in the Sanctions and Costs Decision. I found no grounds for interfering with the IIROC Panel's decision.

II. BACKGROUND FACTS

[12] Mr. Rudensky was employed by RGMP in their Toronto office from November 2009 until he left on September 8, 2015.

[13] Mr. Rudensky held personal accounts at RGMP, including a margin account and a margin short account in the name of his holding company, Dark Horse Financial Corp. (**Dark Horse**).

[14] RGMP permitted its traders, advisors and other employees to buy shares of a bought deal, after it became clear that the bought deal would not be fully subscribed (**Pro Eligible**), at a discount to the offering price because of the deduction of commissions associated with the bought deal. RGMP employees would often short the security for the same number of shares being acquired in the offering and be able to make a profit equal to the spread.

[15] Mr. Rudensky was aware that RGMP had previously unwound trades by other RGMP employees who had used RGMP funds rather than their own money to participate in Pro Eligible bought deals by selling short shares and acquiring an equivalent number of new issue shares. As a result, Mr. Rudensky concluded that if he could ensure that any such trades were paid for using his own funds, there would be no issues with these types of transactions.

[16] On several occasions, Mr. Rudensky participated in Pro Eligible bought deals in this manner. Mr. Rudensky borrowed funds to carry out his trades.

[17] Mr. Rudensky first met the client at issue in the IIROC proceeding (who is referred to by the initials 'RS' by the IIROC Panel and throughout this decision) in 2013, in a social setting, and learned that RS ran a lending business, through which he provided customized loans. Mr. Rudensky also learned that RS structured and made early stage investments.

[18] In April 2015, RGMP was involved in a bought deal offering of Brookfield Asset Management Inc. Class A Limited (**BAM.A**) shares. On April 20, 2015, RGMP's bought deal offering of BAM.A shares became Pro Eligible.

[19] On April 21, 2015, Mr. Rudensky contacted RS to obtain a loan from his lending business to participate in the BAM.A Pro Eligible offering. This was the second such loan Mr. Rudensky sought from RS's lending company. Mr. Rudensky requested $3 million and he and RS agreed that Mr. Rudensky would pay 70 percent of the gross profit from Mr. Rudensky's short sale of the BAM.A shares and purchase of new issue BAM.A shares (the **BAM.A Transaction**).

[20] Mr. Rudensky and RS, in his affidavit, gave evidence that with respect to both loans, they discussed a mortgage being placed on Mr. Rudensky's condominium if the loan was outstanding for longer than the anticipated 3 or 4 days and discussed whether there was any equity in the condominium.

[3] (1986) 9 OSCB 3565 at para 24 (***Canada Malting***)

[21] RS, for his own personal reasons, provided the $3 million personally, rather than from his lending company, and the loan was reflected in a promissory note between RS and Dark Horse executed by Mr. Rudensky on April 21, 2015 (the **Brookfield loan**).

[22] Also on April 21, 2015, Mr. Rudensky executed the BAM.A Transaction, selling short 135,000 BAM.A shares and covering his short position by purchasing 135,000 new issue BAM.A shares.

[23] On April 23, 2015, Mr. Rudensky received a wire transfer of $3 million from RS into his account at BMO, which he transferred to his Dark Horse margin account on April 24, 2015, and which was used to cover the margin call on his BAM.A short sale. On April 27, 2015, Mr. Rudensky received the allocation of new issue BAM.A shares, which he used to cover the BAM.A short sale.

[24] On April 27, 2015, Mr. Rudensky repaid RS, wiring $3 million from his Dark Horse margin account to his BMO account, which was then wired to RS, and wrote a cheque to RS in the amount of USD $44,076, which was 70 percent of Mr. Rudensky's gross profit from the BAM.A Transaction.

[25] On April 24, 2015, RGMP's Chief Compliance Officer asked Mr. King, the RGMP Branch Manager, to determine the source of the $3 million that Mr. Rudensky used to cover the margin call on his BAM.A short sale. Mr. King verbally asked Mr. Rudensky where the funds came from and Mr. Rudensky advised him that it was a loan, collateralized against his condo. At Mr. King's request, Mr. Rudensky confirmed this information in an email.

[26] IIROC Staff commenced its investigation in May 2016 and issued its Statement of Allegations on November 2, 2017. The IIROC merits hearing occurred over three days in May 2018.

III. ISSUES

[27] The following issues are raised in this Application:

a. What is the applicable standard of review?

b. As a preliminary matter, does the presence of industry members on IIROC hearing panels create a conflict of interest this Panel needs to consider?

c. What restrictions, if any, result from the Commission relying on the written record of the original proceeding, rather than hearing *viva voce* testimony?

d. Has Mr. Rudensky established any of the grounds on which the Commission ought to intervene in the Merits Decision and, if there are such grounds, what is the appropriate disposition in the circumstances?

e. Has Mr. Rudensky established any of the grounds on which the Commission ought to intervene in the Sanctions and Costs Decision and, if there are such grounds, what is the appropriate disposition in the circumstances?

IV. ANALYSIS

A. What is the applicable standard of review?

[28] Subsections 8(3) and 21.7(2) of the *Securities Act*, RSO 1990, c S.5 (the **Act**), govern an application to the Commission, by a person or company directly affected by a decision of a self-regulatory organization (**SRO**), for a review of that decision. Together, those subsections authorize the Commission to confirm the decision of the SRO, or to "make such other decision as the Commission considers proper."

[29] The Commission's review of an SRO decision is a hearing *de novo*, rather than an appeal. In other words, the Commission exercises original jurisdiction rather than a more limited appellate jurisdiction.[4]

[30] Despite the broad scope of a hearing and review, there is "a high threshold to meet in demonstrating that an SRO decision should be overturned."[5] In practice, the Commission takes a "restrained approach".[6]

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[4] *Boulieris (Re)*, 2004 ONSEC 1, (2004) 27 OSCB 1597 at paras 29-30 (***Boulieris***), aff'd [2005] OJ No 1984 (Div Ct); *Vitug (Re)*, 2010 ONSEC 7, (2010) 33 OSCB 3965 at para 43 (***Vitug***), aff'd 2010 ONSC 4464 (Div Ct)

[5] *Vitug,* at para 44

[6] *Boulieris*, at para 31; *Vitug,* at paras 43-44; *Northern Securities Inc. (Re)*, 2013 ONSEC 48, (2013) 37 OSCB 161 at paras 56-57 (***Northern Securities***), aff'd [2015] OJ No 2924 (Div Ct)

[31] The Commission takes a restrained approach because it acknowledges the specialized expertise of SROs, including IIROC hearing panels. The Commission accords deference to an SRO decision within the SRO's specialized expertise, such as interpreting and applying its own by-laws and making factual determinations central to its specialized competence.

[32] The parties agreed that the Commission should only interfere with a decision of an SRO where one or more of the following grounds from *Canada Malting* have been satisfied:[7]

a. the SRO has proceeded on an incorrect principle;

b. the SRO has erred in law;

c. the SRO has overlooked material evidence;

d. new and compelling evidence is presented to the Commission that was not presented to the SRO; or

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

[33] In this Application, Mr. Rudensky only makes assertions under the first three legs of the above test.

B. Does the presence of industry representatives on IIROC hearing panels create a conflict of interest this Panel needs to consider?

(a) Mr. Rudensky's Position

[34] Mr. Rudensky submits that a conflict is created by the presence of industry members on IIROC hearing panels, given that one of the principles applicable to IIROC hearings is the protection of IIROC members.

(b) IIROC Staff's Position

[35] IIROC Staff adopted the same submissions that they provided in *Pariak-Lukic* (Re)[8] on this point, which were that:

a. IIROC hearing panels also consider investor protection as a factor,

b. the fact that two-thirds of IIROC hearing panels are industry members has in the past led the Commission and other commissions to accord deference to these panels because of their industry knowledge,

c. IIROC Staff is not aware of any decision where a commission has said that the inclusion of industry members on a hearing panel has led to a lesser penalty due to some type of bias or by reason of wanting to protect industry members, and lastly,

d. the IIROC model has been approved by the Commission and other commissions across Canada.

(c) OSC Staff's Position

[36] Staff of the Commission (**OSC Staff**) took no position on this point.

(d) Analysis

[37] This is the sort of issue that should be raised with an IIROC panel in the first instance, rather than on a hearing and review. Mr. Rudensky did not indicate that this issue had been raised with the IIROC Panel.

[38] However, since Mr. Rudensky raised this issue with me I agree with IIROC Staff's position and do not agree that, as a general principle, the presence of industry members on IIROC hearing panels creates a conflict of interest.

C. What restrictions, if any, result from the Commission relying on the written record of the original proceeding, rather than hearing *viva voce* evidence?

[7] *Canada Malting*, at para 24
[8] 2015 ONSEC 18, (2015) 38 OSCB 5755 (***Pariak-Lukic***)

(a) Mr. Rudensky's Position

[39] Mr. Rudensky is not requesting that the Panel rehear this matter with all the evidence to be put in through live witnesses. He recognizes that a rehearing can be based on a review of the written record, which includes transcripts of the testimony of the witnesses.

[40] Mr. Rudensky's position is that while a hearing and review can be done based on the written record, if determinations of credibility need to be made they "can and should be difficult to make when only reading a paper record."

[41] Mr. Rudensky argues that, on a hearing and review, a rehearing of the merits is as if the original decision does not exist and findings of the panel whose decision has been vacated cannot be relied on by the Commission. Therefore, it will be for the Commission to attempt to weigh any conflicting evidence on material issues, if it is necessary, and determine whether the Commission can fairly adjudicate those issues based solely on the paper record.

