The Ontario Securities Commission

OSC Bulletin

January 3, 2020

Volume 43, Issue 1

(2020), 43 OSCB

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

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

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

Contact Centre – Inquiries, Complaints:

Office of the Secretary:

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

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

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

Fax: 416-593-2318

42707996

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

Printed in the United States by Thomson Reuters.

ISSN 0226-9325

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

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

Table of Contents

Chapter 1

Notices

1.1 Notices

1.1.1 Notice of Amendments to the Securities Act and the Commodity Futures Act – Bill 138

NOTICE OF AMENDMENTS TO THE SECURITIES ACT AND THE COMMODITY FUTURES ACT

On December 10, 2019, the Government's Bill 138, *Plan to Build Ontario Together Act, 2019*, received Royal Assent. Bill 138 includes a number a number of amendments to the *Securities Act* (Ontario) and the *Commodity Futures Act* (Ontario). An explanation of these amendments is provided in Chapter 9.

Questions may be referred to:

Simon Thompson
Senior Legal Counsel
416-593-8261
sthompson@osc.gov.on.ca

1.1.2 Notice of Ministerial Approval of Memorandum of Understanding – Cooperation and the Exchange of Information Related to the Supervision of Regulated Entities Operating in Ontario and Germany

NOTICE OF MINISTERIAL APPROVAL OF MEMORANDUM OF UNDERSTANDING WITH THE GERMAN BUNDESANSTALT FÜR FINANZDIENSTLEISTUNGSAUFSICHT

On December 15, 2019, the Minister of Finance approved, pursuant to section 143.10 of the *Securities Act* (Ontario), a Memorandum of Understanding between the Ontario Securities Commission and the German Bundesanstalt für Finanzdienstleistungsaufsicht (the "MOU").

The MOU provides a comprehensive framework for consultation, cooperation, and information-sharing related to the supervision and oversight of regulated entities operating in Ontario and Germany.

Questions may be referred to:

Keir Wilmut
Legal Counsel
Market Regulation
416-593-8243
kwilmut@osc.gov.on.ca

1.1.3 Notice of Ministerial Approval of Memorandum of Understanding – Cooperation and the Exchange of Information Related to the Supervision of Regulated Entities Operating in Ontario and Ireland

NOTICE OF MINISTERIAL APPROVAL OF MEMORANDUM OF UNDERSTANDING WITH THE CENTRAL BANK OF IRELAND

On December 16, 2019, the Minister of Finance approved, pursuant to section 143.10 of the *Securities Act* (Ontario), a Memorandum of Understanding between the Ontario Securities Commission and the Central Bank of Ireland (the "MOU").

The MOU provides a comprehensive framework for consultation, cooperation, and information-sharing related to the supervision and oversight of regulated entities operating in Ontario and Ireland.

Questions may be referred to:

Keir Wilmut
Legal Counsel
Market Regulation
416-593-8243
kwilmut@osc.gov.on.ca

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 David Randall Miller – ss. 127(1) and 127.1

FILE NO.: 2019-48

IN THE MATTER OF
DAVID RANDALL MILLER

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: January 14, 2020 at 1:00 p.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 December 19, 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 20th day of December, 2019.

"Robert Blair"
For 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
DAVID RANDALL MILLER

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 David Randall Miller ("Miller"), the former CEO of a reporting issuer called Inspiration Mining Corporation ("Inspiration"), who directed the issuer to publish false and misleading press releases to capitalize on investor interest in cannabis. He obtained proceeds of $112,116.92 by selling his own Inspiration shares during the price spike created by the false and misleading press releases. In addition to being deceitful, Miller's conduct was fraudulent, and amounted to illegal insider trading.

2. It is critical to investor protection and the integrity of the capital markets that disclosure by issuers be truthful and not misleading. When an industry is experiencing significant investor interest, as cannabis was in 2018, individuals that try to capitalize on that interest by publishing false and misleading press releases about plans to enter that industry are breaching Ontario securities law. Insiders who sell their own securities after issuing false and misleading press releases, with knowledge of material facts not disclosed to the public, are abusing the market. This type of misconduct warrants enforcement action by Staff and significant sanctions.

3. Miller is the former CEO of Inspiration. Between about January 11, 2018 and August 7, 2018 (the "Material Time"), while he was CEO of Inspiration, Miller caused Inspiration to issue a series of press releases (the "Press Releases") regarding purported negotiations between Inspiration and Compassion Cannabis Corporation ("Compassion"). The Press Releases indicated, among other things, that Inspiration was considering purchasing Compassion as a wholly-owned subsidiary, that Compassion had expertise which would allow it to capitalize on the growing marijuana industry, and that Inspiration intended to take steps to change its business from exploration to cannabis in connection with this acquisition.

4. The Press Releases were false and misleading. They falsely stated that Compassion had expertise in the cannabis industry. They also failed to disclose that Compassion's representative in the purported negotiations was a former Inspiration employee and a personal friend of Miller's, who was working as Miller's assistant at another company during the Material Time.

5. Inspiration's share price increased approximately 450% following the first of the Press Releases. Between January 12 and 19, 2018, Miller sold shares of Inspiration for gross proceeds of $112,116.92. At the time he made these sales, Miller was aware that the Press Releases were false and misleading. The true nature of Inspiration's purported acquisition target, and the relationship between the two parties to the negotiation, were material facts in respect of Inspiration which were known to Miller but had not been generally disclosed.

B. FACTS

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

Background

6. Miller is a resident of Ontario. Miller was the CEO of Inspiration during the Material Time.

7. Inspiration, now known as Silk Energy Limited, is a reporting issuer whose stated business during the Material Time was mining and exploration. The Ontario Securities Commission (the "Commission") is Silk Energy Limited's principal regulator and was Inspiration's principal regulator during the Material Time. During the Material Time, Inspiration traded on the Canadian Securities Exchange under the symbol ISM. On or about July 4, 2019, Inspiration changed its name to Silk Energy Limited in anticipation of a reverse take-over transaction with Silk Energy AS. The effective date of the transaction was September 3, 2019.

Inspiration Announces Negotiations with Compassion

8. During the Material Time, Inspiration issued the Press Releases, which announced various developments in the purported negotiations between Inspiration and Compassion, as set out below. Miller authored, participated in the drafting of, and/or approved the release of, each of the Press Releases.

9. On January 11, 2018, Inspiration announced that it had commenced formal negotiations to acquire Compassion, which Inspiration's news release described as a private Ontario company which "has the expertise to capitalize on the various facets of the going marijuana market, including the 'Vape' market and dispensary centers for the industry." No other information about Compassion was disclosed in this news release.

10. On January 18, 2018, Inspiration announced that it had scheduled a shareholders' meeting to seek approval to change its name to "Inspiration Cannabis Corporation" and to change its business from exploration to cannabis distribution.

11. Inspiration made further announcements on February 23, 2018, April 24, 2018, and April 26, 2018 regarding the state of negotiations with Compassion and related due diligence.

12. On or about August 7, 2018, Inspiration announced that negotiations with Compassion had been terminated.

Compassion

13. Compassion is a private Ontario company incorporated in 2014. Its sole director and officer is JC ("JC"). During the Material Time, Compassion had no assets, employees, or active business operations. It had never generated any revenue. It did not hold a cannabis distribution licence and had never applied for one. During the Material Time, its negotiations with Inspiration were its sole business activity, save for occasional internet research about the cannabis industry conducted by JC.

14. JC has not previously worked in the cannabis industry and does not have any significant expertise in the cannabis industry.

15. JC and Miller have a business relationship dating back to at least 2013 and are personal friends. JC worked for Inspiration between about 2013 and 2016 in an administrative and business development capacity. She reported to Miller. After about 2016, including during the Material Time, JC continued to work as Miller's assistant at another company or companies.

The Press Releases were False and Misleading

16. Miller caused Inspiration to issue five press releases that were false and misleading. The press releases issued on or about January 11 and 18, 2018 were false and misleading for the following reasons:

    a) They falsely stated that Compassion had expertise in the cannabis industry which would allow it to capitalize on the marijuana market, when in fact it had no real expertise in the cannabis industry; and

    b) They failed to state that Compassion was represented in the negotiations by JC. They moreover failed to disclose the nature of the relationship between Miller and JC, specifically that JC was a business associate and friend of Miller, that she had worked as an assistant to Miller for some time, and that she was working as an assistant to Miller during the Material Time.

17. The press releases issued on or about February 23 and April 24, 2018 were misleading because they indicated that due diligence was being conducted in relation to the purported negotiations. The February 23, 2018 press release stated that the due diligence and negotiations were "ahead of schedule and on track." The April 24, 2018 press release stated that the negotiations and related due diligence were "going very well and ahead of the targeted date." In reality, Inspiration was not conducting formal due diligence on Compassion.

18. Moreover, the press releases issued on or about April 24 and April 26, 2018 were misleading as they repeated the statements from the January 11 and 18, 2018 press releases that falsely stated that Compassion had expertise in the cannabis industry which would allow it to capitalize on the marijuana market, when in fact it had no real expertise in the cannabis industry. These press releases in addition to the February 23, 2018 press release also failed to state that Compassion was represented in the negotiations by JC, and failed to disclose the nature of the relationship between Miller and JC, as did the January 11 and 18, 2018 press releases.

19. In addition, the April 26, 2018 press release falsely stated that Inspiration "is contemplating upon the request of Compassion Cannabis that it is allowed to accept crypto currency for settlement for any transactions that occur." In reality, Compassion made no such request.

20. The false and misleading statements in the Press Releases, and their failure to disclose the information about JC's connection to Miller, constituted deceit, falsehood or other fraudulent means and put the economic interests of investors at risk. The false and misleading statements in the January 11 and 18, 2018 press releases would also reasonably be expected to have a significant effect on the market price of Inspiration's securities. Following these two press releases, Inspiration's share price increased by approximately 450%.

