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CSA Notice and Request for Comment

Proposed Amendments to
National Instrument 52-108 *Auditor Oversight* and
Proposed Changes to
Companion Policy 52-108 *Auditor Oversight*

October 3, 2019

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period the following materials:

- Proposed Amendments to National Instrument 52-108 *Auditor Oversight* (the **Proposed Amendments**);
- Proposed Changes to Companion Policy 52-108 *Auditor Oversight* (the **Proposed CP Changes**);

(collectively, the **Proposed Revisions**).

The Proposed Amendments require actions by reporting issuers and participating audit firms that will assist the Canadian Public Accountability Board (**CPAB**) in accessing audit working papers of component auditors, particularly in certain foreign jurisdictions.

The Proposed CP Changes provide guidance on how we will interpret and apply the Proposed Amendments.

The text of the Proposed Revisions is contained in Annexes A and B of this Notice. Local amendments, if any, are in Annex C of this Notice. This Notice will also be available on the websites of CSA jurisdictions, including:

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

Substance and Purpose

The Proposed Revisions aim to respond to challenges CPAB has had in getting access to inspect audit work performed by an audit firm in a foreign jurisdiction that forms part of the audit evidence supporting an auditor's report issued by a participating audit firm (a **PAF**). An audit firm performing such audit work is commonly referred to as a 'component auditor'.

The Proposed Amendments require a reporting issuer to direct a component auditor that meets significant thresholds (a **significant component auditor**) to enter into an agreement with CPAB governing access for file inspection (a **CPAB access agreement**) if the component auditor does not voluntarily provide access to CPAB, upon request, to inspect the audit work it has

performed for a reporting issuer audit. If, despite such request, the component auditor does not enter into a CPAB access agreement, a PAF would, after a prescribed period of time for transition, not be permitted to use the audit firm as a significant component auditor.

Background

Several reporting issuers have operations in foreign jurisdictions that differ from the jurisdictions where their head offices are located. This may present challenges for the reporting issuer's auditor due to different languages, laws and business practices in a foreign jurisdiction. In responding to those challenges, a PAF may ask a component auditor to perform work that forms part of the audit evidence supporting the PAF's auditor's report. A component auditor could be a member of the PAF's international network, or an unrelated foreign or domestic audit firm.

If a PAF decides to use the work of a component auditor, the PAF must comply with Canadian Auditing Standard 600 *Special Considerations – Audits of Group Financial Statements (Including the Work of Component Auditors)* (**CAS 600**), which specifies that the PAF is responsible for the direction, supervision and performance of the overall audit. Although CAS 600 requires the PAF to document the type of work performed by a component auditor and the PAF's review of such work, there is no requirement for the PAF to retain in its files a copy of the work performed by the component auditor.

In order to assess whether sufficient audit evidence has been obtained to support the PAF's audit opinion, CPAB has determined that it needs access to a substantial portion of the audit work performed. However, CPAB has encountered some instances where a substantial portion of the audit work has been performed by a component auditor in a foreign jurisdiction, and CPAB was not allowed access to inspect such audit work.

CSA Consultation Paper 52-403 *Auditor Oversight Issuers in Foreign Jurisdictions*

In April 2017, we published a consultation paper asking for views on whether certain component auditors should be required to register with CPAB. In its comment letter, CPAB took the position that a registration requirement would provide it a legal basis to access audit working papers in most foreign jurisdictions, although there would continue to be a small number of foreign jurisdictions where barriers to access may not be resolved.

We also received responses from six audit firms.

While most firms were supportive of resolving CPAB's challenges in obtaining access, some questioned whether a registration requirement was needed. Some commented that, rather than registration, efforts should instead be made to develop an international solution with regulators and standard setters.

Most of the audit firms noted that, if some form of registration regime was to be introduced, then the focus should be on CPAB access to component auditor working papers. The regime should not include other oversight aspects applicable to a PAF, such as the inspection of an audit firm's system of controls. Some commenters also stated that some foreign laws would likely restrict access even if some form of registration was required.

The consultation paper also asked for views on whether it would be useful to require additional transparency about situations where CPAB has been prevented from inspecting the work of a PAF or component auditor. The commenters did not support a requirement for additional disclosure and noted concerns about the potential for disclosure to be misleading or misunderstood. Based on the responses received, we decided not to develop proposals of this nature.

Summary of the Proposed Amendments

The Proposed Amendments:

- introduce the definition of a significant component auditor, namely a component auditor that
    - performs audit work involving financial information related to a component, whose activities the reporting issuer has the power to direct on its own or jointly with another person or company, and
    - meets one of the quantitative metrics relating to hours of work, fees paid, or relative size of the component's assets or revenue;
- require a reporting issuer to take all reasonable steps to direct a significant component auditor to provide CPAB with access to inspect the records relating to the component auditor's audit work performed for a reporting issuer audit;

- require a reporting issuer to take all reasonable steps to direct a significant component auditor involved in the audit of its financial statements to enter into a CPAB access agreement if the reporting issuer receives a copy of a notice from its PAF stating that a significant component auditor has failed to provide CPAB access to inspect the significant component auditor's records related to audit work performed. A CPAB access agreement is a written agreement between CPAB and a significant component auditor governing access by CPAB to inspect the significant component auditor's records relating to audit work it has performed in relation to a component of a reporting issuer. The terms and conditions set out in a CPAB access agreement, including the manner and conditions for when access is to be provided, must be agreed to by CPAB and the significant component auditor;

- require a PAF to no longer use a public accounting firm as a significant component auditor after a prescribed period of time, if the PAF receives notice that the public accounting firm has failed to enter into a CPAB access agreement after being requested to do so by a reporting issuer.

Summary of the Proposed CP Changes

The Proposed CP Changes provide guidance on how we will interpret and apply the Proposed Amendments and include, among other things, illustrative examples of how to apply the quantitative metrics that form part of the definition of significant component auditor.

Anticipated Benefits and Costs of the Proposed Amendments

Benefits

Auditors play an important role in the capital markets by providing reasonable assurance that the annual financial statements filed by a reporting issuer are presented fairly in all material respects. To ensure that high quality audits are performed on the financial statements of reporting issuers, we are introducing securities requirements that will reduce the number of situations in which CPAB is not given access to inspect the work performed by component auditors to support audit opinions.

If adopted in their current form, the Proposed Amendments will create a legal requirement for a component auditor to enter into a CPAB access agreement if the component auditor has not provided access voluntarily. We expect that this requirement will address situations where a component auditor will only permit access to a component auditor's records if required by law.

The Proposed Amendments will also provide CPAB a tool to address situations where a significant component auditor prevents CPAB from inspecting its audit work for a reporting issuer audit despite there being no legal restriction.

Costs

If a significant component auditor voluntarily provides CPAB access to inspect its records related to audit work it has performed with respect to a reporting issuer audit, the Proposed Amendments would have no cost implications for a reporting issuer or its PAF.

If a significant component auditor does not voluntarily provide access but enters into a CPAB access agreement after being directed to do so by a reporting issuer, the cost implications are small for the reporting issuer and the PAF. Such costs relate to the requirements for a PAF to forward a notice from CPAB to specified parties, and the reporting issuer to direct the significant component auditor to enter into a CPAB access agreement.

If a significant component auditor fails to enter into a CPAB access agreement with CPAB after being requested to so by a reporting issuer, and the PAF can no longer use the firm as a significant component auditor, there would be a one-time cost for any reporting issuer and PAF that previously used that component auditor. Incremental costs may relate to efforts to identify a new significant component auditor or audit fees for work performed by a PAF or a new component auditor.

Authority for the Instrument

In Ontario, the rule-making authority for the Proposed Amendments is in paragraphs 13, 16, 22, 22.1, 25 and 39 of subsection 143(1) of the *Securities Act* (Ontario).

Alternatives Considered

In CSA Consultation Paper 52-403 we identified other potential alternatives, such as a more comprehensive component auditor registration requirement or the development of a disclosure-based regime that highlighted access restrictions. After considering the comments received, we concluded that the development of the Proposed Revisions would be an effective way to respond to restrictions that CPAB faces in inspecting audit work performed by component auditors.

Reliance on Unpublished Studies

In developing the Proposed Revisions, we are not relying on any significant unpublished study, report or other written material.

Request for Comments

We welcome your comments on the Proposed Revisions.

We invite comments on the following specific question:

1. The proposed definition of significant component auditor captures audit work on financial information related to a component, whose activities the reporting issuer has the power to direct on its own or jointly with another person or company. Are there specific limitations or concerns with the inclusion of components where the reporting issuer has power to directly jointly with another person or company? If so, please explain.

Deadline for Comments

Please submit your comments in writing on or before January 2, 2020. If you are not sending your comments by email, please send us an electronic file containing submissions provided (in Microsoft Word format).

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA.

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto ON M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

M^{e} Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Please refer your questions to any of the following:

British Columbia Securities Commission
Carla-Marie Hait, Chief Accountant and CFO, British Columbia Securities Commission
604-899-6726 | chait@bcsc.bc.ca

Anita Cyr, Associate Chief Accountant, British Columbia Securities Commission
604-899-6579 | acyr@bcsc.bc.ca

Alberta Securities Commission
Janice Anderson, Acting Chief Accountant and CFO, Alberta Securities Commission
403-297-2520 | janice.anderson@asc.ca

Ontario Securities Commission
Cameron McInnis, Chief Accountant, Ontario Securities Commission
416-593-3675 | cmcinnis@osc.gov.on.ca

Mark Pinch, Associate Chief Accountant, Ontario Securities Commission
416-593-8057 | mpinch@osc.gov.on.ca

Autorité des marchés financiers
Rosetta Gagliardi, Analyste expert à la réglementation, Autorité des marchés financiers
514-395-0337 Ext: 4365 | rosetta.gagliardi@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

ANNEX A

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 52-108 *AUDITOR OVERSIGHT*

1. National Instrument 52-108 Auditor Oversight is amended by this Instrument.

2. The following is added after Part 3:

PART 3.1 SIGNIFICANT COMPONENT AUDITOR'S WORKING PAPERS

Definitions

7.1 In this Part,

"component" has the same meaning as "component" in Canadian GAAS;

"component auditor" has the same meaning as "component auditor" in Canadian GAAS;

"CPAB access agreement" means a written agreement between CPAB and a significant component auditor governing access by CPAB in order to inspect the significant component auditor's records related to audit work it has performed in relation to a component of a reporting issuer;

"CPAB access-limitation notice" means a written notice issued by CPAB that a significant component auditor has failed to provide CPAB with access in order to inspect the significant component auditor's records related to audit work it has performed for a financial period;

"CPAB no-access notice" means a written notice issued by CPAB that a significant component auditor has failed to enter into a CPAB access agreement after being requested to do so by a reporting issuer;

"significant component auditor" means, with respect to a reporting issuer and its financial statements for a financial period, a component auditor that performs audit work involving financial information related to a component that the reporting issuer has the power to direct on its own or jointly with another person or company, if any of the following apply:

(a) the number of hours spent by the component auditor to perform the audit work in respect of the financial period is 20% or more of the total hours spent on the audit of those financial statements by the reporting issuer's auditor;

(b) the amount of fees paid to the component auditor for the audit work in respect of the financial period is 20% or more of the total fees paid to the reporting issuer's auditor for the audit of those financial statements;

(c) both of the following apply:

(i) the assets or revenues of the component are 20% or more of the reporting issuer's consolidated assets at the end of the financial period or consolidated revenues for that period:

(ii) the number of hours spent by the component auditor to perform the audit work in respect of the financial period exceeds 50% of the total hours spent on audit work relating to the component in connection with the audit of those financial statements.

Reporting Issuer to Direct Provision of Access

7.2 (1) If an audit of a reporting issuer's financial statements for a financial period involves audit work performed by a significant component auditor for the financial period, the reporting issuer must take all reasonable steps to direct the significant component auditor to provide CPAB with access in order to inspect the significant component auditor's records relating to that audit work.

(2) The direction referred to in subsection (1) must be made on or before the date of the auditor's report on the reporting issuer's financial statements referred to in subsection (1).

Failure to Voluntarily Provide Access to Inspect a Significant Component Auditor's Records

7.3 (1) If a participating audit firm receives a CPAB access-limitation notice, the participating audit firm must, not more than 5 business days following receipt of the notice, deliver a copy of the notice to

(a) the reporting issuer identified in the notice;

(b) the audit committee of that reporting issuer; and

(c) the regulator or securities regulatory authority for that reporting issuer.

(2) If a reporting issuer receives a copy of a CPAB access-limitation notice in respect of a significant component auditor, the reporting issuer must, not more than 5 business days following the receipt of the copy of the notice, take all reasonable steps to direct the significant component auditor to enter into a CPAB access agreement.

Failure of a Significant Component Auditor to Enter into a CPAB Access Agreement if Requested To Do So

7.4 (1) If a participating audit firm receives a CPAB no-access notice, the participating audit firm must, not more than 15 business days following receipt of the notice, deliver a copy of the notice to

(a) any reporting issuer audited by the participating audit firm where the public accounting firm identified in the notice was a significant component auditor for the reporting issuer's most recently completed financial period for which an auditor's report has been issued;

(b) the audit committee of each reporting issuer referred to in paragraph (a); and

(c) the regulator or securities regulatory authority for each reporting issuer referred to in paragraph (a).

(2) If a participating audit firm receives a CPAB no-access notice, the participating audit firm must not,

(a) subject to subsection (3), use the public accounting firm referred to in the notice as a significant component auditor in respect of an audit of any reporting issuer's financial statements for a financial period ending more than 180 days after the date of the notice, or

(b) in respect of an audit of a reporting issuer's financial statements for a period ending more than 180 days after the date of the notice, use any other public accounting firm as a significant component auditor in respect of a component of the reporting issuer, where audit work in the current or preceding year was done by the public accounting firm referred to in the notice, unless the other public accounting firm satisfies one or both of the following conditions and delivers a notice to that effect to the participating audit firm and CPAB at least 90 days before the issuance of an auditor's report in respect of that audit:

(i) the other public accounting firm gives an undertaking to CPAB in writing to provide CPAB with prompt access in order to inspect the other public accounting firm's records relating to audit work performed on financial information related to the component of the reporting issuer referred to in the definition of "significant component auditor" in section 7.1;

(ii) the other public accounting firm has entered into a CPAB access agreement in respect of the reporting issuer.

(3) Paragraph (2)(a) does not apply in respect of a financial period of a reporting issuer ending at any time if

(a) CPAB has notified the participating audit firm that the significant component auditor has entered into a CPAB access agreement in respect of the reporting issuer before that time; and

(b) CPAB has not, before that time, notified the participating audit firm that it has withdrawn from that CPAB access agreement..

3. Subsection 8(3) is amended by replacing "Except in Ontario***" with "***Except in Alberta and Ontario***".***

4. This Instrument comes into force on [●].

ANNEX B

PROPOSED CHANGES TO
COMPANION POLICY 52-108CP *AUDITOR OVERSIGHT*

1. Companion Policy 52-108 Auditor Oversight is changed by this Document.

2. The following is added at the end of the Companion Policy:

Section 7.1 – Definition of Component and Component Auditor

The terms "component" and "component auditor" have the same meaning as "component" and "component auditor" in Canadian GAAS. As a result, the terms are interpreted in a manner consistent with how the terms are used in Canadian Audit Standard 600 *Special Considerations – Audits of Group Financial Statements (Including the Work of Component Auditors)* (CAS 600).

In CAS 600, the term "component" means an entity or business activity for which a group or component management prepares financial information that should be included in the group financial statements, and the term "component auditor" means an auditor who, at the request of the group engagement team, performs work on financial information related to a component for the group audit.

Section 7.1 – Definition of CPAB Access Agreement

The Instrument does not prescribe the content to be included in a CPAB access agreement. It is not intended to be equivalent to a "participation agreement". The terms and conditions set out in a CPAB access agreement, including the manner and conditions for when access is to be provided, will be agreed to by CPAB and the significant component auditor.

Section 7.1 - Definition of Significant Component Auditor

A component controlled or jointly controlled by a reporting issuer

The definition of significant component auditor refers to a component auditor that performs work on financial information related to a component of a reporting issuer that the reporting issuer has the power to direct on its own or jointly with another person or company. Financial information related to a component that a reporting issuer does not have power to direct, at least jointly, is excluded from the definition.

For example, under IFRS, a subsidiary or joint arrangement are captured by the reference noted above in the significant component auditor definition, whereas an investment that is accounted for using the equity method of accounting, or a variable interest entity that a reporting issuer does not have power to direct on its own or jointly with another person or company, is not captured.

Determination of what constitutes an 'audit hour' or 'audit fee'

The term 'hours' in this Instrument refers to 'audit hours' and is intended to include any hours that are billed in respect of a financial period as 'audit fees' or 'audit-related fees', as those terms are described in Forms 52-110F1 *Audit Committee Information Required in an AIF* and 52-110F2 *Disclosure by Venture Issuers* (52-110 Forms).

The term 'fees' in this Instrument is intended to include any fees that are billed in respect of a financial period as 'audit fees' or 'audit-related fees', as those terms are described in the 52-110 Forms.

Determination of percentage of audit hours spent by a component auditor on a financial statement audit

Paragraph (a) in the definition of significant component auditor applies if the number of hours spent by the component auditor to perform the audit work in respect of the financial period is 20% or more of the total hours spent on the audit of the reporting issuer's financial statements by the reporting issuer's auditor.

For example, if a reporting issuer audit took 100 hours to complete, and the reporting issuer's auditor performed 80 hours of audit work, and the component auditor performed 20 hours of audit work, paragraph (a) of the definition would apply since the hours spent by the component auditor would be 25% (20 hours / 80 hours) of the audit hours spent by the reporting issuer's auditor.

Determination of percentage of audit fees paid to a component auditor for the financial statement audit

Paragraph (b) of the definition of significant component auditor applies if the amount of fees paid to the component auditor for the audit work in respect of the financial period is 20% or more of the total fees paid to the reporting issuer's auditor for the audit of the reporting issuer's financial statements.

For example, if a reporting issuer paid $100,000 for the audit of its financial statements, and $80,000 of the fee was paid to the reporting issuer's auditor for its audit work, while $20,000 of the fee was paid to the component auditor for its audit work, paragraph (b) of the definition would apply since the percentage of fees paid to the component auditor would be 25% ($20,000 / $80,000).

Determination of number of audit hours a component auditor spent on a significant component

Subparagraph (c)(i) of the definition of significant component auditor applies if a reporting issuer has a component with assets that represent 20% or more of the reporting issuer's consolidated assets at the end of the financial period, or revenues that represent 20% or more of the consolidated revenues for the financial period, and it has the power to direct the activities of the component on its own or jointly with another person or company. If subparagraph (c)(i) applies, subparagraph (c)(ii) of the definition would be considered.

Subparagraph (c)(ii) of the definition of significant component auditor applies if the number of hours spent by the component auditor to perform the audit work in respect of the financial period exceeds 50% of the total hours spent on audit work relating to a component that meets the application requirements in subparagraph (c)(i) of the definition.

For example, assume a reporting issuer has a subsidiary (Component A) that has revenues representing 30% of the consolidated revenues of the reporting issuer, and therefore satisfies subparagraph (c)(i) of the definition. If the audit of Component A took 10 hours to complete and the component auditor performed 6 hours of the audit work and the reporting issuer's auditor performed 4 hours of the audit work, the work performed by the component auditor would satisfy subparagraph (c)(ii) of the definition. The component auditor would have performed 60% (6 hours / 10 hours) of the total hours to audit the component for the reporting issuer audit. The component auditor would therefore meet the definition of a significant component auditor.

In the example above, the 6 hours of work performed by the component auditor would represent the amount of time spent to perform audit work in connection with the audit of the reporting issuer's financial statements. If additional audit work was performed to support the completion of a separate audit engagement (e.g., the audit of the standalone financial statements of Component A), those audit hours would be excluded from the calculation in subparagraph (c)(ii).

Section 7.2 – Reporting Issuer to Direct Provision of Access

Section 7.2 requires a reporting issuer to, on or before the date of the auditor's report on the reporting issuer's financial statements for a financial period, take all reasonable steps to direct a significant component auditor to provide CPAB with access in order to inspect the significant component auditor's records relating to the audit work performed for those financial statements. Effectively, the reporting issuer communicates that it is requesting that CPAB have access in order to inspect the significant component auditor's working papers relating to the audit work performed on the reporting issuer's financial statements.

A reporting issuer can direct a significant component auditor to provide CPAB with access to inspect the significant component auditor's records by communicating directly with the significant component auditor (e.g., a letter to the significant component auditor), or indirectly through the reporting issuer's auditor (e.g., state in the engagement letter with the reporting issuer's auditor that it shall inform all significant component auditors involved in the audit that the reporting issuer is directing them to provide CPAB with access to inspect the work they perform in connection with the reporting issuer's audit).

Subsection 7.3(1) and Subsection 7.4(1) – CPAB Access-limitation Notice and CPAB No-access Notice

Both subsection 7.3(1) and subsection 7.4(1) of the Instrument require a participating audit firm to deliver a copy of a notice to the regulator or securities regulatory authority. The securities regulatory authorities will consider the delivery requirement to be satisfied if a copy of the notice is sent to auditor.notice@acvm-csa.ca.

The Instrument does not prescribe the content of a CPAB access-limitation notice and CPAB no-access notice. If a copy of a CPAB access-limitation notice or CPAB no-access notice is delivered to the email address identified above, the communication should identify each regulator or securities regulatory authority that is to receive a copy of the notice if such information is not specified in the notice.

Subsection 7.3(2) – Impact of a Significant Component Auditor Being Directed to Enter into a CPAB Access Agreement

If subsection 7.3(2) applies, the significant component auditor and CPAB would immediately begin the process of negotiating a CPAB access agreement. The negotiations should be completed in a reasonable period of time, which normally is not expected to exceed 45 business days.

Section 7.4 – Impact of Participating Audit Firm Receiving a CPAB No-access Notice

A participating audit firm will receive a CPAB no-access notice if it has used the public accounting firm named in the notice as a significant component auditor for one or more recently completed reporting issuer audits.

If a participating audit firm receives a CPAB no-access notice and was planning to use the public accounting firm named in the notice as a significant component auditor for an upcoming reporting issuer audit, it may continue to do so provided that the reporting issuer's upcoming year end is less than 180 days after the date of the notice.

If a reporting issuer's upcoming year end is more than 180 days after the date of the notice, the participating audit firm may not use the public accounting firm named in the notice as a significant component auditor for the reporting issuer's upcoming year end unless CPAB has notified the participating audit firm that the named firm has entered into a CPAB access agreement in respect of the reporting issuer before the reporting issuer's year end.

The participating audit firm also must not use any other public accounting firm as a significant component auditor for the audit of the reporting issuer's financial statements unless the other public accounting firm delivers a notice to the participating audit firm and CPAB at least 90 days before the issuance of an auditor's report in respect of that audit stating that it has given an undertaking to CPAB or entered into a CPAB access agreement and, in addition, one or both of the following apply:

- the other public accounting firm gives an undertaking to CPAB in writing to provide CPAB with prompt access in order to inspect its records relating to audit work related to the relevant component of the reporting issuer, if requested to do so, or
- the other public accounting firm has entered into a CPAB access agreement in respect of the reporting issuer.

Participating audit firms should consider how they track the use of component auditors for their reporting issuer clients to meet the requirements of subsection 7.4(1) within the specified time period of 15 business days.**.**

3. These changes become effective on [●].

ANNEX C

LOCAL MATTERS
ONTARIO SECURITIES COMMISSION

Description of Anticipated Costs of Proposed Amendments

The following discussion has been provided to supplement the costs discussion in the attached notice:

General cost implication on reporting issuer population that use a component auditor

As of December 31, 2018, there were approximately 4,900 reporting issuers in Canada.[1] Approximately 2,965 of those reporting issuers were listed issuers in Canada, which represented a total market capitalization of 2.5 trillion.[2] This population included 232 reporting issuers with one or more significant operations[3] in a foreign jurisdiction (excluding the United States, the United Kingdom and Australia) that used a component auditor, which represented a total market capitalization of $158.9 billion.[4] For these reporting issuers there were significant operations in 111 foreign jurisdictions.[5]

The Proposed Amendments would require significant component auditors for these 232 reporting issuers to enter into a CPAB Access Agreement if they are not prepared to voluntarily provide CPAB access to inspect the work performed for a reporting issuer audit when requested. The terms and conditions set out in a CPAB Access Agreement for each component auditor, including the manner and conditions for when access is to be provided, must be agreed to by CPAB and the significant component auditor. For example, if the component auditor identifies specific legal restrictions in their local jurisdiction that prevent CPAB from being able to inspect their work, and such restrictions are set out in the CPAB Access Agreement as a condition that must be addressed before CPAB can be provided access to inspect, then both parties would be able to enter into a CPAB Access Agreement without the significant component auditor being offside on local law in their jurisdiction.

CPAB has requested and been denied access in China, Mexico and Tunisia[6], which represent 43 of the reporting issuers (market capitalization of $36.9 billion) identified above that use a component auditor.[7] CPAB has represented that, if the proposed rules were in place, the component auditors for each of these entities would be able to enter into a CPAB Access Agreement if they so choose. The CPAB Access Agreement would not necessarily result in CPAB having immediate access to inspect work in each of the noted countries if the agreement identifies specific jurisdictional restrictions that continue to prevent access.

With respect to the remaining 189 reporting issuers, which have significant operations in 108 different foreign jurisdictions, it is unknown how many of their significant component auditors would not be prepared to voluntarily provide CPAB access to inspect if requested. However, CPAB is of the view that none of those jurisdictions has any legal impediments to a significant component auditor entering into a CPAB Access Agreement. It would therefore be the component auditor's choice whether to do so. The CPAB Access Agreement would not necessarily result in CPAB having immediate access to inspect work in all 108 foreign jurisdictions since each agreement is separately negotiated and could identify specific jurisdictional restrictions that continue to prevent access.

As a result, the following one-time costs are expected for each stakeholder if a component auditor does not voluntarily provide CPAB access to inspect their work upon request, and a CPAB Access Agreement is needed:

> *Reporting Issuer* - The only action that needs to be undertaken is a one-time request for the reporting issuer's significant component auditor to enter into a CPAB Access Agreement. The cost is nil.
>
> *Participating Audit Firm (PAF)* – The only action that needs to be undertaken is the forwarding of a notice received from CPAB to the reporting issuer to initiate their request for the significant component auditor to enter into a CPAB Access Agreement. The cost is nil.
>
> *Component Auditor* – CPAB Access Agreements are anticipated to be a standard form agreement, except for any

1 Exchange-traded funds have been excluded from the total since it would be highly unlikely for a significant component auditor in a foreign jurisdiction to be used for these audits.
2 This figure is based on (i) 804 TSX and 1,707 TSXV listed issuers as of December 31, 2018; (ii) 448 CSE listed issuers as of December 21, 2018 and (iii) 6 NEO Aequitas listed issuers as of December 21, 2018. All figures exclude exchange-traded funds. Please see the December 2018 MiG Report and related MiG Lists for further information regarding TSX and TSXV issuers https://tsx.com/listings/current-market-statistics/mig-archives
3 Significant operations are subsidiaries or components, the assets or revenues of which constitute 20% or more of the reporting issuer's consolidated assets or revenues.
4 CPAB Report *Access to Foreign Jurisdictions*, March 2019.
5 *Ibid*.
6 *Ibid*.
7 Number of reporting issuers and market capitalization provided by CPAB.

conditions that are agreed to by both the component auditor and CPAB. If specified conditions are needed, then external costs may be incurred by the component auditor to obtain a legal opinion to support any specific legal restrictions in the foreign jurisdiction that prevent access.[8] It is at CPAB's discretion whether a legal opinion would be needed based on the facts and circumstances for each foreign jurisdiction.

In addition to any potential costs incurred to obtain a legal opinion, it is estimated that approximately 10 hours of time would be incurred by members of an audit firm's general counsel's office to agree on any specified conditions. Assuming an executive level internal legal counsel involved in such work has an average salary of $204,500[9], is allocated an overhead charge of approximately 25%, and the time allocated represents 0.5%[10] of time the individual spends in a given year, the total internal cost is approximately $1,278 to finalise an agreement.

CPAB – Since the CPAB Access Agreements are anticipated to be a standard form agreement, the cost would primarily pertain to discussions with a component auditor's internal counsel on any potential terms and conditions. The cost implications have been discussed with CPAB, and they are of the view that the benefits of entering into a CPAB Access Agreement will outweigh the costs they would incur.

Specific cost implications if a significant auditor fails to enter into a CPAB access agreement:

The Proposed Amendments contemplate situations where a significant component auditor may choose not to enter into a CPAB Access Agreement. Since CPAB is not aware of any barriers in a specific foreign jurisdiction that would inhibit a significant component auditor from entering into a CPAB Access Agreement, these situations are only anticipated to occur when a significant component auditor does not wish to provide CPAB access to inspect its work.

If a component auditor fails to enter into a CPAB Access Agreement, then the PAF will no longer be permitted to use that component auditor after a prescribed period and will need to either identify a new component auditor to perform the work or perform the work itself.

The following costs are anticipated for each stakeholder if a new component auditor is used:

Reporting Issuer – The reporting issuer's audit committee will be responsible for overseeing the work of the PAF, which would include any changes to the significant component auditor(s) that are used to perform the audit. This oversight function is performed by a reporting issuer's audit committee each year, so the additional cost is essentially nil. It is possible that a new component auditor could charge a fee for service that differs from the fees charged by the prior component auditor, however it is anticipated that if the work being performed is identical then the fees for service would be substantially similar.

PAF – The PAF will need to employ a process to identify a new component auditor that has sufficient expertise to perform the work and is prepared to either provide CPAB access to inspect voluntarily or enter into a CPAB Access Agreement. The process to identify the new component auditor is estimated to be 10 hours. It is assumed that this process would primarily be undertaken by a Chartered Professional Accountant involved in the audit engagement with approximately 5 to 8 years experience, and an annual salary of $127,000[11]. Assuming an overhead charge of 25%, and the time allocated represents 0.5%[12] of time an individual spends in a given year, the total internal cost anticipated to be incurred by the PAF is $794.[13]

New Component Auditor – The new component auditor may need to enter into a CPAB Access Agreement if it is not able to voluntarily provide access. As noted above, the total internal cost anticipated to finalize an agreement would be $1,278. Additional external costs would be incurred if a legal opinion were needed.

8 The time and cost necessary to provide a legal opinion could vary widely based on the complexity of the laws in a specific foreign jurisdiction. As a result, an estimated cost for a legal opinion has not been provided.

9 The average salary figure provided is based on information from the Counsel Network *In-House Counsel Compensation & Career Survey Report 2018.* This figure is based on the average Canadian salary, which may differ from the average salary for an equivalent position in a foreign jurisdiction.

10 Assuming a 40-hour work week, which is equivalent to 2,080 hours per year.

11 The salary figure provided is based on information from Robert Half *2018 Salary Guide for Accounting and Finance Professionals.* This figure is based on information regarding Canadian salaries, which may differ from the salary for an equivalent position in a foreign jurisdiction.

12 *Supra* Note 10.

13 Since these costs could be viewed as directly attributable to a reporting issuer's audit, the PAF may include all, or a portion, of these one-time costs as part of the audit engagement fee for a reporting issuer audit.

CPAB – The new component auditor may need to enter into a CPAB Access Agreement if it is not able to voluntarily provide access. As noted above, CPAB is of the view that the benefits of entering into a CPAB Access Agreement will outweigh the costs that they would incur.

If the PAF were to decide to perform the procedures previously performed by a significant component auditor, rather than identifying a new component auditor, then there may be additional costs incurred by the PAF that would not have been charged by a component auditor (e.g., travel, translation, etc.). These costs will vary depending on the extent of work performed and the location where the work is performed. Any such costs would need to be discussed with a reporting issuer's audit committee as part of agreeing on the work to be performed for each year's audit.

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1.1.2 CSA Multilateral Staff Notice 58-311 Report on Fifth Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions

CSA Multilateral Staff Notice 58-311 *Report on Fifth Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions* follows on separately numbered pages. Bulletin pagination resumes at the end of the Multilateral Staff Notice.

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Multilateral Staff Notice 58-311

Report on Fifth Staff Review of Disclosure Regarding Women on Boards and in Executive Officer Positions

October 2, 2019

Executive Summary

This report outlines key trends from a recent review of public disclosure regarding women on boards and in executive officer positions as required by Form 58-101F1 *Corporate Governance Disclosure* (the disclosure requirements) of National Instrument 58-101 *Disclosure of Corporate Governance Practices* (NI 58-101). The review was conducted by securities regulatory authorities in Alberta, Manitoba, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan. The review was completed for the purposes of identifying key trends. A qualitative assessment of compliance with the disclosure requirements was not conducted.

The key trends are based on a review sample of 641 issuers that had year-ends between December 31, 2018 and March 31, 2019 (year 5) and filed information circulars or annual information forms by July 31, 2019. See page 12 for details regarding our review sample.

The following key trends were observed in this review[1]:

Board seats	• 17% of board seats were held by women; however, this number tended to increase with the size of the issuer and varied by industry. • 73% of issuers had at least one woman on their board, however, 170 issuers had no women on their board. • 5% of the chairs of the board were women. • 33% of vacated board seats were filled by women.
Executive officer positions	• 4% of issuers had a woman chief executive officer (CEO). • 15% of issuers had a woman chief financial officer (CFO). • 64% of issuers had at least one woman in an executive officer position.
Targets	• 22% of issuers adopted targets for the representation of women on their board. • 3% of issuers adopted targets for the representation of women in executive officer positions.
Term limits and other mechanisms of board renewal	• 21% of issuers adopted some form of director term limits (alone or with other mechanisms of board renewal). • 36% of issuers adopted other mechanisms of board renewal, but did not adopt term limits. • 39% of issuers disclosed that they did not have director term limits nor had they adopted other mechanisms of board renewal.
Policies	• 50% of issuers adopted a policy relating to the representation of women on their board.

The CSA will continue to monitor trends in this area.

[1] All percentages in this report have been rounded to a whole number.

Snapshot of Data

The following is a snapshot of the year-over-year comparison of the key trends identified in our reviews:

Trends	Year				
	1	2	3	4	5
Board representation					
Total board seats occupied by women	11%	12%	14%	15%	17%
Issuers with at least one woman on their board	49%	55%	61%	66%	73%
Issuers with three or more women on their board	8%	10%	11%	13%	15%
Board seats occupied by women of issuers with < $1 billion market capitalization	8%	9%	10%	11%	13%
Board seats occupied by women of issuers with $1-2 billion market capitalization[2]	11%	13%	17%	19%	20%
Board seats occupied by women of issuers with $2-10 billion market capitalization[2]	17%	18%	18%	21%	23%
Board seats occupied by women of issuers with over $10 billion market capitalization[2]	21%	23%	24%	25%	27%
Chairs of the board who are women[3]	--	--	--	--	5%
Board vacancies filled by women[4]	--	--	26%	29%	33%
Executive officers					
Issuers with at least one woman in an executive officer position[5]	60%	59%	62%	66%	64%
Issuers with a woman CEO[6]	--	--	--	4%	4%
Issuers with a woman CFO[6]	--	--	--	14%	15%
Policies					
Issuers that adopted a policy relating to the representation of women on their board	15%	21%	35%	42%	50%
Targets					
Issuers that adopted targets for the representation of women on their board	7%	9%	11%	16%	22%
Issuers that adopted targets for the representation of women in executive officer positions[5]	2%	2%	3%	4%	3%
Term limits					
Issuers that adopted director term limits	19%	20%	21%	21%	21%

[2] Board seats occupied by women for issuers over $1 billion market capitalization: 16% (Year 1), 18% (Year 2), 20% (Year 3), 21% (Year 4) and 23% (Year 5).
[3] Chairs of the board who are women were not included in our reporting in Year 1, Year 2, Year 3 and Year 4.
[4] Board vacancies filled by women were not included in our reporting in Year 1 and Year 2.
[5] The decrease in year 5 is driven in part by a change in methodology used to capture executive officer data. Issuers may have included in their disclosure, positions and/or targets for a group other than executive officers, as that term is defined in NI 58-101. In year 5, we focused more closely on disclosure regarding "executive officers" as defined.
[6] Issuers with a woman CEO and issuers with a woman CFO were not included in our reporting in Year 1, Year 2 and Year 3.