(b) IIROC Staff's Position

[42] IIROC Staff submits that if the Commission decides to intervene, a rehearing on the written record is appropriate unless the Commission determines otherwise. Further, IIROC Staff concurs with OSC Staff's submissions on this point, as set out below.

(c) OSC Staff's Position

[43] OSC Staff submits that if the Commission finds there is a basis to intervene in either the Merits Decision or the Sanctions and Costs Decision, then a rehearing on the written record would be appropriate unless the Commission determines otherwise.

[44] In deciding whether the Commission needs to hear oral evidence, OSC Staff submits that the Commission needs to consider Newbould J.'s comments about credibility assessments in *Springer v Aird & Berlis LLP*, which were adopted by the Commission in *Suman (Re)*:[9]

> The judge is not given a divine insight into the hearts and minds of the witnesses appearing before him. Justice does not descend automatically upon the best actor in the witness box. 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.

[45] OSC Staff submits that in assessing a witness's evidence in this case, it is sufficient for the Commission to consider whether the evidence is in harmony with the probabilities disclosed by the other evidence in the case, which can be adequately done by reviewing the transcript.

(d) Analysis

[46] I consider it appropriate in these circumstances to proceed with a rehearing based on the record of the original proceeding, as well as the written and oral submissions made before me.

[47] As set out below, my only finding of an error warranting interference in the Merits Decision was with respect to the IIROC Panel's interpretation of whether Rule 29.1 remained in effect, which did not require evidence beyond the materials before me. The balance of my reasons and decision focuses on an assessment of whether the test in *Canada Malting* was met with respect to the alleged substantive errors in the Merits Decision and the Sanctions and Costs Decision, which similarly required no additional information beyond what was before me.

[48] Given my findings in this matter there is no need to decide whether credibility can be assessed in a hearing and review based on the written record alone.

D. Have any of the factors from *Canada Malting* been satisfied with respect to the Merits Decision?

1. Did the IIROC Panel err in law in its consideration of the application of Rule 29.1 in this matter, given that the Rule had been repealed before the IIROC proceeding commenced?

[9] *Suman (Re)*, 2012 ONSEC 7, (2012) 35 OSCB 809 at para 315, citing *Springer v Aird & Berlis LLP* (2009), 96 OR (3rd) at para 14

(a) Mr. Rudensky's Position

[49] Mr. Rudensky submits that Rule 29.1 was repealed as of September 1, 2016, as part of the implementation of IIROC's consolidated enforcement, examination and approval rules (the **Consolidated Rules**). He also submits that Schedule C.1 to Transition Rule No. 1 (the **Transition Rule**)[10] did not effectively carry Rule 29.1 forward for enforcement proceedings commenced after the implementation, involving behaviour occurring before September 1, 2016.

[50] The Transition Rule reads as follows:

> 1.3 Enforcement Proceedings
>
> (1) Any Enforcement Hearing commenced by IIROC in accordance with IIROC Rules prior to September 1, 2016 shall proceed in accordance with the Rules and Practice and Procedure in effect and applicable to such Enforcement Hearing at the time it was commenced.
>
> (2) Any Enforcement Hearing commenced on or after September 1, 2016 shall be undertaken and proceed in accordance with the Consolidated Procedural Rules, irrespective of when the conduct which is the subject of the Enforcement Hearing occurred. [*underlining in original*]

[51] Mr. Rudensky submits that the IIROC Panel erred in law and proceeded on an incorrect principle when it apparently found, without explanation, that the *Interpretation Act* (Canada)[11] preserved Rule 29.1 for the proceeding. The Merits Decision does not expressly refer to the *Interpretation Act*. However, the IIROC Panel cites an excerpt from *Sullivan and Driedger* on the Construction of Statutes (***Sullivan and Driedger***)[12] that paraphrases the text of the federal statute. This context was lacking from the Merits Decision, leading to Mr. Rudensky's argument that the IIROC Panel was incorrectly applying the legislation. Mr. Rudensky submits that the IIROC Panel adopted IIROC Staff's written submissions about the relevance of the excerpt from *Sullivan and Driedger* without adequately reviewing the authority and that the IIROC Panel erred in law by not providing reasons of its own.

[52] The common law of statutory interpretation with respect to repealed laws, as set out in the *Sullivan and Driedger* excerpt before the IIROC Panel, is that once repealed the law cannot be relied on retroactively and must be treated as if it never existed.

[53] Mr. Rudensky argues that the Transition Rule expressly provides for matters commenced prior to September 1, 2016, and could have, but did not, create a rule to continue Rule 29.1 in effect for proceedings commenced after September 1, 2016. Therefore, he submits, the common law rule applies and with the repeal of Rule 29.1 it is to be treated going forward as if it never existed for a proceeding such as the one that was before the IIROC Panel.

(b) IIROC Staff 's Position

[54] IIROC Staff submits that the IIROC Panel correctly found that Rule 29.1 remained in effect, notwithstanding the introduction of the Consolidated Rules and the Transition Rule on September 1, 2016, and made no reviewable error in so doing.

[55] IIROC Staff argues that Rule 29.1 was in force and binding on Mr. Rudensky when he engaged in the conduct in question, by the effect of IIROC General By-law No. 1, Article 13 (the **By-law**).

[56] The By-law speaks to IIROC's "power to make, amend or repeal rules" and states:

> All such Rules for the time being in force, unless expressly otherwise provided, shall be binding upon all Regulated Persons.

[57] IIROC Staff repeats the position, taken at the merits hearing and adopted by the IIROC Panel, that Mr. Rudensky's position is based on an incorrect interpretation of the Transition Rule.

[58] IIROC Staff submits that the subsections of Transition Rule s. 1.3 must be read together, which leads in their view to the obvious conclusion that the provisions refer to procedural, rather than substantive, aspects of the hearings.

[59] IIROC Staff repeats their position from the merits hearing that the repeal of Rule 29.1 does not destroy a registrant's obligations under Rule 29.1, nor does it forgive any contravention of Rule 29.1. As they had in their written submissions

[10] *Suman (Re)*, 2012 ONSEC 7, (2012) 35 OSCB 809 at para 315, citing *Springer v Aird & Berlis LLP* (2009), 96 OR (3rd) at para 14
[11] RSC 1985, c I-21
[12] Sullivan, Ruth, *Sullivan and Driedger on the Construction of Statues*, 4th ed (Lexis Nexis Butterworths: 2009)

to the IIROC Panel, IIROC Staff continues to rely on the quotation from the excerpt from *Sullivan and Driedger* with respect to the impact of legislation on the common law rule relating to the effect of a repeal.

[60] In response to my question about why the IIROC Panel referred to this part of the excerpt dealing with the Canadian federal *Interpretation Act*, IIROC Staff's submission was that the IIROC Panel did not make a finding that the *Interpretation Act* applied to the IIROC Rules. Rather, the IIROC Panel was referring to the excerpt by analogy in holding that this reasoning should be applied in this instance.[13]

[61] IIROC Staff also submits that IIROC hearing panels have applied the concept that Rule 29.1 remained in effect in multiple decisions involving the rule that have been released since the implementation of the Consolidated Rules, referring specifically to: *Bodnarchuk (Re)*, 2018 IIROC 22; *Niewswandt (Re)*, 2018 IIROC 41 and *Trudeau (Re)*, 2017 IIROC 51.

[62] At the Hearing and Review Application, Mr. Rudensky argued that IIROC Staff's three above-cited cases were not helpful on the point of whether or not Rule 29.1 remained in effect, as there was no discussion or decision about whether or not the rule had been repealed in two of the cases and, in the third, the Rule 29.1 allegation had been dropped at the commencement of the proceeding.

[63] IIROC Staff also takes the position that the IIROC Panel's decision on this point was consistent with IIROC notices with respect to the Transition Rule (Notices 12-0104 and 13-0275) and regarding the intended effect of Consolidated Rule 1400, which replaced Rule 29.1.

[64] Finally, IIROC Staff submits that to accept Mr. Rudensky's position would lead to the conclusion that no standards of conduct existed for IIROC's members and their representatives prior to September 1, 2016, which would create a void and lead to an absurd result.

(c) OSC Staff's Position

[65] OSC Staff made no submissions on this point.

(d) Analysis

[66] The IIROC Panel accepted IIROC Staff's position that Mr. Rudensky's submission that Rule 29.1 cannot be relied upon was based on an incorrect interpretation of the Transition Rule. The IIROC Panel accepted IIROC Staff's submission that the subsections of Transition Rule 1.3, when read together with the definition of "Consolidated Procedural Rules", clearly refer to procedural, rather than substantive, aspects of hearings.[14]

[67] The IIROC Panel continued, in paragraph 180 of the Merits Decision, by quoting from the excerpt from *Sullivan and Driedger* about the impact of interpretation legislation on the common law rule that repealed rules cannot be applied retrospectively.

[68] The reasoning in this part of the Merits Decision appears to be virtually identical to IIROC Staff's Written Reply submissions to the IIROC Panel on this point.[15]

[69] Although, in those submissions, IIROC Staff had provided the IIROC Panel with a two-page excerpt from *Sullivan and Driedger*, which covered both the common law rule with respect to repealed legislation and analysis of the impact of legislation on that rule, there is no analysis in IIROC Staff's Written Reply about the application of the quotation referred to from that excerpt.