21. During the Material Time, Miller was aware aware that the Press Releases were false and misleading, as set out above at paragraphs 16 to 19 above. He was aware of the above-noted facts which were not disclosed in the Press Releases and/or was aware that he had no information which would support the claims about Compassion which appeared in the Press Releases. The undisclosed facts, as well as the generally misleading nature of the Press Releases, were material facts in respect of Inspiration which had not been generally disclosed.

Increase in Inspiration Share Price and Share Sales by Miller

22. Between January 10 and 22, 2018, the same week that Inspiration began issuing the Press Releases about negotiations with Compassion, the market price of Inspiration shares increased from $0.04 to $0.22 (450%). Between January 12 and 19, 2018, Miller sold shares of Inspiration for gross proceeds of $112,116.92.

23. At the time of these trades, Miller was Inspiration's CEO and was therefore in a special relationship with Inspiration pursuant to s. 76(5)(c)(i) of the *Securities Act*, RSO 1990, c S.5 (the "Act"). Moreover, as the CEO of Inspiration, Miller was an "insider" of Inspiration as defined in s. 1(1) of the Act; he was therefore in a special relationship with Inspiration pursuant to s. 76(5)(a)(i) of the Act.

24. At the time of these trades, Miller was aware that the January 11 and January 18, 2018 press releases were false and misleading for the reasons identified in subparagraphs 16(a) and 16(b) above. He was aware of the facts which were not disclosed in the January 11 and January 18, 2018 press releases. These facts, as well as the generally misleading nature of the January 11 and January 18, 2018 press releases, were material facts which had not been generally disclosed.

25. Miller did not file insider reports with regard to these trades, as required by s. 107(2) of the *Act*, which had the effect of preventing the market from learning of his sales of Inspiration shares immediately after the 450% increase caused by the false and misleading Press Releases.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

Enforcement Staff allege the following breaches of Ontario securities law and conduct contrary to the public interest:

26. Miller's conduct as described above constitutes fraud, making illegal materially false and misleading statements, illegal insider trading, and failing to file the required reports of his trades.

Fraud

27. By participating in the drafting and release of the false and misleading Press Releases, as set out above, Miller engaged or participated in an act, practice or course of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on any person or company, contrary to subsection 126.1(1)(b) of the Act. In addition, by authorizing and permitting the release of the false and misleading Press Releases, as set out above, Miller is deemed under s. 129.2 of the Act to have not complied with s. 126.1(1)(b) of the Act.

Illegal Materially False and Misleading Statements

28. By authorizing and permitting the release of the January 11 and 18, 2018 press releases, as set out above, Miller is deemed under s. 129.2 of the Act to have not complied with s. 126.2 of the Act in respect of Inspiration's statements that he knew or reasonably ought to have known were untrue or misleading and that would reasonably be expected to have a significant effect on the market price or value of the securities of Inspiration.

Illegal Insider Trading

29. By engaging in the conduct set out above at paragraph 22, while in possession of the knowledge set out above at paragraph 24, Miller, while in a special relationship with Inspiration, purchased or sold securities of Inspiration with the knowledge of a material fact or material change with respect to Inspiration that had not been generally disclosed, contrary to subsection 76(1) of the *Act*.

30. In relation to his sales of Inspiration shares between January 12 and 19, 2018, Miller failed to file a report disclosing, in the prescribed manner and form, changes in the direct or indirect beneficial ownership of, or control or direction over, securities of Inspiration or any interest in, or right or obligation associated with, a related financial instrument, within 5 days as prescribed by section 2.2 of National Instrument 55-104 *Insider Reporting Requirements and Exemptions*, contrary to subsection 107(2) of the Act.

31. Miller's conduct described above was contrary to the public interest.

D. ORDERS SOUGHT

32. Enforcement Staff request that the Commission make the following orders:

a) That Miller cease trading in any securities or derivatives permanently or for such period as is specified by the Commission under paragraph (2) of subsection 127(1) of the Act;

b) that Miller be prohibited from acquiring any securities permanently or for such period as is specified by the Commission under paragraph (2.1) of subsection 127(1) of the Act;

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

d) that Miller be reprimanded under paragraph (6) of subsection 127(1) of the Act;

e) that Miller resign any position he may hold as a director or officer of any issuer under paragraph (7) of subsection 127(1) of the Act;

f) that Miller be prohibited from acting as a director or officer of any issuer permanently or for such period as is specified by the Commission under paragraph (8) of subsection 127(1) of the Act;

g) that Miller resign any position he may hold as a director or officer of any registrant under paragraph (8.1) subsection 127(1) of the Act;

h) that Miller be prohibited from acting as a director or officer of any registrant permanently or for such period as is specified by the Commission under paragraph (8.2) of subsection 127(1) of the Act;

i) that Miller be prohibited from becoming or acting as a registrant or promoter permanently or for such period as is specified by the Commission under paragraph (8.5) of subsection 127(1) of the Act;

j) that Miller pay costs of the Commission investigation and hearing under section 127.1 of the Act; and

k) such other order as the Commission may consider appropriate in the public interest.

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

DATED this 19th day of December 2019.

Christina Galbraith
Litigation Counsel
cgalbraith@osc.gov.on.ca
Tel: 416-596-4298

Staff of the Enforcement Branch

1.4 Notices from the Office of the Secretary

1.4.1 Money Gate Mortgage Investment Corporation et al.

FOR IMMEDIATE RELEASE
December 18, 2019

MONEY GATE MORTGAGE INVESTMENT CORPORATION,
MONEY GATE CORP.,
MORTEZA KATEBIAN and
PAYAM KATEBIAN,
File No. 2017-79

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

A copy of the Reasons and Decision dated December 17, 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 General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

1.4.2 BDO Canada LLP

FOR IMMEDIATE RELEASE
December 18, 2019

BDO ECANADA LLP,
File No. 2018-59

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

A copy of the Order dated December 18, 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 General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

1.4.3 The Catalyst Capital Group Inc. et al.

FOR IMMEDIATE RELEASE
December 19, 2019

THE CATALYST CAPITAL GROUP INC. and
HUDSON'S BAY COMPANY,
RICHARD A. BAKER, LISA BAKER,
LISA AND RICHARD BAKER ENTERPRISES, LLC,
RED TRUST, YELLOW TRUST, BLUE TRUST,
ROBERT BAKER, CHRISTINA BAKER,
A TRUST FOR BETTINA JANE RICHMAN,
A TRUST FOR EMMA RICHMAN,
A TRUST FOR FRANCESCA RICHMAN,
ASHLEY S. BAKER 3/15/84 TRUST, LION TRUST,
MR. AND MRS. ROBERT BAKER FAMILY FOUNDATION, CHRISTINA BAKER TRUST FOR GRANDCHILDREN, ROBERT C. BAKER TRUST FOR GRANDCHILDREN, WILLIAM MACK,
THE WILLIAM AND PHYLLIS MACK FAMILY FOUNDATION, INC.,
MACK 2010 FAMILY TRUST I,
RICHARD MACK, WRS ADVISORS III, LLC,
WRS ADVISORS IV, LLC, LEE NEIBART,
LEE S. NEIBART 2010 GRAT,
HANOVER INVESTMENTS (LUXEMBOURG) S.A.,
ABRAMS CAPITAL PARTNERS I, L.P.,
ABRAMS CAPITAL PARTNERS II, L.P.,
WHITECREST PARTNERS, LP,
FABRIC LUXEMBOURG HOLDINGS S.À.R.L.,
L&T B (CAYMAN) INC. and
RUPERT ACQUISITION LLC,
File No. 2019-41

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

A copy of the Order dated December 18, 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 General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

1.4.4 VRK Forex & Investments Inc. and Radhakrishna Namburi

FOR IMMEDIATE RELEASE
December 19, 2019

VRK FOREX & INVESTMENTS INC. and
RADHAKRISHNA NAMBURI,
File No. 2019-40

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

A copy of the Order dated December 19, 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 General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

1.4.5 Issam El-Bouji

FOR IMMEDIATE RELEASE
December 19, 2019

ISSAM EL-BOUJI,
File No. 2018-28

TORONTO – Take notice that the dates for the hearing on the merits in the above-named matter have changed.

The hearing on the merits shall commence at 10:00 a.m. on January 14, 2020 and continue on January 16, 17, and 23 and April 20, 21, 22, and 24, 2020.

The hearing dates January 9 and 10, 2020 are vacated.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.4.6 David Randall Miller

FOR IMMEDIATE RELEASE
December 20, 2019

DAVID RANDALL MILLER,
File No. 2019-48

TORONTO – The Office of the Secretary issued a Notice of Hearing on December 20, 2019 setting the matter down to be heard on January 14, 2020 at 1:00 p.m. or 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 December 20, 2019 and Statement of Allegations dated December 19, 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 General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

1.4.7 Sean Daley and Kevin Wilkerson

FOR IMMEDIATE RELEASE
December 20, 2019

SEAN DALEY and
KEVIN WILKERSON,
File No. 2019-39

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

A copy of the Order dated December 20, 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 General Inquiries:
1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

This page intentionally left blank

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 AGF Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – filer seeking relief from NI 81-102 to permit alternative mutual funds to physically short sell up to 100% of net assets – funds could achieve similar short exposure through derivatives under NI 81-102 – physical short selling is generally cheaper and more efficient and will increase risk to the funds compared to similar short exposure through derivatives – relief subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.6.1(1)(c)(v), 2.6.2 (1), and 19.1(2).