Key Trends

Set out below are highlights from our review related to the following:

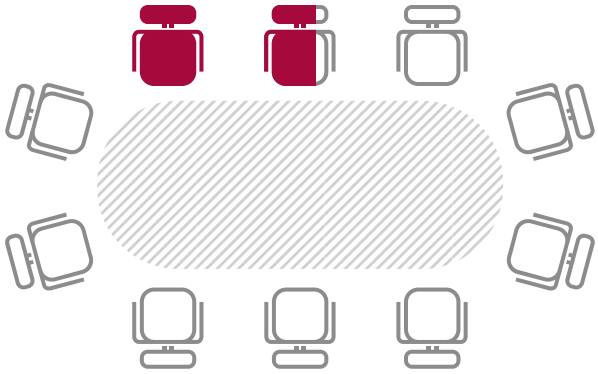
A. Women on boards
B. Women in executive officer positions
C. Board renewal

A. Women on boards

Board seats — **The percentage of board seats held by women increased to 17% in year 5.**

Board seats held by women

17%



The percentage of board seats held by women varied by the size of the issuer.

- For the 432 issuers with a market capitalization of less than $1 billion, 13% of board seats were held by women.
- For the 69 issuers with a market capitalization of between $1 billion and $2 billion, 20% of board seats were held by women.[7]
- For the 94 issuers with a market capitalization of between $2 billion and $10 billion, 23% of board seats were held by women.[7]
- For the 46 issuers with a market capitalization of greater than $10 billion, 27% of board seats were held by women.[7]

5% of the chairs of the board were women.[8]

[7] Board seats occupied by women for the 209 issuers with a market capitalization of greater than $1 billion were: 16% (Year 1), 18% (Year 2), 20% (Year 3), 21% (Year 4) and 23% (Year 5).
[8] Chair data is not a disclosure requirement.

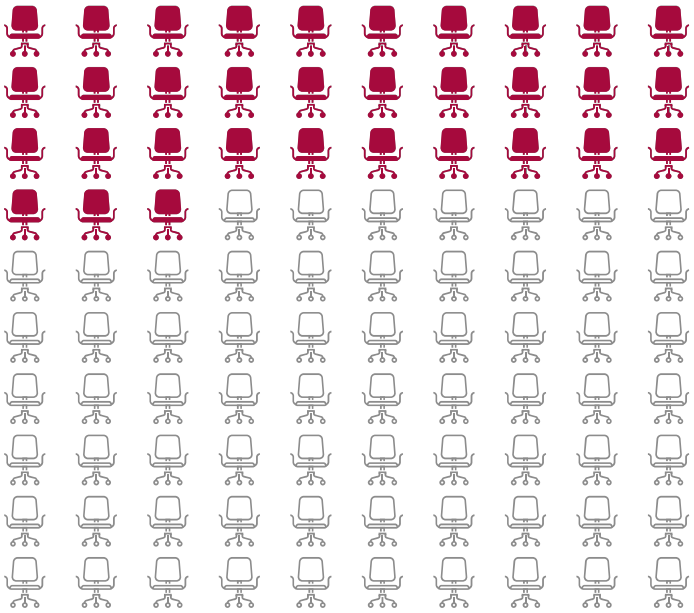
Board fill rate

When board seats became available and were filled, approximately three in ten seats were filled by women.

This year, 712 board seats were vacated during the year and 525 of those seats were filled. Of those filled seats, 33% (175 seats) were filled by women which represents a 4% increase over year 4.

Board vacancies filled by women

33%



Issuers with no women on board

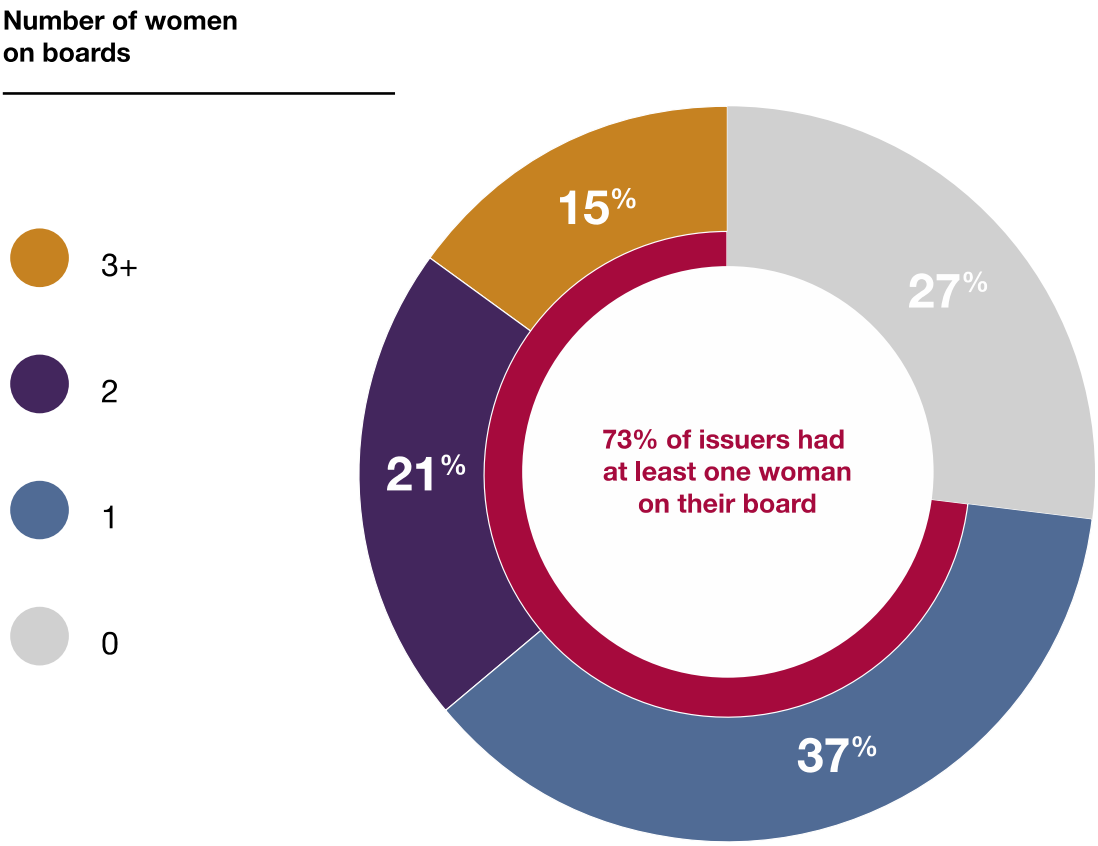
The number of issuers with no women on their board has declined since the disclosure requirements were introduced.

27% of issuers (170 issuers) had no women on their board.

Issuers with at least one woman on board

The number of issuers with at least one woman on their board has increased since the disclosure requirements were introduced.

73% of issuers (471 issuers) had at least one woman on their board.



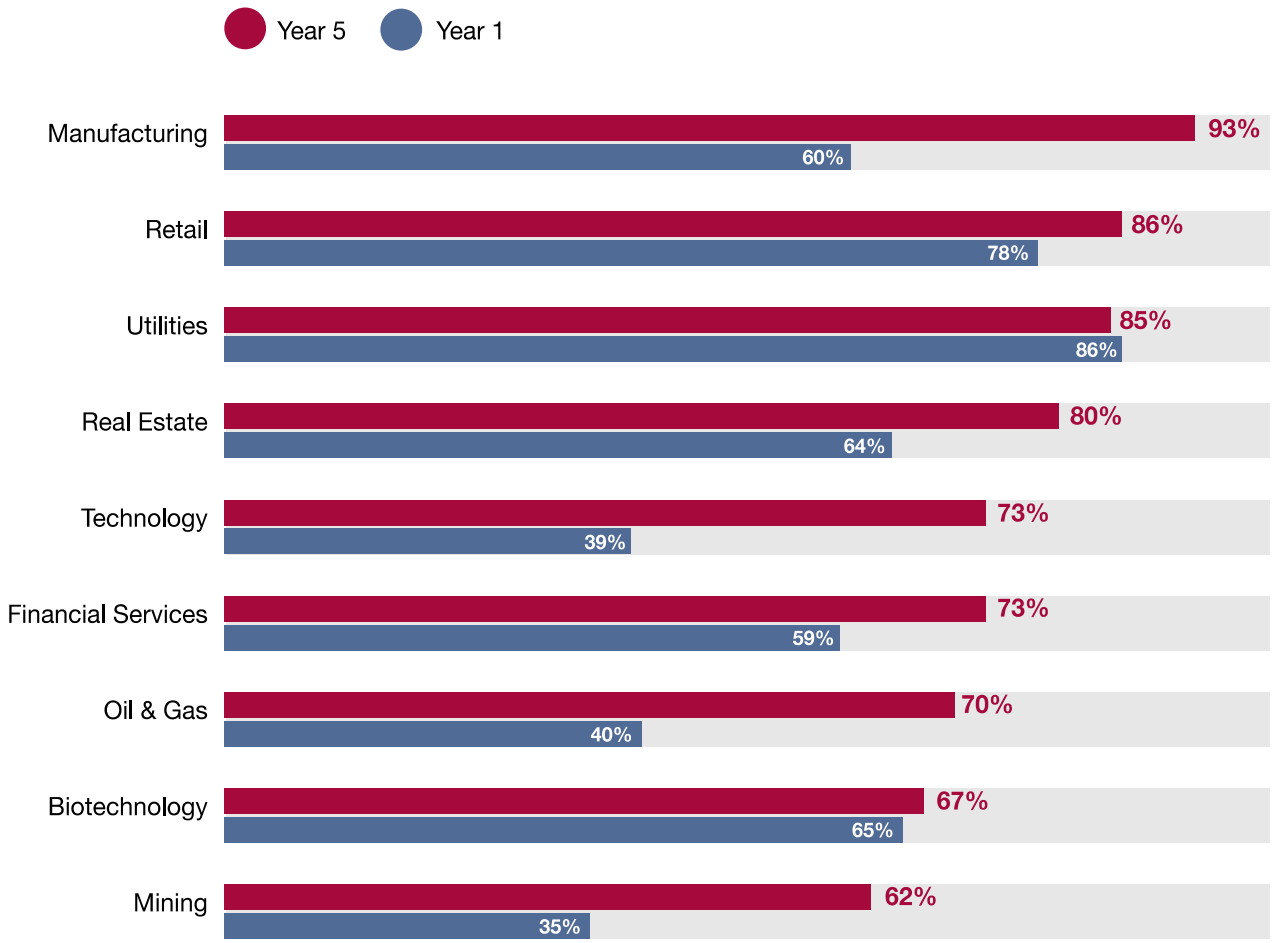
Industry data

The number of women on boards varied by industry.

The manufacturing, retail and utilities industries had the highest percentage of issuers with one or more women on their boards.[9] The mining, biotechnology and oil & gas industries had the lowest percentage of issuers with one or more women on their boards.

Refer to Appendix A for a year-over-year comparison of the percentage of issuers with one or more women on their boards by industry.

Percentage of issuers with one or more women on boards



[9] The larger Canadian banks, which are part of an industry that has generally been an early adopter of diversity initiatives, are not captured in the data sample for this review. The six largest banks had an average of 38% of women on their boards based on their 2019 information circulars filed for their years ending October 31, 2018.

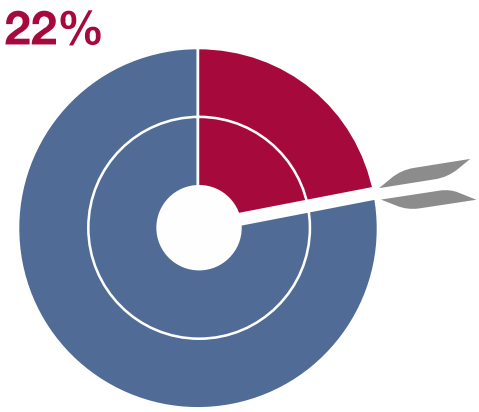
Targets

Few issuers had targets for women on their boards.

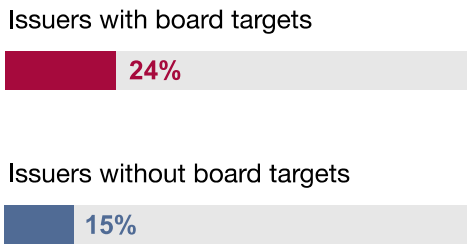
22% of issuers set targets for the representation of women on their boards.

Issuers that adopted board targets had an average of 24% of their board seats held by women, compared to issuers without targets that had an average of 15%.

Percentage of issuers with targets



Board seats held by women

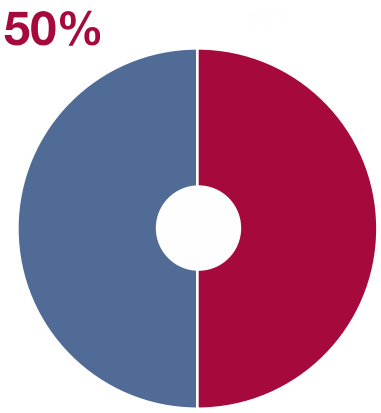


Policies relating to the identification and nomination of women directors

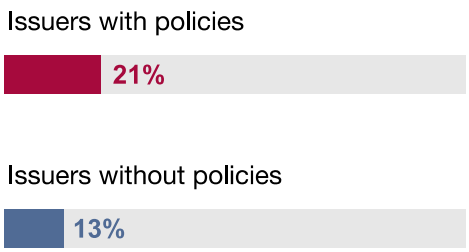
50% of issuers adopted a policy on identifying and nominating women directors, representing a significant increase since year 1.

The 321 issuers that adopted a policy relating to the representation of women on their boards had an average of 21% of women on their boards compared to issuers with no such policy, that had an average of 13%.

Percentage of issuers with policies



Board seats held by women



B. Women in executive officer positions

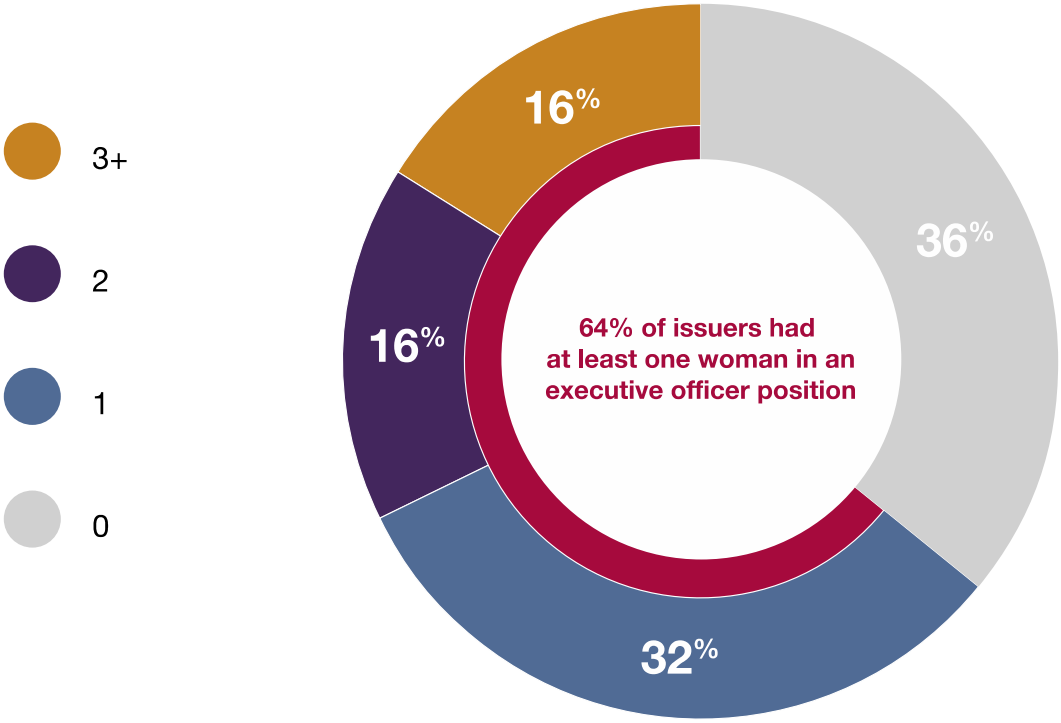
Number of women in executive officer positions

64% of issuers had at least one woman in an executive officer position.[10]

The number of executive officers reported by issuers ranged from zero to approximately 128, with an average number of 10 executive officers.[11]

4% of issuers had a woman CEO.[12]
15% of issuers had a woman CFO.[12]

Number of women in executive officer positions



[10] 540 of the 641 issuers in the review sample disclosed executive officer information.
[11] The numbers included in this part of the report are taken from issuers' disclosure, and may include positions other than executive officers, as that term is defined in NI 58-101. In Year 5, as noted in footnote 5, we focused more closely on disclosure regarding "executive officers" as defined.
[12] CEO and CFO data is not a disclosure requirement.

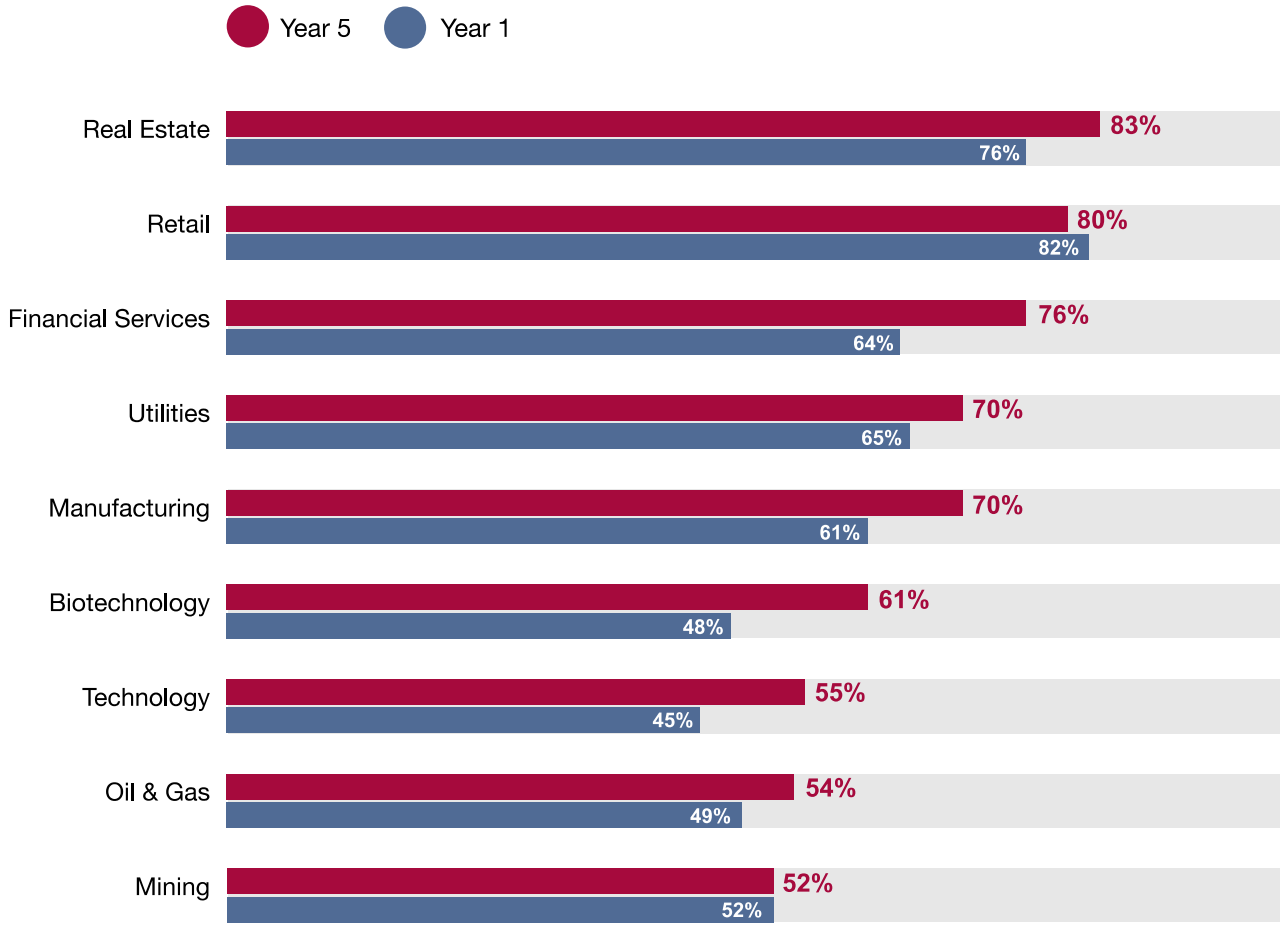
Industry data

The number of women in executive officer positions varied by industry.

The real estate, retail and financial services industries had the highest percentage of issuers with one or more women in executive officer positions. The mining, oil & gas, and technology industries had the lowest percentage of issuers with one or more women in executive officer positions.

Refer to Appendix B for a year-over-year comparison of the percentage of issuers with one or more women in executive officer positions by industry.

Percentage of issuers with one or more women in executive officer positions



Targets

Targets for women in executive officer positions were rare.

3% of issuers set targets for the representation of women in executive officer positions.[13]

[13] Refer to footnote 5.

C. Board renewal

Term limits

21% of issuers adopted term limits (alone or with other mechanisms of board renewal).

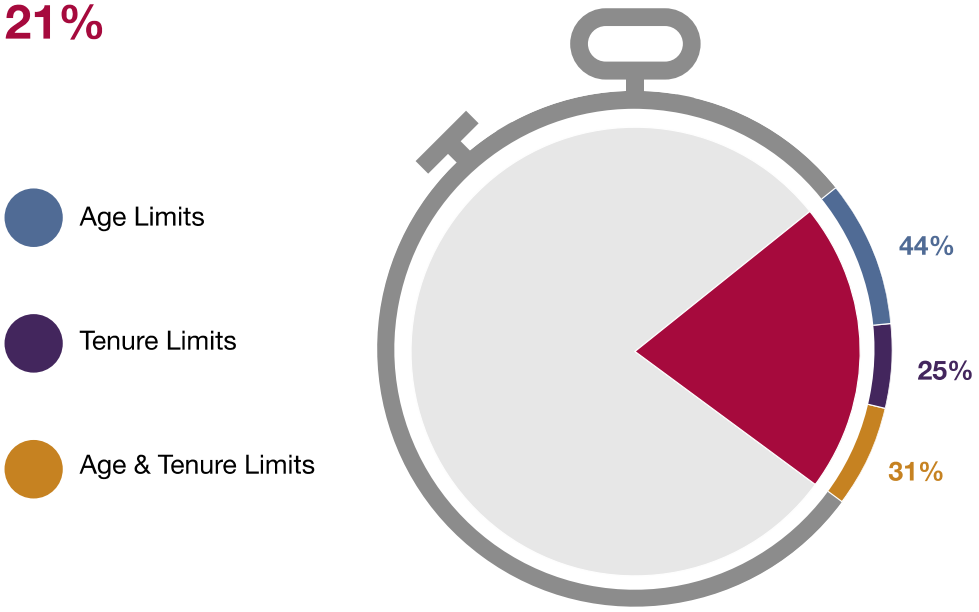
Term limits took varied forms:

- 44% adopted age limits,
- 25% adopted tenure limits, and
- 31% adopted both age and tenure limits.

The average tenure and age limits were 13 years and 73 years, respectively.

Percentage of issuers with term limits

21%



Other mechanisms of board renewal

36% of issuers adopted other mechanisms of board renewal, but did not adopt term limits. Some of these issuers indicated that they used assessments of the board and individual directors as a mechanism of board renewal.

39% of issuers disclosed that they did not have director term limits nor had they adopted other mechanisms of board renewal.

Background

Required disclosure	Subject to certain exceptions, issuers listed on the Toronto Stock Exchange (TSX) and certain other non-venture issuers are required to provide disclosure on an annual basis in the following five areas: • **Number of women in roles** – the number and percentage of women on its board of directors and in executive officer positions. • **Targets** – whether it has targets for the number or percentage of women on its board and in executive officer positions, and if not, why not. • **Board policy** – whether it has a written policy relating to the identification and nomination of women directors, and if not, why not. • **Board renewal** – whether it has director term limits or other mechanisms of board renewal, and if not, why not. • **Consideration of the representation of women** – whether it considers the representation of women in its director identification and selection process and in its executive officer appointments, and if not, why not.
Objective	The objective of the disclosure requirements is to increase transparency for investors and other stakeholders regarding the representation of women on boards and in executive officer positions, and the approach that issuers take in respect of such representation.
Prior reviews of disclosure	This is the fifth consecutive annual review of this disclosure that we[14] have conducted. The trends from our first four annual reviews are set out in: • **Year 1 (2015)** – CSA Multilateral Staff Notice 58-307 • **Year 2 (2016)** – CSA Multilateral Staff Notice 58-308 • **Year 3 (2017)** – CSA Multilateral Staff Notice 58-309 • **Year 4 (2018)** – CSA Multilateral Staff Notice 58-310

[14] The Alberta Securities Commission did not participate in the 2015 and 2016 reviews as the disclosure requirements had not yet been adopted in Alberta. The British Columbia Securities Commission has not adopted the disclosure requirements and did not participate in any of the reviews. However, Alberta-based and BC-based TSX-listed issuers were included in the respective samples.

Review Sample

As of May 31, 2019, approximately 1,600 issuers were listed on the TSX, of which approximately 760 were subject to the disclosure requirements.

Scope of sample

We reviewed the disclosure of 641 issuers that had year-ends between December 31, 2018 and March 31, 2019, and filed information circulars or annual information forms by July 31, 2019.

Issuers excluded from our review include:

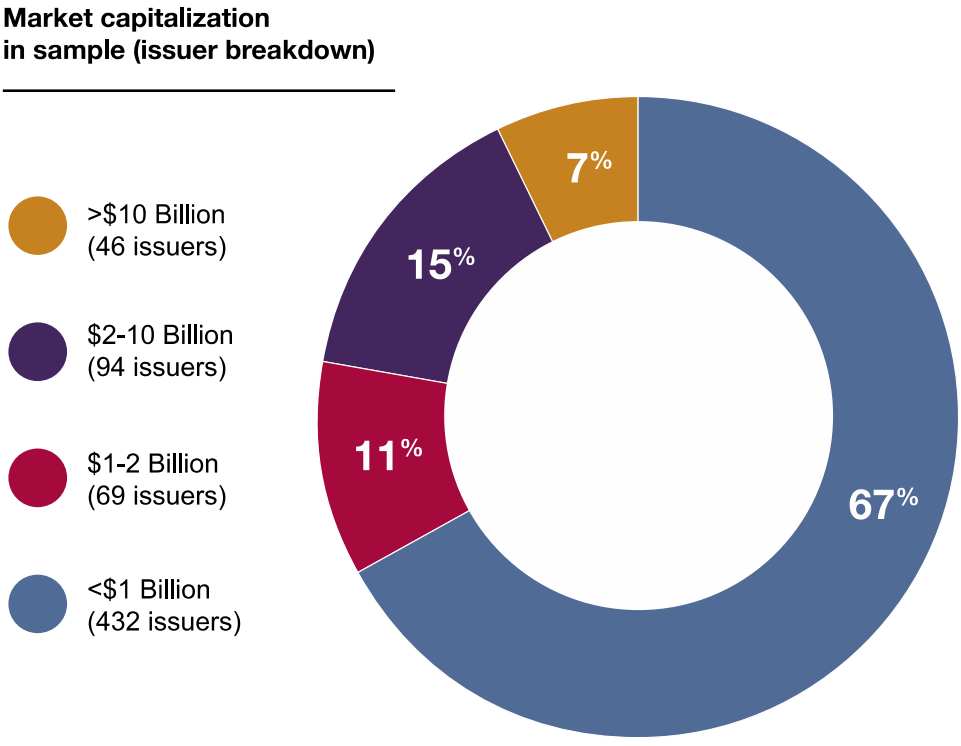
- approximately 760 exchange-traded funds or closed-end funds,
- issuers that moved the listing of their securities from the TSX Venture Exchange (TSX-V) to the TSX in 2019,
- issuers that have year ends subsequent to March 31, 2019, which includes the larger Canadian banks, and
- other issuers such as designated foreign issuers and SEC foreign issuers that are exempt from the requirements of NI 58-101.

Due to the scope of our sample, our findings, and the comparisons between the current year and the prior four years provide only a partial picture. The issuers in the current year and the prior year samples vary for several reasons including:

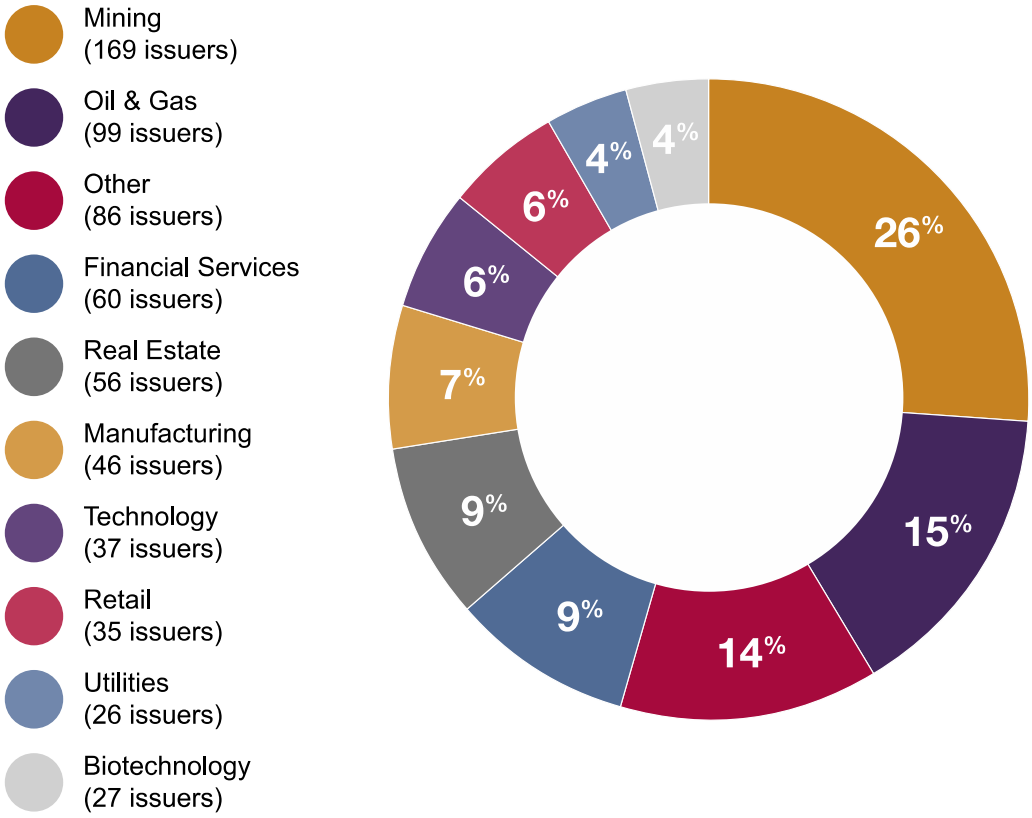
- issuers being delisted from the TSX,
- issuers' listings of securities being moved to the TSX-V,
- corporate reorganizations resulting in issuers no longer being listed on the TSX,
- issuers filing information circulars after July 31, 2019,
- issuers completing initial public offerings and becoming listed on the TSX, and
- issuers ceasing to be reporting issuers.

Profile of issuers in review sample

Market capitalization in sample (issuer breakdown)



Industries in sample



Questions

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The Manitoba Securities Commission	
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Appendix A

The following is a year-over-year comparison of the percentage of issuers with at least one woman on their board by industry:

Industry	Year 1	Year 2	Year 3	Year 4	Year 5
Percentage of issuers with one or more women on their boards					
Biotechnology	65%	57%	56%	56%	67%
Financial Services	59%	67%	60%	61%	73%
Manufacturing	60%	68%	84%	89%	93%
Mining	35%	38%	54%	59%	62%
Oil & Gas	40%	40%	45%	56%	70%
Real Estate	64%	66%	59%	73%	80%
Retail	78%	79%	89%	84%	86%
Technology	39%	52%	52%	68%	73%
Utilities	86%	82%	86%	81%	85%

Appendix B

The following is a year-over-year comparison of the percentage of issuers with at least one woman in an executive officer position by industry:

Industry	Year 1	Year 2	Year 3	Year 4	Year 5
Percentage of issuers with one or more women on in executive officer positions					
Biotechnology	48%	66%	71%	64%	61%
Financial Services	64%	63%	66%	71%	76%
Manufacturing	61%	81%	79%	80%	70%
Mining	52%	49%	52%	56%	52%
Oil & Gas	49%	46%	48%	53%	54%
Real Estate	76%	76%	80%	80%	83%
Retail	82%	71%	68%	76%	80%
Technology	45%	44%	59%	52%	55%
Utilities	65%	73%	67%	75%	70%

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1.1.3 Notice of Amended and Restated Memorandum of Understanding with the UK Financial Conduct Authority Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Alternative Investment Fund Managers

NOTICE OF AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING WITH THE UK FINANCIAL CONDUCT AUTHORITY CONCERNING CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION RELATED TO THE SUPERVISION OF CROSS-BORDER ALTERNATIVE INVESTMENT FUND MANAGERS

October 3, 2019

The Ontario Securities Commission, together with the Autorité des marchés financiers, Alberta Securities Commission and British Columbia Securities Commission (the "Canadian Authorities"), recently entered into an amended and restated supervisory Memorandum of Understanding (the "Amended Supervisory MoU") with the United Kingdom Financial Conduct Authority.

The Canadian Authorities entered into similar supervisory MoUs with other European Union and European Economic Area member state financial securities regulators in 2013. The entering into of such supervisory MoUs was a pre-condition under the EU Alternative Investment Fund Managers Directive ("AIFMD") for allowing non-EU Alternative Investment Fund Managers ("AIFMs") to manage and market Alternative Investment Funds ("AIFs") in the EU and to perform fund management activities on behalf of EU Managers. Under the AIFMD, AIFMs are legal persons whose regular business is the risk and/or portfolio management of AIFs and AIFs are collective investment undertakings other than those that comply with the EU Undertakings for Collective Investment in Transferable Securities Directive.

The OSC is a party to an existing supervisory MoU signed in 2013 with the Financial Conduct Authority based on the AIFMD. The Amended Supervisory MoU was necessary as the United Kingdom has given notice that it intends to leave the European Union, and after this occurs, the European legislation referenced in the existing supervisory MoU with the Financial Conduct Authority will no longer apply to the United Kingdom. The Amended Supervisory MoU has been updated to reflect the regulatory regime that will apply in relation to AIFs in the United Kingdom after it has left the European Union.