[70] In the Merits Decision, the IIROC Panel does not explain its application of the *Sullivan and Driedger* quotation replicated from IIROC Staff's Written Reply. Nor is there anything in the Merits Decision to support IIROC Staff's oral submission to me that the IIROC Panel was referring to this one aspect of the *Sullivan and Driedger* excerpt by analogy.

[71] The IIROC Panel is clear, in paragraphs 177 to 179 of the Merits Decision, that it interpreted the Transition Rule such that Rule 29.1 remained in effect for the purposes of this proceeding.

[72] The IIROC Panel, however, failed to explain the application of the excerpt it cited in paragraph 180 of the Merits Decision, which does not appear applicable to the circumstances. It is also not possible, without documented analysis, to know how the *Sullivan and Driedger* excerpt influenced the IIROC Panel's analysis of the Transitional Rule.

[13] Transcript, *Rudensky (Re),* March 26, 2019 at 83, lines 1-10.
[14] Merits Decision at paras 177-179
[15] IIROC'S Reply Submissions and Authorities, June 20, 2019 (**IIROC Staff's Written Reply**) at paras 7-10

[73] Therefore, I conclude that the IIROC Panel made an error in law or proceeded on an incorrect principle during its analysis of whether Rule 29.1 remained in effect. I conclude that the test in *Canada Malting* is met and that I have grounds to interfere with the Merits Decision. I must now proceed to determine the application of Rule 29.1 and the appropriate outcome.

(e) The Application of Rule 29.1

[74] The Transition Rule contains the following definitions:[16]

> "Consolidated Rules" refers to the IIROC Rules implemented on June 9, 2016 or September 1, 2016, which are Consolidated Rules 1200, 1400, 8100 through 8400 and 9100 through 9400.
>
> "Consolidated Procedural Rules" refers to Consolidated Rules 8200 through 8400, other than sections 8206, 8209, 8210, 8214, and 8216.
>
> […]
>
> "Practice and Procedure" means the rules of practice and procedure governing a hearing brought pursuant to IIROC Rules.

[75] The Transition Rule is clearly intended to address what procedural rules are to be used for hearings commenced after the Consolidated Rules became effective, as stated in subsection 1.3(2) of the Transition Rule:

> Any Enforcement Hearing commenced on or after September 1, 2016 shall be undertaken and proceed in accordance with the Consolidated Procedural Rules, irrespective of when the conduct which is the subject of the Enforcement Hearing occurred.

[76] The By-law provides that all IIROC Rules for the time being in force are binding on all registered representatives.

[77] At the time that Mr. Rudensky engaged in the alleged conduct, Rule 29.1 was in force and, therefore, binding on him.

[78] Post September 1, 2016, by reading the By-law in combination with subsection 1.3(2) of the Transition Rule, IIROC could hold its Members and Registered Representatives accountable for behaviour contrary to the IIROC Rules that were in effect at the time the behaviour occurred, but through proceedings in accordance with the Consolidated Procedural Rules then in effect.

[79] To conclude otherwise would be contrary to a clear reading of the provisions and would result in an absurd outcome.

[80] I agree with Mr. Rudensky's submission that the IIROC cases to which IIROC Staff referred, mentioned in section D.1(b) of this decision above, were distinguishable and were not helpful on this point. I placed no reliance on them in coming to my decision on this issue.

2. Have any of the factors from Canada Malting been satisfied with respect to the other alleged errors in the Merits Decision?

[81] I conclude that the appropriate disposition is to consider as a separate issue, whether there are grounds to intervene in the substance of the Merits Decision.

[82] On the point of whether a finding that I should intervene with respect to the finding of a breach of one of Rule 29.1 or Rule 43 would lead to a hearing de novo on both findings, Mr. Rudensky raised the example of *Northern Securities*. In that hearing and review decision the Commission Panel laid out the issues in their decision by counts and analyzed each count separately against the Canada Malting test. Mr. Rudensky's point was that this may have been possible in *Northern Securities* because of the facts of the case (counsel acknowledged that he didn't know enough about the intricate details of the case to say for certain). However, in Mr. Rudensky's submissions in this Application the motivations and most of the facts applied across both allegations and therefore the two counts are inextricably connected and could not be separated.

[83] My finding of an error of law warranting my intervention in the Merits Decision relates to the IIROC Panel's interpretation of the availability of Rule 29.1. I find that the conclusions in the Merits Decision that Mr. Rudensky breached Rule 43 and Rule 29.1, and the evidence relied upon by the IIROC Panel to arrive at those conclusions, are completely separate from the evidence and analysis by the IIROC Panel on the issue of the availability of Rule 29.1.

[16] Transition Rule, s 1.1

[84] I therefore conclude that the finding of an error with respect to the availability of Rule 29.1 does not result in a hearing *de novo* of the substance of the Merits Decision and I now consider whether Mr. Rudensky established any of the factors in *Canada Malting* with respect to the other alleged errors in the substance of the Merits Decision that would warrant my intervention.

3. Did the IIROC Panel err in law in its findings of fact?

(a) Mr. Rudensky's Position

[85] At paragraph 100 of the Merits Decision the IIROC Panel stated that Mr. Rudensky admitted to a list of facts. However, two of the cited facts were not actually admissions made by Mr. Rudensky:

a. Mr. Rudensky knew that another RGMP advisor (who is referred to by the initials 'SA' by the IIROC Panel and throughout this decision) "was part of the team in Calgary that serviced RS's accounts"; and

b. Mr. Rudensky "wanted SA to be moved near him".

This evidence was relevant to assessing whether Mr. Rudensky knew RS was a client of RGMP for the purposes of determining if Mr. Rudensky had breached Rule 43. Mr. Rudensky relies on *R v H(JM)* for the principle that "it is an error of law to make a finding of fact for which there is no supporting evidence."[17]

[86] The IIROC Panel refers in the Merits Decision to Mr. Rudensky's testimony that he did not know at the relevant times that RS was a client of RGMP at its Calgary office. Mr. Rudensky submits that this reference in the Merits Decision is inconsistent with the IIROC Panel's finding that Mr. Rudensky knew RS was a client of the firm. He argues that the IIROC Panel provided no explanation for the alleged inconsistency.

(b) IIROC Staff's Position

[87] With respect to the IIROC Panel's finding that Mr. Rudensky admitted that he knew SA was part of the team in Calgary that serviced RS's accounts, IIROC Staff submits that Mr. Rudensky's own testimony supports that conclusion. IIROC Staff relies on statements by Mr. Rudensky while he was being cross-examined and, in two instances, his responses to questions from the IIROC Panel.

[88] As regards the admission that Mr. Rudensky wanted SA moved near to him, IIROC Staff concedes that Mr. Rudensky did not make this admission. However, the IIROC Panel preferred the evidence of Mr. Kennedy, a former employee of RGMP and a colleague of Mr. Rudensky in their Toronto office, and Mr. King, both of whom testified that Mr. Rudensky wanted SA moved near to him. IIROC Staff submits that the IIROC Panel did not, therefore, err in law in making that finding.

[89] IIROC Staff relies on the testimony of Mr. Rudensky, Mr. Kennedy and Mr. King and the documentary evidence that was before the IIROC Panel, in support of the IIROC Panel's findings that RS was a client of RGMP, that Mr. Rudensky knew that RS was a client of RGMP and that RS knew his personal financial dealings were with RS.

(c) OSC Staff's Position

[90] OSC Staff took no position on this point.

(d) Analysis

[91] In the context of the Merits Decision, the IIROC Panel made a finding of fact that Mr. Rudensky knew RS was a client of RGMP at the time of the Brookfield loan and BAM.A Transaction.

[92] The IIROC Panel concluded, based solely on Mr. Rudensky's own testimony, that Mr. Rudensky's "assertion that he did not know that RS was a client of RGMP was improbable and not credible."[18] The testimony it referred to in coming to that conclusion included the two statements that were not made by Mr. Rudensky.

[93] The two statements are not, however, the only evidence supporting the IIROC Panel's finding that Mr. Rudensky knew RS was a client of RGMP. The IIROC Panel relied on other evidence from Mr. Rudensky: he knew SA was RS's girlfriend, he knew RS from 2013, he had invested in one of RS's companies, and he was interested in developing a

[17] 2011 SCC 45 at para 25
[18] Merits Decision at para 100

brokerage relationship with RS.[19] In addition, the IIROC Panel relied on the evidence of Mr. Kennedy and, with some acknowledged reservation, the testimony of Mr. King.[20]

[94] The IIROC Panel considered the evidence before it and made findings of fact and assessments of credibility in concluding that Mr. Rudensky knew RS was a client of RGMP. The IIROC Panel was entitled to apply its knowledge and expertise to interpret the evidence and submissions and come to this conclusion.

[95] While the IIROC Panel did, in reaching that conclusion, erroneously refer to two statements Mr. Rudensky had not made, these were not the only facts it relied on. I find there was sufficient evidence supporting the IIROC Panel's conclusion, and the IIROC Panel did not contravene the proposition set forth in *R v H(JM)*. I find that the IIROC Panel did not make a reviewable error on this point that would warrant my intervention.

4. Was the cross guarantee relevant?

(a) Mr. Rudensky's Position

[96] Mr. Rudensky submits that the IIROC Panel erred in law, proceeded on an incorrect principle and failed to consider material evidence by finding that evidence relating to a cross guarantee, involving other individuals, was irrelevant. An employee of GMP Securities (not RGMP), who was also a client of Mr. Rudensky's sales group at RGMP, was previously permitted to have a cross guarantee from a client of RGMP. Before the IIROC Panel, Mr. Rudensky pointed to the cross guarantee to suggest that his conduct was also permissible.