December 9, 2019

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

AND

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

AND

IN THE MATTER OF
AGF INVESTMENTS INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of AGFiQ U.S. Long/Short Dividend Income CAD-Hedged Fund, AGFiQ U.S. Long/Short Dividend Income CAD-Hedged ETF and AGFiQ U.S. Market Neutral Anti-Beta CAD-Hedged ETF (the **Initial Funds**), each being a mutual fund or exchange-traded mutual fund that is structured as an "alternative mutual fund" within the meaning of National Instrument 81-102 Investment Funds (**NI 81-102**), and such alternative mutual funds as may be established in the future and for which the Filer or an affiliate of the Filer acts as investment fund manager (the **Future Funds** and together with the Initial Funds, the **Funds**, and each a **Fund**), for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**), pursuant to section 19.1 of NI 81-102 exempting the Funds from subsections 2.6.1(1)(c)(v) and 2.6.2 of NI 81-102, to permit each Fund to borrow securities from a borrowing agent to sell securities short whereby (i) the aggregate market value of all securities sold short by a Fund may exceed 50% of the net asset value of the Fund and (ii) the aggregate value of cash borrowed combined with the aggregate market value of all securities sold short by each Fund may exceed 50% of the net asset value of the Fund (the **Requested Relief**).

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

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

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

Interpretation

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

Representations

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

Background

1. The Filer is a corporation existing under the laws of the Province of Ontario.

2. The Filer's head office is located in Toronto, Ontario.

3. The Filer is registered in the categories of (a) exempt market dealer in the Provinces of Alberta, British Columbia, Manitoba, Ontario, Quebec and Saskatchewan, (b) portfolio manager in each of the provinces and territories of Canada, (c) investment fund manager in the Provinces of Alberta, British Columbia, Newfoundland and Labrador, Ontario and Quebec, (d) a mutual fund dealer in the Provinces of British Columbia, Ontario and Quebec and (e) a commodity trading manager in the Province of Ontario.

4. Each Initial Fund is, and any Future Fund will be, a mutual fund created under the laws of the Province of Ontario and are governed by the provisions of NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities. Each Fund is or will be an alternative mutual fund for purposes of NI 81-102.

5. Units of the Funds will be offered by simplified prospectus, annual information form and fund facts prepared in accordance with NI 81-101 (a **Simplified Prospectus**), or by a long form and ETF Facts prospectus (**Long Form Prospectus**) prepared in accordance with National Instrument 41-101 – *General Prospectus Requirements* (**NI 41-101**) as applicable, filed in all of the Jurisdictions and each Fund will be a reporting issuer in each of the Jurisdictions

6. Units of AGFiQ U.S. Long/Short Dividend Income CAD-Hedged Fund are being offered by Simplified Prospectus prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) and will be a reporting issuer in each of the Jurisdictions.

7. Units of AGFiQ U.S. Long/Short Dividend Income CAD-Hedged ETF and AGFiQ U.S. Market Neutral Anti-Beta CAD-Hedged ETF are being offered by Long Form Prospectus prepared in accordance with NI 41-101 and will be a reporting issuer in each of the Jurisdictions.

8. The investment objective of each of AGFiQ U.S. Long/Short Dividend Income CAD-Hedged Fund and AGFiQ U.S. Long/Short Dividend Income CAD-Hedged ETF is to seek performance results that correspond to the price and yield performance, before fees and expenses, of the Indxx Hedged Dividend Income Currency-Hedged CAD Index.

9. The Indxx Hedged Dividend Income Index is a long/short index in which the long positions, in the aggregate, have approximately twice the weight as the short positions, in the aggregate. The Indxx Hedged Dividend Income Index identifies approximately 100 securities as equal-weighted long components and approximately 150-200 securities as equal-weighted short components. Thus, although all long positions are the same weight as each other and all short positions are the same weight as each other, in the aggregate the long positions outweigh the short positions.

10. The investment objective of AGFiQ U.S. Market Neutral Anti-Beta CAD-Hedged ETF is to seek performance results that correspond to the price and yield performance, before fees and expenses, of the Dow Jones U.S. Thematic Market Neutral Anti-Beta Index (CAD-Hedged).

11. The Dow Jones U.S. Thematic Market Neutral Anti-Beta Index is a long/short market neutral index that is dollar-neutral. As such, it identifies long and short securities positions of approximately equal dollar amounts. The performance of the AGFiQ US Market Neutral Anti-Beta CAD-Hedged ETF will depend on the difference in the rates of return between its long positions and short positions. The universe of the Dow Jones U.S. Thematic Market Neutral Anti-Beta Index is comprised of the top 1,000 eligible securities by market capitalization. The Dow Jones U.S. Thematic Market Neutral Anti-Beta Index identifies approximately the 20% of securities with the lowest betas within each sector as equal-weighted long positions and approximately the 20% of securities with the highest betas within each sector as equal-weighted short positions.

12. The goal of market neutral investing is to generate returns that are independent of the returns and direction of the stock market (called beta). Market neutral investing is often implemented through a long/short portfolio of investments in publicly traded stocks. The market exposures of the combined long and short positions are designed to cancel each other out, producing a net effect on portfolio returns from stock market returns close to zero. Market neutral investing is sometimes called an “absolute return” strategy because it seeks positive returns, whether the stock market goes up or down.

13. The proposed investment objective for each Future Fund will differ, but in each case, a core investment strategy as stated in the Simplified Prospectus or Long Form Prospectus, as applicable, will make the extensive use of short selling an investment strategy that is available to the portfolio manager in order to achieve the investment objectives of the applicable Fund and the portfolio manager’s desired combination of long and short positions.

14. The investment strategies of each Fund will permit the Fund to borrow cash, enter into specified derivative transactions and/or sell securities short, provided that immediately after entering into a cash borrowing, specified derivative or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of all securities sold short by the Fund and the aggregate notional amount of the Fund’s specified derivatives positions (other than positions held for hedging purposes, as defined in NI 81-102) would not exceed 300% of the Fund’s NAV (the **Leverage Limit**). If the Leverage Limit is exceeded, the Fund shall, as quickly as commercially reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short and aggregate notional amount of the Fund’s specified derivatives position to be within the Leverage Limit, in compliance with section 2.9.1 of NI 81-102.

15. The Requested Relief would provide the portfolio manager of the Funds with the necessary flexibility to make timely trading decisions between physical short and synthetic short positions based on what is in the best interest of the Funds. The portfolio manager of the Funds, as a registrant and a fiduciary, is in the best position to determine whether the Funds should enter into a physical short position or a synthetic short position, depending on the surrounding circumstances. Accordingly, the Requested Relief would permit the Funds to engage in the most effective portfolio management available for the benefit of its unitholders.

16. Any short sales by a Fund will be consistent with the investment objectives and strategies of that Fund.

17. The Filer will determine each Fund's risk rating using the CSA's Mutual Fund Risk Classification Methodology For Use In Fund Facts and ETF Facts, as applicable, as set out in Appendix F of NI 81-102 (the Risk Methodology).

18. The investment strategies of each Fund will be amended to clearly disclose the short selling strategies of the Fund which are outside the scope of NI 81-102, including specifically that the aggregate market value of all securities sold short by the Fund may exceed 50% of the net asset value of the Fund, including how such strategies may affect investors' risk of losing money on their investment in the Fund.

19. The investment strategies of each Fund permit it to sell securities short, provided that at the time the Fund sells a security short (a) the aggregate market value of securities of any one issuer (other than "government securities" as defined in NI 81-102) sold short by the Fund does not exceed 10% of the net asset value of the Fund, and (b) the aggregate market value of all securities sold short by the Fund does not exceed 100% of its net asset value.

20. The Requested Relief would allow the Funds to fully hedge out their long positions through equivalent short positions in order to achieve its investment objectives, without the need to use, or incur the risks that may be associated with, specified derivatives.

21. Each Fund will implement the following controls when conducting a short sale:

    (a) The Fund will assume the obligation to return to the borrowing agent the securities borrowed to effect the short sale;

    (b) The Fund will receive cash for the securities sold short within normal trading settlement periods for the market in which the short sale is effected;

    (c) The Filer will monitor the short positions of the Fund at least as frequently as daily;

    (d) The security interest provided by the Fund over any of its assets that is required to enable the Fund to effect a short sale transaction is made in accordance with section 6.8.1 of NI 81-102 and will otherwise be made in accordance with industry practice for that type of transaction and relates only to obligations arising under such short sale transaction;

    (e) The Fund will maintain appropriate internal controls regarding short sales, including written policies and procedures for the conduct of short sales, risk management controls and proper books and records; and

    (f) The Filer and each Fund will keep proper books and records of short sales and all of its assets deposited with borrowing agents as security.

22. The Filer believes that it is in the best interests of the Funds to be permitted to sell securities short in excess of the current limits permitted by NI 81-102.

Decision

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that:

1. A Fund may sell a security short or borrow cash only if, immediately after the transaction:

    a. The aggregate market value of all securities sold short by the Fund does not exceed 100% of the Fund's NAV;

    b. The aggregate value of cash borrowing by the Fund does not exceed 50% of the Fund's NAV; and

    c. The aggregate market value of securities sold short by the Fund combined with the aggregate value of cash borrowing by the Fund does not exceed 100% of the Fund's NAV.

2. Each short sale by a Fund will otherwise comply with all of the short sale requirements applicable to alternative mutual funds under section 2.6.1 and 2.6.2 of NI 81-102.

3. A Fund's aggregate exposure to short selling, cash borrowing and specified derivatives will not exceed the Leverage Limit.

4. Any short sales by a Fund will be consistent with the investment objectives and strategies of that Fund.

5. Each Fund's Simplified Prospectus or Long Form Prospectus, as applicable, will disclose that the Fund can sell securities short in an amount up to 100% of the Fund's NAV, including the material terms of this decision.