The purpose of the Amended Supervisory MoU is to facilitate consultation, cooperation and the exchange of information related to the supervision of AIFMs that operate on a cross-border basis in the jurisdictions of both the Financial Conduct Authority and the relevant Canadian Authority.

The Amended Supervisory MoU is subject to the approval of the Minister of Finance and was delivered to the Minister of Finance on October 1, 2019.

Questions may be referred to:

Cindy Wan
Interim Lead, International Affairs
Office of Domestic and International Affairs
416-263-7667
cwan@osc.gov.on.ca

Conor Breslin
Advisor
Office of Domestic and International Affairs
416-593-8112
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[Editor's Note: *Amended and Restated MoU concerning consultation, cooperation and the exchange of information related to the supervision of Covered Entities in the alternative investment fund industry between the Ontario Securities Commission (OSC), the Québec Autorité des marchés financiers (QAMF), the Alberta Securities Commission (ASC), the British Columbia Securities Commission (BCSC) and the United Kingdom Financial Conduct Authority (FCA)* is reproduced on the following separately numbered pages. Bulletin pagination resumes at the end of the Staff Notice.]

Amended and Restated MoU concerning consultation, cooperation and the exchange of information related to the supervision of Covered Entities in the alternative investment fund industry between the Ontario Securities Commission (OSC), the Québec Autorité des marches financiers (QAMF), the Alberta Securities Commission (ASC), the British Columbia Securities Commission (BCSC) and the United Kingdom Financial Conduct Authority (FCA)

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of Alternative Investment Fund Managers (AIFMs) of Alternative Investment Funds (AIFs), the OSC, QAMF, ASC and BCSC on one side, and the FCA on the other side have reached this Amended and Restated Memorandum of Understanding (MoU) regarding mutual assistance in the supervision and oversight of AIFMs and their delegates and depositaries that operate on a cross-border basis in the jurisdictions of the signatories of this MoU.

This MoU amends, restates and replaces the Memorandum of Understanding concerning consultation, cooperation and the exchange of information related to the supervision of Managers of alternative investment funds ("2013 MOU") entered into between each Canadian Authority and the UK FCA that entered into force on 22 July 2013. The 2013 MOU was entered into as a pre-condition under the EU Alternative Investment Fund Managers directive to allow non-EU Alternative Investment Fund Managers to manage and market Alternative Investment Funds in the EU, which at that time included the United Kingdom. These amendments and restatements are needed to reflect the changes required due to the departure of the UK from the European Union.

The authorities express, through this MoU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of investor protection, fostering market and financial integrity, and maintaining confidence and systemic stability. The authorities also express through this MoU, their desire to provide one another with the fullest mutual assistance possible to facilitate the performance of the functions with which they are entrusted within their respective jurisdictions to secure compliance with their laws and regulations.

This MoU is a bilateral arrangement between each Canadian Authority and the FCA and should not be considered a bilateral arrangement between each Canadian Authority.

Article 1. Definitions

For the purpose of this MoU:

a) "Authority" means:

i. The FCA, or any successor; or
ii. The Autorite des marches financiers (Quebec) ***(QAMF),*** the Ontario Securities Commission **(OSC),** the Alberta Securities Commission ***(ASC),*** the British Columbia Securities Commission ***(BCSC),*** or any other Canadian securities regulatory authority which may become a party to this MoU in the manner set out in Article 9 (individually a ***Canadian Authority,*** or collectively the ***Canadian Authorities).***

b) "Requested Authority" means:

i. Where the Requesting Authority is the FCA, the Canadian Authority to which a request is made under this MoU; or

ii. Where the Requesting Authority is a Canadian Authority, the FCA to whom a request is made under this MoU.

c) "Requesting Authority" means the Authority making a request under this MoU.

d) "UK AIFM regime" means the UK legislation which, when made, implemented Directive 2011/61/EU in the UK, including (but not limited to) FCA rules, and the Alternative Investment Fund Managers Regulations 2013 (as amended), and any EU laws made under or in relation to Directive 2011/61 EU which are incorporated in UK law by or under the European Union (Withdrawal) Act 2018 (subject to any amendments made to those EU laws as they apply to the UK).

e) "AIFM" means a legal person whose regular business is managing one or more AIFs in accordance with the UK AIFM regime or a person or company that acts as an adviser or as an investment fund manager, as those terms are defined by the Securities Act of the relevant Canadian Authority, to one or more AIFs.

f) "AIF" means a collective investment undertaking, including investment compartments thereof, which: (i) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) is not a UK UCITS, as defined in section 237 (3) of the Financial Services and Markets Act 2000 (FSMA), as amended.

g) "Delegate" means an entity to which an AIFM delegates the tasks of carrying out the portfolio management or risk management of one or more AIFs under its management, including delegation conducted in accordance with section 3.10 of the Investment Funds sourcebook in the FCA's Handbook of rules and guidance.

h) "Depositary" means an entity appointed to perform the depositary functions of an AIF.

i) "Operate(s) on a cross-border basis" includes the following situations:

i. UK AIFMs managing Canadian AIFs,

ii. UK AIFMs marketing Canadian AIFs in the UK,

iii. UK AIFMs marketing Canadian and/or non-Canadian AIFs in Canada,

iv. Canadian AIFMs marketing UK AIFs and/or non-UK AIFs, including Canadian AIFs, in the UK,

v. UK AIFMs marketing Canadian AIFs in the UK,

vi. Canadian AIFMs managing UK AIFs,

vii. Canadian AIFMs marketing UK AIFs in the UK with a passport,

viii. Canadian AIFMs marketing non- UK AIFs in the UK with a passport,

ix. Non-UK AIFMs marketing Canadian AIFs in the UK with a passport,

x. Non-Canadian AIFMs marketing UK AIFs in Canada.

j) Insofar as there is a link to the activity of the AIFMs and the AIFs, the MoU also covers delegates and depositaries as defined in letters g) and h) of this Article. "Covered Entity" means an AIFM that operates on a cross border basis, an AIF, where applicable, and, insofar as there is a link to the AIFM and the AIF, delegates and depositaries as defined in letters g) and h) of this Article, including the persons employed by such entities, provided that these entities are subject to the regulatory authority of the FCA or a Canadian Authority, as applicable.

k) "Cross-border on-site visit" means any regulatory visit by one Authority to the premises of a Covered Entity located in the other Authority's jurisdiction, for the purposes of on-going supervision.

l) "Governmental Entity" means:

i. HM Treasury or The Bank of England (including in its capacity as the Prudential Regulation Authority), if the Requesting Authority is the FCA;

ii. The Bank of Canada or the Office of the Superintendent of Financial Institutions of Canada, if the Requesting Authority is the ASC, BCSC or OSC;

iii. The Alberta Ministry of Treasury Board and Finance, if the Requesting Authority is the ASC;

iv. The British Columbia Ministry of Finance, if the Requesting Authority is the BCSC;

v. The Ontario Ministry of Finance, if the Requesting Authority is the OSC;

vi. The Québec ministère des Finances, if the Requesting Authority is the AMF; and

vii. Such other entity, as agreed to by the signatories, as may be responsible for any other Canadian Authority which may become a party to this MoU in the manner set out in Article 9.

m) "Local Authority" means the Authority in whose jurisdiction a Covered Entity is physically located.

n) "Emergency Situation" means:

i. the occurrence of an event that could materially impair the financial or operational condition of a Covered Entity, AIF investors or the markets.

Article 2. General provisions

1) This MoU is a statement of intent to consult, cooperate and exchange information in connection with the supervision and oversight of Covered Entities that operate on a cross-border basis in the jurisdictions of the signatories, in a manner consistent with, and permitted by, the laws, regulations and requirements that govern the Authorities. This MoU provides for consultation, cooperation and exchange of information related to the supervision and oversight of Covered Entities between the FCA and each Canadian Authority individually. The Authorities anticipate that cooperation will be primarily achieved through on-going, informal, oral consultations, supplemented by more in-depth, ad hoc cooperation. The provisions of this MoU are intended to support such informal and oral communication as well as to facilitate the written exchange of non-public information where necessary.

2) This MoU does not create any legally binding obligations, confer any rights, or supersede domestic laws and regulations. This MoU does not confer upon any person the right or ability directly or indirectly to obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this MoU.

3) This MoU does not intend to limit an Authority to taking solely those measures described herein in fulfilment of its supervisory or oversight functions. In particular, this MoU does not affect any right of any Authority to communicate with, or obtain information or documents from, any person or Covered Entity subject to its jurisdiction that is established in the territory of the other Authority.

4) This MoU complements, but does not alter the terms and conditions of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (the "IOSCO MMoU"), to which the Authorities are signatories, which also covers information-sharing in the context of enforcement investigations; and any of the existing arrangements concerning cooperation in securities matters between the signatories.

5) The Authorities will, within the framework of this MoU, provide one another with the fullest cooperation permissible under the law in relation to the supervision and oversight of Covered Entities. Following consultation, cooperation may be denied:

a) Where the cooperation would require an Authority to act in a manner that would violate domestic law;

b) Where a request for assistance is not made in accordance with the terms of the MoU; or

c) On the grounds of the public interest.

6) No domestic banking secrecy, blocking laws or regulations should prevent an Authority from providing assistance to the other Authority.

7) The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the Authorities with a view, *inter alia,* to expanding or altering the scope or operation of this MoU should that be judged necessary.

8) To facilitate cooperation under this MoU, the Authorities hereby designate contact persons as set forth in Appendix A.

Article 3. Scope of cooperation

1) The Authorities recognize the importance of close communication concerning Covered Entities, and intend to consult at the staff level where appropriate regarding: (i) general supervisory issues, including with respect to regulatory, oversight or other program developments; (ii) issues relevant to the operations, activities, and regulation of Covered Entities; and (iii) any other areas of mutual supervisory interest.

2) Cooperation will be most useful in, but is not limited to, the following circumstances where issues of regulatory concern may arise:

a) The initial application with an Authority for authorization, designation, recognition, qualification, registration or exemption therefrom by a Covered Entity that is authorized, designated, recognized, qualified or registered by an Authority in another jurisdiction;

b) The on-going oversight of a Covered Entity; or

c) Regulatory approvals or supervisory actions taken in relation to a Covered Entity by one Authority that may impact the operations of the entity in the other jurisdiction.

3) *Notification.* Each Authority will, where such information is known and accessible to the Authority, inform the other Authority as soon as practicable of

   a) Any known material event that could have a significant adverse impact on a Covered Entity; and

   b) Enforcement or regulatory actions or sanctions, including the revocation, suspension or modification of relevant licenses or registration, concerning or related to a Covered Entity which may have, in its reasonable opinion, material effect on the Covered Entity.

4) *Exchange of Information.* To supplement informal consultations, each Authority intends to provide the other Authority, upon written request, with assistance in obtaining information accessible to the Requested Authority and not otherwise available to the Requesting Authority, and, where needed, interpreting such information so as to assist the Requesting Authority to assess compliance with its laws and regulations. The information covered by this paragraph includes, without limitation, information such as:

   a) Information that would assist the Requesting Authority to verify that the Covered Entities covered by this MoU comply with the relevant obligations and requirements of the laws and regulations of the Requesting Authority;

   b) Information relevant for monitoring and responding to the potential implications of the activities of an individual AIFM, or AIFMs collectively, for the stability of systemically relevant financial institutions and the orderly functioning of markets in which AIFMs are active;

   c) Information relevant to the financial and operational condition of a Covered Entity, including, for example, reports of capital reserves, liquidity or other prudential measures, and internal controls procedures;

   d) Relevant regulatory information and filings that a Covered Entity is required to submit to an Authority including, for example: interim and annual financial statements and early warning notices; and

   e) Regulatory reports prepared by an Authority, including for example: examination reports, findings, or information drawn from such reports regarding Covered Entities.

Article 4. Cross-border on-site visits

1) Authorities should discuss and reach understanding on the terms regarding cross-border on-site visits, taking into full account each other's sovereignty, legal framework and statutory obligations, in particular, in determining the respective roles and responsibilities of the Authorities. The Authorities will act in accordance with the following procedure before conducting a cross-border on-site visit.

    a) The Authorities will consult with a view to reaching an understanding on the intended timeframe for and scope of any cross-border on-site visit. The Local Authority shall decide whether the visiting officials shall be accompanied by its officials during the visit.

    b) When establishing the scope of any proposed visit, the Authority seeking to conduct the visit will give due and full consideration to the supervisory activities of the other Authority and any information that was made available or is capable of being made available by that Authority.

    c) The Authorities intend to assist each other in obtaining, reviewing, and interpreting the contents of public and non-public documents and obtaining information from directors and senior management of Covered Entities.

Article 5. Execution of requests for assistance

1) To the extent possible, a request for written information pursuant to Article 3(4) should be made in writing, and addressed to the relevant contact person identified in Appendix A. A request generally should specify the following:

    a) The information sought by the Requesting Authority, including specific questions to be asked and an indication of any sensitivity about the request;

    b) A concise description of the facts underlying the request and the supervisory purpose for which the information is sought, including the applicable regulations and relevant provisions behind the supervisory activity; and

    c) The desired time period for reply and, where appropriate, the urgency thereof.

2) In Emergency Situations, the Authorities will endeavour to notify each other of the Emergency Situation and communicate information to the other as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During Emergency Situations, requests for information may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

Article 6. Permissible uses of information.

1) The Requesting Authority may use non-public information obtained under this MoU solely for the purpose of supervising Covered Entities and seeking to ensure compliance with the laws or regulations of the Requesting Authority, including assessing and identifying systemic risk in the financial markets or the risk of disorderly markets.

2) This MoU is intended to complement, but does not alter the terms and conditions of the existing arrangements between Authorities concerning cooperation in securities matters, including the IOSCO MMoU. The Authorities recognize that while information is not to be gathered under this MoU for enforcement purposes, subsequently the Authorities may want to use the information for law enforcement purposes. In such cases, further use of the information should be governed by the terms and conditions of the IOSCO MMoU.

Article 7. Confidentiality and onward sharing of information.

1) Except for disclosures in accordance with this MoU, including permissible uses of information under Article 6, each Authority will keep confidential to the extent permitted by law information shared under this MoU, requests made under this MoU, the contents of such requests, and any other matters arising under this MoU. The terms of this MoU are not confidential.

2) To the extent legally permissible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand from a third party for non-public information that has been furnished under this MoU. Prior to compliance with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as maybe available.

3) In certain circumstances, and as required by law, it may become necessary for the Requesting Authority to share information obtained under this MoU with other Governmental Entities in its jurisdiction. In these circumstances and to the extent permitted by law:

    a) The Requesting Authority will notify the Requested Authority.

    b) Prior to passing on the information, the Requested Authority will receive adequate assurances concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that the information will not be shared with other parties without getting the prior consent of the Requested Authority.

4) Except as provided in paragraphs 2 and 5, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing non-public information received under this MoU to any other party. If consent is not obtained from the Requested Authority, the Authorities will discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.

5) The Authorities intend that the sharing or disclosure of non-public information, including but not limited to deliberative and consultative materials, pursuant to the terms of this MoU, will not constitute a waiver of privilege or confidentiality of such information.

Article 8. Amendments

1) The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the FCA and the Canadian Authorities with a view, *inter alia,* to expanding the scope or operation of this MoU should that be judged necessary.

2) The FCA shall notify the Canadian Authority of any change or modification to its laws, regulations and requirements with respect to the protection of non-public information, and shall explain the consequences of the change or modification on the protection of non-public information in the context of the MoU. If the Canadian Authority is of the view that the change or modification results in lesser protection for non-public information than provided for under the laws, regulations and requirements of the Canadian Authority, the MoU shall be terminated between the authorities concerned and the provisions in Article 7(4) shall apply.

3) Any Canadian authority may become a party to the MoU by executing a counterpart hereof together with the FCA and providing notice of such execution to the other Canadian Authorities that are signatories to this MoU.

Article 9. Termination of the MoU; Successor authorities

1) If an Authority wishes to terminate the MoU, it shall give written notice to the counterparty. Cooperation in accordance with this MoU will continue until the expiration of 30 days after an Authority gives written notice to the others. If either Authority gives such notice, cooperation will continue with respect to all requests for assistance that were made under the MoU before the effective date of notification until the Requesting Authority terminates the matter for which assistance was requested. In the event of termination of this MoU, information obtained under this MoU will continue to be treated in a manner prescribed under Articles 7 to 9.

2) Where the relevant functions of a signatory to this MoU are transferred or assigned to another authority or authorities, the terms of this MoU shall apply to the successor authority or authorities performing those relevant functions without the need for any further amendment to this MoU or for the successor to become a signatory to the MoU. This shall not affect the right of the successor authority and its counterparty to terminate the MoU as provided hereunder if it wishes to do so.

Article 10. Entry into force

1) This MoU enters into force on the day European Union law ceases to apply in the United Kingdom.

Signatures

Ontario Securities Commission	Autorité des marchés financiers (Québec)	Alberta Securities Commission	British Columbia Securities Commission	Financial Conduct Authority (United Kingdom)

Appendix A

Financial Conduct Authority (United Kingdom)
25 The North Colonnade, Canary Wharf
London
E14 5HS

Attentio Manager, Investment Funds Policy

Email: aifmdsupervisorycooperation@fca.org.uk

Alberta Securities Commission
Suite 600, 250-5th Street SW
Calgary, Alberta
T2P OR4
Canada

Attention: General Counsel

Telephone (403) 297-4698
Fax: (403) 297-3679
Email: Samir.sabharwal@asc.ca

Autorite des marches financiers 800, Square Victoria,
22nd Floor Box 246, tour de la
Bourse Montreal, QC
H4Z 103
Canada

Attention: Corporate Secretary

Telephone (514) 395-0337
Email: secretariat@lautorite.qc.ca

British Columbia Securities Commission
P.O Box 10142, Pacific entre 701 West Georgia
Vancouver, B.C. V7Y 1LY

Attention: Secretary to the Commission
Telephone: (604) 899- 6534
Fax: commsec@bcsc.be.ca

Ontario Securities Commission
20 Queen Street West 22nd Floor
Toronto, ON M5H 3S8

Attention: Director, Office of Domestic and International Affairs
Telephone: (416) 593-8314
Email: mourequest@osc.gov.on.ca and inquiries@osc.gov.on.ca

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 Solar Income Fund Inc. et al. – ss. 127(1), 127.1

FILE NO.: 2019-35

IN THE MATTER OF
SOLAR INCOME FUND INC.,
ALLAN GROSSMAN,
CHARLES MAZZACATO, and
KENNETH KADONOFF

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

PROCEEDING TYPE: Enforcement Proceeding

HEARING DATE AND TIME: October 15, 2019 at 11:00 a.m.

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

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 September 26, 2019.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 5(1) of the Commission's *Practice Guideline*.

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 26th day of September, 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
SOLAR INCOME FUND INC.,
ALLAN GROSSMAN,
CHARLES MAZZACATO, and
KENNETH KADONOFF

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

A. OVERVIEW

1. This proceeding involves managers of a fund who used their positions to mislead and defraud investors.

2. Allan Grossman and Solar Income Fund Inc. created and managed a fund called SIF Solar Energy Income & Growth Fund to raise money in the exempt market. Grossman, Charles Mazzacato and Kenneth Kadonoff were shareholders, directors and directing minds of SIF Inc. The fund's offering memorandum promised investors that SIF Inc. would spend all of their money on the "acquisition, development, and operation" of solar energy installations, and would charge investors a "development fee" to do so. The offering memorandum led investors to believe that all of their invested funds would be used to buy, develop and operate physical assets that would produce a return on investment through the sale of solar energy.

3. In fact, Grossman, Mazzacato, Kadonoff and SIF Inc. used SIF Solar Energy Income & Growth Fund as a kind of "slush fund", distributing a substantial portion of its cash to other funds managed by them in exchange for unsecured notes. Certain of the Respondents partly owned some of the entities receiving the funds. The Respondents' diversion of funds meant that investors in SIF Solar Energy Income & Growth Fund were deprived of the opportunity to invest in physical assets as they had been promised and were instead left with unsecured notes, over $5 million of which were never paid back. SIF Inc. also charged these investors over $3 million in development fees, from which the Respondents personally benefitted, despite not using all of investors' funds for development purposes as SIF Inc. had promised. Finally, the Respondents fraudulently used investors' funds to make distributions to investors in another co-managed fund, and to pay fees owed to that fund's exempt market dealers.

4. Investors are entitled to expect that their funds will be used for purposes described in an exempt market offering memorandum. When managers use investor funds in a way that is contrary to the representations made to investors, and particularly when the use of funds provides a direct or indirect benefit to the managers of an exempt market issuer, Staff will not hesitate to take action.

B. FACTS

Staff of the Enforcement Branch of the Ontario Securities Commission ("**Enforcement Staff**") makes the following allegations of fact:

5. SIF Solar Energy Income & Growth Fund ("**SIF #1**") is an open-end investment trust created on February 4, 2013 and governed by the laws of the Province of Alberta. During the relevant time and prior to December 22, 2017, SIF #1 was managed by SIF Income Fund Inc. ("**SIF Inc.**"). Grossman, Mazzacato, and Kadonoff were officers, directors and/or directing minds of SIF Inc. for part or all of the Material Time defined below.

6. During the period March 6, 2013 to October 21, 2014, SIF #1 raised approximately $57 million through the sale of units in SIF #1 (the "**Offering**"). The SIF #1 offering memorandum (the "**OM**") and its amendments represented to investors that the proceeds of the Offering would be used to invest in subsidiaries to acquire, develop, and operate solar energy power installations.

7. However, from March 6, 2013 to December 31, 2016 (the "**Material Time**"), SIF Inc. caused over $20 million of the proceeds raised in SIF #1 to be used for purposes other than those represented to investors in SIF #1's OM. In particular, during the Material Time,

   (i) SIF Inc. caused SIF #1 to transfer approximately $8.35 million to SIF Capital Canada Inc. ("**SIF Capital**"), a company managed and partly owned by SIF Inc. SIF Capital used almost all of these funds to redeem existing debentures of SIF Capital. SIF #1 loaned a further $965,000 to SIF Capital for the expansion of the Whitewater solar project ("**Whitewater**") before SIF #1 owned any stake in this project;

   (ii) Between August 2014 and April 2015, SIF Inc. caused SIF #1 to loan $898,000 to other projects managed by SIF Inc. and in which various entities or trusts related to officers and/or directors of SIF Inc. had an interest; and

(iii) SIF Inc. caused SIF #1 to loan $9.8 million to SIF #2 Solar Income & Growth ("**SIF #2**"), another open-end investment trust managed by SIF Inc. SIF Inc. caused SIF #2 to use these loans to fund solar energy projects owned by SIF #2, to pay development and other fees it owed to SIF Inc., to pay fees it owed to exempt market dealers, and to make distributions to SIF #2 investors that SIF #2 could not otherwise afford to pay.

8. SIF Inc. recorded all of these transactions as either debentures or loans. In each case, the debentures and loans were unsecured and had no fixed term.

9. By engaging in this conduct, the Respondents caused SIF #1 to make statements and/or to omit information related to the use of funds that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made.

10. Further, by causing SIF #2 to pay exempt market dealer fees and distributions to SIF #2 investors using SIF #1 funds, Grossman, Mazzacato and SIF Inc. engaged in conduct that they knew or ought to have known perpetrated a fraud, and deprived SIF #1 investors of their capital and/or put their capital at risk.

11. In addition, the Respondents acted contrary to the public interest.

The corporate Respondent

12. SIF Inc. was incorporated on December 18, 2009. It was a privately held Ontario corporation focused on the development and management of solar energy power generation installations. During the Material Time, SIF Inc. managed SIF #1 under a management agreement and an amended management agreement.

13. SIF Inc. managed other solar energy related entities and business ventures, some of which were directly or indirectly owned by SIF Inc. and/or entities or trusts related to its officers and directors.

The individual Respondents

14. Grossman is a Chartered Accountant. He co-founded SIF Inc. Grossman's family trust was a shareholder and Grossman was a directing mind of SIF Inc. during all of the Material Time. Grossman became the Chief Operating Officer of SIF Inc. commencing December 18, 2009. On November 25, 2013, he became a director of SIF Inc. and its Chief Financial Officer. On or about June 10, 2014, Grossman's position changed to VP Finance of SIF Inc., a position he retained until August 31, 2015, when he became Executive Vice President. He remained a director and/or officer throughout the remainder of the Material Time.

15. Kadonoff was an indirect shareholder of SIF Inc. during the Material Time. On March 6, 2013, he became the Director of Business Development with SIF Inc. On or about May 15, 2014, he became a director and the VP General Counsel. On August 31, 2015, he resigned as a director and officer. Kadonoff remained a consultant to SIF Inc. until he was formally terminated in February 2016.

16. Mazzacato became an indirect shareholder of SIF Inc. in or about September 2014. Effective May 15, 2014, he became a director and the Chief Technology Officer, VP Project Development of SIF Inc. In August 2015, Mazzacato's position changed to President, which he held for the remainder of the Material Time.

SIF #1's Offering Memorandum and Declaration of Trust

17. SIF Inc. established SIF #1 and prepared an OM as well as the Declaration of Trust for SIF #1. Various exempt market dealers distributed the OM to investors. The OM and the Declaration of Trust for SIF #1 provided that the business and purpose of SIF #1 was:

> to invest in Subsidiaries[1] which will in turn invest in the acquisition, development, financing and operation of solar energy powered installations ("Installations") and other ancillary or incidental business activities (the "Business").

18. The long-term objectives of SIF #1 were described in the OM using almost identical language:

1 Subsidiary as defined in the SIF #1 March 6, 2013 OM "means any company, partnership, trust or other entity either controlled, directly or indirectly, by the Fund or in which the Fund holds more than 50% of the outstanding equity securities." The SIF #1 March 6, 2013 OM also stated: "The Fund expects to create a Subsidiary trust to be the sole limited partner of one or more limited partnerships to be formed to conduct the Business. The general partners of such limited partnerships are expected to be owned, directly or indirectly by the Fund or by SIF [Inc.]".

> The Fund's long-term objective is to invest in Subsidiaries which will in turn invest in the acquisition, development, financing and operation of Installations, as more particularly described under Item 2.2 – Our Business.

19. The OM advised investors under a section entitled "Use of Available Funds" that all of the available funds raised in the Offering would be used to "develop or acquire" solar installations, to pay fees associated with this objective, or as cash reserves. No allocation was made in the "Use of Available Funds" section for loans or transfers to other entities.

20. The OM also advised investors, in a section entitled "Short Term Objectives and How We Intend to Achieve Them" that SIF #1 had two short-term objectives over the subsequent 12-month period:

    (i) to "[r]aise capital through the Offering" and,

    (ii) the "[a]cquisition and/or development and operation of approximately 20 Megawatts…of solar energy Installations on designated lands and/or rooftops" resulting in "[t]he equivalent of approximately 25,000,000 Kilowatt hours of solar energy production hours to be generated annually and sold under long-term Power Purchase Agreements."

21. Under a subheading entitled "What we must do and how we will do it", the OM provided an allocation of the total amount to be raised from investors in the Offering, and represented that all of the proceeds from the Offering would be allocated to the costs of the capital raise and to the "acquisition and/or development and operation" of solar installations by and for the benefit of SIF #1. No allocation was made in the "Short Term Objectives" section for loans or transfers to other entities.

22. The OM was amended four times. None of the amendments modified the original description of the business, purpose, use of funds and long-term and short-term objectives of SIF #1.

The Development Fee

23. SIF Inc. received compensation for the "acquisition and/or development and operation" of solar installations by and for the benefit of SIF #1. As confirmed in the OM, SIF Inc. was to provide consulting, development and administrative services to SIF #1 and its subsidiaries under a management agreement. The consideration payable to SIF Inc. for its services included a "development fee" of $1,620,000 (plus tax) payable over the first 12 months of SIF #1's operation, a period described as "the appropriate time delay for substantial completion of SIF's services to the Fund for Installations not currently operating." The duties and services to be provided by SIF Inc. for which it would receive compensation included services related directly to the "acquisition, development and/or operation" of solar projects by SIF #1. Further, the OM described the development fee as part of the "costs to acquire and/or develop and operate the Installations". Not included among the services the OM attributed to the development fee were activities related to financing, nor the making of loans or transfers to other entities.

24. On January 13, 2014, SIF Inc. caused SIF #1 to issue an amendment to the OM that increased the maximum offering to investors from $30 million to $60 million. As with the original OM, the January amendment provided that the available funds raised by SIF #1 in the Offering (net of capital raise costs) would be used to "develop or acquire Installations", for cash reserves, various fees and costs. Due to the increase in the maximum offering, SIF Inc. was ultimately paid a "development fee" of approximately $3.1 million as at December 31, 2015, despite the fact that a significant portion of the total funds raised by SIF #1 was loaned to other entities managed by SIF Inc. and not used to acquire, develop or operate solar assets for SIF #1.

Flow of funds from SIF #1 to the benefit of other, non-affiliated entities

25. As set out below, during the Material Time, SIF Inc. caused SIF #1 to transfer funds to entities in which SIF Inc. and/or its directing minds held an ownership interest, or for the benefit of investors in entities controlled by SIF Inc. and/or its directing minds.

26. By causing SIF #1 to use investors' funds for purposes contrary to the representations in SIF #1's OMs, SIF Inc. authorized, permitted or acquiesced in SIF #1 making false, inaccurate or misleading statements and omitting important facts to investors. This, in some cases, caused actual losses to SIF #1 investors. Grossman, Mazzacato, and Kadonoff authorized, permitted or acquiesced to SIF Inc.'s conduct during the time when each was a directing mind of SIF Inc.

(a) $8.35 million in transfers to SIF Capital

27. In 2013, SIF Inc. was the sole Class B voting shareholder and manager of SIF Capital. Grossman became a director of SIF Capital on April 30, 2014.

28. On November 10, 2013 and December 15, 2013, SIF Inc. caused SIF #1 to transfer $350,000 to SIF Capital, which SIF Inc. characterized as an unsecured loan bearing 9% interest, with no fixed term, and due on demand.

29. On January 13, 2014, after SIF #1 had raised approximately $25 million from investors under the terms of the OM, SIF Inc. caused SIF #1 to transfer another $8 million to SIF Capital. SIF Inc., as manager of SIF Capital, used the SIF #1 funds to redeem approximately $8 million in outstanding 10.75% debentures held by investors in SIF Capital. SIF Inc. then caused SIF Capital to issue an unsecured debenture note to SIF #1 bearing an annual interest rate of 9%, with no fixed term, and due on demand.

30. On January 13, 2014, SIF Capital was not a Subsidiary of SIF #1 (as defined in the SIF #1 OM) or a limited partnership for which SIF #1 was the sole limited partner. In addition, none of these transfers furthered SIF #1's short term objective to "acqui[re] and/or develop[] and operat[e]… approximately 20 Megawatts of solar energy Installations on designated lands and/or rooftops." Rather the transferred SIF #1 funds were used by SIF Inc. to redeem prior investments in SIF Capital.

31. SIF Inc. never demanded repayment of the debenture note on behalf of SIF #1, and although interest was accrued on the debenture note, it was never paid. As recorded in the audited December 31, 2014 SIF #1 consolidated financial statements, SIF #1 recognized an impairment loss of $438,189 on the interest receivable on the debenture note due to uncertainty regarding SIF Capital's cash flows.

32. On or about July 24, 2014, SIF Inc. obtained a valuation of SIF Capital as of April 30, 2014 which determined that after accounting for SIF Capital's liabilities, including the amounts owed to SIF #1, SIF Capital had a negative value. Despite this valuation, on January 1, 2015, SIF Inc. caused SIF #1 to acquire 100% of SIF Inc.'s Class B voting shares in SIF Capital for $84,722, approximately the same price SIF Inc. originally paid for its shares.

33. After SIF #1's acquisition of SIF Capital, the remaining receivable amount of the unsecured loan and the $8 million debenture on the books of SIF #1 were offset by the corresponding debt and liabilities on the books of SIF Capital upon consolidation.

34. At the time of the $8.35 million in transfers, Grossman and Kadonoff were officers and/or directors and directing minds of SIF Inc.

(b) Over $9.8 million in transfers to SIF #2

35. On October 9, 2014, SIF Inc. created SIF #2, another unincorporated open-end investment trust. SIF #2 had nearly identical investment objectives and management structure as SIF #1 (including similar development fees payable to SIF Inc.), and was commonly managed by SIF Inc. SIF #1 did not have an ownership interest in SIF #2 or its assets.

36. SIF #2 sought to raise $30 million. However, it only raised approximately $7 million during the Material Time. Beginning in June 2015, SIF Inc. caused SIF #1 to advance funds to SIF #2. By the end of December 2015, these transfers totalled approximately $5.2 million. A "Grid Promissory Note" signed by Grossman and Kadonoff characterized these transfers of funds as a debt owing to SIF #1. The note bore 15% annual interest, was unsecured, and was payable on demand with no maturity date.

37. SIF Inc. continued to transfer funds from SIF #1 to SIF #2 throughout 2016. On January 22, 2016, SIF Inc. created a second "Grid Promissory Note", signed by Grossman and Mazzacato, to replace the first note, reducing the interest payable to SIF #1 from 15% to 10%. Although the new grid promissory note reflected small repayments of the advances, the amount owing to SIF #1 reached a high of $9.8 million on August 16, 2016. According to SIF #2's audited financial statements, the amount SIF #2 owed to SIF #1 as at December 31, 2016 was approximately $8.3 million. The December 31, 2018 audited consolidated SIF #2 financial statements indicated a write down of the amounts due to SIF #1 of $4.2 million and accrued interest of $877,000, as at December 31, 2017.

38. At no time from June 2015 to December 2016 was SIF #2 a subsidiary of SIF #1 or a limited partnership of which SIF #1 was the sole limited partner. In addition, the transfers were made contrary to SIF #1's representation that it would use all of the investor proceeds from the Offering to "acqui[re] and/or develop[] and operat[e]… solar energy Installations."

39. Rather, the transferred SIF #1 funds were used by SIF Inc., among other things, to:

    (i) acquire, develop and/or operate solar installations for the benefit of SIF #2;

    (ii) pay more than $1.8 million from SIF #2 to SIF Inc. and CPE Inc., a subsidiary of SIF Inc., which included at least $870,000 in development fees;

    (iii) pay over $200,000 in distributions to SIF #2 investors; and

    (iv) pay fees to exempt market dealers involved in raising capital for SIF #2.

40. In addition to using SIF #1 funds to benefit SIF #2, its investors and exempt market dealers, the Respondents used the funds to benefit themselves. Between 2014 and 2016, SIF #2 paid development fees to SIF Inc., some of which consisted of funds provided by SIF #1 to SIF #2. Approximately $1.3 million of the development fees paid by SIF #2 to SIF Inc. were "prepaid" to SIF Inc. as at December 31, 2016. By that time, SIF Inc. did not expect to develop or acquire any additional projects for SIF #2. Rather than refunding the prepaid fees to SIF #2 (and SIF #2 subsequently using the refund to repay its loans from SIF #1), SIF Inc. kept the prepaid fees and caused SIF #2 to write them off as an expense without any value accruing to SIF #2.

41. For some or all of the time of these transfers, Grossman, Mazzacato, and Kadonoff were officers and/or directors, and directing minds, of SIF Inc. For the transfers in which SIF #1 funds were used to pay distributions to SIF #2 investors and fees to exempt market dealers, Grossman, Kadonoff and Mazzacato were officers and/or directors and directing minds of SIF Inc.