[97] Mr. Rudensky's submissions focus in particular on the language used by the IIROC Panel, at paragraph 139 of the Merits Decision: "If this was permitted, how would what the Respondent did be wrong?" The submission is this was not an argument advanced by Mr. Rudensky. The argument was in fact that his knowledge of someone else doing the same thing and it apparently being okay for that person to do it suggests that it was reasonable for Mr. Rudensky to believe what he was doing was okay.

(b) IIROC Staff's Position

[98] IIROC Staff submits that the IIROC Panel properly concluded that the cross guarantee was not relevant to its determination of whether Mr. Rudensky engaged in conduct in breach of the IIROC Rules.

[99] In addition, the IIROC Panel took note of numerous differences in the facts relating to the cross guarantee and Mr. Rudensky's conduct and relationship with RS.

[100] Further, IIROC Staff submits that there is no mens rea requirement to Rule 43 and evidence of Mr. Rudensky's (incorrect) understanding of the facts about the cross guarantee and its use is not relevant to a determination of whether Mr. Rudensky breached Rule 43.

(c) OSC Staff's Position

[101] OSC Staff took no position on this point.

(d) Analysis

[102] I find that the IIROC Panel was exercising its specialized competence in deciding what was relevant to its considerations, and that how someone else may have behaved was not relevant to their determination of whether the facts supported a conclusion that Mr. Rudensky breached Rule 43.

[103] In any event, even had it considered the cross guarantee as relevant, the IIROC Panel agreed with and adopted IIROC Staff's position on this point,[21] including the factors by which the cross guarantee was distinguishable from Mr. Rudensky's situation, which factors the IIROC Panel laid out in its decision.[22]

[104] For the reasons above, I find the IIROC Panel did not make a reviewable error on this point that would warrant my intervention.

[19] Merits Decision at para 100
[20] Merits Decision at paras 97-99
[21] Merits Decision at para 148
[22] Merits Decision para 176

5. Were the client's views about his need for protection relevant?

(a) Mr. Rudensky's Position

[105] Mr. Rudensky's position is that by rejecting as irrelevant the views of RS, a sophisticated client, about whether his arrangements with Mr. Rudensky created a conflict of interest, the IIROC Panel erred in law and proceeded on an incorrect principle.

[106] Mr. Rudensky argues that though he accepts that an informed client's view is not a complete answer on whether there was a conflict, the view should not have been rejected as irrelevant.

[107] Mr. Rudensky submits that the IIROC Panel, having rejected RS's views on the existence of a conflict, concluded that the Brookfield loan created a conflict between RS and both RGMP and Mr. Rudensky and that it constituted personal financial dealings with a client in contravention of Rule 43.

[108] Mr. Rudensky argues that the spirit of Rule 43 is to prevent conflicts of interest where an Approved Person is borrowing funds from a client, as opposed to the Dealer Member itself. If the definition of client includes all clients of the Dealer Member, Mr. Rudensky asks how a conflict can exist between a sophisticated client who does not believe a conflict exists and an employee who does not know the individual is a client of his firm.

[109] Lastly, Rule 43 is a principles-based rule that should be read in a flexible manner reflecting the spirit of the Rule.

(b) IIROC Staff's Position

[110] IIROC Staff submits that there is no reviewable error in the IIROC Panel's finding that the prohibition on personal financial dealing was broad and applied to this case.

[111] Rule 43 prohibits any personal financial dealings with clients and, as set out in IIROC Rules Notice 13-0162, draws no distinction between clients of the firm and clients of an Approved Person.

[112] Rule 43 is consistent with a registered firm's obligations to identify and respond to conflicts of interest, existing or potential.

[113] Therefore, IIROC Staff argues that the determination of whether Mr. Rudensky breached Rule 43 does not require consideration of RS's view about whether there was a conflict nor of Mr. Rudensky's knowledge of RS's status as a client.

(c) OSC Staff's Position

[114] OSC Staff took no position on this point.

(d) Analysis

[115] The IIROC Panel assessed the evidence in RS's affidavit, laying out in detail how it weighed, assessed relevance, or accepted at face value the various aspects of RS's evidence.[23]

[116] The IIROC Panel acknowledged that RS did not consider there to be a conflict of interest with respect to the loans. It further acknowledged that RS did not believe he required the protection of Rule 43.[24]

[117] The IIROC Panel's decision relating to the breach of Rule 43, however, rests on the analysis of RGMP's obligations and perspectives. It speaks to the "potential conflict of interest" from RGMP's position and the "differing interests" as between RGMP, Mr. Rudensky and RS.[25]

[118] In its analysis of Rule 43, the IIROC Panel outlined the obligations of the Dealer Member with respect to the identification and management of conflicts in IIROC Rules Notice 13-0162 and *National Instrument 31-103* (**NI 31-103**), Part 13, Division 2, s. 13.4.[26]

[119] By considering and weighing RS's evidence and making a decision that the member firm's perspective with respect to the existence of a conflict had greater weight than RS's evidence, the IIROC Panel was exercising its authority and

[23] Merits Decision at paras 81-93
[24] Merits Decision at para 90
[25] Merits Decision at para 91
[26] Merits Decision at paras 118-119

expertise. I find that it is appropriate to defer to the IIROC Panel's decision and I find no error of law to warrant my interference on this point.

6. Was there a false and misleading statement?

(a) Mr. Rudensky's Position

[120] Mr. Rudensky submits that, in concluding that his statement that the funds were from a loan collateralized by his condominium was false and misleading, the IIROC Panel made several errors in law and proceeded on incorrect principles, including:

a. ignoring "material" evidence about Mr. King's characterization of his question to Mr. Rudensky about the loan;

b. finding that the Brookfield loan was not one that one would normally interpret as a "loan collateralized on my condo";[27]

c. there was no finding that Mr. Rudensky knew his representation was false;

d. by finding that an answer that wasn't full and complete was, therefore, false and misleading; and

e. by failing to consider Mr. Rudensky's and RS's evidence about their discussions about an undertaking to place a second mortgage on Mr. Rudensky's condo and that the loan would not have been extended if there had not been equity in the condo.

[121] Mr. Rudensky submits that the IIROC Panel could not make a finding that the representation was false and misleading because the evidence from both Mr. Rudensky and RS was that they discussed the equity in the condo and agreed the condo would be put up as security. Therefore, Mr. Rudensky's response did not fit the legal definition of a "false representation".

[122] Mr. Rudensky argues that the IIROC Panel's finding that RGMP was misled was made in reliance only on Mr. King's assumptions, which were made on hearing Mr. Rudensky's response regarding the source of the funds: the loan came from BMO and Mr. Rudensky had access to other sources of collateral. There cannot be a claim of being misled if Mr. King made his own assumptions and did not share them with anyone.

[123] In August 2015, Mr. Rudensky was accused by RGMP of having received the loans from another client, not RS. Mr. Rudensky argues that to have been misled, RGMP would have had to believe that the loans came from BMO, which had been Mr. King's assumption, not from another client.

(b) IIROC Staff's Position

[124] IIROC Staff submits that Mr. Rudensky's condo was never taken as collateral for the $3 million promissory note from RS. The true source of the funds was RS, and they were loaned because of an unsecured promissory note and profit-sharing loan arrangement with RS. Therefore, IIROC Staff submits that the IIROC Panel properly found Mr. Rudensky's representation, that the source of funds was a loan collateralized on his condo, to be false and misleading.

[125] The IIROC Panel found that Mr. Rudensky's response should have been full and complete for the representation not to be false and misleading, which IIROC Staff argues did not amount to the IIROC Panel equating "full and complete" with "not false and misleading".

[126] There was enough evidence before the IIROC Panel to support its conclusion that the representation was false and misleading. IIROC Staff submits that the IIROC Panel clearly considered RS's evidence but gave it little weight when it conflicted with other testimony or raised unanswered questions that RS likely should have been able to clarify, if RS had testified in person.

(c) OSC Staff's Position

[127] OSC Staff took no position on this point.

[27] Merits Decision at para 105

(d) Analysis

[128] I find that it was within the IIROC Panel's expertise and authority to conclude that Mr. Rudensky's representation about the source of the loan was false and misleading, based on the evidence before it.

[129] I do not accept Mr. Rudensky's submission that the IIROC Panel failed to consider material evidence, being Mr. King's characterization of his question as "simple, normal, everyday" and not part of an investigation. How Mr. King characterized his question to Mr. Rudensky, in my view, in no way undermined the IIROC Panel's consideration of the evidence before them on which it based its findings of fact and decision on this point.

[130] The IIROC Panel appropriately considered and weighed the evidence in making its findings of fact and arriving at its decision, which included that RS loaned $3 million to Mr. Rudensky based on an unsecured promissory note with interest calculated as a percentage of the profit on the BAM.A Transaction.

[131] The IIROC Panel considered Mr. Rudensky's evidence and the information in RS's affidavit with respect to discussions about the equity in Mr. Rudensky's condo and that, if the loan remained outstanding longer than anticipated, Mr. Rudensky was willing to place a mortgage on his condo in RS's favour. However, the IIROC Panel found this to be a promise only and the loan was, in fact, not collateralized on the condo.[28]

[132] The IIROC Panel found that the profit sharing and RS as the lender were the central features of the loan, neither of which was disclosed to RGMP.[29]

[133] The IIROC Panel unequivocally found that the representation was false and misleading and set out the evidence on which it relied and the conclusions it drew from the evidence.[30] There was ample evidence before the IIROC Panel to support its finding.