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

2.1.2 Cresco Labs Inc. and Canaccord Genuity Corp.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for exemptive relief to permit issuer and underwriters, acting as agents for the issuer, to enter into equity distribution agreements to make "at the market" (ATM) distributions of subordinate voting shares over the facilities of a marketplace in Canada – ATM distributions to be made pursuant to shelf prospectus procedures in Part 9 of NI 44-102 Shelf Distributions – issuer will issue a press release and file agreements on SEDAR – application for relief from prospectus delivery requirement – delivery of prospectus not practicable in circumstances of an ATM distribution – relief from prospectus delivery requirement has effect of removing two-day right of withdrawal and remedies of rescission or damages for non-delivery of the prospectus – application for relief from certain prospectus form requirements – relief granted to permit modified forward-looking certificate language – relief granted on terms and conditions set out in decision document – decision will terminate 25 months after the issuance of a receipt for the shelf prospectus. Decision and application also held in confidence by decision makers until the earlier of the entering into of an equity distribution agreement, waiver of confidentiality or 90 days from the date of the decision.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 71 and 147.

Applicable Ontario Rules

National Instrument 44-101 Short Form Prospectus Distributions, s. 8.1 and Item 20 of Form 44-101F1.
National Instrument 44-102 Shelf Distributions, s. 6.7, Part 9, s 11.1, s. 2.2 of Part 2 of Appendix A.
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

October 22, 2019

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

AND

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

AND

IN THE MATTER OF
CRESCO LABS INC.
(the Issuer)

AND

CANACCORD GENUITY CORP.
(the Agent and, together with the Issuer, the Filers)

DECISION

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for the following relief (the **Exemption Sought**):

(a) that the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement applies, send or deliver to the purchaser the latest prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) and any amendment to the prospectus (the **Prospectus Delivery Requirement**) does not apply to the Agent or any other registered investment dealer acting on behalf of the Agent as a selling agent (each a **Selling Agent**) in connection with any at-the-market distribution (as defined in National Instrument 44-102 *Shelf Distributions* (**NI 44-102**)) (an **ATM Distribution**) of subordinate voting shares of the Issuer (**Subordinate Voting Shares**) in Canada under an equity distribution agreement (the **Equity Distribution**

Agreement) to be entered into between the Issuer and the Agent;

(b) that the requirements to include each of the following in a prospectus supplement, or in any amendment to a prospectus supplement, do not apply to a prospectus supplement of the Issuer (the **Prospectus Supplement**) or in any amendment thereto in respect of an ATM Distribution:

(i) a forward-looking issuer certificate in the form specified in section 2.1 or section 2.4, as applicable, of Appendix A to NI 44-102;

(ii) a forward-looking underwriter certificate in the form specified by section 2.2 or section 2.4, as applicable, of Appendix A to NI 44-102; and

(iii) a statement respecting purchasers' statutory rights of withdrawal and remedies of rescission or damages in substantially the form prescribed in Item 20 of Form 44-101F1 *Short Form Prospectus*;

(collectively, the **Prospectus Form Requirements**).

The Decision Makers have also received a request from the Filers for a decision that the application and this decision be kept confidential and not made public until the earliest of (i) the date on which the Filers enter into the Equity Distribution Agreement, (ii) the date on which the Filers jointly advise the Decision Makers that there is no longer any need for the application and this decision to remain confidential, and (iii) the date that is 90 days after the date of this decision (the **Confidentiality Relief**).

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

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

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

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

Representations

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

The Issuer

1. the Issuer is incorporated under the laws of the Province of British Columbia with its head office located in Chicago, Illinois and its registered office is located in Vancouver, British Columbia;

2. the Issuer is a reporting issuer in each province of Canada and is in compliance in all material respects with the requirements under applicable securities legislation and is not in default of securities legislation in any jurisdiction of Canada;

3. the Subordinate Voting Shares are listed on the Canadian Securities Exchange (the **CSE**);

The Agent

4. the Agent is a corporation incorporated under the laws of Ontario with its head office in Vancouver, British Columbia;

5. the Agent is registered as an investment dealer under the securities legislation of each province of Canada, is a member of the Investment Industry Regulatory Organization of Canada, and is a registered dealer with the CSE;

6. the Agent is not in default of any requirements under applicable securities legislation in any of the jurisdictions of Canada;

Proposed ATM Distributions

7. the Issuer has filed a short form base shelf prospectus in each province of Canada on July 25, 2019, qualifying the distribution from time to time of Subordinate Voting Shares, debt securities, subscription receipts, warrants and units comprised of the foregoing (the **Shelf Prospectus**); the Shelf Prospectus constitutes an "unallocated shelf" within the meaning of Part 3 of NI 44-102; the Issuer has included in the Shelf Prospectus a forward-looking certificate of the Issuer in the form prescribed by section 1.1 of Appendix A of NI 44-102;

8. subject to mutual agreement on terms and conditions, the Filers propose to enter into the Equity Distribution Agreement for the purpose of ATM Distributions involving the periodic sale of Subordinate Voting Shares by the Issuer through the Agent, as agent, under the base shelf prospectus procedures prescribed by Part 9 of NI 44-102;

9. if the Equity Distribution Agreement is entered into, the Issuer will immediately:

   (a) issue and file a news release under section 3.2 of NI 44-102 announcing the Equity Distribution Agreement and indicating that the Shelf Prospectus and the Prospectus Supplement have been filed on SEDAR, and specifying where and how purchasers of Subordinate Voting Shares under the applicable ATM Distribution may obtain copies; and

   (b) file a copy of the Equity Distribution Agreement on SEDAR;

10. prior to making any ATM Distributions, the Issuer will have filed the Prospectus Supplement in each of the provinces of Canada describing the terms of the applicable ATM Distribution, including the terms of the Equity Distribution Agreement, and otherwise supplementing the disclosure in the Shelf Prospectus;

11. the Equity Distribution Agreement will limit the number of Subordinate Voting Shares that the Issuer may issue and sell under any ATM Distribution thereunder to an amount not to exceed 10% of the aggregate market value of the outstanding Subordinate Voting Shares, such aggregate market value calculated in accordance with section 9.2 of NI 44-102, as at the last trading day of the month before the month in which the first distribution is made;

12. the Issuer will conduct ATM Distributions only through the Agent, as agent, directly or through a Selling Agent, and only through (i) the CSE or (ii) any other recognized Canadian "marketplace" within the meaning of National Instrument 21-101 *Marketplace Operation* upon which the Subordinate Voting Shares are listed, quoted or otherwise traded (each, including the CSE, a **Marketplace**);

13. the Agent will act as the sole agent of the Issuer in connection with an ATM Distribution directly or through one or more selling Agents on the CSE or another Marketplace and will be paid an agency fee or commission by the Issuer in connection with such sales; if sales are effected through a Selling Agent, the Selling Agent will be paid a seller's commission for effecting the trades on behalf of the Agent; the Agent will sign an agent's certificate, in the form set out in paragraph 30 below, in the Prospectus Supplement;

14. a purchaser's rights and remedies under applicable securities legislation against the Agent, as agent of an ATM Distribution through the CSE or another Marketplace, will not be affected by a decision to effect the sale directly or through a Selling Agent;

15. the aggregate number of Subordinate Voting Shares sold on all Marketplaces under an ATM Distribution on any trading day will not exceed 25% of the trading volume of the Subordinate Voting Shares on all Marketplaces on that day;

16. the Equity Distribution Agreement will provide that, at the time of each sale of Subordinate Voting Shares under an ATM Distribution, the Issuer will represent to the Agent that the Shelf Prospectus, as supplemented by the Prospectus Supplement, including the documents incorporated by reference in the Shelf Prospectus and any applicable amendment or supplement to the Shelf Prospectus or Prospectus Supplement (together, the Prospectus), contains full, true and plain disclosure of all material facts relating to the Issuer and the Subordinate Voting Shares; the Issuer will, therefore, be unable to proceed with sales under an ATM Distribution when it is in possession of undisclosed information that would constitute a material fact or a material change in respect of the Issuer or the Subordinate Voting Shares;

17. during the period after the date of the Prospectus Supplement and before the termination of any ATM Distribution, if the Issuer disseminates a news release disclosing information that, in the Issuer's determination, constitutes a "material fact" (as defined in the Legislation), the Issuer will identify such news release as a "designated news release" for the purposes of the Prospectus; this designation will be made on

the face page of the version of such news release filed on SEDAR (any such news release, a Designated News Release); the Prospectus Supplement will provide that any such Designated News Release will be deemed to be incorporated by reference into the Prospectus; a Designated News Release will not be used to update disclosure in the Prospectus by the Issuer in the event of a "material change" (as defined in the Legislation);

18. if, after the Issuer delivers a notice to the Agent directing the Agent to sell Subordinate Voting Shares on the Issuer's behalf under the Equity Distribution Agreement (a **Sell Notice**), the sale of the Subordinate Voting Shares specified in the Sell Notice, taking into consideration prior sales under previous ATM Distributions, would constitute a material fact or material change, the Issuer will suspend sales under the Equity Distribution Agreement until either: (i) it has disseminated and filed a Designated News Release (in the case of a material fact) or a material change report (in the case of a material change), as applicable, or amended the Prospectus; or (ii) circumstances have changed such that the sales would no longer constitute a material fact or material change;

19. in determining whether the sale of the Subordinate Voting Shares specified in a Sell Notice would constitute a material fact or material change, the Issuer will take into account a number of factors, including, without limitation: (i) the parameters of the Sell Notice, including the number of Subordinate Voting Shares proposed to be sold and any price or timing restrictions that the Issuer may impose with respect to the particular ATM Distribution, (ii) the percentage of outstanding Subordinate Voting Shares that the number of Subordinate Voting Shares proposed to be sold under the Sell Notice represents, (iii) sales under prior Sell Notices, (iv) trading volume and volatility of the Subordinate Voting Shares, (v) recent developments in the business, operations or capital of the Issuer and (vi) prevailing market conditions generally;