(c) Over $2.2 million in transfers to other parties

42. Between 2013 and 2015, SIF Inc. caused SIF #1 to make transfers to four additional entities in which SIF Inc. and/or Grossman and Kadonoff held an ownership interest, or for the benefit of investors in entities controlled by SIF Inc. and/or Grossman and Kadonoff. At the time of these transfers, none of these entities was a Subsidiary of SIF #1 or a limited partnership of which SIF #1 was the sole limited partner.

(i) $578,000 transferred to High Quality

43. During 2014 and 2015, High Quality Solar Projects #22 ("**High Quality**") was a general partner of SIF International 2013 LP ("**SIF International**"). High Quality purportedly was involved in the development of a solar project in Romania. During this time, SIF International was under common management by SIF Inc. Grossman and Kadonoff had an indirect ownership interest in SIF International.

44. In 2014 and 2015, SIF Inc. caused SIF #1 to loan to High Quality approximately $578,000.

45. SIF #1's transfers to High Quality were supported by a "Grid Promissory Note", signed by Grossman and Kadonoff, and bearing interest of 11% per annum. The note provided for no security or maturity date.

46. At no time in 2014 and 2015 was High Quality a Subsidiary of SIF #1 or a limited partnership of which SIF #1 was the sole limited partner. In addition, the transfers were made contrary to SIF #1's representation that it would use all of the investor proceeds from the Offering to "acqui[re] and/or develop[] and operat[e]… solar energy Installations."

47. High Quality did not successfully develop any solar projects in Romania and did not have the financial resources to repay SIF #1 the amounts owing under the Grid Promissory Note. Although the amounts were ultimately fully repaid, with interest, by Grossman, Kadonoff and other shareholders of SIF Inc. on December 15, 2015, SIF #1 investors' funds were used in a manner contrary to the representations made to them.

48. At the time of the transfers to High Quality, Grossman, Kadonoff and Mazzacato were officers and/or directors and directing minds of SIF Inc.

(ii) $965,000 in transfers to Whitewater

49. In 2013, Whitewater was a project 80% owned by SIF Capital, which was in turn partially owned and managed by SIF Inc.

50. On November 27, 2013, SIF Inc. caused SIF #1 to transfer $350,000 to Whitewater. In 2014, SIF Inc. caused SIF #1 to make additional transfers to Whitewater such that, the end of 2014 a total of $965,000 was transferred from SIF #1 to Whitewater.

51. The transfers were acknowledged by promissory notes signed by Grossman on behalf of SIF Capital which provided no security, required payment on demand, and set an annual interest rate of 9%.

52. On February 1, 2014, SIF Inc. caused SIF #1 to acquire a 20% interest in Whitewater although this interest did not qualify Whitewater as a Subsidiary under the SIF #1 OMs.

53. At no time in 2013 and 2014 was Whitewater a Subsidiary of SIF #1 or a limited partnership of which SIF #1 was the sole limited partner. In addition, the transfers were made contrary to SIF #1's representation that it would use all of the investor proceeds from the Offering to "acqui[re] and/or develop[] and operat[e]… solar energy Installations."

54. As referred to above, on January 1, 2015, SIF Inc. caused SIF #1 to acquire 100% of SIF Inc.'s Class B voting shares in SIF Capital. The effect of SIF #1's acquisition of SIF Capital (which owned the remaining 80% of Whitewater) was that, on a consolidated basis, the entire debt owing by Whitewater to SIF #1 was eliminated.

55. For some or all of these transfers, Grossman, Mazzacato and Kadonoff were officers and/or directors and directing minds of SIF Inc.

(iii) $320,000 in transfers to LP #3

56. In 2014, Grossman and Kadonoff held an ownership interest in Solar Income Fund LP #3 ("**LP #3**"), which was managed by SIF Inc. LP #3 owned a solar energy project named Paddock Green.

57. In 2014, SIF Inc. caused SIF #1 to transfer funds to LP #3 such that as at December 31, 2014 a total of $320,386 had been transferred to LP #3. These transfers were acknowledged by a promissory note which provided no security, required payment on demand, and set an annual interest rate of 10%.

58. At no time in 2014 was LP #3 a Subsidiary of SIF #1 or a limited partnership of which SIF #1 was the sole limited partner. In addition, the transfers were made contrary to SIF #1's representation that it would use all of the investor proceeds from the Offering to "acqui[re] and/or develop[] and operat[e]… solar energy Installations."

59. For some or all of these transfers, Grossman, Kadonoff and Mazzacato were officers and/or directors and directing minds of SIF Inc.

(iv) $430,000 in transfers to SIF Inc.

60. In 2014 and 2015, SIF Inc. caused SIF #1 to transfer funds to itself over and above the funds owed to it by SIF #1. By December 31, 2015, these excess payments totalled approximately $430,000. These transfers were recorded as a promissory note which provided no security, required payment on demand, and bore an annual interest rate of 10%.

61. For some or all of these transfers, Grossman, Kadonoff and Mazzacato were officers and/or directors and directing minds of SIF Inc.

Summary

62. All of the Respondents have breached subsection 44(2) of the Securities Act, RSO 1990, c.S.5 (the "Act") by making or causing SIF #1 to make statements related to SIF #1's use of funds that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made.

63. All of the Respondents have breached subsection 126.1(1)(b) of the Act by using funds of SIF #1 in a way that was contrary to the purpose and the short-term and long-term objectives of SIF #1 as provided in its OM, thereby directly or indirectly engaging in or participating in a course of conduct relating to securities which they each knew or reasonably ought to have known perpetrated a fraud on investors. In particular, the Respondents caused SIF #1 to transfer funds to SIF #2 to pay distributions to SIF #2 investors, and fees payable to SIF #2's exempt market dealers, which was contrary to statements provided in SIF #1's OM. By doing so, the Respondents exposed SIF #1 investors to risks not disclosed to them, and in some cases, caused actual losses to SIF #1 investors.

64. All of the Respondents have also acted contrary to the public interest.

C. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

65. Enforcement Staff alleges the following breaches of Ontario securities law and/or conduct contrary to the public interest during the Material Time:

(a) SIF Inc. made or caused SIF #1 and/or others to make statements that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the Act;

(b) Each of the individual Respondents as officers and/or directors of SIF Inc. authorized, permitted or acquiesced in the breaches by SIF Inc. set out in (a) above and, in doing so, are deemed to have not complied with Ontario securities law pursuant to section 129.2 of the Act;

(c) Grossman, Mazzacato, Kadonoff and SIF Inc. directly or indirectly engaged in or participated in acts, practices or courses of conduct relating to securities that they each knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to s. 126.1(1)(b) of the Act, by causing SIF #1 to transfer funds to SIF #2 for the payment of distributions to SIF #2 investors, and fees payable to SIF #2's exempt market dealers, which was contrary to statements provided in SIF #1's OM; and

(d) The Respondents have engaged in activity that is contrary to the public interest.

66. Enforcement Staff reserves the right to amend these allegations and to make such further and other allegations as Enforcement Staff may advise and the Commission may permit.

D. ORDERS SOUGHT:

67. Enforcement Staff requests that the Commission make the following orders:

*As against **Solar Income Fund Inc.**:*

(i) that it cease trading in any securities or derivatives permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1) of the Act;

(ii) that it be prohibited from acquiring any securities permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

(iii) that any exemption contained in Ontario securities law not apply to it permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1) of the Act;

(iv) that it be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

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

(vi) that it pay an administrative penalty of not more than $1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;

(vii) that it disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;

(viii) that it pay costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and

(ix) such other order as the Commission considers appropriate in the public interest.

*As against **Allan Grossman, Charles Mazzacato and Kenneth Kadonoff**:*

(i) that he cease trading in any securities or derivatives permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1) of the Act;

(ii) that he be prohibited from acquiring any securities permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

(iii) that any exemption contained in Ontario securities law not apply to him permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1) of the Act;

(iv) that he be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

(v) that he resign any position he may hold as a director or officer of an issuer permanently or for such period as is specified by the Commission, pursuant to paragraph 7 of subsection 127(1) of the Act;

(vi) that he be prohibited from becoming or acting as a director or officer of any issuer permanently or for such period as is specified by the Commission, pursuant to paragraph 8 of subsection 127(1) of the Act;

(vii) that he resign any positions that he may hold as a director or officer of a registrant, pursuant to paragraph 8.1 of subsection 127(1) of the Act;

(viii) that he be prohibited from becoming or acting as a director or officer of a registrant, pursuant to paragraph 8.2 of subsection 127(1) of the Act;

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

(x) that he pay an administrative penalty of not more than $1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;

(xi) that he disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;

(xii) that he pay costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and

(xiii) such other order as the Commission considers appropriate in the public interest.

DATED this 26th day of September, 2019

Andrew Faith
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Tel: 416.365.1600
Litigation Counsel for Staff of the Ontario Securities Commission

1.4 Notices from the Office of the Secretary

1.4.1 Majd Kitmitto et al.

FOR IMMEDIATE RELEASE
September 25, 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 September 25, 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)

1.4.2 Natural Bee Works Apiaries Inc. et al.

FOR IMMEDIATE RELEASE
September 26, 2019

NATURAL BEE WORKS APIARIES INC.,
RINALDO LANDUCCI, and
TAWLIA CHICKALO,
File No. 2018-40

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

A copy of the Reasons and Decision on Sanctions and Costs and the Order dated September 25, 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 Solar Income Fund Inc. et al.

FOR IMMEDIATE RELEASE
September 26, 2019

SOLAR INCOME FUND INC.,
ALLAN GROSSMAN,
CHARLES MAZZACATO, and
KENNETH KADONOFF,
File No. 2019-35

TORONTO – The Office of the Secretary issued a Notice of Hearing on September 26, 2019 setting the matter down to be heard on October 15, 2019 at 11:00 a.m. as soon thereafter as the hearing can be held in the above named matter. The hearing will be held at the offices of the Commission at 20 Queen Street West, 17th Floor, Toronto.

A copy of the Notice of Hearing dated September 26, 2019 and Statement of Allegations dated September 26, 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)

1.4.4 Canada Cannabis Corporation et al.

FOR IMMEDIATE RELEASE
September 30, 2019

CANADA CANNABIS CORPORATION,
CANADIAN CANNABIS CORPORATION,
BENJAMIN WARD,
SILVIO SERRANO, and
PETER STRANG,
File No. 2019-34

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

A copy of the Order dated September 30, 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)

1.4.5 First Global Data Ltd. et al.

FOR IMMEDIATE RELEASE
September 30, 2019

FIRST GLOBAL DATA LTD.,
GLOBAL BIOENERGY RESOURCES INC.,
AYEEM ALLI,
MAURICE AZIZ,
HARISH BAJAJ, AND
ANDRE ITWARU,
File No. 2019-22

TORONTO – Take notice that the hearing in the above named matter scheduled to be heard on October 22, 2019 will not proceed as scheduled.

The hearing will continue on October 30, 2019 at 10:00 a.m.

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 PIMCO Canada Corp.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from the concentration restriction requirements to permit fixed income funds to invest in debt securities issued by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) – relief is required to allow funds to invest more than 10 percent of their net asset value in Fannie Mae and Freddie Mac – Fannie Mae and Freddie Mac are implicitly guaranteed by the U.S. government – Fannie Mae and Freddie Mac are government sponsored entities in the U.S. – Fannie Mae and Freddie Mac are classified as "government securities" under the U.S. Investment Company Act of 1940 – Fannie Mae and Freddie Mac has a U.S. government equivalent credit rating – exemptive relief granted from subsection 2.1(1) of National Instrument 81-102 Investment Funds, subject to certain conditions.

Applicable Legislative Provisions

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

September 20, 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
PIMCO CANADA CORP.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of each investment fund of which the Filer currently is the manager (the **Current Funds**) and each investment fund of which the Filer in the future becomes the manager (the **Future Funds** and, together with the Current Funds, the **Funds**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that grants exemptive relief to the Filer and the Fund from:

(a) subsection 2.1(1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) to permit each Fund that is a mutual fund, other than an alternative mutual fund, to purchase a security of an issuer, enter into a specified derivative transaction or purchase index participation units (each a **Purchase**) when, immediately after the Purchase, more than 10 percent of the net asset value of the Fund would be invested in debt obligations issued or guaranteed by either the Federal National Mortgage Association (**Fannie Mae**) or the Federal Home Loan Mortgage Corporation (**Freddie Mac**); and

(b) subsection 2.1(1.1) of NI 81-102 to permit each Fund that is an alternative mutual fund or a non-redeemable investment fund to make a Purchase when, immediately after the Purchase, more than 20 percent of the net asset value of the Fund would be invested in debt obligations issued or guaranteed by either the Fannie Mae

or Freddie Mac,

(together, the **Exemption Sought**).

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

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

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

Interpretation

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

1940 Act means the United States *Investment Company Act of 1940*, as amended from time to time;

Fannie and Freddie Securities means debt obligations issued or guaranteed by either Fannie Mae or Freddie Mac including, without limitation, bonds and mortgage-backed securities and **Fannie or Freddie Security** means any one such debt obligation;

Minimum Rating means a credit rating of BBB- assigned by Standard & Poor's Rating Service or an equivalent rating by one or more other designated rating organizations; and

U.S. Government Equivalent Rating means a credit rating assigned by Standard & Poor's Rating Services (Canada), or an equivalent rating assigned by one or more other designated rating organizations, to a Fannie or Freddie Security that is not less than the credit rating then assigned by such designated rating organization to the debt of the United States government of approximately the same term as the remaining term to maturity of, and denominated in the same currency as, the Fannie or Freddie Security.

Representations

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

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

2. The Filer is registered under the securities legislation in:

   (a) all the provinces as a portfolio manager and exempt market dealer;

   (b) Ontario, Québec and Newfoundland and Labrador as an investment fund manager; and

   (c) Ontario and Manitoba as a commodity trading manager under the *Commodity Futures Act* (Ontario) and an adviser under the *Commodity Futures Act* (Manitoba), respectively.

3. The Filer is or will be the manager of each Fund.

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

5. The Filer is an indirect wholly-owned subsidiary of Pacific Investment Management Company LLC (**PIMCO LLC**) which is a global fixed income investment manager with approximately US$1.84 trillion of assets under management as of June 30, 2019. PIMCO LLC currently is the investment sub-adviser to each Current Fund.

6. Each Fund is or will be an investment fund to which NI 81-102 applies, subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities.

7. Each Current Fund is a reporting issuer under the securities legislation of all the Jurisdictions. Each Future Fund will be a reporting issuer under the securities legislation of Ontario and may be a reporting issuer under the securities legislation of one or more other Jurisdictions.

8. Each Current Fund is not in default of securities legislation in any Jurisdiction.

9. The investment objectives of each Fund is or will permit the Fund to invest a majority of its assets in fixed income securities. The ability to invest in Fannie and Freddie Securities is or will be an important feature of each Fund due to the size and role of Fannie Mae and Freddie Mac in the United States mortgage industry and the expertise of PIMCO LLC investing in such securities.

10. Fannie Mae is a financial services corporation originally established by the United States Congress in 1938 to provide United States federal government money to local banks to finance home mortgages during the Great Depression. Its business includes borrowing money in the debt markets by selling bonds and providing liquidity to mortgage originators by purchasing whole loans which it then securitizes by issuing mortgage-backed securities. Fannie Mae also earns guarantee fees for assuming the credit risk on mortgage loans.

11. Freddie Mac is a financial services corporation that was created by the United States Congress in 1970 to expand the secondary market for mortgages in the United States. It was established to provide competition to Fannie Mae. Similar to Fannie Mae, the business of Freddie Mac includes buying mortgages in the secondary market, pooling them, and issuing mortgage-backed securities, as well as earning guarantee fees for assuming the credit risk on mortgage loans.

12. Fannie and Freddie Securities provide a substantial portion of the financing for residential mortgages in the United States.

13. Originally, the obligations of Fannie Mae were explicitly guaranteed by the United States government. The explicit guarantee was removed as part of a reorganization of Fannie Mae in 1968. Like Fannie Mae, there is no explicit guarantee of the obligations of Freddie Mac by the United States government.

14. Notwithstanding the absence of an explicit guarantee, it is widely assumed that there is an implied guarantee of the obligations of both Fannie Mae and Freddie Mac by the United States government. This assumption is based on the view that Fannie Mae and Freddie Mac each are considered to be “to big to fail” due to the critical roles they play as instrumentalities of the United States government existing to support the liquidity of the residential real estate mortgage market. Accordingly, it is widely believed that the United States government implicitly guarantees the obligations of Fannie Mae and Freddie Mac. This is reflected in Fannie and Freddie Securities currently having a U.S. Government Equivalent Rating.

15. The implied guarantee was evidenced during the 2008 financial crisis. At that time, Fannie Mae and Freddie Mac together owned or guaranteed approximately half of the United States’ US$12 trillion mortgage market and were at risk of defaulting on their obligations. Such a default would have increased the cost of obtaining mortgage financing from other sources, thereby exacerbating the decline in the U.S. residential real estate market, as well as negatively impacting investors (including retirement funds and money market funds) that held Fannie and Freddie Securities. As a result, on September 7, 2008, Fannie Mae and Freddie Mac were placed into conservatorship of the United States Federal Housing Financing Agency in order to stabilize them. The United States government avoided creating an explicit guarantee of the obligations of Fannie Mae and Freddie Mac due to the negative impact it would have had on the United States Treasury. Fannie Mae and Freddie Mac were expressly excluded from the bail-in regime created under Title II of the United States Dodd-Frank Wall Street Reform and Consumer Protection Act to preclude future U.S. government bail-outs of large financial companies. It is expected that a further act of the U.S. Congress would be required to remove the implied guarantee of Fannie and Freddie Securities as part of a larger reform of the U.S. residential real estate market. No such initiative currently is a priority of the U.S. Congress.

16. Under the 1940 Act, an investment company registered with the United States Securities and Exchange Commission (the **SEC**) seeking to qualify as a “diversified company” is required, among other matters, to invest at least 75% of its total assets in a manner whereby not more than 5% of the value of its total assets is invested in the securities of any single issuer. This restriction is analogous to the diversification requirement imposed on public mutual funds in Canada by subsection 2.1(1) of NI 81-102 on public mutual funds in Canada. Similar to paragraph 2.1(2)(a) of NI 81-102, the 1940 Act excludes a “government security” from the 5% limit described.

17. The definition of “government security” in the 1940 Act differs from that contained in NI 81-102 by including any security issued by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States (a **U.S. government instrumentality**). Each of Fannie Mae and Freddie Mac is considered to be a U.S. government instrumentality and Fannie and Freddie Securities therefore are “government securities” under the 1940 Act.

18. The definition of “government security” in NI 81-102 does not include U.S. government instrumentalities. Accordingly, the only United States securities which qualify as government securities are those directly issued by, or fully and unconditionally guaranteed by, the United States government. Fannie and Freddie Securities do not meet this definition since their obligations are not explicitly fully and unconditionally guaranteed by the United States government.

19. As a result, the restriction in subsection 2.1(1) applies to each investment by a Fund in Fannie and Freddie Securities.

20. Fannie and Freddie Securities represent a large, attractive and unique category of investment that cannot be replicated by any other issuer. For this reason, it is important to the Funds that they be entitled to maximize their opportunity to invest in Fannie and Freddie Securities.

21. Investments in Fannie and Freddie Securities are considered by PIMCO LLC to be more prudent than investments in equivalent bonds and mortgage-backed securities of other issuers due to the implied guarantee by the United States government. Accordingly, if the Exemption Sought is granted, each Fund will have the opportunity to maintain a more prudent portfolio through greater exposure to securities implicitly guaranteed by the United States government.

22. PIMCO LLC manages investment companies in the United States that currently hold significant amounts of Fannie and Freddie Securities, in many cases with individual investment companies investing more than 10% of their net assets in the securities of either Fannie Mae or Freddie Mac. As the investment sub-adviser to each Current Fund, PIMCO LLC has, on occasion, needed to limit the amount of Fannie and Freddie Securities a Current Fund otherwise would hold due to the restriction in subsection 2.1(1) of NI 81-102. Granting the Exemption Sought will enable the Funds to invest in Fannie and Freddie Securities to the same degree and proportions as their equivalent U.S. investment company counterparts managed by PIMCO LLC.

23. PIMCO LLC and its affiliates currently employ worldwide approximately 255 portfolio managers as well as more than 90 analysts (including more than 65 global credit analysts). This portfolio management team includes a subset that invests a substantial amount of client assets in Fannie and Freddie Securities and which continuously researches and monitors the investment attributes and trading operations for Fannie and Freddie Securities. Such ongoing research and monitoring includes monitoring proposals to restructure the U.S. residential housing market that may impact the implied guarantee of Fannie and Freddie Securities by the U.S. government. If, the U.S. Congress proposes legislation to change or remove the implied guarantee and the Filer determines in its judgement that, as a result of the announced proposed legislation, there is a significant risk that the Fannie and Freddie Securities held by the Funds could cease to have a U.S. Government Equivalent Rating or their credit ratings could decline below a Minimum Rating, the Funds will take steps that are reasonably required to dispose of their Fannie and Freddie Securities in an orderly and timely fashion such that the Fannie and Freddie Securities held by the Fund comply with subsection 2.1(1) of NI 81-102.

Decision

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

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

(a) at the time of Purchase, the Fannie or Freddie Security has a U.S. Government Equivalent Rating and a rating not less than the Minimum Rating;

(b) the simplified prospectus of each Fund that is a mutual fund distributing its securities, the prospectus of each Fund that is a non-redeemable investment fund distributing its securities, and the annual information form of each Fund that is not distributing its securities:

(i) discloses that the Fund has received permission to invest more than 10% (or, in the case of an alternative mutual fund or a non-redeemable investment fund, 20%) of its net assets in each of Fannie Mae and Freddie Mac provided the Fannie and Freddie Securities maintain a U.S. Government Equivalent Rating and a rating not less than the Minimum Rating;

(ii) discloses (in the case of a prospectus or simplified prospectus, under the heading or sub-heading “Investment Strategies”) the maximum amount the Fund may invest in Fannie and Freddie Securities; and

(iii) contains risk factors that:

(A) the U.S. government may not guarantee payment of Fannie and Freddie Securities; and

(B) describe the risks associated with the Fund investing more than 10% (or, in the case of an alternative mutual fund or a non-redeemable investment fund, 20%) of its net assets in securities of Fannie Mae or Freddie Mac,

provided that in the case of a Fund that is a mutual fund currently distributing its securities, the information required by this condition (b) may instead be included in the simplified prospectus of the Fund when it is next renewed or amended;

(c) if the rating of a Fannie or Freddie Security held by a Fund ceases to have a U.S. Government Equivalent Rating or declines below the Minimum Rating, the Fund will take the steps that are reasonably required to dispose of such Fannie or Freddie Security in an orderly and timely fashion such that the Fannie and Freddie Securities of such issuer held by the Fund comply with subsection 2.1(1) of NI 81-102; and

(d) if the U.S. Congress:

(i) proposes legislation intended to change or remove the implied guarantee by the U.S. government of Fannie Mae and/or Freddie Mac and the Filer determines in its judgement that, as a result of the announced proposed legislation, there is a significant risk that the Fannie and Freddie Securities held by the Funds could cease to have a U.S. Government Equivalent Rating or their credit ratings could decline below the Minimum Rating; or

(ii) enacts legislation that:

(A) removes the implied guarantee by the U.S. government of Fannie Mae and/or Freddie Mac; or

(B) specifies a future effective date on which the implied guarantee by the U.S. government of Fannie Mae and/or Freddie Mac will end,

the Funds will take the steps that are reasonably required to dispose of such Fannie and Freddie Securities in an orderly and timely fashion such that the Fannie and Freddie Securities held by the Funds comply with subsection 2.1(1) of NI 81-102.

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

2.1.2 CI Investments et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from the requirement in section 6.1 of NI 81-102 that all portfolio assets of an investment fund must be held under the custodianship of one custodian – Relief needed because plain reading of exemption in section 6.8.1 of NI 81-102 from the requirement in section 6.1 of NI 81-102 results in unintended consequences – Relief subject to condition that the aggregate market value of the securities held by the Prime Broker after such deposit excluding the aggregate of the market value of the proceeds from all then outstanding short sales of securities, must not, (a) in the case of a Fund, other than an Alternative Fund, exceed 10% of the net asset value of the Fund at the time of deposit, and (b) in the case of an Alternative Fund, exceed 25% of the net asset value of the Alternative Fund at the time of deposit.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 6.1, 6.8.1, and 19.1.

September 24, 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
CI INVESTMENTS INC.
(the Filer)

AND

CI LAWRENCE PARK ALTERNATIVE INVESTMENT GRADE CREDIT FUND
CI MARRET ALTERNATIVE ABSOLUTE RETURN BOND FUND
CI MUNRO ALTERNATIVE GLOBAL GROWTH FUND
(the Existing Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, which is the trustee and the investment fund manager of the Existing Funds, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption, pursuant to section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**), for the Existing Funds and all other current and future mutual funds, exchange-traded funds and alternative mutual funds managed by the Filer or an affiliate of the Filer (the **Future Funds** and, together with the Existing Funds, the **Funds**) exempting each Fund from the requirement set out in subsection 6.1(1) of NI 81-102 that provides that, except as provided in section 6.8, 6.8.1 and 6.9, all portfolio assets of an investment fund must be held under the custodianship of one custodian that satisfies the requirements of section 6.2, in order to permit the following:

(i) unless the borrowing agent is the Fund's custodian or sub-custodian, if a Fund deposits portfolio assets with a borrowing agent as security in connection with a short sale of securities, the aggregate market value of portfolio assets held by the borrowing agent after such deposit, excluding the aggregate market value of the proceeds from outstanding short sales of securities held by the borrowing agent, must not:

   (a) in the case of each Fund, other than an Alternative Fund, exceed 10% of the net asset value of the Fund at the time of deposit; and

(b) in the case of an Alternative Fund, exceed 25% of the net asset value of the Alternative Fund at the time of deposit

(collectively, the **Requested Relief**).

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

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

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

Interpretation

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

Alternative Fund means each Fund, including the Existing Funds, that is or will be an alternative mutual fund under NI 81-102

Prime Broker means any entity that acts as, among other things, a borrowing agent to one or more investment funds, whether the investment fund is an alternative mutual fund, a mutual fund or an exchange-traded fund

Representations

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

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

   (a) under the securities legislation of all provinces of Canada as a portfolio manager;

   (b) under the securities legislation of Ontario, Québec, and Newfoundland and Labrador as an investment fund manager;

   (c) under the securities legislation of Ontario as an exempt market dealer; and

   (d) under the *Commodity Futures Act* (Ontario) as a commodity trading counsel and a commodity trading manager.

2. The Filer is, or will be, the investment fund manager of the Funds and the Filer, an affiliate of the Filer or a third party portfolio manager retained by the Filer is, or will be, the portfolio manager of the Funds.

3. Each Existing Fund is an alternative mutual fund established as a trust under the laws of Ontario that operates under the provisions of NI 81-102 applicable to alternative mutual funds.

4. Each Existing Fund is a reporting issuer in each Jurisdiction and its units are qualified for distribution to the public in each Jurisdiction pursuant to a simplified prospectus dated May 10, 2019, as amended.

5. Neither the Filer nor the Existing Funds are in default of securities legislation in any Jurisdiction.

6. The Funds are, or will be, open-ended mutual funds or classes of a mutual fund corporation, including exchange-traded funds and alternative mutual funds, organized and governed by the laws of a Jurisdiction or the laws of Canada.

7. The Funds are, or will be, governed by the provisions of NI 81-102, subject to any exemption therefrom that has been, or may be, granted by the securities regulatory authorities.

8. In connection with, among other things, the short sale of securities that the Funds will or may engage in, each Fund is permitted to grant a security interest in favour of, and deposit pledged portfolio assets with, its Prime Broker. If a Fund engages as its Prime Broker an entity that is not its custodian or sub-custodian, then a Fund that is not an Alternative Fund may, under section 6.8.1 of NI 81-102, only deliver to its Prime Broker portfolio assets having a market value, in

the aggregate, of not more than 10% of the net asset value of the Fund at the time of deposit, and an Alternative Fund may, under section 6.8.1 of NI 81-102, only deliver to its Prime Broker portfolio assets having a market value, in the aggregate, of not more than 25% of the net asset value of the Alternative Fund at the time of deposit.

9. A Prime Broker may not wish to act as borrowing agent for a Fund that is not an Alternative Fund and that wants to sell short securities having an aggregate market value of up to 10% of the Fund's net asset value if the Prime Broker is only permitted to hold, as security for such transactions, portfolio assets, including the proceeds from the short sale, having an aggregate market value that is not in excess of 10% of the net asset value of the Fund. The issue is even greater in the context of an Alternative Fund, as a Prime Broker will not act as borrowing agent for an Alternative Fund that wants to sell short securities having an aggregate market value of up to 50% of the Alternative Fund's net asset value if the Prime Broker is only permitted to hold, as security for such transactions, portfolio assets, including the proceeds from the short sale, having an aggregate market value that is not in excess of 25% of the net asset value of the Alternative Fund.

10. Effective as of January 3, 2019, NI 81-102 was amended to include alternative mutual funds. Prior to and since that date, a number of investment fund managers have either launched alternative mutual funds or are planning to do so. The ability of alternative mutual funds to borrow cash and to sell short securities more extensively than other investment funds governed by NI 81-102 has led to the increased involvement of Prime Brokers in the operations of these alternative mutual funds. While the prime brokerage business model works well in the exempt investment fund space, the prime brokerage community and investment fund managers are experiencing greater difficulties in applying that model to alternative mutual funds and other investment funds under NI 81-102.

11. The prime brokerage operational and pricing models in the context of short selling are premised on the ability of the Prime Broker to retain, as collateral for the obligations of the applicable Fund, the proceeds from the sale of the short sales, whether such proceeds are cash or are used by the Fund to purchase other portfolio assets. These models are also based on the ability of the Prime Broker to hold additional assets of the Fund as collateral for those obligations.

12. Given the collateral requirements that Prime Brokers impose on their customers that engage in the short sale of securities, if the 10% and 25% of net asset value limitations set out in subsection 6.8.1 of NI 81-102 apply, then the Funds will need to retain two, or possibly three, Prime Brokers in order to sell short securities to the extent permitted under section 2.6.1 of NI 81-102. This would result in inefficiencies for the Funds and would increase their costs of operations. Alternatively, in order to address this issue, different methodologies have been adopted in connection with the calculation of the 10% and the 25% of net asset value limitations.

13. While the collateral limits for the short sale of securities is currently topical in the context of alternative mutual funds, there is no policy reason to differentiate between the Alternative Funds and the Funds that are not Alternative Funds to the extent that these other Funds also engage in the short selling of securities.

14. It would not be prejudicial to the public interest to grant the Requested Relief to the Funds.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted, provided that the Funds otherwise comply with subsections 6.8.1(2) and (3) of NI 81-102.

"Darren McKall"
Manager
Investment Funds and Structured Products Branch
ONTARIO SECURITIES COMMISSION

2.1.3 Algonquin Capital Corporation and the Top Funds

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the conflict of interest restrictions in the Securities Act (Ontario) and the self-dealing prohibitions in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations to permit fund-on-fund structures involving between funds under common management subject to conditions.

Applicable Legislative Provisions

Securities Act (Ontario) R.S.O. 1990, c. S.5, as amended, ss. 111(2)(b), 111(2)(c), 111(4), 113 and 144.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5(2)(a) and 15.1.

September 24, 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
ALGONQUIN CAPITAL CORPORATION
(the Filer)

AND

IN THE MATTER OF
THE TOP FUNDS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of each of the Filer, Algonquin Trust (the **Initial Top Fund**) and one or more investment funds, which are not reporting issuers under the securities legislation of the principal regulator (the **Legislation**) and which are established, advised and managed by the Filer, in the future (the **Future Top Funds**, and together with the Initial Top Fund, the **Top Funds**) for a decision under the Legislation:

(1) in respect of the Fund-on-Fund Structure (as defined below) exempting the Filer and the Top Funds from:

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

(b) the restriction in the Legislation that prohibits an investment fund from knowingly making an investment in an issuer in which:

(i) any officer or director of the investment fund, its management company or distribution company or an associate of them, or

(ii) any person or company who is a substantial securityholder of the investment fund, its management company or its distribution company, has a significant interest;

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

(d) the restrictions contained in subsection 13.5(2)(a) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) which prohibit a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase a security of an issuer in which a responsible person or an associate of a responsible person is a partner, officer or director, unless (i) this fact is disclosed to the client and (ii) the written consent of the client to the purchase is obtained before the purchase (the **Consent Relief**, and together with the Related Issuer Relief, the **Requested Relief**), to permit the Filer to cause the Top Funds to invest in the Underlying Funds (as defined below); and

(2) to revoke and replace the Prior Decision (as defined below) (the **Revocation**). Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* is intended to be relied upon:

(i) in respect of the Related Issuer Relief, in Alberta;

(ii) in respect of the Consent Relief, in each of the other provinces and territories of Canada; and

(iii) in respect of the Revocation, in each of the other provinces and territories of Canada.

Interpretation

Unless otherwise defined herein, terms in this decision have the respective meanings given to them in National Instrument 14-101 *Definitions*.

Representations

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

The Filer

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

2. The Filer is registered with the Ontario Securities Commission in the categories of investment fund manager, portfolio manager and exempt market dealer. The Filer is also registered as an exempt market dealer in Alberta, British Columbia, Manitoba and Nova Scotia and an exempt market dealer and investment fund manager in Québec and Newfoundland and Labrador.

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

4. Pursuant to a decision dated November 23, 2018 (the **Prior Decision**), the Filer, on behalf of the Top Funds, was granted the Requested Relief. The Prior Decision included representations regarding the Underlying Funds that prohibit the Underlying Funds from being reporting issuers in any province or territory of Canada. As such, the Filer is now seeking the Requested Relief and the Revocation to obtain a new decision that broadens the reporting issuer status and organization of the Underlying Funds.

Top Funds

5. The Initial Top Fund is organized under the laws of Ontario as a trust. Each Future Top Fund will be organized as a trust under the laws of Ontario or another jurisdiction in Canada.

6. Each Top Fund is or will be a “mutual fund” for the purposes of the Legislation.

7. The Initial Top Fund is not, and each Future Top Fund will not be, a reporting issuer in any province or territory of Canada.

8. The Filer is, or will be, the investment fund manager and the portfolio manager of the Initial Top Fund and each of the Future Top Funds. The Filer is the trustee of the Initial Top Fund. The Filer or a third party will act as trustee of the Top Funds.

9. Securities of the Initial Top Fund and each Future Top Fund are, or will be, offered on a private placement basis to qualified investors pursuant to available exemptions from the prospectus requirements under Canadian securities legislation.

10. The Initial Top Fund was created pursuant to a declaration of trust dated January 16, 2017, as amended.

11. The Initial Top Fund will invest all or substantially all of its assets in the Initial Underlying Fund.

12. In addition to the Initial Top Fund, each Top Fund will also invest all or substantially all of its assets in an Underlying Fund.

13. The investment objective of the Initial Top Fund is the same as the current investment objective of the Initial Underlying Fund and the strategy for the Initial Top Fund is to invest substantially all of its assets in the Initial Underlying Fund.