[134] Further, I find the IIROC Panel did not err in law by finding that Mr. Rudensky's answer "should have been full and complete in order for the representation not to be false and misleading."[31]

[135] Included in the material before the IIROC Panel were IIROC Staff's submissions regarding expectations of an industry participant:[32] basic honesty is a requirement;[33] and Approved Persons must provide true and complete answers to questions from their Dealer Members.[34]

[136] The IIROC Panel also considered a member firm's obligation to identify and address existing or potential conflicts of interest under NI 31-103, s. 13.4, and the importance of a registrant's true and complete answers to the registrant's firm:[35]

> Because firms are required to address existing or potential conflicts of interest, it is essential that a registrant's answers to their queries are true and complete. This is particularly the case where a registrant solely possesses information about existing or potential conflicts of interest. The failure to provide true and complete disclosure prevents a firm from being able to fulfil its obligation to respond to existing or potential conflicts of interest, thereby exposing the firm to potential damages.

[137] In addition to the evidence referred to by the IIROC Panel, its decision adopts and incorporates the principles reflected in the materials before it, as articulated above, and supports the finding that Mr. Rudensky's response had to fully and completely reflect the facts in order not to be false and misleading. I find no error warranting my interference on this point.

[138] Finally, I do not agree with Mr. Rudensky's submissions that the IIROC Panel erred in finding that RGMP was misled. In so finding, the IIROC Panel did not rely "only upon Mr. King's assumptions", as submitted by Mr. Rudensky. The IIROC Panel made the finding that RGMP was misled after reviewing the evidence it relied on in determining that Mr. Rudensky was deceiving RGMP,[36] and concluded that the representation was another step in the deception. I find there was sufficient evidence before the IIROC Panel to come to the conclusion RGMP was misled and there is no basis for my interference with its decision on this point.

[28] Merits Decision at para 105
[29] Merits Decision at para 106
[30] Merits Decision at paras 104-114
[31] Merits Decision at para 165
[32] Merits Decision at paras 124-126
[33] *Papp (Re)*, 2016 IIROC 41 at para 4
[34] *Scoten (Re)*, 2012 IIROC 6, at para 2
[35] Merits Decision at para 128
[36] Merits Decision at paras 105-112

E. Have any of the factors from Canada Malting been satisfied with respect to the Sanctions and Costs Decision?

[139] Having concluded that Mr. Rudensky failed to establish that there was a basis for me to interfere in the substance of the Merits Decision, I now move to consider whether Mr. Rudensky established a basis under *Canada Malting* for me to interfere in the Sanctions and Costs Decision on the basis of the alleged errors described in the Overview section of these Reasons.

1. Did the IIROC Panel err in law by ordering disgorgement?

(a) Mr. Rudensky's Position

[140] Mr. Rudensky's position is that the loan from RS formed the basis for the IIROC Panel's finding of a personal financial dealing that breached Rule 43. The disgorgement order, however, related to the profits earned from the BAM.A Transaction that was connected to the loan.

[141] In support of this position, he refers to the last sentence of paragraph 161 of the Merits Decision:

> The Brookfield loan created a conflict of interest with RGMP and with the Respondent and was personal financial dealings of the Respondent with a client of RGMP contrary to Rule 43.

[142] Mr. Rudensky also submits that to consider the profit from the BAM.A Transaction, one would have to know what profit Mr. Rudensky would have made had he participated in the BAM.A Transaction without the loan. No such evidence was before the IIROC Panel.

[143] Mr. Rudensky also refers to IIROC Staff's opening statements in the IIROC Hearing; the argument being that when the proceeding against Mr. Rudensky commenced, the case he had to meet was that the Brookfield loan was contrary to Rule 43. The IIROC Panel found that the loan was contrary to Rule 43. The IIROC Panel then erred in law when, for the sanctions hearing, it changed or altered that finding to include not just the Brookfield loan, but also the BAM.A Transaction.

[144] Alternatively, Mr. Rudensky's position is that disgorgement was extended to any use made of the loan from a client, with no authority or analysis; which is an error of law.

(b) IIROC Staff's Position

[145] IIROC Staff's responding argument is that disgorgement is a vital means of achieving deterrence, as it ensures that a Member or an Approved Person does not retain any of the benefits obtained through violation of the IIROC Rules.

[146] In support of this position, IIROC Staff refers to Rule 20.33 of the IIROC Rules (the relevant rule given the conduct was prior to September 1, 2016), which authorizes an IIROC hearing panel to impose a fine of the greater of $1 million or three times the profit made by reason of a contravention.

[147] In addition, IIROC Staff cites the IIROC Sanction Guidelines, in particular the following excerpt:[37]

> Sanctions should ensure that a respondent does not financially benefit as a result of the misconduct.
>
> It is a fundamental tenet that wrong-doers should not benefit from their wrong-doing. Accordingly, in cases where the respondent benefited financially from the misconduct, the sanction, where possible, should include a disgorgement of the amount of any such financial benefit. Financial benefit would include any profits, commissions, fees, or any other compensation or other benefit received by the respondent, directly or indirectly, as a result of the misconduct.

[148] IIROC Staff states that the behaviour with which they took issue has always been the profit sharing and loan arrangement with RS, as referred to in the Statement of Allegations. Therefore, it was appropriate for the IIROC Panel to include disgorgement of the profits from the BAM.A Transaction in their Sanctions and Costs Decision.

[149] Further, undue emphasis is placed, IIROC Staff submits, on the IIROC Panel's use of the term "Brookfield loan" in paragraph 161 of the Merits Decision. The term, IIROC Staff argues, was used throughout the Merits Decision and it is clear that the "Brookfield loan" was a profit sharing and loan arrangement.

[37] IIROC Sanction Guidelines, Investment Industry Regulatory Organization of Canada online: https://www.iiroc.ca/industry/enforcement/Documents/IIROCSanctionGuidelines_en.pdf at Part I, Guideline 4

[150] IIROC Staff submits that they proved at the IIROC hearing, on a balance of probabilities, the amount Mr. Rudensky obtained because of his contravention of Rule 43. IIROC Staff relies on the decision in *Limelight Entertainment Inc. (Re)*[38] for the proposition that the risk of uncertainty in a disgorgement calculation falls on the wrongdoer, whose non-compliant behaviour gave rise to the uncertainty.

[151] IIROC Staff also submits that there was opportunity, during both the merits and sanctions and costs hearings, for Mr. Rudensky to lead evidence that all or some of the profits from the BAM.A Transaction could have been made without the Brookfield loan. In the absence of any such evidence, Mr. Rudensky's submissions on this point are speculative.

[152] Lastly, IIROC Staff states that the Commission has recognized a purposive reading of "profit" in determining the quantum of a sanction, referring to *Dennis (Re)*[39] and *X Inc (Re)*.[40] IIROC Staff also refers to *Boulieris*, in which the Commission held that a registrant who has willfully facilitated a market manipulation "should face severe consequences, including removal from a marketplace for an appropriate period and disgorgement of moneys received as a consequence of his conduct."[41]

(c) OSC Staff's Position

[153] OSC Staff concurs with IIROC Staff's position regarding the principles underlying disgorgement decisions and submits that the Commission should not take an unduly restrictive view of the meaning of disgorgement.

[154] In considering the disgorgement remedy available under the Act, the Commission has stated that the remedy is intended to ensure that respondents do not retain any financial benefit from their breaches of the Act and to provide specific and general deterrence.[42] OSC Staff submits that the same principles should inform the Commission's review of the IIROC Panel's disgorgement order.

(d) Analysis

[155] I do not find that the IIROC Panel made any error of law or proceeded on an incorrect principle in ordering disgorgement in their Sanctions and Costs Decision.

[156] I do not accept Mr. Rudensky's position that the IIROC Panel found the Brookfield loan to be the cause of the breach of Rule 43. Such a conclusion focuses too narrowly on discrete statements in IIROC Staff's opening statement at the IIROC hearing and on a single sentence in the Merits Decision.

[157] The IIROC Panel clearly understood IIROC Staff's position to be that the breach of Rule 43 was broader than the Brookfield loan itself, as set out in the "Summary of the Staff's Position" in the Merits Decision:[43]

> Staff's position was that the Brookfield loan with interest tied to a percentage of [Mr. Rudensky's] profit from purchasing and shorting Brookfield shares was a profit sharing and loan arrangement which constituted personal financial dealings with a client of RGMP contrary to Rule 43.

[158] In its findings of fact, the IIROC Panel further indicated that it understood the case against Mr. Rudensky to be broader than just the loan when it found that the "profit sharing arrangement and RS as lender were the central features of the loan and this was not disclosed."[44]

[159] The IIROC Panel further indicated this view when it discussed whether "entering into a profit sharing and loan arrangement like the Brookfield loan if done with a third party, whether or not a client, not registered in the securities industry would be just plain wrong". The IIROC Panel is clear this was not alleged in Mr. Rudensky's case and, therefore, was not a factor in its decision. But it is further evidence that the IIROC Panel did not consider Mr. Rudensky's breach of Rule 43 to relate to only the loan itself.[45]

[160] For the reasons above, I conclude that the IIROC Panel's decision to order disgorgement was not based on an altered or changed finding.

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[38] 2008 ONSEC 28, (2008) OSCB 12030 at paras 48-49
[39] 2012 ONSEC 24, (2012) 25 OSCB 7374 at para 43
[40] 2012 ONSEC 24, (2012) 25 OSCB 7374 at para 43
[41] *Boulieris*, at para 50
[42] *Sabourin (Re)*, 2010 ONSEC 10, OSCB 5399 at para 65
[43] Merits Decision at para 14
[44] Merits Decision at para 106
[45] Merits Decision at para 164

[161] Mr. Rudensky's argument in the alternative is that the IIROC Panel "extended disgorgement to any use that is made of a loan from a client" without authority or analysis, which was an error in law.