20. it is in the interest of the Filers to minimize the market impact of sales under an ATM Distribution; therefore, the Agent will closely monitor the market's reaction to trades made on the CSE or any other Marketplace under an ATM Distribution in order to evaluate the likely market impact of future trades; the Agent has experience and expertise in managing sell orders to limit downward pressure on trading prices; if the Agent has concerns as to whether a particular Sell Notice delivered by the Issuer may have a significant effect on the market price of the Subordinate Voting Shares, the Agent will recommend against effecting the trade under the applicable Sell Notice at that time;

Disclosure of Subordinate Voting Shares Sold

21. for each financial period in which the Issuer conducts an ATM Distribution, it will disclose in its annual and interim financial statements and related management discussion and analysis filed on SEDAR the number and average selling price of Subordinate Voting Shares distributed under the ATM Distribution, and the gross proceeds, commission and net proceeds for such sales;

Prospectus Delivery Requirement

22. under the Prospectus Delivery Requirement, a dealer effecting a trade of securities offered under a prospectus is required to deliver a copy of the prospectus (including the applicable prospectus supplement(s) in the case of a shelf prospectus) to the purchaser within prescribed time limits;

23. delivery of a prospectus is not practicable in the circumstances of an ATM Distribution, as neither the Agent nor a Selling Agent effecting the trade will know the identity of the purchasers;

24. although purchasers under an ATM Distribution would not physically receive a printed prospectus, the Prospectus will be filed and readily available electronically via SEDAR to all purchasers under ATM Distributions; as stated in paragraph 9 above, the Issuer will also issue a news release that specifies where and how copies of the Prospectus can be obtained;

25. the liability of an issuer or an underwriter (or others) for a misrepresentation in a prospectus under the civil liability provisions of the Legislation will not be affected by the grant of an exemption from the Prospectus Delivery Requirement, because purchasers of securities offered by a prospectus during the period of distribution have a right of action for damages or rescission, without regard to whether or not the purchaser relied on the misrepresentation or in fact received a copy of the prospectus;

Withdrawal Right and Right of Action for Non-Delivery

26. under the Legislation, an agreement of purchase and sale in respect of a distribution to which the prospectus requirement applies is not binding on the purchaser if the dealer from whom the purchaser purchases the security receives, not later than midnight on the second day (exclusive of Saturdays, Sundays and holidays) after receipt by the purchaser of the latest prospectus or any amendment to the prospectus, a notice in writing

that the purchaser does not intend to be bound by the agreement of purchase (the **Withdrawal Right**);

27. under the Legislation, a purchaser of securities to whom a prospectus was required to be sent or delivered in compliance with the Prospectus Delivery Requirement, but was not so sent or delivered, has a right of action for rescission or damages against the dealer who did not comply with the Prospectus Delivery Requirement (the **Right of Action for Non-Delivery**);

28. neither the Withdrawal Right nor the Right of Action for Non-Delivery is workable in the context of an ATM Distribution because of the impracticability of delivering the Prospectus to a purchaser of Subordinate Voting Shares thereunder;

Modified Certificates and Statements

29. to reflect the fact that an ATM Distribution is a continuous distribution, the Prospectus Supplement and any amendment thereto will include the following issuer certificate (with appropriate modifications in respect of the filing of an amendment prescribed by section 2.4 of Appendix A to NI 44-102), such issuer certificate to supersede and replace the issuer certificate in the Shelf Prospectus solely with regard to the ATM Distribution:

> *The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, as of the date of a particular distribution of securities offered by the prospectus, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this prospectus supplement, as required by the securities legislation of each of the provinces of Canada.*

30. to reflect the fact that an ATM Distribution is a continuous distribution, the Prospectus Supplement and any amendment thereto will include the following underwriter certificate (with appropriate modifications in respect of the filing of an amendment prescribed by section 2.4 of Appendix A to NI 44-102):

> *To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, as of the date of a particular distribution of securities offered by the prospectus, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this prospectus supplement, as required by the securities legislation of each of the provinces of Canada.*

31. a different statement of purchasers' rights than that required by the Legislation is necessary so that the Prospectus will accurately reflect the relief granted from the Prospectus Delivery Requirement; accordingly, the Prospectus Supplement will state the following, with the date reference completed:

> *Securities legislation in certain of the provinces of Canada provides purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. However, purchasers of Subordinate Voting Shares under an at-the-market distribution will not have any right to withdraw from an agreement to purchase the Subordinate Voting Shares and will not have remedies of rescission or, in some jurisdictions, revision of the price, or damages for non-delivery of the prospectus, because the prospectus, prospectus supplements relating to the Subordinate Voting Shares purchased by the purchaser and any amendments thereto will not be delivered as permitted under a decision document dated ●, 2019 and granted under National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.*
>
> *Securities legislation in certain of the provinces of Canada also provides purchasers with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contain a misrepresentation, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. Any remedies under securities legislation that a purchaser of the Subordinate Voting Shares under an at-the-market distribution by the Corporation may have against the Corporation or the Agent for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to the Subordinate Voting Shares purchased by the purchaser and any amendment contain a misrepresentation remain unaffected by the non-delivery of the prospectus and the decision referred to above.*
>
> *Purchasers should refer to any applicable provisions of the securities legislation of the purchaser's province and the decision referred to above for the particulars of their rights or consult with a legal*

advisor.

32. the Prospectus Supplement will disclose that, in respect of ATM Distributions, the statement prescribed in section 31 above supersedes and replaces the statement of purchasers' rights contained in the Shelf Prospectus; and

33. the Issuer has not yet publicly announced its intention to enter into the Equity Distribution Agreement; premature disclosure of this intention may have an adverse effect on the Issuer.

Decision

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

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

(a) during the 60-day period ending not earlier than 10 days prior to the commencement of an ATM Distribution, the Subordinate Voting Shares have traded, in total, on one or more Marketplaces, as reported on a consolidated market display:

  (i) an average of at least 100 times per trading day; and

  (ii) with an average trading value of at least $1,000,000 per trading day;

(b) the Issuer makes the disclosure described in sections 21, 29, 30, 31 and 32; and

(c) the Issuer complies with the representations in sections 2, 9, 10, 11, 12, 15, 16, 17, 18, 19 and 29; and

(d) the Agent complies with the representations in sections 4, 5, 6, 11, 12, 13, 14, 15 and 20.

This decision will terminate 25 months from the date of the receipt for the Shelf Prospectus.

The further decision of the Decision Makers is that the Confidentiality Relief is granted.

"John Hinze"
Director, Corporate Finance
British Columbia Securities Commission

2.1.3 Portland Investment Counsel Inc.

Headnote

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

Applicable Legislative Provisions

National Instrument 81-102 – Mutual Funds, ss. 11.1(1)(b) and 19.1.

December 10, 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
PORTLAND INVESTMENT COUNSEL INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief from the requirements of paragraph 11.1(1)(b) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) that cash received by a principal distributor of a mutual fund, by a person or company providing services to the mutual fund or the principal distributor, or by a person or company providing services to a non-redeemable investment fund, for investment in, or on the redemption of, securities of the investment fund (**Investment Fund Cash**) may be commingled only with cash received by the principal distributor or service provider for the sale or on the redemption of other investment fund securities (the **Commingling Prohibition**) (the **Exemption Sought**).

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

(a) the Ontario Securities Commission (the **OSC**) 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 (together with Ontario, the **Jurisdictions**).

Interpretation

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

Portland Exempt Funds means the private and alternative investments, including prospectus exempt investment funds, offered by the Filer, and which are "investment funds" as defined by the Legislation;

Portland Funds means the Portland Mutual Funds, Portland Exempt Funds and Portland Private Equity Funds;

Portland Investment Funds means the Portland Mutual Funds and the Portland Exempt Funds;

Portland Mutual Funds means the prospectus offered mutual funds offered by the Filer; and

Portland Private Equity Funds means the prospectus exempt private equity funds offered by the Filer which do not fall within the definition of "investment funds" as they seek to obtain control of or become involved in the management of the companies in which they invest, but which are structured similarly to the Portland Mutual Funds and the Portland Exempt Funds in that they are also pooled investment vehicles.

Representations

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

The Filer and the Funds

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

2. The Filer is registered as follows:

   (a) in the provinces of Alberta, Newfoundland and Labrador, Ontario and Quebec in the category of investment fund manager;

   (b) in each of the provinces and territories of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Ontario, Prince Edward Island, Québec and Saskatchewan as an adviser in the category of portfolio manager;

(c) in each of the provinces and territories of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec and Saskatchewan as a dealer in the category of exempt market dealer; and

(d) in Ontario as a dealer in the category of mutual fund dealer.

3. The Filer is the trustee, investment fund manager and portfolio manager of the Portland Mutual Funds. Mandeville Private Client Inc. ("**Mandeville Private Client**", or the "**Principal Distributor**"), an affiliate of the Filer, acts as principal distributor of the Portland Mutual Funds.

4. The Filer and Mandeville Private Client are direct wholly-owned subsidiaries of Mandeville Holdings Inc.

5. In addition to the Portland Mutual Funds, the Filer also offers investors private and alternative investments, including the Portland Exempt Funds and the Portland Private Equity Funds.

6. Securities of the Portland Funds are generally sold through the Filer, Mandeville Private Client or through third party registered dealers ("**Dealers**").

7. The Filer is a "person providing services to the mutual fund" under the provisions of section 11.1(1)(b) of NI 81-102. Accordingly, the Commingling Prohibition prohibits the Filer from commingling Portland Investment Funds Trust Cash with Portland Private Equity Funds Trust Cash.