14. The investment objective of each Future Top Fund will be the same as the investment objective of an Underlying Fund and the strategy for a Future Top Fund will be to invest substantially all of its assets in an Underlying Fund.

15. The Initial Top Fund is not in default of securities legislation in any province or territory of Canada.

Underlying Funds

16. Algonquin Debt Strategies Fund LP (the **Initial Underlying Fund**) is not a reporting issuer in any province or territory of Canada. Investment funds that are established, managed, and advised by the Filer in the future (the Future Underlying Funds, and together with the Initial Underlying Fund, the Underlying Funds) may be, reporting issuers in any province or territory of Canada.

17. The Initial Underlying Fund is a limited partnership formed under the laws of the Province of Ontario by a declaration dated December 15, 2014.

18. The investment objective of the Initial Underlying Fund is to generate positive absolute returns with an emphasis on capital preservation and with a low correlation to traditional equity and fixed income markets.

19. Each Future Underlying Fund will be structured as a limited partnership or mutual fund trust under the laws of the Province of Ontario or another jurisdiction in Canada, or as an entity organized under the laws of the Cayman Islands, Barbados, Bahamas or the British Virgin Islands (each an **Off-Shore Jurisdiction**). The Initial Underlying Fund is, and each Future Underlying Fund will be, a “mutual fund” for the purposes of the Legislation.

20. Securities of each Underlying Fund will be offered to qualified investors, including the Top Funds, by prospectus or on a private placement basis pursuant to available exemptions from the prospectus requirements under Canadian securities legislation.

21. The Filer is the investment fund manager and portfolio manager of the Initial Underlying Fund and will be the investment manager and the portfolio manager of each of the Future Underlying Funds.

Fund-on-Fund Structure

22. Securities of the Initial Underlying Fund, structured as a limited partnership, are not qualified investments for tax-free savings accounts (**TFSAs**) and trusts governed by registered retirement savings plans, registered retirement income funds, registered education savings plans, deferred profit sharing plans and registered disability savings plans (collectively, **Tax Deferred Plans**), each as defined in the *Income Tax Act* (Canada).

23. The Initial Top Fund has been, and the Future Top Funds will be, formed as trusts for the purpose of accessing a broader base of investors, including TFSAs, Tax Deferred Plans and other investors that may not wish to invest directly in a limited partnership or an Off-Shore Jurisdiction entity. Rather than operating investment portfolios of the Initial Top Fund and the Initial Underlying Fund as separate pools, the Filer wishes to make use of economies of scale by managing only one investment pool in the Initial Underlying Fund.

24. There are tax advantages for non-Canadian unitholders to invest directly in Future Underlying Funds structured as entities under laws of an Off-Shore Jurisdiction. Accordingly, the Filer expects non-Canadian investors to invest directly

in the Future Underlying Funds which are structured under the laws of an Off-Shore Jurisdiction. However, since similar tax advantages are not available to Canadian resident investors, the Filer expects Canadian resident investors to invest directly in a Top Fund to get indirect exposure to the related Underlying Fund.

25. The Initial Top Fund was, and Future Top Funds will be, created by the Filer to allow investors in the Top Funds to obtain indirect exposure to the investment portfolio of the Initial Underlying Fund or Future Underlying Funds and their investment strategies through, primarily, direct investments by the Top Funds in securities of the Underlying Funds (the **Fund-on-Fund Structure**).

26. The Fund-on-Fund Structure will permit the Filer to manage a single portfolio of assets for both a Top Fund and an Underlying Fund in a single investment vehicle structure.

27. Managing a single pool of assets provides economies of scale, allows the Top Funds to achieve their investment objectives in a cost-efficient manner and will not be detrimental to the interest of other securityholders of an Underlying Fund.

28. The Fund-on-Fund Structure is expected to increase the asset base of the Underlying Funds, which is expected to result in additional benefits to unitholders of the Underlying Funds, including more favourable pricing and transaction costs on portfolio trades, increased access to investments when there is a minimum subscription or purchase amount, and better economies of scale through greater administrative efficiency.

29. An investment in an Underlying Fund by a Top Fund will be effected at an objective price. According to the Filer's policies and procedures, an objective price for this purpose, will be the net asset value (**NAV**) per security of the applicable class or series of the applicable Underlying Fund.

30. The portfolio of each Underlying Fund consists, or will consist, primarily of publicly traded securities, debt instruments and derivatives. No Underlying Fund holds, or will hold, more than 10% of its NAV in illiquid assets (as defined in National Instrument 81-102 – *Investment Funds* (**NI 81-102**)).

31. The amounts invested, from time to time, in an Underlying Fund by one or more of the Top Funds, may exceed 20% of the outstanding voting securities of any single Underlying Fund. Accordingly, each Top Fund could, either alone or together with Future Top Funds, become a substantial securityholder of an Underlying Fund.

32. The Initial Top Fund is currently a substantial securityholder of the Initial Underlying Fund.

33. No Underlying Fund will be a Top Fund in a Fund-on-Fund Structure.

34. Each Underlying Fund has, or is expected to have, other investors in addition to the Top Funds.

35. Securities of the Top Funds and their corresponding Underlying Funds have, or will have, matching redemption dates and matching valuation dates.

36. In all cases, the Filer manages, or will manage, the liquidity of each Top Fund having regard to the redemption features of the corresponding Underlying Fund(s) to ensure that it can meet redemption requests from investors of the Top Funds.

37. The Fund-on-Fund Structures involving Future Top Funds and Future Underlying Funds will be structured where a Future Top Fund, formed as a trust, invests in an Underlying Fund(s) that is a Canadian entity, formed as a limited partnership or a trust. The Filer also expects future Fund-on-Fund Structures to resemble that of the Initial Top Fund and Initial Underlying Fund to the extent that they involve a Future Top Fund, formed as a trust, which invests in an Off-Shore Jurisdiction entity.

38. In addition, the Fund-on Fund structure may result in a Top Fund investing in an Underlying Fund (i) in which an officer or director of the Top Fund, of the Filer or of any associate of them, has a significant interest, and/or (ii) where a person or company who is substantial securityholder of the Top Fund or the Filer, has a significant interest.

39. Currently, there is no officer or director of any Top Fund, the Filer or its distribution company, or any associate of them, who has a significant interest in the Initial Underlying Fund, however, there may be circumstances in the future which may cause them to have a significant interest.

40. The Top Funds and Underlying Funds subject to National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) will prepare annual audited financial statements and interim unaudited financial statements in accordance with NI 81-106 and will otherwise comply with the requirements of NI 81-106 applicable to them.

41. In the absence of the Related Issuer Relief, the Top Funds would be constrained by the investment restrictions in Canadian securities legislation in terms of the degree to which they could implement the Fund-on-Fund Structure. Specifically, the Top Funds would be prohibited from: (i) becoming a substantial securityholders of the Underlying Funds, either alone or together with related investment funds; and (ii) a Top Fund investing in an Underlying Fund in which an officer or director of the Filer has a significant interest and/or a Top Fund investing in an Underlying Fund in which a person or company who is a substantial securityholder of the Top Fund or the Filer, has a significant interest.

42. In the absence of the Consent Relief, each Top Fund would be precluded from investing in one or more Underlying Funds unless the specific fact is disclosed to securityholders of the Top Fund and the written consent of the securityholders of the Top Fund to the investment is obtained prior to the purchase, since an officer and/or director of the Filer, who may be considered a responsible person (as per section 13.5 of NI 31-103) or an associate of a responsible person, may also be a partner, officer and/or director of the applicable Underlying Fund.

43. The Fund-on-Fund Structure represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of the prospective investors in the Top Funds.

Decision

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

The decision of the principal regulator under the Legislation is that: (1) the Revocation is granted; and (2) the Requested Relief is granted provided that:

(a) securities of a Top Fund are distributed in Canada solely pursuant to exemptions from the prospectus requirement under Canadian securities legislation;

(b) the investment by a Top Fund in an Underlying Fund is compatible with the fundamental investment objectives of the Top Fund;

(c) an investment in an Underlying Fund by a Top Fund will be effected at an objective price, calculated in accordance with section 14.2 of NI 81-106;

(d) a Top Fund will not invest in an Underlying Fund, unless the Underlying Fund complies with the provisions of NI 81-106 that apply to a “mutual fund in Ontario” as defined in the Securities Act (Ontario);

(e) no Top Fund will purchase or hold a security of an Underlying Fund unless at the time of purchasing securities of the Underlying Fund, the Underlying Fund holds no more than 10% of its NAV in securities of other mutual funds unless the Underlying Fund:

(i) is a clone fund (as defined in NI 81-102);

(ii) purchases or holds securities of a “money market fund” (as defined in NI 81-102); or

(iii) purchases or holds securities that are “index participation units” (as defined by NI 81-102) issued by an investment fund;

(f) no management fees or incentive fees are payable by a Top Fund that, to a reasonable person, would duplicate a fee payable by an Underlying Fund for the same service;

(g) no sales fee or redemption fees are payable by a Top Fund in relation to its purchases or redemptions of securities of an Underlying Fund that, to a reasonable person, would duplicate a fee payable by an investor in the Top Fund other than brokerage fees incurred for the purchase or sale of an index participation unit issued by an investment fund;

(h) the Filer does not cause the securities of an Underlying Fund held by a Top Fund to be voted at any meeting of the holders of such securities, except that the Filer may arrange for the securities the Top Fund holds of an Underlying Fund to be voted by the beneficial owners of the securities of the Top Fund who are not the Filer or an officer, director or substantial securityholder of the Filer;

(i) when purchasing and/or redeeming securities of an Underlying Fund, the Filer shall, as investment fund manager of the applicable Top Fund and Underlying Fund, act honestly, in good faith and in the best interests of the Top Fund and the Underlying Fund, respectively, and shall exercise the care and diligence that a

reasonably prudent person would exercise in comparable circumstances;

(j) the offering memorandum, where available, or other disclosure document of a Top Fund, will be provided to investors in a Top Fund prior to the time of investment, and will disclose:

(i) that a Top Fund may purchase securities of the applicable Underlying Fund;

(ii) that the Filer is the investment fund manager and portfolio manager of both the Top Fund and the Underlying Fund;

(iii) that the Top Fund may invest all, or substantially all, of its assets in securities of an Underlying Fund;

(iv) the fees, expenses and any performance or special incentive distributions payable by the Underlying Fund in which a Top Fund invests;

(v) the process or criteria used to select the Underlying Fund, if applicable;

(vi) for each officer, director and/or substantial securityholder of the Filer, or of a Top Fund, that has a significant interest in an applicable Underlying Fund, and for the officers and directors and substantial securityholders who together in aggregate hold a significant interest in an applicable Underlying Fund, the approximate amount of the significant interest they hold, on an aggregate basis, expressed as a percentage of the applicable Underlying Fund's NAV, and the potential conflicts of interest which may arise from such relationship;

(vii) that investors are entitled to receive from the Filer, on request and free of charge, a copy of the prospectus, offering memorandum or other similar disclosure document of the Underlying Fund, if available; and

(viii) that investors are entitled to receive from the Filer, on request and free of charge, the annual audited financial statements and interim financial reports relating to the Underlying Fund in which the Top Fund invests; and

(k) the Filer shall annually inform investors in a Top Fund of their right to receive from the Filer, on request and free of charge, a copy of the prospectus, offering memorandum or other similar disclosure document of each Underlying Fund, if available, and the annual audited financial statements and interim financial reports relating to each Underlying Fund in which the Top Fund invests.

The Consent Relief

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

The Related Issuer Relief and the Revocation

"Lawrence Haber"
Commissioner
Ontario Securities Commission

"Ray Kindiak"
Commissioner
Ontario Securities Commission

2.1.4 Nuance Communications, Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from prospectus requirements for the first trades of common shares by Canadian shareholders after spin-off by a U.S. publicly traded company to investors by issuing shares of spun-off entity – Distribution not covered by legislative prospectus exemptions – There is no market for the securities of the issuer in Canada – The number of Canadian participants and their share ownership are de minimis – Relief granted, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53 and 74.
National Instrument 45-106 Prospectus Exemptions, ss. 2.11 and 2.31.
National Instrument 45-102 Resale of Securities, s. 2.6.

TRANSLATION

September 27, 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
NUANCE COMMUNICATIONS, INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption (the **Exemption Sought**) from the prospectus requirement in the Legislation in connection with the proposed distribution (the **Spin-Off**) by the Filer of the shares of common stock (**Cerence Shares**) of Cerence Inc. (**Cerence**), a wholly-owned subsidiary of the Filer, by way of a dividend in specie to holders (**Filer Shareholders**) of shares of common stock of the Filer (**Filer Shares**) resident in Canada (**Canadian Shareholders**).

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

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

(b) the Filer has provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System* (chapter V-1.1, r. 1) (**Regulation 11-102**) is intended to be relied upon in each of the other jurisdictions of Canada, other than Ontario; 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* (chapter V-1.1, r. 3) and Regulation 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation incorporated in Delaware with principal executive offices in Burlington, Massachusetts, U.S.A. The Filer is a global provider of conversational artificial intelligence innovations.

2. The Filer is a reporting issuer in the provinces of Alberta, Ontario and Québec, and currently has no intention of becoming a reporting issuer under the securities laws of any other jurisdiction of Canada.

3. The authorized capital stock of the Filer consists of 560 million Filer Shares, US$0.001 par value per share, and 40 million shares of preferred stock, US$0.001 par value per share. As of August 30, 2019, there were 285,876,799 Filer Shares and no preferred shares issued and outstanding.

4. The Filer Shares are listed on the Nasdaq Stock Market (**NASDAQ**) and trade under the symbol "NUAN". Other than the foregoing listing on NASDAQ, no securities of the Filer are listed or posted for trading on any exchange or market in Canada or outside of Canada. The Filer has no present intention of listing or posting its securities on any Canadian exchange or market.

5. The Filer is subject to the 1934 Act and the rules, regulations and orders promulgated thereunder.

6. Based on a geographic breakdown of registered holders prepared for the Filer by American Stock Transfer & Trust Company (the Filer's transfer agent), as of September 13, 2019 there were 5

registered Canadian Shareholders, representing approximately 0.87% of the registered shareholders of the Filer worldwide, and holding 2,561 Filer Shares, representing approximately 0.0009% of the outstanding Filer Shares. The Filer does not expect these numbers to have materially changed since that date.

7. Based on a geographic analysis of beneficial shareholders prepared for the Filer by Broadridge Financial Solutions, Inc., as of September 4, 2019, there were 1,782 beneficial Canadian Shareholders, representing approximately 1.27% of the beneficial holders of Filer Shares worldwide, and holding approximately 5,775,735 Filer Shares, representing approximately 2.02% of the outstanding Filer Shares. The Filer does not expect these numbers to have materially changed since that date.

8. Based on the information above, the number of registered and beneficial Canadian Shareholders and the proportion of Filer Shares held by such shareholders are de minimis.

9. The Filer is in the process of separating, through a series of transactions, its automotive technology business (the **Cerence Business**) into its wholly-owned subsidiary, Cerence (and its subsidiaries). In addition, prior to the Spin-Off, the Filer will sell approximately 1.8% of the outstanding Cerence Shares to one or more third party non-affiliate purchasers which will hold such shares immediately after the Spin-Off. The Filer will then distribute the Cerence Shares it holds, pro rata to Filer Shareholders by way of a dividend in specie, being 98.2% of the then outstanding Cerence Shares. The Filer will distribute such Cerence Shares on the basis of one Cerence Share for every eight Filer Shares held as of September 27, 2019.

10. Cerence is a corporation incorporated in Delaware with principal executive offices in Burlington, Massachusetts, U.S.A. It is currently a wholly-owned subsidiary of the Filer that, at the time of the Spin-Off, will hold, directly and through its subsidiaries, the Cerence Business.

11. Cerence's authorized capital stock consists of 560 million Cerence Shares, US$0.01 par value per share, and 40 million shares of preferred stock, US$0.01 par value per share. All of the Cerence Shares are currently held directly by the Filer and no preferred shares are issued and outstanding. It is estimated that after the Spin-Off, there will be approximately 36,385,336 Cerence Shares outstanding based on the number of Filer Shares outstanding on August 30, 2019, but the actual number of Cerence Shares will be determined as of the effective date of the Spin-Off. No preferred shares are expected to be issued and outstanding.

12. The distribution agent will distribute to each Filer Shareholder entitled to Cerence Shares in connection with the Spin-Off, the number of whole Cerence Shares to which the Filer Shareholder is entitled in book-entry form. No fractional Cerence Shares will be issued to the Filer Shareholders as part of the Spin-Off. Instead, the distribution agent will aggregate all fractional Cerence Shares into whole Cerence Shares, sell such whole Cerence Shares in the open market at prevailing market prices and distribute the aggregate cash proceeds of the sales (net of brokerage fees, transfer taxes and other costs) pro rata to each Filer Shareholder who would otherwise have been entitled to receive fractional Cerence Shares in the Spin-Off (net of any required applicable withholding taxes). Interest will not be paid on the amounts of payment made in lieu of fractional Cerence Shares.

13. Filer Shareholders will not be required to pay any consideration for the Cerence Shares or to surrender or exchange Filer Shares or take any other action to receive their Cerence Shares. The Spin-Off will occur automatically and without any investment decision on the part of Filer Shareholders.

14. Subject to the satisfaction of certain conditions, it is currently anticipated that the Spin-Off will become effective on or around October 1, 2019, and following the Spin-Off, Cerence will cease to be a subsidiary of the Filer.

15. Cerence has received approval from NASDAQ to list the Cerence Shares on NASDAQ under the symbol "CRNC".

16. After completion of the Spin-Off, the Filer Shares will continue to be listed and traded on NASDAQ.

17. Cerence is not a reporting issuer in any jurisdiction in Canada nor are its securities listed on any stock exchange in Canada. Pursuant to the Spin-Off, Cerence will become a reporting issuer under the *Securities Act* (Québec) (chapter V-1.1) by operation of law. Cerence does not have any intention to become a reporting issuer in any other jurisdiction of Canada or to list its securities on any stock exchange in Canada after completion of the Spin-Off.

18. The Spin-Off will be effected under the laws of the State of Delaware.

19. Because the Spin-Off will be effected by way of a dividend of Cerence Shares to Filer Shareholders, no shareholder approval of the Spin-Off is required (or being sought) under Delaware law.

20. In connection with the Spin-Off, Cerence has filed with the SEC a registration statement on Form 10 under the 1934 Act, detailing the Spin-Off.

Cerence filed its registration statement on August 21, 2019 and subsequently filed an amendment thereto on September 4, 2019, which registration statement (as amended, the **Registration Statement**) was declared effective by the SEC on September 6, 2019.

21. Filer Shareholders have received a copy of Cerence's information statement (the **Information Statement**) (forming part of the Registration Statement) detailing the terms and conditions of the Spin-Off. All materials relating to the Spin-Off sent by or on behalf of the Filer and Cerence in the United States (including relating to the Information Statement) have been sent concurrently to Canadian Shareholders. Any future materials relating to the Spin-Off sent by or on behalf of the Filer or Cerence in the United States will be sent concurrently to Canadian Shareholders.

22. The Information Statement contains prospectus-level disclosure about Cerence as required to comply with the SEC requirement for Form 10.

23. Canadian Shareholders who receive Cerence Shares pursuant to the Spin-Off will have the benefit of the same rights and remedies in respect of the disclosure documentation received in connection with the Spin-Off that are available to Filer Shareholders resident in the United States

24. Following completion of the Spin-Off, Cerence will be subject to the requirements of the 1934 Act and the rules and regulations of NASDAQ. Cerence will send concurrently to holders of Cerence Shares resident in Canada the same disclosure materials required to be sent under applicable United States securities laws to holders of Cerence Shares resident in the United States.

25. There will be no active trading market for the Cerence Shares in Canada following the Spin-Off and none is expected to develop. Consequently, it is expected that any resale of Cerence Shares distributed in connection with the Spin-Off will occur through the facilities of NASDAQ or any other exchange or market outside of Canada on which the Cerence Shares may be quoted or listed at the time that the trade occurs or to a person or company outside of Canada.

26. The distribution to Canadian Shareholders of Cerence Shares in connection with the Spin-Off would be exempt from the prospectus requirement pursuant to subsection 2.31(2) of *Regulation 45-106 respecting Prospectus Exemptions* (chapter V-1.1, r. 21) but for the fact that Cerence is not a reporting issuer under the securities legislation of any jurisdiction in Canada.

27. Neither the Filer nor Cerence is in default of any securities legislation in any jurisdiction of Canada.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that the first trade in the Cerence Shares acquired pursuant to the Spin-Off will be deemed to be a distribution that is subject to section 2.6 of *Regulation 45-102 respecting Resale of Securities* (chapter V-1.1, r. 20).

"Elaine Lanouette"
Directrice principale de l'encadrement des structures de marché

2.1.5 Fiera Capital Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – BAR – Exemption from the requirement to file a BAR under Part 8 of National Instrument 51-102 Continuous Disclosure Obligations – The acquisition is non-significant applying the asset and investment tests; applying the profit or loss test produces an anomalous result because the significance of the acquisition under this test is disproportionate to its significance on an objective basis in comparison to the results of the other significance tests and all other business, commercial and financial factors; the Filer has provided additional measures that demonstrate the non-significance of the Acquisition to the Filer and that are generally consistent with the results when applying the asset and investment tests.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, ss. 8.2(1) and Part 13.

TRANSLATION

September 11, 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
FIERA CAPITAL CORPORATION
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) granting relief pursuant to Part 13 of *Regulation 51-102 respecting Continuous Disclosure Obligations* (chapter V-1.1, r. 24) (**Regulation 51-102**) from the requirement in Part 8 of Regulation 51-102 to file a business acquisition report (a **BAR**) in connection with the Filer's acquisition of Natixis Investment Managers Canada Corp. (now known as Fiera Investments Corp.) (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 subsection 4.7(1) of *Regulation 11-102 respecting Passport System* (chapter V-1.1, r. 1) (**Regulation 11-102**) is intended to be relied upon in each of the provinces of Canada other than Ontario; 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* (chapter V-1.1, r. 3) and Regulation 11-102 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

1. The head office of the Filer is located at 1981 McGill College Avenue, Suite 1500, Montreal, Québec H3A 0H5.

2. The Filer is a reporting issuer in all of the provinces of Canada and the Filer is not in default of securities legislation in any of the provinces of Canada.

3. The Filer's Class A subordinate voting shares (**Filer Shares**) are listed for trading on the Toronto Stock Exchange (**TSX**) under the ticker symbol "FSZ".

4. On July 3, 2019, the Filer announced that it had completed the acquisition of all of the common shares of Natixis Investment Managers Canada Corp. (now called Fiera Investments Corp.) (the **Acquired Business**), a private company (the **Acquisition**). The Acquired Business is a Canadian-based asset management company, based in Toronto, that had 2.28 billion dollars in assets under management as at December 31, 2018.

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

6. For the purposes of completing its quantitative analysis of the "asset test", "investment test" and "profit or loss test", the Filer used the Acquired Business' financial statements and the Filer's financial statements which were prepared in accordance with International Financial Reporting Standards (IFRS).

7. The Acquisition is not a "significant acquisition" under the "asset test" as the consolidated assets of the Acquired Business as of December 31, 2018 represented approximately 1.7% of the consolidated assets of the Filer as of December 31, 2018.

8. The Acquisition is not a "significant acquisition" under the "investment test" as the total consideration paid for the Acquisition represents approximately 0.9% of the consolidated assets of the Filer as of December 31, 2018.

9. The Acquisition is a "significant acquisition" under the "profit or loss test" as the "specified profit or loss" (as calculated in accordance of paragraph 8.3(2)(c) of Regulation 51-102) of the Acquired Business exceeds 20% of the "specified profit or loss" of the Filer. As such, the Acquisition would represent a "significant acquisition" requiring the filing of a BAR under the "profit and loss test" of paragraph 8.3(2)(c) of Regulation 51-102.

10. The Acquisition would also represent a "significant acquisition" under the optional "profit or loss test" or the alternative applications available under subsections 8.3(3) and 8.3(4) of Regulation 51-102.

11. The application of the profit or loss test produces an anomalous result for the Filer because it exaggerates the significance of the Acquisition on an objective basis in comparison to the results of the asset and investment tests.

12. The Filer does not believe that that the Acquisition is significant from a commercial, business or financial perspective.

13. The Filer has provided the principal regulator with additional financial and operational measures, all of which are generally important metrics for the Filer and the industry in which it operates, which further demonstrate the insignificance of the Acquisition to the Filer. These additional financial and operational measures include total assets under management and total revenues of the Acquired Business to that of the Filer and the results of those measures are generally consistent with the results of the "asset test" and the "investment test".

14. The Filer is of the view that the "asset test", the "investment test" and these additional financial and operational measures more accurately reflect the significance of the Acquisition to the Filer from a commercial, business and financial perspective.

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.

"Lucie J. Roy"
Directrice principale du financement des societes

2.1.6 Fiera Capital Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – BAR – Exemption from the requirement to file a BAR under Part 8 of National Instrument 51-102 Continuous Disclosure Obligations – The acquisition is non-significant applying the asset and investment tests; applying the profit or loss test produces an anomalous result because the significance of the acquisition under this test is disproportionate to its significance on an objective basis in comparison to the results of the other significance tests and all other business, commercial and financial factors; the Filer has provided additional measures that demonstrate the non-significance of the Acquisition to the Filer and that are generally consistent with the results when applying the asset and investment tests.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 8.2(1) and Part 13.

TRANSLATION

July 30, 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
FIERA CAPITAL CORPORATION
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) granting relief pursuant to Part 13 of *Regulation 51-102 respecting Continuous Disclosure Obligations* (chapter V-1.1, r. 24) (**Regulation 51-102**) from the requirement in Part 8 of Regulation 51-102 to file a business acquisition report (a **BAR**) in connection with the Filer's acquisition of Integrated Asset Management Corp. (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 subsection 4.7(1) of *Regulation 11-102 respecting Passport System* (chapter V-1.1, r. 1) (**Regulation 11-102**) is intended to be relied upon in each of the provinces of Canada other than Ontario; 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* (chapter V-1.1, r. 3) and Regulation 11-102 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

1. The head office of the Filer is located at 1981 McGill College Avenue, Suite 1500, Montreal, Québec H3A 0H5.

2. The Filer is a reporting issuer in all of the provinces of Canada and the Filer is not in default of securities legislation in any of the provinces of Canada.

3. The Filer's Class A subordinate voting shares (**Filer Shares**) are listed for trading on the Toronto Stock Exchange (**TSX**) under the ticker symbol "FSZ".

4. On July 3, 2019, the Filer announced that it had completed the acquisition of all of the common shares of Integrated Asset Management Corp. (the **Acquired Business**), a reporting issuer in the provinces of Alberta, British Columbia, Manitoba, Ontario, Québec and Saskatchewan (the **Acquisition**). The Acquired Business is a Canadian-based alternative asset management company, based in Toronto, that had 2.3 billion dollars in assets under management as at September 30, 2018.

5. The total consideration paid by the Filer for the Acquisition was $74 million, representing total enterprise value of the Acquired Business of $64 million and $10 million of adjusted cash. The consideration paid by Filer to the shareholders of the Acquired Business consisted of $55.5 million in cash and approximately $18.5 million in Filer Shares.

6. Under Part 8 of Regulation 51-102, the Filer is required to file a BAR for any completed acquisition that is determined to be a significant

acquisition based on the acquisition satisfying any of the three significance tests set out in subsection 8.3(2) of Regulation 51-102.

7. For the purposes of completing its quantitative analysis of the "asset test", "investment test" and "profit or loss test", the Filer used the Acquired Business' financial statements and the Filer's financial statements which were prepared in accordance with International Financial Reporting Standards (IFRS).

8. The Acquisition is not a “significant acquisition” under the “asset test” as the consolidated assets of the Acquired Business as of September 30, 2018 represented approximately 2.0% of the consolidated assets of the Filer as of December 31, 2018.

9. The Acquisition is not a “significant acquisition” under the “investment test” as the total consideration paid for the Acquisition represents approximately 5.0% of the consolidated assets of the Filer as of December 31, 2018.

10. The Acquisition is a “significant acquisition” under the “profit or loss test” as the “specified profit or loss” (as calculated in accordance of paragraph 8.3(2)(c) of Regulation 51-102) of the Acquired Business exceeds 20% of the “specified profit or loss” of the Filer. As such, the Acquisition would represent a “significant acquisition” requiring the filing of a BAR under the “profit and loss test” of paragraph 8.3(2)(c) of Regulation 51-102.

11. The Acquisition would also represent a “significant acquisition” under the optional “profit or loss test” or the alternative applications available under subsections 8.3(3) and 8.3(4) of Regulation NI 51-102.

12. The application of the profit or loss test produces an anomalous result for the Filer because it exaggerates the significance of the Acquisition on an objective basis in comparison to the results of the asset and investment tests.

13. The Filer does not believe that that the Acquisition is significant from a commercial, business or financial perspective.

14. The Filer has provided the principal regulator with additional financial and operational measures, all of which are generally important metrics for the Filer and the industry in which it operates, which further demonstrate the insignificance of the Acquisition to the Filer. These additional financial and operational measures include total assets under management, total revenues and the market capitalization of the Acquired Business to that of the Filer and the results of those measures are generally consistent with the results of the "asset test" and the "investment test".

15. The Filer is of the view that the "asset test", the "investment test" and these additional financial and operational measures more accurately reflect the significance of the Acquisition to the Filer from a commercial, business and financial perspective.

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.

“Lucie J.Roy”
Directrice principale du financement des sociétés

2.2 Orders

2.2.1 Poplar Creek Resources Inc. – s. 144

Headnote

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

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as. am., ss. 127, 144.

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

AND

IN THE MATTER OF
POPLAR CREEK RESOURCES INC.

ORDER
(Section 144 of the Act)

WHEREAS the securities of Poplar Creek Resources Inc. (the **Applicant**) are subject to a temporary cease trade order dated May 9, 2014, issued by the Director of the Ontario Securities Commission (the **Commission**) pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, as extended by a further cease trade order dated May 21, 2014 issued by the Director, pursuant to paragraph 2 of subsection 127(1) of the Act (collectively, the **Ontario Cease Trade Order**), directing that all trading in the securities of the Applicant, whether direct or indirect, cease until the Ontario Cease Trade Order is revoked by the Director;

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

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated under the *Business Corporations Act* (Alberta) on October 18, 2006.

2. The Applicant's head office is located at 19 River Ridge Close, Calgary, Alberta, T3Z 3K9.

3. The Applicant is a reporting issuer under the securities legislation of the provinces of British Columbia, Alberta and Ontario (the **Reporting Jurisdictions**). The Applicant is not a reporting issuer in any other jurisdiction in Canada. The Applicant's principal regulator is the Alberta Securities Commission (the **ASC**).

4. The Applicant's authorized share capital consists of an unlimited number of common shares (the **Common Shares**) and an unlimited number of preferred shares issuable in series. As of the date hereof, there are 44,919,261 Common Shares issued and outstanding.

5. The Applicant has unsecured promissory notes (the **Promissory Notes**) in the aggregate principal amount of $262,000 issued and outstanding.

6. Other than the Common Shares and the Promissory Notes, the Applicant has no other securities outstanding.

7. The Common Shares, under the trading symbol "PCK", were delisted from trading on the NEX on September 30, 2015. Prior to the NEX, the Common Shares were listed on the TSX Venture Exchange. Other than the foregoing, the Common Shares have not been nor are they now listed on any other stock exchange. The Common Shares are not currently listed on any other exchange or market in Canada or elsewhere.

8. The Ontario Cease Trade Order was issued as a result of the Applicant's failure to file its annual audited financial statements, the related management's discussion and analysis (**MD&A**) and related certifications of annual filings as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filing* (**NI 52-109**) for the fiscal year ended December 31, 2013 (the **2013 Annual Filings**).

9. The Applicant is also subject to a cease trade order issued by the British Columbia Securities Commission (**BCSC**) dated May 8, 2014 (the **BC Cease Trade Order**), and a cease trade order issued by the ASC dated May 6, 2014 (the **Alberta Cease Trade Order**) (collectively with the Ontario Cease Trade Order, the **Cease Trade Orders**).

10. The Applicant has concurrently applied to the ASC for a full revocation of the Alberta Cease Trade Order and to the BCSC for a full revocation of the BC Cease Trade Order.

11. Subsequent to the issuance of the Ontario Cease Trade Order, the Applicant failed to file in the Reporting Jurisdictions the following continuous disclosure documents within the prescribed time-frame in accordance with the requirements of applicable securities laws:

(i) all audited annual financial statements, related MD&A and related NI 52-109 certificates for the financial years ended December 31, 2014 to December 31, 2017;

(ii) all unaudited interim financial statements, related MD&A and related NI 52-109 certificates for the interim periods ended March 31, 2014 through September 30, 2018; and

(iii) the statements of executive compensation for the financial years ended December 31, 2013 to December 31, 2017.

12. Since the issuance of the Ontario Cease Trade Order, the Applicant has filed in the Reporting Jurisdictions:

(i) the audited annual financial statements, related MD&A and related NI 52-109 certificates for each of the years ended December 31, 2017 and 2018;

(ii) the amended audited annual financial statements, related amended MD&A and related NI 52-109 certificates for each of the years ended December 31, 2017 and 2018;

(iii) the statements of executive compensation for the financial years ended December 31, 2017 and 2018;

(iv) the unaudited interim financial statements, related MD&A and related NI 52-109 certificates for the interim period ended March 31, 2019; and

(v) the unaudited interim financial statements, related MD&A and related NI 52-109 certificates for the interim period ended June 30, 2019.

13. The Applicant has not filed (i) audited annual financial statements, related MD&A, and related NI 52-109 certificates for the fiscal years ended December 31, 2013 to December 31, 2016; (ii) unaudited interim financial statements, related MD&A, and related NI 52-109 certificates for the interim periods ended March 31, 2014 to September 30, 2018; and (iii) statements of executive compensation for the years ended December 31, 2013 to December 31, 2016 (collectively, the **Outstanding Filings**).

14. Except for the Outstanding Filings, the Applicant is (i) up-to-date with all of its continuous disclosure obligations; (ii) not in default of any requirements under applicable securities legislation or the rules and regulations made pursuant thereto in any of the Reporting Jurisdictions, except for the existence of the Cease Trade Orders; and (iii) not in default of any of its obligations under the Cease Trade Orders.

15. The Applicant's issuer profile on the System for Electronic Document Analysis and Retrieval (**SEDAR**) and issuer profile supplement on the System for Electronic Disclosure by Insiders (**SEDI**) are current and accurate.

16. The Applicant has paid all outstanding activity, participation and late filing fees that are required to be paid to the Commission and has filed all forms associated with such payments.

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

18. Since the issuance of the Cease Trade Orders, there have not been any material changes in the business, operations or affairs of the Applicant that have not been disclosed to the public.

19. The Applicant has given the Commission a written undertaking that it will hold an annual meeting of its shareholders within three months after the date on which the Ontario Cease Trade Order is revoked.

20. Upon the issuance of this revocation order and concurrent revocation orders from the ASC and the BCSC, the Applicant will issue a news release announcing the revocation of the Cease Trade Orders and concurrently file the news release and a related material change report on SEDAR.

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

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

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

DATED at Toronto, Ontario on this 24th day of September, 2019.