[162] I do not agree with this submission. The IIROC Panel clearly refers to the IIROC Sanctions Guidelines, which state that "[s]anctions should ensure that a respondent does not financially benefit as a result of the misconduct".[46] The IIROC Panel found the financial benefit from Mr. Rudensky's misconduct to be the net profit from the BAM.A Transaction and ordered that it be disgorged.

[163] I accept IIROC Staff's position that there was ample opportunity for Mr. Rudensky to make submissions with respect to what the financial benefit would have been had he entered into the BAM.A Transaction without the loan. The IIROC Panel did not err in law by not speculating about what that amount might have been when ordering disgorgement of the financial benefit from that transaction.

2. Did the IIROC Panel err in law by ordering both a significant fine and a suspension?

(a) Mr. Rudensky's Position

[164] Mr. Rudensky submits that the IIROC Panel erred in law and proceeded on an incorrect principle by, at paragraphs 55 and 56 of the Sanctions and Costs Decision, relying upon the size of the financial impact a suspension would have as a basis for determining whether a significant fine was warranted, in addition.

[165] In the alternative, Mr. Rudensky submits that the IIROC Panel erred in law and proceeded on an incorrect principle by finding, without any supporting evidence, that a suspension for a respondent who is not currently in the industry would not have a sufficient financial impact on that individual. Mr. Rudensky also submits that there is no analysis or consideration from the IIROC Panel as to what it understood the financial impact of the suspension would be.

(b) IIROC Staff's Position

[166] IIROC Staff submits that a suspension was appropriate. It balances specific deterrence, general deterrence and the public interest.

[167] IIROC Staff further submits that the IIROC Panel viewed sanctions as a whole and recognized that to achieve general and specific deterrence, and considering the public interest, in some cases, such as this, where the conduct was egregious and compromised the integrity and reputation of the securities industry, both a suspension and a fine are warranted.

(c) OSC Staff's Position

[168] OSC Staff submits that the IIROC Panel neither erred in law nor proceeded on an incorrect principle by considering the overall deterrent effect of the package of sanctions on Mr. Rudensky.

[169] An IIROC panel may consider the total impact of the sanctions ordered in light of the respondent's particular circumstances, rather than considering each sanction in isolation. The rationale for different sanctions may vary depending on the professional and financial circumstances of the respondent.

[170] The IIROC Sanction Guidelines expressly consider that the same sanction might have a different effect on different types of respondents. The guidelines also indicate that sanctions should be adjusted as appropriate to achieve specific and general deterrence, given the characteristics of the respondent.

[171] Imposing sanctions that the IIROC Panel believed would, in total, provide enough deterrent for the conduct in the context of Mr. Rudensky's personal circumstances did not, in OSC Staff's submission, amount to an error in law or proceeding on an incorrect principle.

(d) Analysis

[172] I do not find that the IIROC Panel relied upon the size of the financial impact a suspension would have "as a basis for determining whether a suspension was warranted or not", as submitted by Mr. Rudensky.[47]

[173] The IIROC Panel reviewed the precedent cases submitted by both parties and the IIROC Sanction Guidelines, concluding that the sanctions it was ordering were within the range of reasonableness suggested by the cases and consistent with the guidelines.[48]

[46] Sanctions and Costs Decision at paras 35 and 43
[47] Applicant's Memorandum of Fact and Law, February 8, 2019 at para 107

[174] The IIROC Panel concluded that "[a] two year suspension is consistent with similar regulatory decisions and is warranted given the intentional and dishonest nature of [Mr. Rudensky's] misconduct."[49]

[175] I agree with Mr. Rudensky's submission that in *Pariak-Lukic*, the Commission added a two-year suspension to sanctions ordered by IIROC, including a significant fine, without expressly considering the financial impact of the suspension or how that financial impact should affect the substantial fine already imposed.

[176] However, I disagree that *Pariak-Lukic* stands for the proposition that a panel cannot consider the financial impact of a sanctions decision when determining specific and general deterrence of that decision in a particular circumstance.

[177] Mr. Rudensky submitted that the IIROC Panel erred by concluding, without evidence, that a suspension for someone not currently in the business would not have enough financial impact.

[178] The IIROC Panel noted that a suspension of someone who is active in the industry disrupts or destroys the person's book of business, which is not the case for someone already out of the business.[50] However, I find their decision with respect to sanctions was based on an overall assessment of specific and general deterrence in Mr. Rudensky's specific circumstances and this was only one of several factors that the IIROC Panel considered.

[179] With respect to Mr. Rudensky's submission that the IIROC Panel should have provided some analysis as to what the financial impact of suspension would be for Mr. Rudensky, I disagree. The IIROC Panel reviewed the cases and the IIROC Sanctions Guidelines, and considered the seriousness of Mr. Rudensky's behaviour, before coming to its decision to suspend him.[51] I find no error of law or proceeding on an incorrect principle that would warrant my interference on this point.

3. Did the IIROC Panel err in law by finding there was harm to market integrity?

(a) Mr. Rudensky's Position

[180] Mr. Rudensky's position is that the IIROC Panel made an error in law by finding that there was harm to market integrity, without hearing any evidence of such harm.

(b) IIROC Staff's Position

[181] The IIROC Panel found that Mr. Rudensky's conduct was dishonest and deceptive. IIROC Staff relies on Suleiman (Re) for the proposition that it is obvious that such behaviour causes harm to the integrity of the market and to its reputation.[52] Therefore, in their submission, there was no error in law.

(c) OSC Staff's Position

[182] OSC Staff took no position on this point.

(d) Analysis

[183] I agree with IIROC Staff's position on this issue. Although *Suleiman* and the cases referred to therein involve forgery, I agree that they stand for the broader concept that dishonest and deceptive behaviour, by its very nature, causes harm to the integrity of the market and to its reputation.

[184] The IIROC Panel adopted the principle laid out in *Scoten (Re)* that "the investment industry by necessity operates in an atmosphere of trust", including "trust between the Approved Person and his or her employer".[53]

[185] In addition, the IIROC Panel cited *Wong (Re)* for the concept that the investment industry is based on trust and disclosure and that lying to one's Member Firm strikes at the heart of the principles on which the industry is built.[54]

[186] I find no error of law warranting my interference with the IIROC Panel's conclusion, based on their analysis of the decisions before them, that Mr. Rudensky's misconduct and lack of honesty harmed market integrity and the reputation of the marketplace.

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[48] Sanctions and Costs Decision at paras 47-48
[49] Sanctions and Costs Decision at paras 47-48
[50] Sanctions and Costs Decision at paras 55-56
[51] Sanctions and Costs Decision at paras 52-54
[52] *Suleiman (Re)*, 2016 IIROC 27 at para 8(d) (***Suleiman***)
[53] Sanctions and Costs Decision at para 5; *Scoten (Re)*, 2012 IIROC 67 at para 21
[54] Sanctions and Costs Decision at para 6, citing *Wong (Re)*, 2010 IIROC 50 at para 32

V. CONCLUSION

[187] For the above reasons, Mr. Rudensky's application for hearing and review is hereby dismissed. I conclude that:

a. the Merits Decision included analysis that constituted an error of law with respect to the interpretation about whether Rule 29.1 remained in effect in these circumstances. However, upon conducting and substituting my own analysis, I reach the same finding as the IIROC Panel. Rule 29.1 remained in effect in these circumstances;

b. as the evidence supporting the IIROC Panel's finding with respect to the availability of Rule 29.1 was completely separate from the evidence supporting the IIROC Panel's decision regarding whether Mr. Rudensky had breached Rule 43 and Rule 29.1, I considered as a separate issue if Mr. Rudensky had established any grounds warranting my interference in the substance of the Merits Decision and I found that Mr. Rudensky had failed to do so; and

c. Mr. Rudensky failed to establish any grounds warranting my intervention in the Sanctions and Costs Decision.

Dated at Toronto this 9th day of July, 2019.

"M. Cecilia Williams"

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Callitas Health Inc.	09 July 2019	
StartMonday Technology Corp.	10 July 2019	

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
Peeks Social Ltd.	04 July 2019	

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Chapter 5

Rules and Policies

5.1.1 Amendments to OSC Rule 13-502 Fees

AMENDMENTS TO
OSC RULE 13-502 *FEES*

1. OSC Rule 13-502 Fees is amended by this Instrument.

2. Section 1.1 is amended by adding the following definitions:

"OBA amendment" means an amendment to NI 33-109 that sets out circumstances in which outside business activity is required to be disclosed;

"specified day" means

(a) in relation to the late filing of Form 33-109F5 for the purposes of amending item 10 of Form 33-109F4, a business day occurring:

(i) before January 1, 2019, or

(ii) after the date that is the earlier of:

(A) the date that the first OBA amendment comes into force, and

(B) December 31, 2021, and

(b) in any other case, any business day;

3. Column B of Row A of Appendix D is amended by replacing "every business day***" with "***every specified day***".***

4. This Instrument comes into force on July 17, 2019.

5.1.2 Changes to Companion Policy 13-502CP Fees to OSC Rule 13-502 Fees

CHANGES TO
COMPANION POLICY 13-502CP *FEES* TO OSC RULE 13-502 *FEES*

1. Companion Policy 13-502CP Fees is changed by this Document.

2. The following is added immediately after section 7.1:

7.1.1 Moratorium on OBA Late Fee – (1) Under paragraph 4.1(b) of National Instrument 33-109 *Registration Information*, a change to information previously submitted in Item 10 of Form 33-109F4 is required to be filed within 10 days of the change. The change is made by submitting a completed Form 33-109F5. Subject to the exceptions in subsection (2) and a cap contained in Appendix D, a late filing of Form 33-109F5 gives rise to a late fee of $100 per business day under subparagraph (e)(i) of Row A of Appendix D.