The Trust Accounts

8. The Filer has retained CIBC Mellon Global Securities Services Company ("**CIBC Mellon**") to carry out certain administrative services for the Portland Investment Funds, including processing of all subscriptions and redemptions. CIBC Mellon uses the services of CIBC Mellon Trust Company ("**CIBC Mellon Trust**") to maintain trust accounts for their clients.

9. The Filer has one or more trust accounts on behalf of the Portland Investment Funds (the "**Trust Accounts**") through CIBC Mellon into which all monies ("**Portland Investment Funds Trust Cash**") invested by securityholders in the Portland Investment Funds ("**Securityholders**") are paid by way of cheque, wire transfer, electronic funds transfer and the Fundserv electronic order entry systems (collectively referred to as "**Industry Standard Settlement Processes**") and from which redemption proceeds or assets to be distributed are paid. The Trust Accounts bear interest at rates equivalent to comparable accounts at CIBC Mellon Trust and any interest earned on the cash in the Trust Accounts is paid to Securityholders or to each of the Portland Investment Funds on a pro rata basis in compliance with subsection 11.1(4) of NI 81-102. The Filer also ensures compliance with section 11.3 of NI 81-102 in the way in which the Trust Accounts are maintained.

10. Each Trust Account is designated as a "trust account" by CIBC Mellon and is currently held on behalf of the Portland Investment Funds. The Filer, as manager and trustee of the Portland Investment Funds, has access to the Trust Accounts and has control over which of its employees has access to the Trust Accounts.

11. As permitted by the provisions of paragraph 11.1(1)(b) of NI 81-102, the Portland Investment Funds Trust Cash represents cash that has been received in respect of the Portland Investment Funds and is commingled in the Trust Accounts.

12. The Filer has similarly retained CIBC Mellon to carry out certain administrative services for the Portland Private Equity Funds, including processing of all subscriptions and redemptions.

The Proposed Commingling

13. The Filer proposes that the process in respect of monies invested by securityholders in the Portland Private Equity Funds will be the same as the process in respect of the Portland Investment Funds described in paragraph 9 above. All monies ("**Portland Private Equity Funds Trust Cash**") invested by securityholders in the Portland Private Equity Funds will be paid into the Trust Accounts via Industry Standard Settlement Processes. Once received, the Filer will hold both Portland Investment Funds Trust Cash and Portland Private Equity Funds Trust Cash (together, "**Commingled Cash**") temporarily in the Trust Accounts. The Portland Private Equity Funds Trust Cash will then be forwarded by CIBC Mellon from the Trust Accounts to the individual Portland Private Equity Fund custodial account at CIBC Mellon Trust, which is the same process as currently exists in respect of the Portland Investment Funds Trust Cash. For a brief time then, the Portland Private Equity Funds Trust Cash will temporarily be commingled with the Portland Investment Funds Trust Cash in the Trust Accounts.

Interests of the Fund and Investors

14. The Filer proposes to temporarily pool monies invested by securityholders in the Portland Private Equity Funds with Portland Investment Funds Trust Cash in the Trust Accounts. The Filers believes that the commingling of Portland Private Equity Funds Trust Cash with Portland Investment Funds Trust Cash would facilitate significant administrative and systems economies that will

enable the Filer to enhance its level of service to its clients at less cost.

15. In the absence of the Requested Relief, the commingling of Portland Private Equity Funds Trust Cash with Portland Investment Funds Trust Cash may contravene the Commingling Prohibition and would require the Filer to establish separate trust accounts for the Portland Investment Funds on the one hand and the Portland Private Equity Funds on the other. This would represent a significant cost to be borne by the securityholders of the Portland Private Equity Funds and no benefit to the securityholders of the Portland Investment Funds.

Clearing and Settlement

16. Dealers may accept money from investors for investment in the Portland Private Equity Funds and for investment in the Portland Investment Funds and will forward such money to the Trust Accounts via Industry Standard Settlement Processes.

17. As manager of the Portland Investment Funds, the Filer is subject to the statutory standard of care set forth in section 116 of the Legislation and to similar provisions contained in the legislation of the Jurisdictions. The Filer also maintains insurance coverage in accordance with section 12.5 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

18. Commingled Cash will be forwarded by CIBC Mellon from the Trust Accounts to the individual custodial accounts for the Portland Funds at CIBC Mellon Trust no less frequently than following overnight processing of Portland Fund purchase orders. Commingled Cash will be forwarded from the Trust Accounts to the relevant dealers or dealer trust accounts which redeem Portland Funds no less frequently than following overnight processing of redemption orders, subject to the time it may take for a securityholder to redeem a cheque issued in respect of redeemed Portland Fund securities. Accordingly, all monies held in the Trust Accounts will be cleared no less frequently than on a daily basis at the beginning of each business day following the previous business day's overnight processing of all purchase transactions involving the Portland Funds and most redemptions from the Portland Funds.

19. The Filer believes that the commingling of Portland Private Equity Funds Trust Cash with Portland Investment Funds Trust Cash in the Trust Accounts will not be detrimental to the protection of investors.

20. Portland Investment Funds Trust Cash or Portland Private Equity Funds Trust Cash related to the transaction initiated by one of the Filer's clients will not be used to settle the transaction initiated by any other client of the Filer.

Internal Controls

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

22. The Filer will ensure that proper records with respect to the cash that is commingled in the Trust Accounts are kept and will ensure that the Trust Accounts are reconciled, and that cash is properly accounted for daily.

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

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

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

Filer not in Default of Securities Legislation

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

Decision

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

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

"Darren McKall"
Manager
Investment Funds & Structured Products Branch

2.2 Orders

2.2.1 Bloomberg Trading Facility Limited – s. 144

Headnote

Application for a variation order extending an interim order so that the interim order will expire on the earlier of (i) December 31, 2020 and (ii) the effective date of a subsequent order exempting Bloomberg Trading Facility Limited from the requirement to be recognized as an exchange – requested order granted.

Applicable Legislative Provisions

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
BLOOMBERG TRADING FACILITY LIMITED

ORDER

VARIATION OF INTERIM ORDER
(Section 144 of the Act)

WHEREAS Bloomberg Trading Facility Limited ("**Applicant**") is authorized by the U.K. Financial Conduct Authority, a financial regulatory body in the United Kingdom, to act as the operator of a multilateral trading facility ("**MTF**");

AND WHEREAS the Applicant has participants located in Ontario;

AND WHEREAS an MTF allowing access to Ontario participants is considered by the Ontario Securities Commission ("**Commission**") to be carrying on business as an exchange in Ontario;

AND WHEREAS on December 22, 2017, the Commission issued an interim order under section 147 of the Act exempting the Applicant on an interim basis from the requirement in subsection 21(1) of the Act to be recognized as an exchange ("**Interim Order"**);

AND WHEREAS on December 14, 2018, the Commission issued an order varying the Termination Date (as defined below) of the Interim Order ("**First Variation Order**");

AND WHEREAS on June 27, 2019, the Commission issued a second order varying the Termination Date of the Interim Order ("**Second Variation Order**");

AND WHEREAS the Interim Order, as varied by the First Variation Order and the Second Variation Order, will terminate on the earlier of (i) December 31, 2019 and (ii) the effective date of a subsequent order ("**Subsequent Order**") exempting the Applicant from the requirement to be recognized as an exchange under section 21(1) of the Act ("**Termination Date**"), unless further extended by order of the Commission;

AND WHEREAS the Applicant has made an Application for a Subsequent Order;

AND WHEREAS the Commission has determined that it is not prejudicial to the public interest to further vary the Interim Order, as varied by the First Variation Order and the Second Variation Order, to extend the Applicant's interim exemption from the requirement to be recognized as an exchange pursuant to section 21(1) of the Act for an additional twelve-month period;

IT IS HEREBY ORDERED by the Commission, pursuant to section 144 of the Act, that:

1. The Interim Order, as varied by the First Variation Order and the Second Variation Order, is further varied by replacing the reference to "December 31, 2019" with "December 31, 2020".

DATED this 13th day of December, 2019

"Craig Hayman"

"Poonam Puri"

2.2.2 Authorization Order – s. 3.5(3)

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5
(the "Act")

AND

IN THE MATTER OF
AN AUTHORIZATION PURSUANT TO
SUBSECTION 3.5(3) OF THE ACT

AUTHORIZATION ORDER
(Subsection 3.5(3))

WHEREAS a quorum of the Ontario Securities Commission (the "Commission") may, pursuant to subsection 3.5(3) of the Act, in writing authorize any member of the Commission to exercise any of the powers and perform any of the duties of the Commission, including the power to conduct contested hearings on the merits.

AND WHEREAS, by an authorization order made on April 30, 2019, pursuant to subsection 3.5(3) of the Act (the "**Prior Authorization**"), the Commission authorized each of MAUREEN JENSEN, D. GRANT VINGOE, TIMOTHY MOSELEY, MARY ANNE DE MONTE-WHELAN, GARNET W. FENN, LAWRENCE P. HABER, CRAIG HAYMAN, RAYMOND KINDIAK, POONAM PURI, M. CECILIA WILLIAMS, and HEATHER ZORDEL acting alone, subject to subsection 3.5(4) of the Act,

(a) to exercise the powers of the Commission to grant adjournments and set dates for hearings, to hear and determine procedural matters, including making an order under section 147 of the Act to exempt a person or company from any time limit imposed by Ontario securities law,

(b) to make and give any orders, directions, appointments, applications, consents and determinations under sections 5, 11, 12, 17, 19, 20, 122, 126, 128, 129, 144, 146, 152 and 153 of the Act that the Commission is authorized to make or give,

(c) to exercise the powers of the Commission under subsections 8(2) and (3) of the Act, including those powers conferred on the Commission because of subsection 21.7(2) of the Act,

(d) to exercise the powers of the Commission under sections 104 and 127 of the Act, and

(e) to provide the opinion contemplated by subsection 140(2) of the Act,

including to exercise the power to conduct contested hearings on the merits.