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

2.2.2 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

September 25, 2019

ORDER

WHEREAS on September 25, 2019, the Ontario Securities Commission (the **Commission**) held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON HEARING the submissions of the representatives for Staff of the Commission (**Staff**) and 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. further attendances are scheduled for October 30, 2019 at 10:00 a.m., November 20, 2019 at 10:00 a.m., and December 13, 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;

2. the parties shall disclose any expert evidence according to the following schedule:

   a. The Respondents shall serve all parties with any expert report by no later than November 22, 2019;

   b. Staff shall serve all parties with any expert response report by no later than January 7, 2020; and

   c. The Respondents shall serve all parties with any expert reply report by no later than January 24, 2020;

3. Staff shall serve the Respondents with a hearing brief containing copies of the documents, and identifying the other things, that Staff intends to produce or enter as evidence at the merits hearing by January 7, 2020;

4. each Respondent shall serve every other party with a hearing brief containing copies of the documents, and identifying the other things, that the party intends to produce or enter as evidence at the merits hearing by January 21, 2020;

5. each party shall provide to the Registrar an E-hearing Checklist by January 17, 2020;

6. a final interlocutory attendance is scheduled for January 24, 2020 at 10:00 a.m., or such other date and time as provided by the Office of the Secretary and agreed to by the parties;

7. each party shall provide to the Registrar the electronic documents that the party intends to rely on or enter into evidence at the merits hearing, along with an index file, in accordance with the *Protocol for E-hearings*, by February 14, 2020; and

8. the merits hearing shall commence on February 20, 2020 at 10:00 a.m. and continue on February 21, 2020; September 1, 2, 3, 4, 8, 9, 10, 11, 2020; October 5, 7, 8, 9, 13, 14, 15, 16, 19, 21, 22, 23, 26, 27, 28, 29, 30, 2020; November 2, 4, 5, 6, 12, 13, 16, 18, 19, 20, 23, 25, 26, 27, 30, 2020; and December 1, 2, 9, 10, 11, 2020 at 10:00 a.m. on each day, or such other dates and times as provided by the Office of the Secretary and agreed to by the parties.

"M. Cecilia Williams"

2.2.3 Natural Bee Works Apiaries Inc. et al. – ss. 127(1), 127.1

FILE NO.: 2018-40

IN THE MATTER OF
NATURAL BEE WORKS APIARIES INC.,
RINALDO LANDUCCI and
TAWLIA CHICKALO

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

September 25, 2019

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

WHEREAS on August 6, 2019, the Ontario Securities Commission (the **Commission**) held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider the sanctions and costs that the Commission should impose on Rinaldo Landucci (**Mr. Landucci**), Tawlia Chickalo (**Ms. Chickalo**) and Natural Bee Works Apiaries Inc. (**NBW**) (collectively, the **Respondents**) as a result of the findings in the Commission's Reasons and Decision on the merits, issued on July 3, 2019;

ON READING the materials of Staff of the Commission (**Staff**) and the Respondents, and on hearing the submissions of Staff appearing in person, Ms. Chickalo appearing on her own behalf by video conference, and Mr. Landucci, appearing on his own behalf and on behalf of NBW by video conference;

IT IS ORDERED THAT:

1. pursuant to paragraph 2 of s. 127(1) of the Act, trading in any securities or derivatives by Mr. Landucci and Ms. Chickalo shall cease permanently, with the exception that they may each trade securities or derivatives:

   (a) in a registered retirement savings plan, registered retirement income fund, and/or tax-free savings account (as defined in the *Income Tax Act* (Canada)) at a registered dealer in each their own name of which he or she has the sole beneficial interest;

   (b) in respect of holdings in each such account described in paragraph 1(a), he or she does not own legally or beneficially more than five percent of the outstanding securities of the class or series of the class in question; and

   (c) that he or she carries out exclusively through a registered dealer (which dealer must be given a copy of this Order) and through accounts opened in his or her name only;

2. pursuant to paragraph 2 of s. 127(1) of the Act, trading in any securities or derivatives by NBW shall cease permanently;

3. pursuant to paragraph 2.1 of s. 127(1) of the Act, the acquisition of any securities by Mr. Landucci and Ms. Chickalo shall cease permanently, with the exception that they may each acquire securities:

   (a) in a registered retirement savings plan, registered retirement income fund, and/or tax-free savings account (as defined in the *Income Tax Act* (Canada)) at a registered dealer in each their own name of which he or she has the sole beneficial interest;

   (b) in respect of holdings in each such account described in paragraph 3(a), he or she does not own legally or beneficially more than five percent of the outstanding securities of the class or series of the class in question; and

   (c) that he or she carries out exclusively through a registered dealer (which dealer must be given a copy of this Order) and through accounts opened in his or her name only;

4. pursuant to paragraph 2.1 of s. 127(1) of the Act, the acquisition of any securities by NBW shall cease permanently;

5. pursuant to paragraph 3 of s. 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Mr. Landucci, Ms. Chickalo and NBW permanently;

6. pursuant to paragraph 6 of s. 127(1) of the Act, Mr. Landucci and Ms. Chickalo are reprimanded;

7. pursuant to paragraphs 7 and 8.1 of s. 127(1) of the Act, Mr. Landucci and Ms. Chickalo resign any positions that they hold as directors or officers of an issuer or registrant;

8. pursuant to paragraphs 8 and 8.2 of s. 127(1) of the Act, Mr. Landucci and Ms. Chickalo are prohibited permanently from becoming or acting as directors or officers of any issuer or registrant;

9. pursuant to paragraph 8.5 of s. 127(1) of the Act, Mr. Landucci, Ms. Chickalo and NBW are prohibited permanently from becoming or acting as a registrant or as a promoter;

10. pursuant to paragraph 9 of s. 127(1) of the Act, the Respondents shall pay an administrative penalty of $650,000 to the Commission, as follows:

(a) Mr. Landucci and NBW, jointly and severally, shall pay an administrative penalty of $500,000; and

(b) Ms. Chickalo shall pay an administrative penalty of $150,000;

11. pursuant to paragraph 10 of s. 127(1) of the Act, the Respondents shall disgorge $267,203 to the Commission, as follows:

(a) Mr. Landucci and NBW, jointly and severally, shall disgorge to the Commission $234,922; and

(b) Ms. Chickalo shall disgorge to the Commission $32,281;

12. each of the payments in paragraphs 10 and 11 is designated for allocation or use by the Commission in accordance with s. 3.4(2)(b) of the Act; and

13. pursuant to s. 127.1 of the Act, the Respondents shall pay costs of $267,806.59 to the Commission as follows:

(a) Mr. Landucci and NBW, jointly and severally, shall pay $187,464.61 for the costs of the investigation and hearing; and

(b) Ms. Chickalo shall pay $80,341.98 for the costs of the investigation and hearing.

“D. Grant Vingoe”

2.2.4 Avalon Works Corp. – s. 144

Headnote

Application by an issuer for a revocation of a cease trade order issued by the Commission – cease trade order issued because the issuer failed to file certain continuous disclosure materials required by Ontario securities law – defaults subsequently remedied by bringing continuous disclosure filings up-to-date – Issuer has provided an undertaking to the Commission that it will not complete (a) a restructuring transaction involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada, (b) a reverse takeover with a reverse takeover acquiror that has a direct or indirect, existing or proposed, material underlying business which is not located in Canada, or (c) a significant acquisition involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada, unless the issuer files a preliminary prospectus and a final prospectus with the Ontario Securities Commission and obtains receipts for the preliminary prospectus and the final prospectus from the Director under the Act.

Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am., s. 144.

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

AND

IN THE MATTER OF
AVALON WORKS CORP.

ORDER
(Section 144 of the Act)

WHEREAS the securities of Avalon Works Corp. (the **Filer**) are subject to a temporary cease trade order dated August 6, 2010 made by the Director under paragraph 2 of subsection 127(1) and subsection 127(5) of the Act and a further cease trade order dated August 18, 2010 made by the Director under paragraph 2 of subsection 127(1) of the Act (together, the **OSC CTO**) directing that trading in the securities of the Filer cease until the OSC CTO is revoked by the Director;

AND WHEREAS the OSC CTO was made on the basis that the Filer was in default of certain filing requirements under Ontario securities law as described in the OSC CTO;

AND WHEREAS the Filer has applied to the Ontario Securities Commission (the **Commission**) pursuant to section 144 of the Act for a full revocation of the OSC CTO (the **Application**);

AND UPON the Filer having represented to the Commission that:

1. The Filer was incorporated under the *Canada Business Corporations Act* on April 6, 2000.

2. The head office of the Filer is located at 237 Argyle Avenue, Ottawa, Ontario, K2P 1B8.

3. The Filer's core competency was one-to-one information technology (**IT**) consulting. Its IT consulting revenues included fees from a long term, electronic service delivery contract and a variety of smaller assignments. The Filer terminated its operations in 2007.

4. The Filer is a reporting issuer under the securities legislation of the provinces of Ontario, British Columbia, and Alberta. The Filer is not a reporting issuer in any other jurisdiction in Canada.

5. The Filer's authorized capital consists of an unlimited number of common shares (the **Common Shares**), of which 429,742,200 Common Shares are issued and outstanding. Other than the Common Shares, the Filer has no securities (including debt securities) issued and outstanding.

6. The Filer's Common Shares were listed on the TSX Venture Exchange (**TSXV**) under the symbol "AWB". However, the TSXV delisted the Filer's Common Shares for failure to maintain the TSXV's minimum listing requirements. The Filer's Common Shares are not currently listed, quoted or traded on any other exchange, marketplace or other facility in Canada or elsewhere.

7. The OSC CTO was issued as a result of the Filer's failure to file interim financial statements for the nine-month period ended May 31, 2010 and accompanying management's discussion and analysis (**MD&A**) within the timeframe as required under National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) and related certifications as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**) (collectively, the **Unfiled Documents**).

8. The Unfiled Documents were not filed in a timely manner as a result of financial difficulties. Subsequent to the failure to file the Unfiled Documents, the Filer also failed to file the following documents as required by Ontario securities law:

   (a) all audited annual financial statements, together with accompanying MD&As (including statements of executive compensation), as required under NI 51-102 and NI 52-109 certificates for the financial years ended August 31, 2010 to August 31, 2018; and

   (b) all unaudited interim financial statements, together with accompanying MD&As, as required under NI 51-102 and NI 52-109 certificates for the interim periods ended May 31, 2010 to May 31, 2019

   (together with the Unfiled Documents, the **Unfiled Continuous Disclosure**).

9. The Filer is also subject to a cease trade order (the **BCSC CTO**) of the British Columbia Securities Commission (**BCSC**) dated August 9, 2010 issued in response to the Filer's failure to file its Unfiled Documents.

10. The Filer is also subject to a cease trade order (the **ASC CTO**) of the Alberta Securities Commission (**ASC**) dated November 22, 2010 issued in response to the Filer's failure to file its Unfiled Documents (the ASC CTO, the BCSC CTO together with the OSC CTO, the **CTOs**).

11. The Filer has concurrently applied to the BCSC and the ASC for orders for revocation of the ASC CTO and the BCSC CTO, respectively.

12. Since the issuance of the OSC CTO, the Filer has filed the following on the System for Electronic Document Analysis and Retrieval (**SEDAR**):

   (a) audited annual financial statements, accompanying MD&As and NI 52-109 certificates for the financial years ended August 31, 2017 and August 31, 2018;

   (b) unaudited interim financial statements, accompanying MD&As and NI 52-109 certificates for the periods ended November 30, 2017, February 28, 2018, May 31, 2018, November 30, 2018, February 28, 2019 and May 31, 2019;

   (c) Form 51-102F6V *Statement of Executive Compensation* (Venture Issuers) for the years ended August 31, 2018 and 2017; and

   (d) audit committee and corporate governance disclosure for the year ended August 31, 2018.

13. The Filer has not filed the following:

   (a) the audited financial statements, together with the corresponding MD&As, (including statements of executive compensation), as required under NI 51-102 and NI 52-109 certificates for the financial years ended August 31, 2010 to August 31, 2016; and

   (b) the unaudited interim financial statements, together with the corresponding MD&As, as required under NI 51-102 and NI 52-109 certificates for the periods ended May 31, 2010 to May 31, 2017

   (collectively, the **Outstanding Filings**)

14. The Filer has requested that the Commission exercise its discretion in accordance with sections 6 and 7 of National Policy 12-202 *Revocation of a Compliance-Related Cease Trade Order* (**NP 12-202**) and elect not to require the Filer to file the Outstanding Filings.

15. Except for the failure to file the Outstanding Filings, the Filer is (i) up-to-date with all of its other continuous disclosure obligations; (ii) is not in default of any of its obligations under the OSC CTO, the ASC CTO and the BCSC CTO; and (iii) is not in default of any requirements under the Act or the rules and regulations made pursuant thereto.

16. Since the issuance of the CTOs, there have been no material changes in the business, operations or affairs of the Filer which have not been disclosed by the Filer via news release and/or material change report and filed on SEDAR.

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

18. The Filer has paid all outstanding activity, participation and late filing fees that are required to be paid to the Commission and has filed all forms associated with such payments.

19. The Filer's SEDAR and System for Electronic Disclosure by Insiders profiles are up-to-date.

20. Other than the OSC CTO, the ASC CTO and the BCSC CTO, the Filer is not in default of its continuous disclosure obligations under Ontario / Alberta / British Columbia securities laws.

21. The Filer has provided the Commission with a written undertaking (the **Undertaking**) that it will:

    (a) hold an annual meeting of shareholders within three months after the date on which the OSC CTO is revoked; and

    (b) not complete:

        (i) a restructuring transaction involving, directly or indirectly, an existing, or proposed, material underlying business which is not located in Canada,

        (ii) a reverse takeover with a reverse takeover acquirer that has a direct or indirect, existing or proposed, material underlying business which is not located in Canada, or

        (iii) a significant acquisition involving, directly or indirectly, an existing or proposed, material underlying business which is not located in Canada,

    unless

    a. the Filer files a preliminary prospectus and a final prospectus with the Commission and obtains receipts for the preliminary and final prospectus from the Director under the Act,

    b. the Filer files or delivers with the preliminary prospectus and the final prospectus the documents required by Part 9 of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) including a completed personal information form and authorization in the form set out in Appendix A of NI 41-101 for each current and incoming director, executive officer and promoter of the Filer, and

    c. the preliminary prospectus and final prospectus contain the information required by applicable securities legislation, including the information required for a probable restructuring transaction, reverse takeover or significant acquisition (as applicable).

22. Upon the issuance of this revocation order, the Filer will issue a news release and file a material change report on SEDAR to announce the revocation of the CTOs, describe the Undertaking and outline the Filer's future plans.

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

AND UPON the Director being satisfied that it would not be prejudicial to the public interest to revoke the OSC CTO;

IT IS ORDERED pursuant to section 144 of the Act that the OSC CTO is revoked.

DATED at Toronto, Ontario on this 24th day of September 2019.

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

2.2.5 Critical Control Energy Services Corp.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – issuer deemed to be no longer a reporting issuer under securities legislation.

Applicable Legislative Provisions

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

Citation: *Re Critical Control Energy Services Corp.*, 2019 ABASC 143

September 17, 2019

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

AND

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

AND

IN THE MATTER OF
CRITICAL CONTROL ENERGY SERVICES CORP.
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

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

Representations

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

1. The Filer is incorporated under the *Business Corporations Act* (Alberta) (the **ABCA**) and has its head and registered office in Calgary, Alberta.

2. The Filer is a reporting issuer in British Columbia, Alberta and Ontario.

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

4. On February 12, 2019, the Filer filed an application with the Toronto Stock Exchange (the **TSX**) to voluntarily delist its common shares (the **Common Shares**) and Series A preferred shares (the Old Preferred Shares) from trading on the TSX (the **Delisting**). Management of the Filer (**Management**) deemed it in the best interests of the Filer to make the Delisting application, and such application was granted on February 28, 2019.

5. The Filer completed a plan of arrangement transaction under section 193 of the ABCA effective June 5, 2019 (the **Arrangement**) to, among other things, consolidate its issued and outstanding Common Shares and Old Preferred Shares, and reduce the number of securityholders holding such shares. On May 27, 2019, the Arrangement was approved at an annual general and special meeting of shareholders. Of the shareholders who cast votes: (i) 99.67% of the holders of Common Shares (**Common Shareho**lders) and 99.82% of the holders of Old Preferred Shares (**Preferred Shareholders**) voted in favour of the Arrangement; and (ii) 99.52% of Common Shareholders and 99.81% of Preferred Shareholders excluding the votes held or controlled by "interested parties" as defined under Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* voted in favour of the Arrangement. The Arrangement was approved by the Alberta Court of Queen's Bench on June 4, 2019.

6. In the management information circular prepared in connection with the approval of the Arrangement, the Filer indicated to its shareholders that it would apply to the relevant Canadian securities regulatory authorities for an order declaring the Filer to no longer be a reporting issuer in each of its reporting jurisdictions.

7. Immediately prior to the Arrangement, the Filer had 46,136,587 Common Shares issued and outstanding and 4,298,490 Old Preferred Shares issued and outstanding.

8. Pursuant to the Arrangement, 11,696,409 Common Shares and 855,098 Old Preferred Shares were redeemed by the Filer for a price of $0.08 per Common Share and $0.42 per Old Preferred Share, respectively. Common Shares that were not redeemed were consolidated on the basis of one (1) post-Arrangement Common Share for every five and one quarter (5.25) pre-Arrangement Common Shares. Old Preferred Shares that were not redeemed were either:

   (a) converted to Common Shares on the basis of two (2) post-Arrangement Common Shares for every one (1) Old Preferred Share; or

   (b) exchanged for a newly created class of Series B preferred shares (**New Preferred Shares**) on the basis of one (1) New Preferred Share for every one (1) Old Preferred Share.

9. Under the Arrangement, 930,488 Old Preferred Shares were converted to Common Shares and 363,659 Old Preferred Shares were converted to 363,659 New Preferred Shares.

10. Following the Arrangement, the Filer has 12,366,049 Common Shares and 363,659 New Preferred Shares issued and outstanding.

11. The Filer has no securities outstanding other than the Common Shares and New Preferred Shares.

12. Management has determined that there are a maximum of 40 beneficial common securityholders and a maximum of 10 beneficial preferred securityholders inclusive of one securityholder holding both Common Shares and New Preferred Shares, for an aggregate maximum of 49 beneficial securityholders of the Filer worldwide who hold an aggregate of 12,366,049 Common Shares and 363,659 New Preferred Shares.

13. Of the above, Management has advised that:

   (a) in the province of Alberta there are a maximum of 23 beneficial common securityholders and a maximum of five beneficial preferred securityholders, inclusive of one securityholder holding both Common Shares and New Preferred Shares, for an aggregate maximum of 27 beneficial securityholders who hold 7,588,391 Common Shares and 23,091 New Preferred Shares, representing 61.36% of the total issued and outstanding Common Shares of the Filer and 6.35% of the total issued and outstanding New Preferred Shares of the Filer, respectively;

   (b) in the province of Saskatchewan there is one beneficial common securityholder and no beneficial preferred securityholders for an aggregate of one beneficial securityholder who holds 5,000 Common Shares, representing 0.04% of the total issued and outstanding Common Shares of the Filer;

(c) in the province of Ontario there are seven beneficial common securityholders and no beneficial preferred securityholders for an aggregate of seven beneficial securityholders who holds 4,692,182 Common Shares, representing 37.94% of the total issued and outstanding Common Shares of the Filer;

(d) in the province of Quebec there are four beneficial common securityholders and one beneficial preferred securityholder for an aggregate of five beneficial securityholders who hold 39,782 Common Shares and 2,751 New Preferred Shares, representing 0.32% of the total issued and outstanding Common Shares of the Filer and 0.76% of the total issued and outstanding New Preferred Shares of the Filer, respectively;

(e) in the province of British Columbia there are two beneficial common securityholders and one beneficial preferred securityholders for an aggregate of three beneficial securityholders who hold 10,444 Common Shares and 12,000 New Preferred Shares, representing 0.08% of the total issued and outstanding Common Shares of the Filer and 3.3% of the total issued and outstanding New Preferred Shares of the Filer, respectively; and

(f) in the United States there are three beneficial common securityholders and three beneficial preferred securityholders for an aggregate of six beneficial securityholders who hold 30,250 Common Shares and 325,817 New Preferred Shares, representing 0.24% of the total issued and outstanding Common Shares of the Filer and 89.59% of the total issued and outstanding New Preferred Shares of the Filer, respectively.

14. Management has determined that there are fewer than 15 beneficial securityholders in each jurisdiction other than Alberta, where there are a maximum of 27 beneficial securityholders (the **Alberta Holders**).

15. Management has determined in Alberta there are a maximum of 23 beneficial common securityholders and a maximum of five beneficial preferred securityholders, inclusive of one securityholder holding both Common Shares and New Preferred Shares, for an aggregate maximum of 27 beneficial securityholders who hold 7,588,391 Common Shares and 23,091 New Preferred Shares. Of the Alberta Holders, Management is unable to identify the beneficial holder of two accounts and, therefore, has assumed that each account is a separate beneficial holder. Of the above:

(a) 14 beneficial common securityholders hold 7,481,097 Common Shares and one beneficial preferred securityholder holds 20,000 New Preferred Shares; and

(b) nine beneficial common securityholders hold 107,294 Common Shares and four beneficial preferred securityholders hold 3,091 New Preferred Shares, inclusive of one securityholder holding both Common Shares and New Preferred Shares, representing 0.87% of the total issued and outstanding Common Shares of the Filer and 0.85% of the total issued and outstanding New Preferred Shares of the Filer, respectively.

16. In support of the representations set forth herein concerning the number of securityholders of the Filer, Management has undertaken the following investigations and analysis:

(a) a thorough and diligent examination of the Filer's securityholders' register;

(b) a thorough and diligent examination of the records of the Filer prepared by Computershare Trust Company of Canada;

(c) a thorough and diligent examination of the securityholders' accounts and non-objecting beneficial owner list maintained for the Filer by Canadian Depository for Securities Limited; and

(d) a thorough and diligent examination of the geographical analysis report prepared by Broadridge Financial Solutions, Inc.

17. The Filer is unable to rely on the simplified procedure set out in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* as it has more than 15 securityholders in Alberta.

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

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

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

21. The Filer has no current intention to seek public financing by way of an offering of its securities in Canada.

22. The Filer is not in default of the Legislation in any jurisdiction.

23. The Filer, upon grant of the Order Sought, will no longer be a reporting issuer in any jurisdiction of Canada.

Order

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

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

"Timothy Robson"
Manager, Legal
Corporate Finance
Alberta Securities Commission

2.2.6 DMG Blockchain Solutions Inc.

Headnote

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

Applicable Legislative Provisions

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

Citation: 2019 BCSECCOM 285

REVOCATION ORDER

DMG BLOCKCHAIN SOLUTIONS INC.

UNDER THE SECURITIES LEGISLATION OF BRITISH COLUMBIA AND ONTARIO
(Legislation)

Background

¶ 1 DMG Blockchain Solutions Inc. (the Issuer) is subject to a failure-to-file cease trade order (the FFCTO) issued by the regulator in each of British Columbia (the Principal Regulator) and Ontario (each a Decision Maker) respectively on February 1, 2019.

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

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

Interpretation

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

Representations

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

(a) The Issuer was incorporated under the Business Corporations Act (British Columbia) on April 18, 2011.

(b) On February 9, 2018, the Issuer previously known as Aim Explorations Ltd. closed its qualifying transaction in a reverse take over transaction where all of the issued and outstanding shares, warrants and options of the Issuer were exchanged for shares of DMG Blockchain Solutions Inc. Following the reverse take over transaction, the Issuer was renamed DMG Blockchain Solutions Inc.

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

(d) The Issuer's authorized capital consists of an unlimited number of common shares, of which 93,448, 981 common shares are issued and outstanding on a non-diluted basis.

(e) The common shares are listed on the TSX Venture Exchange but were suspended from trading on January 29, 2019. The common shares of the Issuer remain suspended as of the date hereof. The common voting shares are not listed or quoted on any other exchange or market in Canada or elsewhere.

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

(i) annual audited financial statements for the year ended September 30, 2018;

(ii) annual management's discussion and analysis for the year ended September 30, 2018; and

(iii) certification of the annual filings for the year ended September 30, 2018

(the Financial Statements).

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

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

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

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

Order

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

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

¶ 8 August 28, 2019

"Michael L. Moretto, CPA, CA"
Chief of Corporate Disclosure
Corporate Finance

TO:

DMG Blockchain Solutions Inc.
c/o Nick Ayling Law Corporation
605 - 815 Hornby Street
Vancouver BC V6Z 2E6
Email: nick@afgllp.com

Stock Transfer Department
Computershare Investor Services Inc.
510 Burrard Street 3rd Floor
Vancouver BC V6C 3B9
Fax No.: (604) 661-9401

2.2.7 Halio Energy Inc.

Headnote

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

Applicable Legislative Provisions

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

Citation: 2019 BCSECCOM 311

REVOCATION ORDER

HALIO ENERGY INC.

UNDER THE SECURITIES LEGISLATION OF BRITISH COLUMBIA AND ONTARIO
(the Legislation)

Background

¶ 1 Halio Energy Inc. (the Issuer) is subject to a failure-to-file cease trade order (the FFCTO) issued by the regulator of the British Columbia Securities Commission (the Principal Regulator) and Ontario (each a Decision Maker) respectively on December 4, 2017.

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

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

Interpretation

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

Order

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

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

¶ 7 September 13, 2019

"Allan Lim, CPA, CA"
Manager
Corporate Finance

TO:

Halio Energy Inc.
2300 - 1177 West Hastings Street
Vancouver BC V6E 2K3
Email: c.ross@halioenergy.com

Stock Transfer Department
Computershare Trust Company of Canada
3rd Floor, 510 Burrard Street
Vancouver BC V6C 3B9
Fax No.: (604) 661-9401

2.2.8 Canada Cannabis Corporation et al. – ss. 127, 127.1

FILE NO.: 2019-34

IN THE MATTER OF
CANADA CANNABIS CORPORATION,
CANADIAN CANNABIS CORPORATION,
BENJAMIN WARD,
SILVIO SERRANO, and
PETER STRANG

Raymond Kindiak, Commissioner and Chair of the Panel

September 30, 2019

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

WHEREAS on September 30, 2019, the Ontario Securities Commission held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario, with respect to the first attendance in this proceeding;

ON HEARING the submissions of the representatives for Staff of the Commission (**Staff**) and for each of the respondents;

IT IS ORDERED THAT:

1. By no later than October 30, 2019, Staff shall disclose to each of the respondents non-privileged relevant documents and things in the possession or control of Staff (**Staff's Disclosure**);

2. By no later than January 23, 2020, the respondents shall serve and file a motion, if any, regarding Staff's Disclosure or seeking disclosure of additional documents;

3. By no later than January 23, 2020, Staff shall:

   a. file and serve a witness list on each respondent,

   b. serve a summary of each witness's anticipated evidence on each respondent, and

   c. indicate any intention to call an expert witness, including providing the expert's name and the issues on which the expert will give evidence; and

4. A further attendance in this proceeding is scheduled for February 6, 2020 at 10:00 a.m. or on such other date and time as may be agreed by the parties and set by the Office of the Secretary.

"Raymond Kindiak"

2.2.9 eCobalt Solutions Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for an order that an issuer is not a reporting issuer under applicable securities laws; following an arrangement, all of the issuer's common shares were acquired by another company; the outstanding securities of the issuer, 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; issuer failed to file interim financial statements and is in default of its obligations as a reporting issuer; no securities of the issuer are traded over any exchange or marketplace.

Applicable Legislative Provisions

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

September 27, 2019

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

AND

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

and

IN THE MATTER OF
eCOBALT SOLUTIONS INC.
(the Filer)

Order

Background

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

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

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

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

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

Interpretation

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

Representations

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

1. the Filer (formerly known as Formation Capital Corp. and Formation Metals Inc.) was incorporated under the *Company Act* (British Columbia) on June 13, 1988 and transitioned under the *Business Corporations Act* (British Columbia) (the BCBCA) on August 10, 2004; the name of the Filer was changed to Formation Metals Inc. on November 9, 2009 and to eCobalt Solutions Inc. on August 2, 2016;

2. the Filer's head office is located in Vancouver, British Columbia;

3. the common shares in the capital of the Filer (the eCobalt Shares) traded on the Toronto Stock Exchange (the TSX), on the OTCQX Market (the OTCQX) and on the Frankfurt Stock Exchange; in addition, 11,500,000 eCobalt common share purchase warrants (the eCobalt Listed Warrants) traded on the TSX; no other securities of the Filer were listed on any exchange;

4. Jervois Mining Limited (Jervois) is a corporation existing under the laws of Australia and is extra-provincially registered in British Columbia; the authorized share capital of Jervois consists of an unlimited number of ordinary shares (the Jervois Shares); the Jervois Shares are listed on the Australian Stock Exchange and the TSX Venture Exchange under the symbol "JRV";

5. effective at 12:01 a.m. (Pacific Daylight Time) on July 24, 2019 (the Effective Time), Jervois acquired all of the issued and outstanding eCobalt Shares by way of a statutory plan of arrangement under the BCBCA (the Arrangement);

6. on July 26, 2019, the eCobalt Shares were delisted from the TSX, the OTCQX and the Frankfurt Stock Exchange, and the eCobalt Listed Warrants were delisted from the TSX;

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

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

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

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

11. the Filer is not in default of securities legislation in any jurisdiction, other than the obligation to file by August 14, 2019 its interim financial statements and related management's discussion and analysis for the interim period ended June 30, 2019 as required under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certification of interim filings as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (collectively, the Filings); and

12. the Filer is not eligible to use the simplified procedure under National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* as it is in default for failure to file the Filings.

Order

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

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

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

2.2.10 Aguia Resources Limited – s. 1(11)(b)

Headnote

Subsection 1(11)(b) – Order that the issuer is a reporting issuer for the purposes of Ontario securities law – Issuer is already a reporting issuer in Alberta and British Columbia – Issuer's securities listed for trading on the TSX Venture Exchange – Continuous disclosure requirements in Alberta and British Columbia are substantially the same as those in Ontario – Issuer has a significant connection to Ontario.

Statues Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(11)(b).

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

AND

IN THE MATTER OF
AGUIA RESOURCES LIMITED

ORDER
(clause 1(11)(b))

UPON the application of Aguia Resources Limited (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to clause 1(11)(b) of the Act that the Applicant is a reporting issuer for the purposes of Ontario securities law;

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

AND UPON the Applicant representing to the Commission as follows:

1. The Applicant was incorporated under the *Australian Corporations Act 2001* (Cth) (the **Corporations Act**) as Newport Mining Limited on October 31, 2007. On October 6, 2010, Newport Mining Limited changed its name to Aguia Resources Limited.

2. The head and registered office of the Applicant is located at Level 5, 126 Phillip Street, Sydney, NSW, Australia, 2000.

3. The ordinary shares of the Applicant (the **Ordinary Shares**) were first listed on the Australian Securities Exchange (**ASX**) on February 13, 2008. The Ordinary Shares are the Company's only securities listed on the ASX.

4. The Ordinary Shares began trading on the TSX Venture Exchange (the **TSXV**) on July 6, 2017 under the symbol "AGRL." The Ordinary Shares are not traded on any other stock exchange or trading or quotation system.

5. Australian companies do not have authorized share capital. There is generally no limit in the Corporations Act or the corporate constitution of the Applicant on the power of the Board to issue Ordinary Shares. However, subject to certain exceptions, the ASX Listing Rules (the rules of the ASX which govern the conduct and disclosure of companies listed thereon and which are amended from time to time) prohibit an ASX-listed company from issuing shares or options representing more than 15% of the issued capital in any 12-month period without shareholder approval. The ASX Listing Rules also permit an ASX-listed company to issue up to an additional 10% of its issued capital within the following 12 months, if approved by the shareholders at an annual general meeting. The Ordinary Shares have no nominal or par value, they entitle their holder to vote at general meetings, and are recorded in the accounts of the Applicant at their issue price.

6. As of June 24, 2019, the Applicant had issued and outstanding the following securities:

   (i) 164,255,158 Ordinary Shares,

   (ii) unlisted options issued under the Applicant's employee share ownership plan to acquire an aggregate of 9,160,000 Ordinary Shares at exercise prices ranging from A$0.14 to A$0.64;

   (iii) unlisted warrants to acquire an aggregate of 13,180,418 Ordinary Shares at a price of C$0.65 each expiring June 30, 2020; and

   (iv) unlisted warrants to acquire an aggregate of 7,142,900 Ordinary Shares at a price of C$0.65 each expiring April 12, 2021.

7. As a consequence of listing its shares on the TSXV, the Applicant became a reporting issuer under the *Securities Act* (Alberta) (the **Alberta Act**) and under the *Securities Act* (British Columbia) (the **BC Act**) on July 6, 2017.

8. The Applicant is not a reporting issuer or the equivalent in any jurisdiction in Canada other than Alberta or British Columbia.

9. The Applicant is not on the list of defaulting reporting issuers maintained pursuant to the Alberta Act or the BC Act and is not in default of any of its obligations under the Alberta Act or the BC Act or the rules and regulations made thereunder. There is no Australian equivalent to the lists of defaulting reporting issuers maintained pursuant to the BC Act and the Alberta Act.

10. The continuous disclosure materials filed by the Applicant under the securities legislation in Alberta

and British Columbia are available on the System for Electronic Document Analysis and Retrieval.

11. The continuous disclosure materials filed by the Applicant under the requirements of the Alberta Act and the BC Act are substantially the same as the continuous disclosure requirements under the Act.

12. The Applicant is also subject to the continuous disclosure reporting requirements of the ASX.

13. The Applicant is not in default of any of the rules, regulations or policies of the TSXV.

14. The Applicant does not intend to list or post the Ordinary Shares for trading on any other stock exchange or marketplace in Canada, other than the TSXV.

15. The TSXV requires all of its listed issuers, which are not otherwise reporting issuers in Ontario, to assess whether they have a significant connection with Ontario, as defined in Policy 1.1 of the TSXV Corporate Finance Manual, and, upon first becoming aware that it has a significant connection to Ontario, to promptly make a bona fide application to the Commission to be designated a reporting issuer in Ontario.

16. The Applicant has determined that it has a significant connection to Ontario in accordance with the policies of the TSXV as several of the Applicant's officers, including the Managing Director, Chief Financial Officer and Chief Commercial Officer, are residents of Ontario.

17. The Applicant's principal regulator is the British Columbia Securities Commission. The Commission will be the principal regulator of the Applicant once it has obtained reporting issuer status in Ontario. Upon granting of this Order, the Applicant will amend its SEDAR profile to indicate that the Commission is its principal regulator.

18. On March 28, 2019 a group of shareholders in Australia filed a notice under the Corporations Act indicating that they were acting together to requisition two shareholders' meetings for the purpose of removing certain directors of the Applicant and appointing new directors. The maximum shareholding of these persons was 13.12% of the outstanding Ordinary Shares. The requisitioning shareholders were successful in that the directors that they wanted to remove resigned from office and the new directors nominated by them were elected. On June 17, 2019, these shareholders filed a further notice under the Corporations Act indicating that they were no longer acting together.

19. The Applicant does not have a shareholder that holds sufficient securities of the Applicant to affect materially the control of the Applicant.

20. Neither the Applicant nor any of its officers or directors has:

    a) been subject to any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;

    b) entered into a settlement agreement with a Canadian securities regulatory authority; or

    c) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.