(2) Registrants have commented that the scope of outside business activities (**OBAs**) that are required to be reported under Item 10 may be unclear. We acknowledge these comments and the need for greater clarity regarding OBA reporting. Amendments to the OBA reporting regime will require a CSA initiative. To reduce regulatory burden while the reporting regime is considered, we will not require registrants to pay the $100 per day late fee in respect of updating Item 10 for the period beginning January 1, 2019 to the earlier of: (i) the first date that an amendment to NI 33-109 comes into force that sets out the circumstances in which outside business activity is required to be disclosed; and (ii) December 31, 2021. In this regard, see the definitions of “OBA amendment” and “specified day” in section 1.1, read with revised text in Column B of Row A of Appendix D.

3. This change comes into effect on July 17, 2019.

5.1.3 Amendments to OSC Rule 13-503 (Commodity Futures Act) Fees

AMENDMENTS TO
OSC RULE 13-503 *(COMMODITY FUTURES ACT) FEES*

1. OSC Rule 13-503 (Commodity Futures Act) Fees is amended by this Instrument.

2. Section 1.1 is amended by adding the following definition:

"OBA amendment" means an amendment to OSC Rule 33-506 *(Commodity Futures Act) Registrant Information* that sets out circumstances in which outside business activity is required to be disclosed;

"specified day" means

(a) in relation to the late filing of Form 33-506F5 for the purposes of amending item 10 of Form 33-506F4, a business day occurring:

(i) before January 1, 2019, or

(ii) after the date which is the earlier of:

(A) the date that the first OBA amendment comes into force, and

(B) December 31, 2021, and

(b) in any other case, any business day;

3. Column B of Row A of Appendix D is amended by replacing "every business day***" with "***every specified day***".***

4. This Instrument comes into force on July 17, 2019.

5.1.4 Changes to Companion Policy 13-503CP (Commodity Futures Act) Fees to OSC Rule 13-503 (Commodity Futures Act) Fees

CHANGES TO
COMPANION POLICY 13-503CP *(COMMODITY FUTURES ACT) FEES* TO
OSC RULE 13-503 *(COMMODITY FUTURES ACT) FEES*

1. Companion Policy 13-503CP (Commodity Futures Act) Fees is changed by this Document.

2. The following is added immediately after subsection 5.1(1):

(1.1) Under subsection 4.1(1) of OSC Rule 33-506 *Registration Information*, a change to information previously submitted in Item 10 of Form 33-506F4 is required to be filed within 10 days of the change. The change is made by submitting a completed Form 33-506F5. Subject to the exceptions in subsection (1.2) and a cap contained in Appendix C, a late filing gives rise to a late fee of $100 per business day under subparagraph (e)(i) of Row A of Appendix C.

(1.2) Registrants have commented that the scope of outside business activities (**OBAs**) that are required to be reported under Item 10 may be unclear. We acknowledge these comments and the need for greater clarity regarding OBA reporting. To reduce regulatory burden while the reporting regime is considered, we will not require registrants to pay the $100 per day late fee in respect of updating Item 10 for the period beginning January 1, 2019 to the earlier of: (i) the first date that an amendment to NI 33-109 comes into force that sets out the circumstances in which outside business activity is required to be disclosed; and (ii) December 31, 2021. In this regard, see the definitions of “OBA amendment” and “specified day” in section 1.1, read with revised text in Column B of Row A of Appendix C.

3. This change comes into effect on July 17, 2019.

Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
CI First Asset U.S. Tactical Sector Allocation Index ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated July 10, 2019
Received on July 10, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2887249

Issuer Name:
Counsel Canadian Growth
Principal Regulator - Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated July 12, 2019
Received on July 12, 2019
Offering Price and Description:
Series A, F and I securities
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2818942

Issuer Name:
iShares S&P Global Consumer Discretionary Index ETF (CAD-Hedged)
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated July 11, 2019
Received on July 11, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BlackRock Asset Management Canada Limited
Promoter(s):
N/A
Project #2878215

Issuer Name:
SmartBe Global Value Momentum Trend Index ETF
Principal Regulator - Alberta (ASC)
Type and Date:
Amendment #1 to Final Long Form Prospectus dated July 12, 2019
Received on July 15, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
SmartBe Wealth Inc.
Project #2853464

Issuer Name:
Desjardins Global Total Return Bond Fund (formerly Desjardins Global Inflation Linked Bond Fund)
Chorus II Conservative Low Volatility Portfolio
Chorus II Moderate Low Volatility Portfolio
Chorus II Balanced Low Volatility Portfolio
Principal Regulator - Quebec
Type and Date:
Amendment #2 to Final Simplified Prospectus dated July 8, 2019
NP 11-202 Receipt dated July 10, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2870473

Issuer Name:
CI First Asset U.S. Tactical Sector Allocation Index ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated July 10, 2019
NP 11-202 Receipt dated July 11, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2887249

Issuer Name:
Counsel Canadian Growth
Principal Regulator - Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated July 12, 2019
NP 11-202 Receipt dated July 15, 2019
Offering Price and Description:
Series A, F and I securities
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2818942

Issuer Name:
Purpose Emerging Markets Dividend Fund
Principal Regulator - Ontario
Type and Date:
Amendment #4 to Final Simplified Prospectus dated June 25, 2019
NP 11-202 Receipt dated July 9, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Purpose Investments Inc.
Project #2823273

Issuer Name:
Dynamic Credit Absolute Return II Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jul 9, 2019
NP 11-202 Preliminary Receipt dated Jul 9, 2019
Offering Price and Description:
Series A Units, Series O Units, Series F Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2939057

Issuer Name:
Lorica Canadian Fixed Income Fund (formerly Marquest Canadian Fixed Income Fund)
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jul 11, 2019
NP 11-202 Preliminary Receipt dated Jul 12, 2019
Offering Price and Description:
Class A Units, Class F Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2937978

Issuer Name:
BMO Private U.S. Equity Portfolio
Principal Regulator – Ontario\
Type and Date:
Amendment #1 to Final Simplified Prospectus dated July 5, 2019
NP 11-202 Final Receipt dated Jul 10, 2019
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2898245

Issuer Name:
Purpose Credit Opportunities Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Jul 11, 2019
NP 11-202 Preliminary Receipt dated Jul 11, 2019
Offering Price and Description:
Series A units, Series I units, Series F units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2939848

Issuer Name:
Phillips, Hager & North High Yield Bond Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated July 10, 2019
NP 11-202 Final Receipt dated Jul 11, 2019
Offering Price and Description:
Series A units, Series D units, Series O units, Series I units, Advisor Series, Series FT5 units, Series F units, Series T5 units, Series H units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2917644

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NON-INVESTMENT FUNDS

Issuer Name:
Brookfield Renewable Partners L.P.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated July 9, 2019
NP 11-202 Preliminary Receipt dated July 10, 2019
Offering Price and Description:
Limited Partnership Units
Preferred Limited Partnership Units
US$2,000,000,000.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2939282

Issuer Name:
Brookfield Renewable Partners ULC
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated July 9, 2019
NP 11-202 Preliminary Receipt dated July 10, 2019
Offering Price and Description:
Debt Securities
US$2,000,000,000.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2939283

Issuer Name:
Brookfield Renewable Power Preferred Equity Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated July 9, 2019
NP 11-202 Preliminary Receipt dated July 10, 2019
Offering Price and Description:
Class A Preference Shares
US$2,000,000,000.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2939284

Issuer Name:
Evergold Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated July 8, 2019
NP 11-202 Preliminary Receipt dated July 11, 2019
Offering Price and Description:
Minimum Public Offering of 12,500,000 Offered Units for Gross Proceeds of $2,500,000.00
Maximum Public Offering of 15,000,000 Offered Units for Gross Proceeds of $3,000,000.00
Price: C$0.20 per Unit
Underwriter(s) or Distributor(s):
Leede Jones Gable Inc.
Promoter(s):
Kevin M. Keough
Charles J. Greig
Project #2939482

Issuer Name:
Hemp for Health Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated July 11, 2019
NP 11-202 Preliminary Receipt dated July 15, 2019
Offering Price and Description:
No securities are being offered pursuant to this prospectus (the “Prospectus”).
Underwriter(s) or Distributor(s):
-
Promoter(s):
ROBERT EADIE
GARY ARCA
Project #2940270

Issuer Name:
HeyBryan Media Inc.
Principal Regulator - British Columbia
Type and Date:
Amendment dated July 11, 2019 to Preliminary Long Form Prospectus dated April 12, 2019
NP 11-202 Preliminary Receipt dated July 15, 2019
Offering Price and Description:
Up to $3,000,000.00
Maximum 10,000,000 Units, $3,000,000.00
Minimum 8,000,000 Units, $2,400,000.00
Price: C$0.30 per Unit
Underwriter(s) or Distributor(s):
LEEDE JONES GABLE INC.
Promoter(s):
LANCE MONTGOMERY
PENNY GREEN
Project #2901700