IT IS ORDERED that the Prior Authorization is hereby revoked;

THE COMMISSION HEREBY AUTHORIZES, pursuant to subsection 3.5(3) of the Act, each of MAUREEN JENSEN, D. GRANT VINGOE, TIMOTHY MOSELEY, MARY ANNE DE MONTE-WHELAN, GARNET W. FENN, LAWRENCE P. HABER, CRAIG HAYMAN, RAYMOND KINDIAK, POONAM PURI and HEATHER ZORDEL acting alone, subject to subsection 3.5(4) of the Act,

(a) to exercise the powers of the Commission to grant adjournments and set dates for hearings, to hear and determine procedural matters, including making an order under section 147 of the Act to exempt a person or company from any time limit imposed by Ontario securities law,

(b) to make and give any orders, directions, appointments, applications, consents and determinations under sections 5, 11, 12, 17, 19, 20, 122, 126, 128, 129, 144, 146, 152 and 153 of the Act that the Commission is authorized to make or give,

(c) to exercise the powers of the Commission under subsections 8(2) and (3) of the Act, including those powers conferred on the Commission because of subsection 21.7(2) of the Act,

(d) to exercise the powers of the Commission under sections 104 and 127 of the Act, and

(e) to provide the opinion contemplated by subsection 140(2) of the Act,

including to exercise the power to conduct contested hearings on the merits.

DATED at Toronto, this 13th day of December, 2019.

"D. Grant Vingoe"
Vice-Chair

"Lawrence P. Haber"
Commissioner

2.2.3 BDO Canada LLP

IN THE MATTER OF
BDO CANADA LLP

File No. 2018-59

Timothy Moseley, Vice-Chair and Chair of the Panel

December 18, 2019

ORDER

WHEREAS on December 16, 2019, the Ontario Securities Commission held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider a motion brought by Staff of the Commission (**Staff**), seeking an order requiring BDO Canada LLP (**BDO**) to provide further and better witness summaries of the evidence that each of BDO's witnesses is expected to give at the hearing on the merits of this proceeding;

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

IT IS ORDERED, with reasons to follow, that Staff's motion is dismissed.

"Timothy Moseley"

2.2.4 The Catalyst Capital Group Inc. et al. – s. 127

IN THE MATTER OF
THE CATALYST CAPITAL GROUP INC.

AND

IN THE MATTER OF
HUDSON'S BAY COMPANY,
RICHARD A. BAKER, LISA BAKER,
LISA AND RICHARD BAKER ENTERPRISES, LLC,
RED TRUST, YELLOW TRUST, BLUE TRUST,
ROBERT BAKER, CHRISTINA BAKER,
A TRUST FOR BETTINA JANE RICHMAN,
A TRUST FOR EMMA RICHMAN,
A TRUST FOR FRANCESCA RICHMAN,
ASHLEY S. BAKER 3/15/84 TRUST, LION TRUST,
MR. AND MRS. ROBERT BAKER FAMILY FOUNDATION,
CHRISTINA BAKER TRUST FOR GRANDCHILDREN,
ROBERT C. BAKER TRUST FOR GRANDCHILDREN,
WILLIAM MACK,
THE WILLIAM AND PHYLLIS MACK FAMILY FOUNDATION, INC.,
MACK 2010 FAMILY TRUST I,
RICHARD MACK, WRS ADVISORS III, LLC,
WRS ADVISORS IV, LLC,
LEE NEIBART, LEE S. NEIBART 2010 GRAT,
HANOVER INVESTMENTS (LUXEMBOURG) S.A.,
ABRAMS CAPITAL PARTNERS I, L.P.,
ABRAMS CAPITAL PARTNERS II, L.P.,
WHITECREST PARTNERS, LP,
FABRIC LUXEMBOURG HOLDINGS S.À.R.L,
L&T B (CAYMAN) INC. and
RUPERT ACQUISITION LLC

File No. 2019-41

D. Grant Vingoe, Vice-Chair and Chair of the Panel
Timothy Moseley, Vice-Chair
Lawrence Haber, Commissioner

December 18, 2019

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

WHEREAS on December 13, 2019 the Ontario Securities Commission issued an interim order, following a hearing on December 11, 12 and 13, 2019, held at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider the Application brought by The Catalyst Capital Group Inc. (**Catalyst**) in respect of the proposed acquisition of securities of Hudson's Bay Company (**HBC**) by Rupert Acquisition LLC (**Rupert LLC**), in connection with the plan of arrangement (the **Transaction**) contemplated under an arrangement agreement dated October 20, 2019 between Rupert LLC and HBC (the **Arrangement Agreement**);

ON READING the Amended Application and the materials filed and on hearing the submissions of the representatives for Catalyst, HBC, Rupert LLC, the remaining respondents (the **Continuing Shareholders**)

and Staff of the Commission (**Staff**) and considering the undertaking of HBC to postpone the shareholders' meeting previously scheduled for December 17, 2019, until compliance with this Order;

IT IS ORDERED, with reasons to follow, that:

1. If HBC wishes to proceed with a vote for shareholder approval of the Transaction or any similar modified transaction, HBC must:

   (a) amend HBC's Management Information Circular dated November 14, 2019 (the **Circular**) in accordance with this Order and send such amended Circular to shareholders, appending this Order and a blacklined version of the Circular showing the tracked changes, at least 14 days before the scheduled vote;

   (b) deliver a copy of the amended Circular to Staff at least five days before it is sent to shareholders; and

   (c) promptly provide to Staff any of the records that HBC is required to keep pursuant to s. 19(1) of the *Securities Act*, RSO 1990, c S.5, and that are necessary in the opinion of Staff to facilitate Staff's review of the amended Circular;

2. If HBC wishes to proceed with a vote for shareholder approval of the Transaction or any similar modified transaction, HBC shall amend the Circular to provide full and accurate disclosure of the following information and, in each case, a meaningful discussion and analysis of the implications of that information for purposes of the Transaction and the shareholder vote:

   (a) A description of any limitation on the scope of the review of the appraisal of the value of Saks Fifth Avenue's main flagship property (the **Saks Flagship**) prepared by CBRE, Inc. as at July 15, 2019 and dated October 15, 2019, and whether CBRE, Inc., in its professional judgment, considered such appraisal to be based on scenarios constituting the highest and best use of the Saks Flagship;

   (b) The effect, if any, of the disclosures made pursuant to section 2(a) of this Order on the contents of the valuation and fairness opinion of TD Securities Inc. included in the Circular;

   (c) The direct or indirect benefits to be obtained by the persons specified in Item 11 of Form 62-104F2 *Issuer Bid Circular* in connection with the Transaction, including, without limitation:

      i. those to be obtained by directors and officers of HBC and involving treatment of restricted share units and options; and

      ii. those to be obtained by the Continuing Shareholders arising from the tax structure proposed to implement the Transaction;

   (d) The analysis of David Leith, Chairman of the Special Committee of the HBC Board (**Leith**), leading to his decision on or about March 25, 2019 to consent to Richard Baker, HBC's Governor and Executive Chairman (**Baker**), sharing certain financial information with the Continuing Shareholders on a confidential basis, in the context of exploring a potential privatization transaction, including:

      i. his consideration of the effects of such decision on the confidentiality obligations of each of the Continuing Shareholders at that time; and

      ii. his consideration of the effects of such decision on the standstill provision in the Investor Rights Agreement with Fabric Luxembourg Holdings S.à.r.l. (**Fabric**);

   (e) Leith's analysis leading to his decision on or about March 25, 2019 to consent to Baker's use of HBC's historical transaction counsel in connection with the initial evaluation of Baker's contemplated privatization proposal;

   (f) Leith's analysis concerning whether he did make, and if so was authorized to make, and should have made, the decisions described in sections 2(d) and (e) of this Order on his sole authority and without the benefit of a Special Committee authorized to consider the privatization proposal and/or without the advice of counsel;

   (g) The HBC Board's reasons for deciding that a Special Committee was not required to address the conflicts of interest arising from the contemplated privatization proposal until June 9, 2019;

   (h) The HBC Board's analysis of the effect of the potential use of the proceeds of the sale of HBC's joint venture interests to SIGNA Retail Holdings (the **SIGNA Transaction**) to partially fund the privatization proposal on the HBC Board's decision not to enlarge the mandate of the Special Committee, which included consideration of the SIGNA

Transaction, to also consider the contemplated privatization proposal, until June 9, 2019;

(i) The Special Committee's reasons for granting a waiver of the standstill provision in Fabric's Investor Rights Agreement and the effect of such waiver on whether alternative transactions to the privatization proposal could emerge, both with and without regard to the Continuing Shareholders' assertion that they would not be sellers under any circumstances;

(j) The factors involved in any negotiation by the Special Committee with the Continuing Shareholders of the terms of the "Superior Proposal" definition and related provisions in the Arrangement Agreement and the effect of such provisions on the practicality of alternative transactions emerging;

(k) The Special Committee's discussions and decisions regarding the timing of the two press releases issued on June 10, 2019 (regarding the SIGNA Transaction and the privatization proposal) and the implications of the timing of those press releases, including, without limitation:

i. on the ability of the market to absorb the significance of the SIGNA Transaction in advance of the announcement of the privatization proposal; and

ii. on the magnitude of the premium to market reflected in the initial privatization proposal;

(l) Reconciliation of the disclosures made in HBC's press release issued on December 6, 2019 and the evidence contained in Leith's Affidavit sworn December 9, 2019, marked as Exhibit 3 in this proceeding, together with his evidence given on direct and cross-examination on December 12, 2019; and

(m) Whether the Special Committee continues to view the Transaction as fair and reasonable in accordance with the applicable corporate law standard;

3. If any issue arises with the interpretation of, or compliance with, the terms of this Order, any party may apply to the Commission for directions or further relief, with notice to all other parties.