21. Neither the Applicant nor any of its officers or directors is or has been subject to:

    a) any known ongoing or concluded investigation by a Canadian securities regulatory authority, or a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or

    b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver manager or trustee, within the preceding 10 years.

22. None of the officers or directors of the Applicant, is or has been at the time of such event an officer or director of any other issuer which is or has been subject to:

    a) any cease trade or similar orders, or orders that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days within the preceding 10 years; or

    b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver manager or trustee, within the preceding 10 years.

AND UPON the Commission being satisfied that granting this Order would not be prejudicial to the public interest;

IT IS HEREBY ORDERED pursuant to clause 1(11)(b) of the Act, that the Applicant is a reporting issuer for the purposes of Ontario securities law.

DATED at Toronto, Ontario on this 4th day of July, 2019.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

2.2.11 The Mosport Park Entertainment Corporation – s. 144

Headnote

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

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127 and 144.

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

AND

IN THE MATTER OF
THE MOSPORT PARK ENTERTAINMENT CORPORATION

ORDER
(section 144 of the Act)

WHEREAS the securities of The Mosport Park Entertainment Corporation (the **Applicant**) are subject to a cease trade order dated April 14, 1997 issued by the Director of the Ontario Securities Commission (the **Commission**) pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act as extended by a further cease trade order issued by the Director on April 30, 1997 pursuant to subsection 127(8) of the Act (the **Ontario Cease Trade Order**) directing that all trading in securities of the Applicant, whether direct or indirect, shall cease until further order by the Director;

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

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated under the laws of the Province of Quebec by Letters Patent dated July 30, 1971 under the name "The Wellington Investment Corporation". By Supplementary Letters Patent (Quebec) dated May 31, 1973 the name was changed to "Mosport Park Corporation"/"Corporation Parc Mosport". The Applicant was continued pursuant to Part 1 A of

the *Companies Act* (Quebec) on August 19, 1994 and its name was changed to "Corporation D'Amusement Parc Mosport"/"The Mosport Park Entertainment Corporation". The Articles of the Applicant were also amended on August 19, 1994 to consolidate the issued and outstanding shares. The Applicant's registration with Registraire des Entreprises du Québec was cancelled involuntarily on May 8, 1998 but the cancellation was revoked on August 29, 2018.

2. The Applicant's registered head office is located at 300-4060 Sainte-Catherine Street West, Westmount, Quebec H3Z 2Z3.

3. The Applicant's principal regulator is the Authorité des Marchés Financier in the Province of Quebec. The Applicant is a reporting issuer in Quebec, Ontario, British Columbia, and Manitoba and is not a reporting issuer in any other jurisdiction in Canada.

4. The Applicant's authorized capital consists of an unlimited number of common shares (the **Common Shares**), of which approximately 8,499,181 Common Shares are issued and outstanding.

5. The Applicant has no other securities, including debt securities, issued and outstanding.

6. The Common shares of the Applicant were listed for trading on the Vancouver Stock Exchange on November 6, 1978 under the symbol MPM. The shares were delisted on March 1, 1999. The Common Shares are not currently listed, quoted, or traded on any exchange, marketplace or other facility in Canada or elsewhere.

7. The Applicant is also subject to cease trade orders issued by the Authorité des Marchés Financier dated April 15, 1997, the British Columbia Securities Commission dated April 22, 1997 and the Manitoba Securities Commission dated March 10, 1998 (together with the Ontario Cease Trade Order, the **Cease Trade Orders**)

8. The Applicant has concurrently applied for full revocation of the cease trade orders by the Authorité des Marchés Financier, the British Columbia Securities Commission and the Manitoba Securities Commission.

9. The Ontario Cease Trade Order was issued as a result of the Applicant's failure to file its audited annual financial statements for the year ended September 30, 1996 and interim financial statements for the three month period ended December 31, 1996.

10. The Applicant subsequently failed to file other continuous disclosure documents with the Commission within the prescribed timeframe in accordance with the requirements of Ontario securities law, including the following:

    i) all audited financial statements for the years ended September 30, 1997 to September 30, 2004, and all audited financial statements, accompanying MD&A and related certificates as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109 Certificates**) for the years ended September 30, 2005 to September 30, 2018; and

    ii) all unaudited interim financial statements for the interim periods ended March 31, 1997 to December 31, 2003, and all unaudited interim financial statements, accompanying MD&A and NI 52-109 Certificates for the interim periods ended March 31, 2004 to December 31, 2018.

11. Since the issuance of the Cease Trade Orders, the Applicant has filed the following continuous disclosure documents with the Commission:

    i) audited financial statements, accompanying MD&A (including statements of executive compensation) and NI 52-109 Certificates for the years ended September 30, 2017 and September 30, 2018; and

    ii) unaudited interim financial statements, accompanying MD&A and NI 52-109 Certificates for the interim periods ended March 31, 2018, June 30, 2018, December 31, 2018, March 31, 2019, and June 30, 2019.

12. The Applicant has not filed the following:

    i) audited financial statements for the years ended September 30, 1996 to September 30, 2004, and audited financial statements, accompanying MD&A and related NI 52-109 certificates for the years ended September 30, 2005 to September 30, 2016;

    ii) unaudited interim financial statements for the interim periods ended December 31, 1996 to December 31, 2003, and unaudited interim financial statements, accompanying MD&A and NI 52-109 Certificates for the interim periods ended March 31, 2004 to December 31, 2017; and

    iii) statements of executive compensation for the years ended September 30, 1996 to September 30, 2016.

(collectively, the **Outstanding Filings**).

13. The Applicant has filed with the Commission all continuous disclosure that it is required to file under Ontario securities law, except for the Outstanding Filings and any other continuous disclosure that the Commission elected not to require as contemplated under sections 6 and 7 of National Policy 12-202 *Revocation of a Compliance-related Cease Trade Order*.

14. Except for the failure to file the Outstanding Filings, the Applicant (i) is up-to-date with all of its other continuous disclosure obligations; (ii) is not in default of any of its obligations under the Cease Trade Orders; and (iii) is not in default of any requirements under the Act or the rules and regulations made pursuant thereto.

15. As of the date hereof, the Applicant has paid all outstanding activity, participation and late filing fees that are required to be paid to the Commission and has filed all forms associated with such payments.

16. As of the date hereof, the Applicant's profiles on the System for Electronic Document Analysis and Retrieval (**SEDAR**) and the System for Electronic Disclosure by Insiders are current and accurate.

17. Since the issuance of the Cease Trade Orders, there have been no material changes in the business, operations or affairs of the Applicant which have not been disclosed by news release and/or material change report and filed on SEDAR.

18. Other than the Cease Trade Orders, the Applicant has not previously been subject to a cease trade order issued by any securities regulatory authority.

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

20. The Applicant held an annual meeting of shareholders on July 22, 2019.

21. Upon the revocation of the Ontario Cease Trade Order, the Applicant will issue a news release and concurrently file a material change report on SEDAR announcing the revocation of the Ontario Cease Trade Order and outlining the Applicant's future plans.

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

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

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

DATED at Toronto this 4th day of September, 2019.

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

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Natural Bee Works Apiaries Inc. et al. – ss. 127, 127.1

Citation: *Natural Bee Works Apiaries Inc (Re)*, 2019 ONSEC 31
Date: 2019-09-25
File No. 2018-40

IN THE MATTER OF
NATURAL BEE WORKS APIARIES INC.,
RINALDO LANDUCCI and
TAWLIA CHICKALO

REASONS AND DECISION ON SANCTIONS AND COSTS
(Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Hearing:	August 6, 2019	
Decision:	September 25, 2019	
Panel:	D. Grant Vingoe	Vice-Chair and Chair of the Panel
Appearances:	Christina Galbraith Audrey Smith	For Staff of the Commission
	Rinaldo Landucci	For himself and Natural Bee Works Apiaries Inc.
	Tawlia Chickalo	For herself

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REASONS AND DECISION ON SANCTIONS AND COSTS

I. OVERVIEW

[1] In a merits decision dated July 3, 2019,[1] the Ontario Securities Commission (the **Commission**) found that:

a. Tawlia Chickalo (**Ms. Chickalo**) engaged in the business of trading in securities without the necessary registration or an applicable exemption from the registration requirement, contrary to s. 25 of the Ontario *Securities Act* (the **Act**)[2];

b. Natural Bee Works Apiaries Inc. (**NBW**) and Ms. Chickalo traded in securities that constituted a distribution without a prospectus and without an applicable exemption from the prospectus requirement, contrary to s. 53 of the Act;

c. NBW and Rinaldo Landucci (**Mr. Landucci**) engaged in and participated in an act, practice or course of conduct relating to securities that they knew perpetrated a fraud on the investors, contrary to s. 126.1(1)(b) of the Act;

d. Ms. Chickalo engaged in and participated in an act, practice or course of conduct relating to securities that she reasonably ought to have known perpetrated a fraud on the investors, contrary to s. 126.1(1)(b) of the Act; and

e. Mr. Landucci authorized and permitted all of the breaches of the Act committed by NBW and as a result is deemed, pursuant to s. 129.2 of the Act, to have contravened Ontario securities law.[3]

[2] During the continuation of this misconduct, between April 2017 and January 2018 (the **Material Time**), a total of $291,250 was raised from 69 investors and Staff was able to match $267,203 of funds in the Respondents' bank accounts to investor payments.[4] These investors lost their funds. The evidence at the merits hearing demonstrated that some of the investor funds were used by Mr. Landucci and Ms. Chickalo for personal expenditures or withdrawn in cash.[5] Some funds were also used for activities that were inconsistent with the venture presented to investors.

[3] On August 6, 2019, a hearing was held to determine whether it is in the public interest to impose a sanctions and costs order on Mr. Landucci, Ms. Chickalo and NBW (collectively, the **Respondents**). Staff of the Commission (**Staff**) seeks market bans, disgorgement of the funds obtained by the Respondents and administrative penalties. Staff also seeks a costs order.

[4] For the reasons that follow, I find that it is in the public interest to issue an order as requested by Staff, with the exceptions that Ms. Chickalo and Mr. Landucci are provided with a trading carve-out in registered accounts, and it is unnecessary to specify an "investment fund manager" ban as that is already included in any registrant ban ordered.

II. PRELIMINARY ISSUES

A. Representation Status of the Respondents

[5] At the outset of the sanctions and costs hearing, Mr. Landucci and Ms. Chickalo confirmed that they were unrepresented at the hearing. Mr. Landucci mentioned he did have representation. However, that lawyer did not participate at the hearing.

[6] Mr. Landucci confirmed that he still represents NBW.

[7] As they were located outside of Toronto, Mr. Landucci and Ms. Chickalo each participated in the hearing using GotoMeeting from personal computers. Mr. Landucci evidently did so from a public waiting area at a hospital where he explained that he was to receive treatment shortly.

1 *Natural Bee Works Apiaries Inc (Re)*, 2019 ONSEC 23, (2019) 42 OSCB 5905 (**Merits Decision**)
2 RSO 1990, c S.5
3 Merits Decision at para 150
4 Merits Decision at para 75
5 Merits Decision at para 99

B. The Respondents' Removal Motion

[8] On July 31, 2019, I received an e-mail from the Registrar transmitting a "communique" dated July 15, 2019 from Mr. Landucci sent by Ms. Chickalo, which she later indicated that she also supported, requesting my recusal from the sanctions and costs hearing (the **Communique**). The subject line of the e-mail mentioned that the request was being advanced "due to conflict of interest".

[9] The Communique stated:

> Communique to be forwarded to Mr. Vingoe
>
> In relation to several matters, we demand that Mr. Vingoe recuse himself from the Natural Bee Works case, as he has knowingly and wilfully allowed four major infractions in this case.
>
> 1 - Mr. Vingoe allowed Mr. Bernstein to tamper with evidence. Mr. Bernstein sated [sic] there was no sales, but was reminded by Mr. Landucci that evidence of sales was submitted to BCSC, which Mr. Bernstein then had to acknowledge, yet he was allowed to say virtually no sales, which allowed 'fraudulent' to be posted on the website.
>
> 2 - Mr [sic] Vingoe allowed OSC Staff., [sic] Ms Lavalley, to purger [sic] herself on the stand with no sanctioning.
>
> Ms. Lavalley testified that she was unable to communicate with Mr. RS. or get in touch with him. She stated she did not know his whereabout [sic]. She also testified that Mr. Landucci said he had a cold.
>
> Ms. Gailbraith [sic] entered evidence that RS communicated with Ms. Lavalley. Ms. Lavalley stated on the stand that Mr. Landucci said he had a cold. Mr. Landucci never talked to Ms. Lavalley.
>
> 3 - Mr. Vingoe allowed Ms. Gailbraith [sic] to slander a third party not associated to the case. Mr. Vingoe must recuses [sic] himself or Ms. Q is going to sue him personally.
>
> 4 - To rebuttal Mr. Landucci's health reports from Fraser Health, Mr. Vingoe allowed the opinion of BCSC staff, who are not medically licences [sic] professionals, instead of getting an expert opinion of an Ontario Medical professional.
>
> Rinaldo Landucci

[10] The delay in my receipt of the July 15 e-mail was due to the fact that the e-mail had not been sent to all parties. The Registrar requested on two occasions that it be forwarded to all parties in compliance with Rule 8 of the Commission's *Rules of Procedure and Forms*[6] (the **Rules**), and when this request was complied with on July 31, this e-mail was sent to me. I replied to all parties that this request would be addressed as a preliminary matter at the commencement of the sanctions and costs hearing.

[11] At the beginning of the hearing, I indicated that I was treating the Communique as a motion for my removal as a panel member on the grounds of bias. Staff did not object to the motion being heard on this basis, nor did they object to dispensing with the time periods for the filing of motion materials.

[12] The Respondents limited their arguments to the positions expressed in the Communique, except that they expanded the list to include the treatment of their sales projections in the Merits Decision.

[13] I heard submissions from Mr. Landucci regarding the grounds for my removal. I asked him to provide an explanation of why these assertions supported the view that I was biased in this matter. I indicated that some of his complaints might reflect a misunderstanding of my role as a panel member, and specifically their belief that I supervise conduct of Staff during their investigation. I explained that this was not the case since I was performing an adjudicative function that separated me from any involvement in the investigative functions. I suggested that disagreements on the substance of the Merits Decision and the other matters in the Communique could potentially be addressed by an appeal if they chose to do so. Mr. Landucci said that he would not be appealing but instead would be suing the Commission and a number of Staff members, as well as me, on various grounds through counsel in the United States and Canada. He indicated that counsel in Ontario was ready to file his complaint with the court on the day of the hearing.

6 (2019) 42 OSCB 6528

[14] I raised with Ms. Chickalo her right to appeal the Merits Decision, if she wished, and she indicated that things had gone too far for that. I also asked her to explain how their assertions pointed to bias. She only added that my discounting of their sales projections based on worldwide sales was inaccurate since they had used US sales as the basis for the projection and stated that they used expert financial analysts and established methodologies in doing so, which should not have been discounted in the Merits Decision. I indicated several times that they could consider appealing if they took issue with the findings in the Merits Decision.

[15] I took from the Respondents' submissions that they viewed the findings in the Merits Decision and evidentiary rulings as being so contrary to their positions that they believed that it pointed to bias on my part.

[16] Staff expressed the position that all the matters raised by the Respondents reflected disagreements that could be dealt with, if the Respondents chose, through the appeal process. Staff also disagreed with all of the assertions in the Communique.

[17] Section 2 of the Commission's *Adjudication Guideline* describes the standard to be satisfied and process for considering bias by a panel member as follows:

> 2(2) Panel Members have a duty to conduct hearings and render decisions in a fair and impartial manner. The ability to discharge that duty is undermined by actual bias or a reasonable apprehension of bias. The test to be applied in determining whether a reasonable apprehension of bias exists is "would a reasonable and informed person, viewing the matter realistically and practically — and having thought the matter through — conclude that there is bias on the part of the Panel or individual Panel Members impairing their duty to fairly and impartially adjudicate the matter?
>
> Unless the context shows otherwise, actual bias and reasonable apprehension of bias are collectively referred to as "bias" in these Guidelines.
>
> …
>
> 2(5) If a party brings a motion seeking the removal of a Panel Member on grounds of bias, the Panel should provide reasons for its decision on the motion.

[18] Staff drew my attention to several cases addressing assertions of bias, including *Fawad Ul Haq Khan (Re)*.[7] Paragraphs 25 to 29 provide a concise description of the relevant principles, synthesizing several authorities, which I adopt:

> [25] It is of "fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done" (*Re Norshield Asset Management (Canada) Ltd.* (2009), 32 O.S.C.B. 1249 ("*Re Norshield*") at para. 54, citing *R. v. Sussex Justices, Ex parte McCarthy* (1923), [1924] 1 K.B. 256 at 259). Moreover, given the difficulty of determining actual bias, the Commission has held that the applicable test that should be applied is the reasonable apprehension of bias test (*Re Norshield*, *supra* at para. 53), which has been set out as follows:
>
> > ... the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information... [The] test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly".
> >
> > (*Re Norshield*, *supra* at para. 55, citing *Committee for Justice and Liberty v. Canada (National Energy Board)*, 1976 CanLII 2 (SCC), [1978] 1 S.C.R. 369 at 394).
>
> [26] The Supreme Court of Canada provided further guidance on the application of this test:
>
> > It contains a two-fold objective element: the person considering the alleged bias must be reasonable, and the apprehension of bias itself must also be reasonable in the circumstances of the case.
> >
> > (*Re Norshield*, *supra* at para. 60, citing *R. v. R.D.S.*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para. 111).

7 *Fawad Ul Haq Khan (Re)*, 2014 ONSEC 3, (2014) 37 OSCB 1035 (**Khan**)

> [27] The Commission has held that when assessing whether a reasonable apprehension of bias exists, the "test is that of a reasonable person informed of all the relevant circumstances; that is, a person who is fully informed of any safeguards in place at the Commission" (*Re Norshield*, *supra* at para. 68). The threshold for finding real or perceived bias is high – pure conjecture, insinuations or mere impressions are not sufficient – because a finding of a reasonable apprehension of bias calls into question an element of judicial integrity (*Re Norshield*, *supra* at para. 62; *Arthur v. Canada (Attorney General)*, 2001 FCA 223 (CanLII) at para. 8).
>
> [28] Commissioners are presumed to act "fairly and impartially in discharging their adjudicative responsibilities" (*Re Norshield*, *supra* at para. 64). This presumption will stand, unless there is any evidence to the contrary (*Re Norshield*, *supra* at para. 64, aff'd *Re Norshield Asset Management (Canada) Ltd.*, 2011 ONSC 4685 (CanLII), 2011 O.N.S.C. 4685 (Div. Ct.), citing *E.A. Manning Ltd. v. Ontario Securities Commission* (1995), 1995 CanLII 1706 (ON CA), 23 O.R. (3d) 257 (C.A.) at 267).
>
> [29] The Applicants have the onus of proving that a reasonable apprehension of bias exists (*Re Norshield*, *supra* at para. 61).

[19] Applying the test set out in the *Adjudication Guideline* and the case law above, a reasonable and informed person, viewing the matter realistically and practically — and having thought the matter through — would conclude that the panel is not biased. A reasonable person would see a panel making findings and rulings based on the evidence before it and the arguments that it has heard at the merits hearing without bias.

[20] The thrust of the Respondents' arguments on the motion are disagreements with factual findings and evidentiary rulings made at the merits hearing, some of which were not central to the Merits Decision's findings with respect to breaches of the Act. Specifically:

a. Ground #1 deals with the Merits Decision finding with respect to NBW's sales. As set out in the Merits Decision at paragraph 57a.v., the Statement of Allegations in this proceeding did not allege that NBW had "no sales" and paragraph 78 of the Merits Decision found that NBW was involved in "small-scale individual night market sales." The Merits Decision did not make the findings that Mr. Landucci alleges in his bias claim.

b. Ground #2 deals with an evidentiary issue related to Ms. Lavalley's testimony that was addressed at the merits hearing. Paragraph 57b. of the Merits Decision sets out that Mr. Landucci's evidence on this issue was inadmissible as these matters were not put to Ms. Lavalley during her cross-examination.

c. Ground #3 deals with evidence that was presented at the merits hearing relating to who resided in the motel room and the Merits Decision findings relating to the use of the motel. While the Respondents' bias claim focused on a third party who is not named in the Merits Decision, nothing in the Merits Decision turns on this point and the Merits Decision found at paragraph 119 that "Regardless of whether Mr. Landucci resided at this motel, no credible evidence was presented by Mr. Landucci about the business purpose of the use of the motel."

d. Ground #4 deals with the evidentiary ruling in the Merits Decision to exclude the medical evidence provided by Mr. Landucci. Paragraph 57a.iii. of the Merits Decision sets out that Mr. Landucci's evidence was inadmissible as the documents pertained "to his case well after his interview" and "did not provide information containing his condition at the time of this interview." Further, the Merits Decision states at paragraph 68 that "Any differences in evidence given by Mr. Landucci at the merits hearing compared to his investigation interview on May 8, 2018 are not material to my findings."

e. Ground #5 deals with findings made in the Merits Decision with respect to the Respondents' sales projections estimates. I heard evidence about this at the merits hearing and my findings are set out in paragraph 79 of the Merits Decision.

[21] The grounds listed above were already considered and adjudicated on during the merits hearing. Further, none of the breaches of the Act found in the Merits Decision turned on Grounds #1, 2, 3 and 4 above. Regarding Ground #5, I found that the sales projections and estimates were false; they were misrepresentations used to induce recipients of the Marketing Materials to invest and these findings fall within the expertise of the Commission as a specialized securities tribunal.[8]

[22] Disagreements with a finding in the Merits Decision or an evidentiary ruling does not constitute bias. This has also been acknowledged by the Commission's case law in *Khan*.[9] In that case, the Commission found that a respondent's

8 Merits Decision at paras 79 and 80
9 *Khan* at para 30

argument that the Commission is biased because the respondent disagreed with a procedural motion decision made by the Commission was insufficient to establish the existence of a reasonable apprehension of bias.

[23] The Respondents take issue with findings and evidentiary rulings made in the Merits Decision, and the appropriate forum to raise such concerns is on appeal and not at the sanctions and costs hearing. The Merits Decision speaks for itself and the sanctions and costs hearing is not the time to revisit and re-argue findings and evidentiary rulings that were previously made. The Respondents had the chance and did in fact raise all of these issues at the merits hearing and these issues have already been adjudicated. The Respondents have not met the burden to demonstrate actual bias or a reasonable apprehension of bias and I dismiss their motion.

C. Mr. Landucci's Participation

[24] Mr. Landucci participated during the first part of the hearing that dealt with the removal motion. He provided oral submissions on the motion and, while Staff was in the process of providing oral submissions on the motion, Mr. Landucci informed me that he would no longer participate.

[25] I asked Mr. Landucci if he wished to request an adjournment and, if so, when he thought he would be available to resume the hearing. Mr. Landucci explained that he had to go for a medical treatment. He declined to seek an adjournment and could not say when he would be sufficiently recovered from his treatment to participate.[10] He again indicated that the proceedings were a joke[11] and that he would be initiating various legal proceedings against the Commission.[12] On this basis, he elected not to participate further in the hearing.

[26] Mr. Landucci had ample notice of the date of the hearing and opportunities to request an adjournment or inform the Commission of any timing conflicts and medical appointments. The sanctions and costs hearing was scheduled by order on July 3, 2019, a month earlier. He did not inform the Commission of any timing conflict until the day of the actual hearing.

[27] Ms. Chickalo continued to participate in the hearing and, similarly, she did not request an adjournment. I asked Ms. Chickalo if she was in a position to speak for NBW and she said that it would depend on the subject matter, but she was unwilling to say that she was acting as its representative in these proceedings. I concluded that, with Mr. Landucci's departure, NBW was also no longer present at the hearing but that the sanctions and costs hearing should proceed in Mr. Landucci's and NBW's absence. Given the ample notice they had of the sanctions and costs hearing, Mr. Landucci had the opportunity to request an adjournment in advance and he declined to request an adjournment when I raised the issue with him at the hearing.

D. Ms. Chickalo's Evidence and Submissions

[28] Very early in the morning on the day of the sanctions and costs hearing, the Respondents sent four e-mails to the Registrar that contained written submissions in connection with the sanctions and costs hearing as well as materials proposed to be entered as evidence.

[29] The title of the written submissions stated that "This document constitutes the Response and Reasons from Rinaldo Landucci on behalf of himself and Natural Bee Works (NBW) and from Tawlia Chickalo on behalf of herself." I accepted this document as the joint written submissions of the Respondents for the sanctions and costs hearing, and I explained that these submissions do not constitute documentary evidence but submissions, including a synthesis of the Respondents' views, that I would consider.

[30] With regard to the documents sought to be entered as evidence, Ms. Chickalo was sworn and described the documents accompanying each e-mail sent to the Registrar. Staff did not object to the marking of any of the documents as exhibits, stating that they would make submissions as to the weight to be accorded to them. Each set of documents accompanying consecutive e-mails were entered as a group as exhibits 2 to 5.

[31] Most of the documents entered in evidence were product and price lists and brochure-type materials designed to demonstrate the level of activity that the Respondents claimed NBW had engaged in. Similar evidence was considered at the merits hearing, and Ms. Chickalo was not able to explain how these documents were relevant to sanctions. Rather, they were introduced to challenge the description of the scale of NBW's business in the Merits Decision.

[32] One document was also a revised table of assets from Ms. Chickalo's former business that she claimed to have transferred to NBW in return for consideration equal to the amounts she retained from investors, raising again one of

10 Hearing Transcript, Natural Bee Works Apiaries Inc (Re), August 6, 2019 at 18 line 10 – 19 line 11
11 Hearing Transcript, Natural Bee Works Apiaries Inc (Re), August 6, 2019 at 16 line 18
12 Hearing Transcript, Natural Bee Works Apiaries Inc (Re), August 6, 2019 at 14 lines 16-21 and 22 lines 2-17

the defences she advanced during the merits hearing. This revised table was also introduced to challenge the finding in the Merits Decision that the amounts received from investors were misappropriated by her for impermissible purposes. Although this evidence was designed primarily to contest findings made in the Merits Decision, I considered it to also be potentially relevant to the amount of disgorgement.

[33] Ms. Chickalo also entered a document from the authority in British Columbia responsible for licensing bee-keepers regarding a survey they were conducting. The document was in the form of an e-mail dated June 7, 2019 addressed from the British Columbia's Provincial Apiculturist to himself. On the face of this document, it was not addressed to Mr. Landucci or anyone else since it seemed to blind-copy other recipients. Ms. Chickalo stated that this document was offered to demonstrate that Mr. Landucci was a registered bee-keeper in British Columbia. Under cross-examination, Ms. Chickalo admitted that she had cut and pasted this document so that it was not in its original form, but in doing so, she omitted to include the name of the entity with whom Mr. Landucci was apparently associated. Under cross-examination, Ms. Chickalo was shown the e-mail from the authority to Staff indicating that Mr. Landucci was not registered and indicating that only individuals and not entities could be registered bee-keepers.

[34] The e-mail with the accompanying bee-keeper survey was introduced to contest the Merits Decision finding that there was no evidence that Mr. Landucci was registered as a bee-keeper. This is also something that could be potentially raised on an appeal and has little relevance to sanctions. Further, the document was dated June 7, 2019 which falls outside of the Material Time for this proceeding. The irregularities with the document itself also severely limit the weight to be accorded this document, if any, for the purposes for which Ms. Chickalo offered it as evidence.

III. ANALYSIS – SANCTIONS

A. Contraventions of the Act

[35] In the Merits Decision, I found that the Respondents violated Ontario securities law as enumerated in paragraph [1] above.

B. Sanctions Requested by Staff

[36] Staff submits that the following sanctions in respect of each of the Respondents are appropriate and in the public interest in the circumstances of this case.

[37] With respect to market conduct sanctions for Mr. Landucci and Ms. Chickalo, Staff seeks:

a. an order pursuant to paragraph 2 of s. 127(1) of the Act that trading in any securities or derivatives by Mr. Landucci and Ms. Chickalo shall cease permanently;

b. an order pursuant to paragraph 2.1 of s. 127(1) of the Act that the acquisition of any securities by Mr. Landucci and Ms. Chickalo shall cease permanently;

c. an order pursuant to paragraph 3 of s. 127(1) of the Act that any exemptions contained in Ontario securities law do not apply to Mr. Landucci and Ms. Chickalo permanently;

d. an order pursuant to paragraph 6 of s. 127(1) of the Act that Mr. Landucci and Ms. Chickalo be reprimanded;

e. an order pursuant to paragraphs 7, 8.1 and 8.3 of s. 127(1) of the Act that Mr. Landucci and Ms. Chickalo resign any positions that they hold as directors or officers of an issuer, registrant or investment fund manager;

f. an order pursuant to paragraphs 8, 8.2 and 8.4 of s. 127(1) of the Act that Mr. Landucci and Ms. Chickalo are prohibited permanently from becoming or acting as directors or officers of any issuer, registrant or investment fund manager; and

g. an order pursuant to paragraph 8.5 of s. 127(1) of the Act that Mr. Landucci and Ms. Chickalo are prohibited permanently from becoming or acting as registrants, investment fund managers or as promoters.

[38] With respect to NBW, Staff seeks:

a. an order pursuant to paragraph 2 of s. 127(1) of the Act that trading in any securities or derivatives by NBW shall cease permanently;

b. an order pursuant to paragraph 2.1 of s. 127(1) of the Act that the acquisition of any securities by NBW shall cease permanently;

c. an order pursuant to paragraph 3 of s. 127(1) of the Act that any exemptions contained in Ontario securities law do not apply to NBW permanently; and

d. an order pursuant to paragraph 8.5 of s. 127(1) of the Act that NBW is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

[39] Staff submits that carve-outs for personal trading are not appropriate in this case. As the Respondents were involved in fraud and misused investor funds, Staff submits that they therefore cannot be trusted to participate in the capital markets even in a limited capacity.

[40] With respect to financial sanctions, Staff seeks with respect to Mr. Landucci and NBW:

a. an order pursuant to paragraph 9 of s. 127(1) of the Act that Mr. Landucci and NBW, jointly and severally, shall pay an administrative penalty of $500,000, to be allocated to or for the benefit of third parties in accordance with s. 3.4(2)(b) of the Act; and

b. an order pursuant to paragraph 10 of s. 127(1) of the Act that Mr. Landucci and NBW, jointly and severally, shall disgorge to the Commission $234,922, to be allocated to or for the benefit of third parties in accordance with s. 3.4(2)(b) of the Act.

[41] With respect to Ms. Chickalo, Staff seeks:

a. an order pursuant to paragraph 9 of s. 127(1) of the Act that Ms. Chickalo shall pay an administrative penalty of $150,000, to be allocated to or for the benefit of third parties in accordance with s. 3.4(2)(b) of the Act; and

b. an order pursuant to paragraph 10 of s. 127(1) of the Act that Ms. Chickalo shall disgorge to the Commission $32,281, to be allocated to or for the benefit of third parties in accordance with s. 3.4(2)(b) of the Act.

[42] Staff submits that the financial sanctions requested are proportionate to the misconduct of the Respondents and fall within the range of sanctions ordered by the Commission in previous fraud cases of similar magnitude.

C. Respondents' Submissions

[43] The written submissions of the Respondents state that the Respondents will not be paying the financial sanctions sought by Staff. Further, the written submissions state that the Respondents will be filing other lawsuits against the Commission and its Staff and demand that the Commission compensate the Respondents for loss of revenue, among other things.

[44] The Respondents' oral and written submissions essentially take issue with the conduct of the proceedings overall and the findings in the Merits Decision. Instead of focusing on submissions with respect to appropriate sanctions, the submissions focused on disagreements with the findings of the Merits Decision, many of which reiterated the same arguments raised on the motion to remove me as a panel member.

[45] An exception to the general attack on the Merits Decision that is relevant to sanctions are Ms. Chickalo's submissions that she was relying on Mr. Landucci for the veracity of certain statements found to be fraudulent misrepresentations and did not have direct knowledge of these matters. She states that she later understood that these statements were not to be made to prospective investors. Implicit in these submissions is the view that her reliance on Mr. Landucci should be taken into account when considering appropriate sanctions as she was not the architect of the fraud and they played different roles in the scheme.

[46] The Merits Decision acknowledges that she was a secondary participant in the fraudulent conduct, responsible because of her reckless disregard as to whether those statements were true or false.[13] With regard to the intention to list the securities on the NASDAQ Stock Market, she stated in her evidence and submissions that she stands by the accuracy of that statement.

D. Application of the Relevant Sanctioning Factors

[47] The sanctions listed in s. 127(1) of the Act are protective and are intended to prevent future harm to Ontario's capital markets.

13 Merits Decision at paras 133 and 134

[48] The Commission has identified a non-exhaustive list of factors to be considered with respect to sanctions generally, including the seriousness of the misconduct, the size of the profit made from the illegal conduct, any mitigating factors, and the likely effect that any sanction would have on the respondent ("specific deterrence") as well as on others ("general deterrence"). Sanctions must be proportionate to the respondent's conduct in the circumstances of the case.[14]

[49] The sanctioning factors set out below are most relevant in the circumstances of this case.

1. Seriousness of the Misconduct

[50] Fraud is "one of the most egregious securities law violations" and is both an "affront to the individual investors targeted" and conduct that "decreases confidence in the fairness and efficiency of the entire capital markets system".[15]

[51] In this case, I found the existence of "extravagant deceit" since the misrepresentations made NBW appear to be a very substantial enterprise preparing to list on the NASDAQ Stock Market where, to the contrary, there was no significant evidence provided by the Respondents of work being undertaken to attain such a listing.[16] They portrayed NBW as a substantial company with a multi-million dollar line of credit and with investors lined up to invest in anticipation of a stock market launch but with little or no evidence to support these claims.

[52] Mr. Landucci provided false information regarding the state of development of NBW to Ms. Chickalo knowing that she would use it to solicit investors from her network of contacts, primarily prior candle buyers and friends or both.[17]

[53] Ms. Chickalo implemented this sales effort with these individuals without considering the truth of these statements and was reckless as to their truth or falsehood. She was an officer or director of this company, at various times was in frequent communication with Mr. Landucci, and did not take the most basic precautions in seeking to determine the accuracy of these statements. And, without probing into the accuracy of these statements, she did not consider whether they could appropriately be incorporated in marketing materials for the investment and communicated to her friends and former customers to entice them to invest in NBW.[18]

[54] It was also established that Ms. Chickalo and Mr. Landucci used the proceeds raised for their own personal expenses or purposes not reasonably related to the business described to the investors.

[55] As a result of this scheme, Staff's evidence demonstrated that they were able to match $267,203 of funds in the Respondents' bank accounts to investor payments.[19] In total, 69 individuals invested over a period of approximately nine months. These funds were diverted to the personal use of the Respondents or uses that were inconsistent with the business described to the investors.

[56] Mr. Landucci was the controlling person for NBW and orchestrated this fraudulent scheme.[20]

[57] To this day, the Respondents have not acknowledged their role in the investor losses. They have not returned funds to investors. In fact, the written submissions of the Respondents submit that "every investment includes risk" and implies that the investors should have been prepared to accept this risk. Further, the Respondents written submissions state that Investor CK:

> … actually said many positive statements about Ms. Chickalo's intentions, passion and dedication to the project. The only negative statement she made in testimony was that her request to have her money refunded was not complied with. …[21]

This statement shows a disregard of the harm the Respondents caused to Investor CK.