Issuer Name:
TELUS Corporation
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated July 11, 2019
NP 11-202 Preliminary Receipt dated July 11, 2019
Offering Price and Description:
$3,000,000,000.00 - Debt Securities, Preferred Shares, Common Shares, Warrants to Purchase Equity Securities, Warrants to Purchase Debt Securities, Share Purchase Contracts, Share Purchase or Equity Units, Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2939780

Issuer Name:
The Flowr Corporation (formerly The Needle Capital Corp.)
Principal Regulator - Ontario
Type and Date:
Amendment dated July 12, 2019 to Preliminary Short Form Prospectus dated June 24, 2019
NP 11-202 Preliminary Receipt dated July 12, 2019
Offering Price and Description:
$125,000,000.00
[*] Common Shares
Price: C$[*.**] per Offered Share
Underwriter(s) or Distributor(s):
Barclays Capital Canada Inc.
BMO Nesbitt Burns Inc.
Credit Suisse Securities (Canada), Inc.
AltaCorp Capital Inc.
Clarus Securities Inc.
Sprott Capital Partners LP
Promoter(s):
Thomas Flow
Steven Klein
Project #2933259

Issuer Name:
Toronto Hydro Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated July 11, 2019
NP 11-202 Preliminary Receipt dated July 11, 2019
Offering Price and Description:
$1,000,000,000.00 DEBENTURES
(unsecured)
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
Promoter(s):
-
Project #2939739

Issuer Name:
Avicanna Inc.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated July 8, 2019
NP 11-202 Receipt dated July 10, 2019
Offering Price and Description:
2,228,328 Common Shares and 1,114,164 Warrants issuable without payment
upon the conversion of 2,228,328 Special Warrants
Total: $17,826,624.00. Price per Warrant - $8.00
Underwriter(s) or Distributor(s):
Sprott Capital Partners LP by its general partner, Sprott Capital Partners GP Inc.
Paradigm Capital Inc.
Promoter(s):
Aras Azadian
Kyle Langstaff
Setu Purohit
Project #2863765

Issuer Name:
Converge Technology Solutions Corp.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated July 8, 2019
NP 11-202 Receipt dated July 12, 2019
Offering Price and Description:
$500,000,000.00 - Common Shares, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2903376

Issuer Name:
Enbridge Gas Inc.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated July 11, 2019
NP 11-202 Receipt dated July 12, 2019
Offering Price and Description:
$2,000,000,000.00 - MEDIUM TERM NOTES (UNSECURED)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2935539

Issuer Name:
LL One Inc.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated July 5, 2019
NP 11-202 Receipt dated July 9, 2019
Offering Price and Description:
Offering: Minimum of $375,000.00 and up to $420,000.00
Minimum of 3,750,000 Common Shares and up to 4,200,000
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
-
Project #2879806

Issuer Name:
Subversive Capital Acquisition Corp.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated July 10, 2019
NP 11-202 Receipt dated July 10, 2019
Offering Price and Description:
U.S.$500,000,000 - 50,000,000 Class A Restricted Voting Units
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
Promoter(s):
SUBVERSIVE CAPITAL SPONSOR LLC
Project #2931921

Issuer Name:
VALEO PHARMA INC.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated July 11, 2019
NP 11-202 Receipt dated July 12, 2019
Offering Price and Description:
$2,000,000.00 (Minimum Offering) $8,000,000.00 (Maximum Offering)
Minimum of 4,000,000 Units Maximum of 16,000,000 Units
Price: $0.50 per Unit

Underwriter(s) or Distributor(s):
MACKIE RESEARCH CAPITAL CORPORATION
ECHELON WEALTH PARTNERS INC.
Promoter(s):
MANITEX CAPITAL INC.
Project #2908717

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Brookfield Public Securities Group LLC	From: Portfolio Manager and Commodity Trading Manager To: Investment Fund Manager, Portfolio Manager and Commodity Trading Manager	July 10, 2019
New Registration	Sharno Capital Corporation	Portfolio Manager and Exempt Market Dealer	July 9, 2019
Change in Registration Category	Trans-Canada Capital Inc.	From: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager To: Exempt Market Dealer, Portfolio Manager, Investment Fund Manager and Commodity Trading Manager	July 15, 2019

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Nasdaq CXC Limited – Introduction of Point-In-Time Closing Cross – Notice of Approval

NASDAQ CXC LIMITED

NOTICE OF APPROVAL

INTRODUCTION OF POINT-IN-TIME CLOSING CROSS

In accordance with the requirements set out in the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto (Exchange Protocol), on July 11th, 2019, the Commission approved significant changes to Form 21-101F1 for Nasdaq CXC Limited (Nasdaq Canada) reflecting the introduction of the Point-In-Time Closing Cross (Closing Cross) for the Nasdaq Fixed Income trading system.

Nasdaq Canada's Notice and Request for Comment on the proposed Closing Cross was published on the Commission's website and in the Commission's Bulletin on June 13, 2019 at (2019) 42 OSCB 5415. No comment letters were received.

The Closing Cross is expected to become effective in the fourth quarter of 2019.

13.3 Clearing Agencies

13.3.1 CDS Clearing and Depository Services Inc. – Proposed Material Amendments to CDS Rules – China Bond Link – Notice of Withdrawal

CDS CLEARING AND DEPOSITORY SERVICES INC.

PROPOSED MATERIAL AMENDMENTS TO CDS RULES

CHINA BOND LINK

NOTICE OF WITHDRAWAL

In accordance with the provisions of the rule protocol between the Ontario Securities Commission ("OSC") and CDS Clearing and Depository Services Inc. ("CDS®"), and pursuant to request from CDS's principal regulators, CDS hereby officially withdraws the Notice and Request for Comments regarding proposed amendments to the CDS Rules related to the implementation of the China Bond Link. The Notice and Request for Comments was submitted for regulatory review on October 12, 2018, and published on October 18, 2018.

CDS may re-submit the foregoing Notice and Request for Comments for re-publication, and further regulatory review, at such time as the proposed China Bond Link regains momentum.

Tony Hoffmann
Senior Legal Counsel
CDS Clearing and Depository Services Inc.

13.3.2 CDS Clearing and Depository Services Inc. – Proposed Material Amendments to CDS Fee Schedule – China Bond Link – Notice of Withdrawal

CDS CLEARING AND DEPOSITORY SERVICES INC.

PROPOSED MATERIAL AMENDMENTS TO CDS FEE SCHEDULE

CHINA BOND LINK

NOTICE OF WITHDRAWAL

In accordance with the provisions of the rule protocol between the Ontario Securities Commission ("OSC") and CDS Clearing and Depository Services Inc. ("CDS®"), and pursuant to request from CDS's principal regulators, CDS hereby officially withdraws its submission of proposed amendments to the CDS Fee Schedule related to the implementation of the China Bond Link. The Notice and Request for Comments was submitted for regulatory review on October 19, 2018, and published on November 1, 2018.

CDS may re-submit the foregoing submission for re-publication, and further regulatory review, at such time as the proposed China Bond Link regains momentum.

Tony Hoffmann
Senior Legal Counsel
CDS Clearing and Depository Services Inc.

Chapter 25

Other Information

25.1 Applications for Variation of an Order

25.1.1 Martin Bernholtz – s. 144

File No.: 2018-16

IN THE MATTER OF
MARTIN BERNHOLTZ

APPLICATION OF MARTIN BERNHOLTZ
(For Variation of an Order Under Section 144 of the Securities Act, RSO 1990, c. S.5)

A. ORDER SOUGHT

The Applicant, Martin Bernholtz, request(s) that the Ontario Securities Commission make the following order(s):

1. an Order varying the order made in this matter dated May 21, 2019 to permit various transfers of securities from Martin Bernholtz, or companies under his control, to his son, David Bernholtz, to be completed.

B. GROUNDS

The grounds for the request are:

1. Pursuant to the order dated May 21, 2019, Martin Bernholtz was subject to a cease trade order as of July 5, 2019;

2. Weeks prior to July 5, 2019, Mr. Bernholtz had been advised by a registrant that various transfers of shares from him to his son could be carried out prior to July 5, 2019. On or about July 3, 2019, Mr. Bernholtz was advised by that registrant that the transfers could not be carried out. Mr. Bernholtz proceeded to have another registrant assist with the transfer of the shares to his son as of July 3, 2019;

3. A large number of the shares to be transferred have stock certificates that are stale dated and have changed their name and consolidated the number of shares. The second registrant submitted these through to the transfer agent to reflect the current name and shareholdings. The transfer agents of these securities could not complete them by July 4, 2019;

4. In addition, Martin Bernholtz had requested the transfer of various shares in his online brokerage account to his son. For some unknown reason, these transfers did not go through and Mr. Bernholtz was advised to resubmit the request for transfer;

5. It is likely that while these transfers complete, some further input or action from Martin Bernholtz will be required;

6. Staff have been advised of the details above, including the names of the registrants and the account numbers for Martin Bernholtz and his son and Staff have advised that they are prepared to consent to the requested order.

C. EVIDENCE

The Applicant(s) intend(s) to rely on the following evidence at the hearing:

1. Draft order consented to by Staff, attached.

DATED this 8th day of July, 2019

GROIA & COMPANY
Professional Corporation ■ Lawyers
365 Bay Street, Suite 1100
Toronto, ON M5H 2V1
Fax: (416) 203-9231

Kevin Richard
Tel: (416) 203-4485

Lawyers for the Respondent

TO: THE ONTARIO SECURITIES COMMISSION
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20 Queen Street West Toronto, ON M5H 3S8
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Matthew Britton

Index