[58] In my view, these statements demonstrate that the Respondents have not recognized the seriousness of their misconduct.

14 *Cartaway Resources Corp (Re)*, 2004 SCC 26; *Belteco Holdings Inc (Re)*, (1998) 21 OSCB 7743 at 7746; and *MCJC Holdings Inc (Re)*, (2002) 25 OSCB 1133
15 *Al-Tar Energy Corp (Re)*, 2010 ONSEC 11, (2010) 33 OSCB 5535 (***Al-Tar (Re)***) at para 214
16 Merits Decision at para 105
17 Merits Decision at para 113
18 Merits Decision at para 115
19 Merits Decision at para 75
20 Merits Decision at para 134
21 Respondents' written submissions at 4

2. Respondents' Continuing Activities in the Marketplace

[59] At several times during the proceeding, Mr. Landucci indicated that NBW was sold or negotiations were being conducted for its sale to others who would continue the business. The sale of its shares to another party would have been a direct contravention of the temporary order in place, which continued in effect until the date of the issuance of the sanctions and costs decision.

[60] At other times, Ms. Chickalo indicated that she and Mr. Landucci were moving forward with the business and she supplied numerous product sheets listing products they either were or were intending to market. Since the Respondents used the funds raised from investors to sustain their personal expenses and for other impermissible purposes, I am concerned that they will seek to raise new funds from investors to further these goals. I have concerns that the Respondents may well embark on additional capital-raising activities based on the same types of misrepresentations that they have employed in the past.

[61] These concerns point to a need for sanctions that will act to specifically deter such future activities.

3. The Respondents' Activity was not an Isolated Event

[62] The raising of at least $267,203 from 69 investors over a period of approximately nine months indicates relatively widespread activity given that the source of funds was exclusively from Ms. Chickalo's previous candle customers and/or friends. The unlawful activity was not limited to an isolated event and their statements about their future activities suggests that the temporary order could well have prevented other sales to investors based on the fraudulent misrepresentations they made to solicit NBW's investors. Based on these circumstances, a permanent order is necessary to prevent a recurrence of this misconduct.

4. Size of the Profit

[63] Overall, Mr. Landucci received approximately $234,922 of investor funds through the two personal accounts in his own name and through the NBW account he controlled (funds were transferred through Ms. Chickalo, or in some cases from investors directly into the NBW account). Staff demonstrated that out of the co-mingled funds from investors and other sources deposited in Ms. Chickalo's account, she retained $32,281 of investor funds. The entire amount of $267,203 was devoted either to personal expenditures of the Respondents or to uses that were inconsistent with the uses promised to investors.

[64] Ms. Chickalo's evidence that a portion of these funds was used to pay for a transfer of assets from her prior business to NBW does not point to a reduction in the size of the profit earned since these funds would not have been received but for the deceit the Respondents' engaged in. She received these proceeds and could apply them to her living expenses only because of their misconduct, and those funds are not transformed into legitimate business proceeds merely because she justified their retention as proceeds from the apparent sale of assets in NBW.

[65] The two investor witnesses demonstrated the impact of these losses on them personally. Specifically, Investor CK lost in excess of $100,000 and as a friend of Ms. Chickalo at the time she invested, she testified about the loss and betrayal she experienced.[22] Ms. Chickalo's statements to this investor that she was proud that she went forward with this investment and ignored the concerns expressed by representatives of her bank branch that the proposed investment involved warning signs[23] showed a disturbing lack of concern for this investor's financial wellbeing while benefiting Ms. Chickalo at her friend's expense.

5. Lack of Mitigating Factors

[66] Ms. Chickalo has stated, as a potentially mitigating factor, that she was inexperienced in capital-raising activities and did not know that the information conveyed to her by Mr. Landucci should not be passed on to others. She provided no explanation as to why she, as an officer or director of an issuer, should not have made some investigation into the accuracy of these statements and their appropriate use other than her trust in Mr. Landucci. She asserted that the accuracy of the statements she passed on to these investors were Mr. Landucci's responsibility since he was the one who best knew about these plans. The explanation that it was not her job to know the accuracy of these statements, when she was the only one communicating with the investors, does not afford grounds for these circumstances to be mitigating factors.

[67] The Respondents have not advanced any other mitigating factors with regard to sanctions.

22 Merits Decision at para 88
23 Merits Decision at para 86 and Hearing Transcript, Natural Bee Works Apiaries Inc (Re), April 23, 2019 at 37 lines 20-27

6. Deterrence

[68] As explained earlier, I have significant concerns that these Respondents may continue to engage in improper capital-raising activities unless deterred by strong market prohibitions and other sanctions. Such sanctions are also necessary to provide general deterrence in relation to others who think they can make similar fraudulent misrepresentations or prey on communities similar to those in Ms. Chickalo's network with impunity.

E. Appropriate Sanctions

1. Market Bans

[69] For the reasons given above, each of the Respondents needs to be prohibited from having any significant role in the markets, and Staff's proposed sanctions would have this effect.

[70] At the sanctions and costs hearing, it was pointed out to Ms. Chickalo that the prohibition on being an officer and director of an issuer relates to persons exercising such functions for public or private entities, including NBW or other entities. After this explanation, she did not make any submissions concerning why this was inappropriate.

[71] Similarly, I explained that the prohibition on trading and the acquisition of securities relates to all securities and not just those involved in the business of NBW. I indicated by way of example that it would relate to trading in connection with any account, including a registered retirement account, she or Mr. Landucci might have. Her response was "That is not going to go down well."[24] I then explained to Ms. Chickalo that now was the opportunity to make submissions on this issue. She responded that she did "not have enough knowledge in this field to really comment" and expressed dismay about the possibility that she would not be allowed to invest in another independent company.[25]

[72] In other cases involving respondents who have engaged in violations of Ontario securities law of a comparable magnitude, the Commission has sometimes granted a respondent a trading carve-out to trade solely through a registered retirement account through a registered dealer who receives a copy of the sanctions order. This has been done in some cases based on the fact that the respondents' misconduct did not involve trading of securities on a marketplace or over-the-counter market as would trading through a registrant on their behalf. Allowing such an exception potentially helps mitigate the risk that respondents will become a charge on society and does not pose a risk to the public. In my view, in this case, a complete prohibition without such a carve-out is unnecessary for specific or general deterrence and I have included this exception even though Ms. Chickalo, after an explanation of the scope of the prohibition, did not specifically ask for it, and Mr. Landucci was no longer participating in the hearing. I will therefore order that Mr. Landucci and Ms. Chickalo shall permanently cease trading securities and derivatives and acquiring securities, except that they may trade securities and derivatives or acquire securities:

a. in a registered retirement savings plan, registered retirement income fund, and/or tax-free savings account (as defined in the *Income Tax Act* (Canada)) at a registered dealer in each their own name of which he or she has the sole beneficial interest;

b. in respect of holdings in each such account described in paragraph a., he or she does not own legally or beneficially more than five percent of the outstanding securities of the class or series of the class in question; and

c. that he or she carries out exclusively through a registered dealer (which dealer must be given a copy of this Order) and through accounts opened in his or her name only.

[73] Staff also requested that the Respondents be subject to market bans whereby:

a. Mr. Landucci and Ms. Chickalo resign any positions that they hold as directors or officers of an issuer, registrant or investment fund manager;

b. Mr. Landucci and Ms. Chickalo are prohibited permanently from becoming or acting as directors or officers of any issuer, registrant or investment fund manager; and

c. Mr. Landucci, Ms. Chickalo and NBW are prohibited permanently from becoming or acting as registrants, investment fund managers or as promoters.

[74] In my view, such bans are necessary to ensure that the Respondents are not in positions of influence where they can raise capital for and control and direct any issuer or registrant. However, the inclusion of the term "investment fund

24 Hearing Transcript, Natural Bee Works Apiaries Inc (Re), August 6, 2019 at 81 lines 7-8
25 Hearing Transcript, Natural Bee Works Apiaries Inc (Re), August 6, 2019 at 81 lines 15-20

manager" is not necessary. As set out by the Commission in previous decisions,[26] the distinction between a "registrant" and "investment fund manager" is unnecessary, given that the definition of "registrant" in s. 1(1) of the Act includes an investment fund manager, by virtue of s. 25(4) of the Act. As a result, the order I shall issue refers to registrants, which term includes investment fund managers.

[75] Staff requests and I agree that the serious misconduct by Mr. Landucci and Ms. Chickalo is deserving of a reprimand, which is set forth in the order resulting from this Decision.

2. Disgorgement

[76] Paragraph 10 of s. 127(1) of the Act provides that if "a person or company has not complied with Ontario securities law," the Commission may, if it determines it to be in the public interest to do so, issue "an order requiring the person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance."

[77] The Commission has set out various factors that it will take into account in determining whether a disgorgement order is appropriate, and if so, in what amount: (a) whether an amount was obtained by a respondent as a result of the non-compliance with Ontario securities law; (b) the seriousness of the misconduct and whether that misconduct caused serious harm, whether directly to original investors or otherwise; (c) whether the amount obtained as a result of the non-compliance is reasonably ascertainable; (d) whether those who suffered losses are likely to be able to obtain redress; and (e) the deterrent effect of a disgorgement order on the Respondents and on other market participants.[27]

[78] The amounts obtained by the Respondents as a result of non-compliance are accurately described in paragraphs 18 to 19 of Staff's written Sanctions and Costs Submissions. As discussed above, these amounts were received as a result fraud, one of the most serious and egregious[28] breaches of the Act.

[79] The amounts described by Staff are ascertainable since the amounts raised from investors that passed through their bank accounts is known with precision, and where these funds were co-mingled with other funds with indeterminate sources in the case of Ms. Chickalo, those additional non-accountable funds were subtracted from the amounts computed by Staff.

[80] Mr. Landucci received $234,922 of investor funds through his two personal bank accounts and through an account in the name of NBW that he controlled. All these funds were received as a result of the fraudulent misrepresentations originating with Mr. Landucci and communicated to the investors by Ms. Chickalo. The Respondents argue in their written submissions that it was not established that these funds were not used for business purposes. The Merits Decision established that the funds were raised based on fraud, a sufficient basis to order disgorgement, and then were misapplied for personal uses or purposes not consistent with the business described to investors, also supporting disgorgement. This fraudulent conduct violates Ontario securities law as established in the Merits Decision and disgorgement may be ordered.

[81] Ms. Chickalo retained $32,281 of investor funds. These funds were also obtained by fraud and also involved a misapplication of funds. Ms. Chickalo's argument that these funds were also compensation for assets sold to NBW, although computed like a commission, even if accepted as a rationale for discounting the amount of disgorgement, does not reduce the disgorgement of funds obtained through fraud. In any event, the Merits Decision concludes that these funds were both raised through fraud and misapplied even if they also may have compensated for the transfer of assets.

[82] As to the prospect of redress, as stated in a recent decision of the Commission:

> The onus does not lie on Staff to demonstrate that victims of misconduct are unlikely to obtain redress. The difficulties inherent in such a determination would impose a burden that is inconsistent with the Commission's investor protection mandate. Rather, if the Respondents were to show that those who suffered losses are likely to obtain redress, the Commission might reduce the disgorgement amount, or not order any disgorgement at all.[29]

[83] In this case, no such evidence was brought forward by any of the Respondents.

26 *Meharchand (Re)*, 2019 ONSEC 7, (2019) 42 OSCB 1135 at para 65 citing *Inverlake Property Investment Group Inc (Re)*, 2018 ONSEC 35, (2018) 41 OSCB 5309 at para 39; and *Vantooren (Re)*, 2018 ONSEC 36, (2018) 41 OSCB 5603 at para 30

27 *Pro-Financial Asset Management (Re)*, 2018 ONSEC 18, (2018) 41 OSCB 3512 at para 56

28 *Al-Tar (Re)* at para 214

29 *Meharchand (Re)* at para 73

[84] Ordering disgorgement of the full ascertainable amounts obtained by the Respondents in this fraud is necessary to deter these Respondents and others from engaging in such misconduct in the future.

[85] Since NBW was the entity for which the funds were raised, and since Mr. Landucci controlled NBW, based on the findings against them, NBW is appropriately jointly and severally responsible for the amounts ordered to be disgorged by Mr. Landucci.

[86] Based on the foregoing, it is in the public interest to require Mr. Landucci and NBW to jointly and severally disgorge the amount of $234,922 sought by Staff and for Ms. Chickalo to disgorge the amount of $32,281 sought by Staff.

3. Administrative Penalty

[87] Given the nature of the fraudulent conduct of the Respondents, their statements regarding their future plans for NBW and the absence of any substantial mitigating factors, an administrative penalty against each of the Respondents is necessary in the public interest to both deter future violations by each of them and to deter others from following a similar course of misconduct.

[88] A $500,000 administrative penalty for Mr. Landucci and NBW, imposed on them jointly and severally, as sought by Staff, is at the mid- to higher-end of the range compared to the precedents provided by Staff. Staff cites *Winick (Re)*[30], *Richvale Resources Corp (Re)*[31], *Lehman Brothers and Associates (Re)*[32], *Rezwealth Financial Services Inc (Re)*[33] and *Portfolio Capital Inc (Re)*[34] as providing a reasonable comparison where sanctions are imposed on the directing mind of a fraud, demonstrating a range of administrative penalties of $250,000 to $750,000. An administrative penalty of $500,000 is supported by these cases and is appropriate in the circumstances. In conjunction with the other sanctions imposed, the quantum of the administrative penalty requested by Staff is appropriate based on Mr. Landucci's status as the controlling person of NBW and the finding that he is the architect of the fraudulent scheme and creator of the misrepresentations. In addition, through his deceit, Mr. Landucci received the majority of the investor funds raised.

[89] Staff proposes a lower administrative penalty of $150,000 for Ms. Chickalo, given that she acted with reckless disregard rather than actual knowledge that the fraudulent misrepresentations were false. Her role in the fraud was subordinate to that of Mr. Landucci who originated and passed along to her the fraudulent misrepresentations that she used to raise capital for NBW. Her actions were comparable to the respondents Hanna-Rogerson in *Portfolio Capital Inc (Re)*, Kurichh in *Blue Gold Holdings Ltd (Re)*[35], and the Ramoutars in *Rezwealth (Re)*, who all played supporting but significant roles in carrying out their frauds. The $150,000 administrative penalty is consistent with the sanctions imposed in these cases, I find an administrative penalty of $150,000, in conjunction with the other sanctions imposed on Ms. Chickalo, to be appropriate and proportionate in the circumstances.

IV. ANALYSIS – COSTS

A. Introduction

[90] Staff requests that the Respondents pay some of the costs associated with this proceeding.

[91] Given the Commission's finding that the Respondents did not comply with Ontario securities law, s. 127.1 of the Act empowers the Commission to order them to pay the costs of the investigation and/or hearings in this matter. Such an order is not a sanction; instead, it allows the Commission to recover some of the costs expended in connection with the investigation and hearings.

B. Staff's Request

[92] Staff seeks the following costs:

a. Mr. Landucci and NBW, jointly and severally, pay $187,464.61 for the costs of the investigation and hearing, and

b. Ms. Chickalo pay $80,341.98 for the costs of the investigation and hearing.

30 *Winick (Re)*, 2013 ONSEC 51, (2013) 37 OSCB 501
31 *Richvale Resources Corp (Re)*, 2012 ONSEC 40, (2012) 35 OSCB 10699
32 *Lehman Brothers & Associates Corp (Re)*, 2012 ONSEC 15, (2012) 35 OSCB 5357: see sanctions imposed relating to the respondent Greg Marks.
33 *Rezwealth Financial Services Inc (Re)*, 2014 ONSEC 18, (2014) 37 OSCB 6731 (***Rezwealth (Re)***): see sanctions imposed relating to the respondent Sylvan Blackett.
34 *Portfolio Capital Inc (Re)*, 2015 ONSEC 27, (2015) 38 OSCB 7357: see sanctions imposed relating to the respondent David Rogerson.
35 *Blue Gold Holdings Ltd (Re)*, 2016 ONSEC 37, (2016) 39 OSCB 10177

[93] The Respondents did not make any submissions as to costs.

C. Relevant Factors

[94] Staff's submissions are persuasive that:

a. the misconduct established in this case was serious and necessitated an appropriate regulatory response;

b. Staff conducted itself in an efficient manner. For example, most of Staff's investigator's testimony was provided by affidavit and made available to the Respondents months before the merits hearing in order to give the Respondents time to review this evidence and prepare.[36] The use of affidavit evidence saved hearing time. In addition, Staff only called two investor witnesses, each of whom testified to the financial and emotional impact and harm experienced.

c. the factual basis for all of Staff's allegations were satisfied, notwithstanding that the Merits Decision declined to find a violation of the allegations relating to ss. 38(3) and 126.2 since these allegations were effectively included in the fraud allegation.

[95] The Respondents' conduct did not, in many ways, contribute to an efficient process. Mr. Landucci never provided his address to receive Staff's disclosure notwithstanding repeated promises to do so and an order requiring it. In addition, he never provided a hearing brief as ordered and provided documents very late in the process. Ms. Chickalo also provided certain documents late in the process, although her participation was more orderly than Mr. Landucci and she displayed a greater level of cooperation during the hearing and the pre-hearing stages. Specifically, she attempted to comply with procedural directions, for example, by providing her witness summary. On the other hand, Mr. Landucci failed to provide various documents that would have contributed to a more efficient hearing even when given time extensions to do so. This difference in the promotion of efficiency in the proceeding is reflected in the apportionment of costs: 70% to Mr. Landucci and NBW, jointly and severally, amounting to $187,464.61, and the remainder of 30%, or $80,341.98, to Ms. Chickalo.

[96] Staff employed a conservative approach to costs. They only claimed for the work of two employees for each phase of the proceeding. No time has been claimed for the work of law clerks, articling students or any other staff. A discount of 24.25% has been applied to the actual costs incurred.

D. Conclusion as to Costs

[97] The costs sought by Staff are appropriate and proportionate and reflect the principle that wrongdoers ought to pay some portion of the costs associated with investigations and proceedings.

[98] Staff's proposed basis for apportionment of costs between the Respondents is appropriate based on the conduct of Mr. Landucci and Ms. Chickalo during the investigation and proceeding. I will therefore make the order requested by Staff.

V. CONCLUSION

[99] For the reasons set out above, I shall issue an order as follows:

1. pursuant to paragraph 2 of s. 127(1) of the Act, trading in any securities or derivatives by Mr. Landucci and Ms. Chickalo shall cease permanently, with the exception that they may each trade securities or derivatives:

   (a) in a registered retirement savings plan, registered retirement income fund, and/or tax-free savings account (as defined in the *Income Tax Act* (Canada)) at a registered dealer in each their own name of which he or she has the sole beneficial interest;

   (b) in respect of holdings in each such account described in paragraph 1(a), he or she does not own legally or beneficially more than five percent of the outstanding securities of the class or series of the class in question; and

   (c) that he or she carries out exclusively through a registered dealer (which dealer must be given a copy of this Order) and through accounts opened in his or her name only;

36 Merits Decision at para 52

2. pursuant to paragraph 2 of s. 127(1) of the Act, trading in any securities or derivatives by NBW shall cease permanently;

3. pursuant to paragraph 2.1 of s. 127(1) of the Act, the acquisition of any securities by Mr. Landucci and Ms. Chickalo shall cease permanently, with the exception that they may each acquire securities:

   (a) in a registered retirement savings plan, registered retirement income fund, and/or tax-free savings account (as defined in the *Income Tax Act* (Canada)) at a registered dealer in each their own name of which he or she has the sole beneficial interest;

   (b) in respect of holdings in each such account described in paragraph 3(a), he or she does not own legally or beneficially more than five percent of the outstanding securities of the class or series of the class in question; and

   (c) that he or she carries out exclusively through a registered dealer (which dealer must be given a copy of this Order) and through accounts opened in his or her name only;

4. pursuant to paragraph 2.1 of s. 127(1) of the Act, the acquisition of any securities by NBW shall cease permanently;

5. pursuant to paragraph 3 of s. 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Mr. Landucci, Ms. Chickalo and NBW permanently;

6. pursuant to paragraph 6 of s. 127(1) of the Act, Mr. Landucci and Ms. Chickalo are reprimanded;

7. pursuant to paragraphs 7 and 8.1 of s. 127(1) of the Act, Mr. Landucci and Ms. Chickalo resign any positions that they hold as directors or officers of an issuer or registrant;

8. pursuant to paragraphs 8 and 8.2 of s. 127(1) of the Act, Mr. Landucci and Ms. Chickalo are prohibited permanently from becoming or acting as directors or officers of any issuer or registrant;

9. pursuant to paragraph 8.5 of s. 127(1) of the Act, Mr. Landucci, Ms. Chickalo and NBW are prohibited permanently from becoming or acting as a registrant or as a promoter;

10. pursuant to paragraph 9 of s. 127(1) of the Act, the Respondents shall pay an administrative penalty of $650,000 to the Commission, as follows:

    (a) Mr. Landucci and NBW, jointly and severally, shall pay an administrative penalty of $500,000; and

    (b) Ms. Chickalo shall pay an administrative penalty of $150,000;

11. pursuant to paragraph 10 of s. 127(1) of the Act, the Respondents shall disgorge $267,203 to the Commission, as follows:

    (a) Mr. Landucci and NBW, jointly and severally, shall disgorge to the Commission $234,922; and

    (b) Ms. Chickalo shall disgorge to the Commission $32,281;

12. each of the payments in paragraphs 10 and 11 is designated for allocation or use by the Commission in accordance with s. 3.4(2)(b) of the Act; and

13. pursuant to s. 127.1 of the Act, the Respondents shall pay costs of $267,806.59 to the Commission as follows:

    (a) Mr. Landucci and NBW, jointly and severally, shall pay $187,464.61 for the costs of the investigation and hearing; and

    (b) Ms. Chickalo shall pay $80,341.98 for the costs of the investigation and hearing.

Dated at Toronto this 25th day of September, 2019.

“D. Grant Vingoe”

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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
Avalon Works Corp.	06 August 2010	18 August 2010	18 August 2010	24 September 2019
Poplar Creek Resources Inc.	09 May 2014	21 May 2014	21 May 2014	24 September 2019

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
PetroQuest Energy, Inc.	05 September 2019	26 September 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
Beleave Inc.	06 August 2019	
CannTrust Holdings Inc.	15 August 2019	
BetterU Education Corp.	02 August 2019	

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Chapter 7

Insider Reporting

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

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

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

Chapter 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Investment Funds for the week ending October 4, 2019 will be published in next week's issue, volume 42, issue 41.

NON-INVESTMENT FUNDS

Issuer Name:
79North Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 24, 2019
NP 11-202 Preliminary Receipt dated September 24, 2019
Offering Price and Description:
Maximum Offering: $3,500,000.00 (23,333,333 Common Shares)
Minimum Offering: $1,500,000.00 (10,000,000 Common Shares)
Price: $0.15 per Common Share
Underwriter(s) or Distributor(s):
LEEDE JONES GABLE INC.
Promoter(s):
Jon North
Project #2969346

Issuer Name:
AltaGas Ltd.
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated September 25, 2019
NP 11-202 Receipt dated September 26, 2019
Offering Price and Description:
$2,000,000,000.00 - Common Shares Preferred Shares Subscription Receipts Debt Securities Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2968229

Issuer Name:
Bluestone Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated September 26, 2019
NP 11-202 Receipt dated September 26, 2019
Offering Price and Description:
C$200,000,000.00 - Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Units, Warrants, Share Purchase Contracts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2964936

Issuer Name:
Brachium Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Final CPC Prospectus dated September 25, 2019
NP 11-202 Receipt dated September 27, 2019
Offering Price and Description:
Minimum Offering: $250,000.00 or 2,500,000 Common Class A Shares
Maximum Offering: $400,000.00 or 4,000,000 Common Class A Shares
Price: C$0.10 per Common Share
Underwriter(s) or Distributor(s):
PI FINANCIAL CORP.
Promoter(s):
-
Project #2949941

Issuer Name:
BTB Real Estate Investment Trust
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated September 30, 2019
NP 11-202 Receipt dated September 30, 2019
Offering Price and Description:
Series G 6.00% Convertible Unsecured Subordinated Debentures
$24,000,000.00 Aggregate Principal Amount
Price: $1,000 per Series G Debenture
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
ECHELON WEALTH PARTNERS INC.
LAURENTIAN BANK SECURITIES INC.
RAYMOND JAMES LTD
INDUSTRIAL ALLIANCE SECURITIES INC.
Promoter(s):
-
Project #2968064

Issuer Name:
Eagle Credit Card Trust
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated September 27, 2019
NP 11-202 Receipt dated September 27, 2019
Offering Price and Description:
Up to $1,250,000,000.00 of Credit Card Receivables-Backed Notes
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
DESJARDINS SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
Promoter(s):
PRESIDENT'S CHOICE BANK
Project #2964495

Issuer Name:
FAX Capital Corp.
Principal Regulator - Ontario
Type and Date:
Amendment dated September 26, 2019 to Preliminary Long Form Prospectus dated August 28, 2019
NP 11-202 Preliminary Receipt dated September 26, 2019
Offering Price and Description:
Minimum: $25,000,000.00 of Units
Maximum: $150,000,000.00 of Units
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
INDUSTRIAL ALLIANCE SECURITIES INC.
RAYMOND JAMES LTD.
RICHARDSON GMP LIMITED
DESJARDINS SECURITIES INC.
MANULIFE SECURITIES INCORPORATED
CORMARK SECURITIES INC.
ECHELON WEALTH PARTNERS INC.
INFOR FINANCIAL INC.
Promoter(s):
FAX INVESTMENTS INC.
Project #2961428

Issuer Name:
Flower One Holdings Inc. (formerly Theia Resources Ltd.)
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated September 27, 2019
NP 11-202 Preliminary Receipt dated September 30, 2019
Offering Price and Description:
US$250,000,000.00
Common Shares
Warrants
Options
Subscription Receipts
Debt Securities
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2971051

Issuer Name:
GFL Environmental Inc.
Principal Regulator - Ontario
Type and Date:
Amendment dated to Preliminary Long Form Prospectus dated January 21, 2019
Received on September 30, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Goldman Sachs Canada Inc.
J.P. Morgan Securities Canada Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #2941753

Issuer Name:
Golden Star Resources Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated September 26, 2019
NP 11-202 Preliminary Receipt dated September 27, 2019
Offering Price and Description:

U.S.$300,000,000.00 - Common Shares, Preferred Shares, Subscription Receipts, Warrants, Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2970477

Issuer Name:
Good2Go2 Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated September 25, 2019
NP 11-202 Preliminary Receipt dated September 25, 2019
Offering Price and Description:
Offering: $225,000.00
2,250,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
James C. Cassina
Project #2969686

Issuer Name:
Great-West Lifeco Inc.
Principal Regulator - Manitoba
Type and Date:
Final Shelf Prospectus dated September 30, 2019
NP 11-202 Receipt dated September 30, 2019
Offering Price and Description:
$8,000,000,000.00
Debt Securities (unsecured)
First Preferred Shares
Common Shares
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2967100

Issuer Name:
Harte Gold Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated September 26, 2019
NP 11-202 Receipt dated September 27, 2019
Offering Price and Description:
$6,000,000.00 - 20,000,000 Flow-Through Shares
Price: C$0.30 per Flow-Through Share
Underwriter(s) or Distributor(s):
ECHELON WEALTH PARTNERS INC.
Promoter(s):
-
Project #2967781

Issuer Name:
Incubara Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Amendment dated September 26, 2019 to Preliminary Long Form Prospectus dated June 26, 2019
NP 11-202 Preliminary Receipt dated September 26, 2019
Offering Price and Description:
No securities are being offered pursuant to this Prospectus
Underwriter(s) or Distributor(s):
-
Promoter(s):
Jason Walsh
Project #2935360

Issuer Name:
Kiaro Brands Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated September 30, 2019
NP 11-202 Preliminary Receipt dated September 30, 2019
Offering Price and Description:
No securities are being offered pursuant to this Prospectus
Underwriter(s) or Distributor(s):
-
Promoter(s):
Daniel Petrov
Project #2971572

Issuer Name:
LaSalle Exploration Corp.
Principal Regulator - British Columbia
Type and Date:
Amendment dated September 24, 2019 to Preliminary Long Form Prospectus dated July 22, 2019
Received on September 27, 2019
Offering Price and Description:
5,500,000 Common Shares for $550,000.00
Price: $0.10 per Common Share
5,200,000 Flow-Through Common Shares for $722,800.00
Price: $0.139 per Flow-Through Share
3,300,000 Ontario Flow-Through Common Shares (“OFT Shares”) for $468,600.00
Price: $0.142 per OFT Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Ian Campbell
Daniel Innes
Project #2942260

Issuer Name:
LexaGene Holdings Inc. (formerly, Wolfeye Resource Corp.)
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated September 24, 2019
NP 11-202 Preliminary Receipt dated September 24, 2019
Offering Price and Description:
Minimum Public Offering: $3,500,000.00 / * Units
Maximum Public Offering: $10,000,000 / * Units
Price: $*.** per Unit
Underwriter(s) or Distributor(s):
INDUSTRIAL ALLIANCE SECURITIES INC.
Promoter(s):
-
Project #2969474

Issuer Name:
Mithrandir Capital Corp.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated September 26, 2019
NP 11-202 Receipt dated September 30, 2019
Offering Price and Description:
Minimum of $1,000,000.00 - 10,000,000 Common Shares
Maximum of $2,000,000.00 - 20,000,000 Common Shares
Price: C$0.10 per Common Share
Underwriter(s) or Distributor(s):
INDUSTRIAL ALLIANCE SECURITIES INC.
Promoter(s):
-
Project #2949930

Issuer Name:
Newtopia Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 24, 2019
NP 11-202 Preliminary Receipt dated September 24, 2019
Offering Price and Description:
12,166,879 Common Shares and 6,083,439 Warrants issuable without payment upon deemed exercise of 12,166,879 Special Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2969399

Issuer Name:
Profound Medical Corp. (formerly Mira IV Acquisition Corp.)
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated September 27, 2019
NP 11-202 Preliminary Receipt dated September 30, 2019
Offering Price and Description:
US$100,000,000.00
Common Shares
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2970941

Issuer Name:
Two Hands Corporation
Type and Date:
Amendment dated September 25, 2019 to Preliminary Long Form Prospectus dated June 28, 2019
(Preliminary) Receipted on September 26, 2019
Offering Price and Description:

No securities are being offered pursuant to this Prospectus
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2937099

Issuer Name:
VOTI Detection Inc. (formerly Steamsand Capital Corp.)
Principal Regulator - Quebec
Type and Date:
Amendment dated September 26, 2019 to Preliminary Short Form Prospectus dated September 23, 2019
NP 11-202 Preliminary Receipt dated September 27, 2019
Offering Price and Description:
Up to $6,000,000.00 - Up to 3,428,571 Common Shares
Price: $1.75 per Offered Share
Underwriter(s) or Distributor(s):
GMP SECURITIES L.P.
HAYWOOD SECURITIES INC.
CANACCORD GENUITY CORP.
DESJARDINS SECURITIES INC.
ECHELON WEALTH PARTNERS INC.
Promoter(s):
-
Project #2969076

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	Loewen, Ondaatje, McCuthcheon Limited	Exempt Market Dealer	September 19, 2019
New Registration	Harness Investment Management Inc.	Portfolio Manager and Exempt Market Dealer	September 30, 2019
Change in Registration Category	Amundi Canada Inc.	From: Portfolio Manager and Exempt Market Dealer To: Investment Fund Manager, Portfolio Manager, and Exempt Market Dealer	September 30, 2019

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Chapter 25

Other Information

25.1 Consents

25.1.1 TheScore, Inc. – s. 4(b) of Ont. Reg. 289/00 under the OBCA

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the British Columbia Business Corporations Act.

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, as am., s. 4(b) Securities Act, R.S.O. 1990, c .S.5, as am.

IN THE MATTER OF
R.R.O. 1990, REGULATION 289/00, AS AMENDED
(the Regulation)

UNDER THE BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990 c. B.16, AS AMENDED
(the OBCA)

AND

IN THE MATTER OF
THESCORE, INC.

CONSENT
(Subsection 4(b) of the Regulation)

UPON the application (the **Application**) of theScore, Inc. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) requesting the Commission's consent to the Applicant continuing in another jurisdiction pursuant to section 181 of the OBCA (the **Continuance**);

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is an offering corporation under the OBCA.

2. The authorized capital of the Applicant consists of an unlimited number of class A subordinate voting shares (the **Class A Subordinate Voting Shares**), 5,566 special voting shares (the **Special Voting Shares**) and an unlimited number of preference shares, issuable in series (the **Preferred Shares**). As of July 15, 2019, 334,575,975 Class A Subordinate Voting Shares were issued and outstanding and 5,566 Special Voting Shares were issued and outstanding. No Preferred Shares have been issued. All of the issued and outstanding Class A Subordinate Voting Shares of the Applicant are listed for trading on the TSX Venture Exchange (the **TSXV**) under the symbol "SCR".

3. The Applicant intends to apply to the Director pursuant to section 181 of the OBCA (the **Application for Continuance**) for authorization to continue as a corporation under the *Business Corporations Act* (British Columbia), S.B.C. 2002, c. 57, as amended (the **BCBCA**).

4. The Application for Continuance is being made because the Applicant is launching a mobile sports betting business in the United States and must comply with all applicable laws and regulations relating to gaming. The Applicant believes

that being governed by the BCBCA will provide it with the ability to comply with such laws and regulations, including among other things, certain laws and regulations relating to the ownership of the Applicant, which require the Applicant to introduce restrictions on the issue, transfer and ownership of securities of the Applicant, where the ability to impose such restrictions is not currently available to the Applicant under the OBCA.

5. The material rights, duties and obligations of a corporation governed by the BCBCA are substantially similar to those of a corporation governed by the OBCA. The principal differences were highlighted for shareholders in the management information circular of the Applicant dated July 15, 2019 (the **Circular**) in respect of the Applicant's special meeting held on August 22, 2019 (the **Meeting**).

6. The Applicant is a reporting issuer under the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the **Act**) and the securities legislation in each of the provinces of Canada (together with the Act, the **Legislation**) and will remain a reporting issuer in these jurisdictions following the Continuance.

7. The Applicant is not in default of any of the provisions of the OBCA or the Legislation, including the regulations made thereunder.

8. The Applicant is not in default of any provision of the rules, regulations or policies of the TSXV.

9. The Applicant is not subject to any proceeding under the OBCA or the Legislation.

10. The Commission is the principal regulator of the Applicant and will remain the Applicant's principal regulator following the Continuance.

11. A summary of the material provisions respecting the proposed Continuance was provided to the shareholders of the Applicant in the Circular, including the reasons for the proposed Continuance and its implications. The Circular also disclosed full particulars of the dissent rights of the Applicant's shareholders under section 185 of the OBCA.

12. The Applicant's shareholders authorized the Continuance at the Meeting by a special resolution that was approved by 99.94% of the votes cast. No shareholder exercised dissent rights pursuant to section 185 of the OBCA.

13. Following the Continuance, the Applicant's name will change to "Score Media and Gaming Inc."

14. Subsection 4(b) of the Regulation requires the Application for Continuance be accompanied by a consent from the Commission.

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

THE COMMISSION CONSENTS to the Continuance of the Applicant under the BCBCA.

DATED at Toronto, Ontario this 27th day of August, 2019.

"Tim Moseley"
Commissioner
Ontario Securities Commission

"Ray Kindiak"
Commissioner
Ontario Securities Commission

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