"D. Grant Vingoe"

"Timothy Moseley"

"Lawrence Haber"

2.2.5 VRK Forex & Investments Inc. and Radhakrishna Namburi – ss. 127, 127.1

IN THE MATTER OF
VRK FOREX & INVESTMENTS INC. and
RADHAKRISHNA NAMBURI

File No. 2019-40

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

December 19, 2019

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

WHEREAS on December 19, 2019, the Ontario Securities 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 VRK Forex & Investments Inc. and Radhakrishna Namburi (together, the **Respondents**);

IT IS ORDERED THAT:

1. the Respondents shall serve and file a motion, if any, regarding Staff's disclosure of non-privileged relevant documents and things in the possession or control of Staff or seeking disclosure of additional documents by no later than March 15, 2020;

2. Staff shall file and serve a witness list, and serve a summary of each witness' anticipated evidence on the Respondents, and indicate any intention to call an expert witness, including the expert's name and the issues on which the expert will give evidence, by no later than March 15, 2020; and

3. a further attendance in this proceeding is schedule for March 26, 2020 at 10:00 a.m., or on such other date and time as may be agreed to by the parties and set by the Office of the Secretary.

"D. Grant Vingoe"

2.2.6 Sean Daley and Kevin Wilkerson – ss. 127, 127.1

IN THE MATTER OF
SEAN DALEY and
KEVIN WILKERSON

File No. 2019-39

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

December 20, 2019

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

WHEREAS on December 20, 2019, the Ontario Securities Commission held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario, with respect to the First Attendance;

ON HEARING the submissions of the representatives for Staff of the Commission (**Staff**) and Sean Daley, appearing on his own behalf, and no one appearing on behalf of Kevin Wilkerson, although properly served (together, the **Respondents**);

IT IS ORDERED THAT:

1. Staff shall file and serve a witness list on each Respondent, serve a summary of each witnesses' anticipated evidence on each Respondent by no later than February 3, 2020;

2. the Respondents shall serve and file a motion, if any, regarding Staff's Disclosure or seeking disclosure of additional documents by no later than February 10, 2020;

3. a further attendance in this proceeding is scheduled for February 13, 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.

"D. Grant Vingoe"

2.2.7 Enthusiast Gaming Properties Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for an order that the issuer is not a reporting issuer under applicable securities laws – issuer is the wholly-owned subsidiary of an acquirer – issuer has outstanding warrants and debentures exercisable into securities of acquirer – warrant and debenture holders no longer require public disclosure in respect of the issuer – relief granted.

Applicable Legislative Provisions

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

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

AND

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

AND

IN THE MATTER OF
ENTHUSIAST GAMING PROPERTIES INC.
(the FILER)

ORDER

Background

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

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

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

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 – *Passport System* (MI 11-102) is intended to be relied upon in British Columbia and Alberta.

Interpretation

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

Representations

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

1. The Filer was incorporated under the *Business Corporations Act* (Ontario) (the **OBCA**) on February 27, 2017 as Tova Ventures II Inc. The name of the Filer was changed to "Enthusiast Gaming Holdings Inc." pursuant to articles of amendment dated September 21, 2018.

2. The Filer's registered and head office is at 90 Eglinton Avenue East, Suite 805, Toronto, Ontario M4P 2Y3.

3. On August 30, 2019 (the **Effective Date**), J55 Capital Corp. (the **Purchaser**) acquired all of the issued and outstanding common shares of the Filer, pursuant to a plan of arrangement under section 182 of the OBCA (the **Arrangement**).

4. The Purchaser is a corporation existing under the *Business Corporations Act* (British Columbia). The common shares of the Purchaser (the **J55 Shares**) are listed on the TSX Venture Exchange (the **TSXV**) under the symbol "FIVE.P". The Purchaser is a reporting issuer in British Columbia, Alberta and Ontario.

5. Immediately prior to the Effective Date, the Filer had the following outstanding securities: (i) 52,335,716 common shares (the **Filer Shares**); (ii) 4,470,798 options to purchase Filer Shares (the **Filer Options**); (iii) 14,180,359 warrants to purchase Filer Shares (the **Filer Warrants**), (iv) 9,000 unsecured convertible debentures convertible into Filer Shares (the **Filer Debentures**) and (v) 540 broker warrants convertible into Filer Debentures and Filer Warrants (**the Filer Broker Warrants**). The Filer Shares were listed on the TSXV under the symbol "EGLX" and the OTCQB Venture Market (the **OTCQB**) under the symbol "EGHIF".

6. Notice of the annual and special meeting of holders of Filer Shares to consider the Arrangement was delivered to the holders of Filer Shares. Notice was not delivered to holders of Filer Options, Filer Warrants, Filer Debentures and Filer Broker Warrants. These holders do not have the right to receive notice of meetings pursuant to the governing documents in respect of the Filer Options, Filer Warrants, Filer Debentures and Filer Broker Warrants. The Filer issued a news release on May 31, 2019 publicly announcing the Arrangement.

7. Pursuant to the Arrangement and the applicable plan of arrangement (the **Plan of Arrangement**), among other things, the following occurred:

   a. The Purchaser acquired all of the Filer Shares and the Filer became a wholly-owned subsidiary of the Purchaser, changing its name from "Enthusiast Gaming Holdings Inc." to "Enthusiast Gaming Properties Inc.";

   b. Each Filer Option (vested and unvested) was exchanged for a replacement J55 option to acquire such number of J55 Shares as set out in the Plan of Arrangement;

   c. Each holder of a Filer Warrant became entitled to receive upon the exercise of such holder's Filer Warrant the number of J55 Shares which the holder would have been entitled to receive as a result of the transactions contemplated by the Arrangement if, immediately prior to the Effective Date, such holder had been the registered holder of the number of Filer Shares to which such holder would have been entitled if such holder had exercised such holder's Filer Warrants immediately prior to the Effective Date; and

   d. Each holder of a Filer Debenture became entitled to receive upon the conversion of such holder's Filer Debenture the number of J55 Shares which the holder would have been entitled to receive as a result of the transactions contemplated by the Arrangement if, immediately prior to the Effective Date, such holder had been the registered holder of the number of Filer Shares to which such holder would have been entitled if such holder had converted such holder's Filer Debentures immediately prior to the Effective Date.

   e. Each holder of a Filer Broker Warrant became entitled to receive upon the conversion of such holder's Filer Broker Warrant a convertible debenture of J55 (each, a **J55 Debenture**) and the number of J55 common share purchase warrants (**J55 Warrants**) which the holder would have been entitled to receive as a result of the transactions contemplated by the Arrangement if, immediately prior to the Effective Date, such holder had been the registered holder of the number of Filer Debentures and Filer Warrants to which such holder would have been entitled if such holder had converted such holder's Filer Broker Warrants immediately prior to the Effective Date.

8. The Filer is not required to remain a reporting issuer pursuant to the terms of the warrant indentures or the debenture agreements. No consents or approvals to cease to be a reporting issuer are required from the holders of the Filer Warrants or the Filer Debentures.

9. The Filer Shares were delisted from the TSXV and the OTCQB as of the close of business on September 5, 2019.

10. The Filer is not eligible to surrender its status as a reporting issuer pursuant to the simplified procedure in NP 11-206 because the outstanding securities, including debt securities, of the Filer are not 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.

11. The only outstanding securities of the Filer held by persons other than the Purchaser are the Filer Warrants, the Filer Debentures and Filer Broker Warrants.

12. Upon the exercise of the Filer Warrants and/or conversion of the Filer Debentures, only J55 Shares are issuable. No Filer Shares are issuable upon exercise of any Filer Warrants. No Filer Shares are issuable upon conversion of any Filer Debentures.

13. To the best of the Filer's knowledge and belief and based on the registers of holders of the Filer Warrants maintained by the Filer and the TSX Trust Company, as of August 29, 2019, there were 109 holders of Filer Warrants, 31 of which were in Ontario (representing 71.3% of the total aggregate Filer Warrants), 70 of which were in British Columbia (representing 10.3% of the total aggregate Filer Warrants), 3 of which were in Quebec (representing 0.1% of the total aggregate Filer Warrants), 1 of which was in Alberta (representing 0.3% of the total aggregate Filer Warrants), 3 of which were in the United States of America (representing 15% of the total aggregate Filer Warrants), and 1 of which was in Cyprus (representing 3% of the total aggregate Filer Warrants). The registered holders of Filer Warrants in Ontario includes those held by the Canadian Depository for Securities Limited, representing 23% of the total aggregate Filer Warrants.

14. To the best of the Filer's knowledge and belief and based on the register of holders of the Filer Debentures maintained by the Filer, as of August 29, 2019 there were 70 holders of Filer Debentures, 9 of which were in Ontario (representing 69.1% of the total aggregate amount of Filer Debentures), and 61 of which were in British Columbia (representing 30.9% of the total aggregate amount of Filer Debentures).

15. To the best of the Filer's knowledge and belief and based on the register of holders of the Filer Broker Warrants maintained by the Filer, as of August 29, 2019 there was 1 holder of Filer Broker Warrants, who was in Ontario (representing 100% of the total aggregate amount of Filer Broker Warrants).

16. Upon the granting of the requested relief, the Filer will not be a reporting issuer or the equivalent in any jurisdiction of Canada.

17. The Filer is not in default of any of its obligations under the securities legislation in any jurisdiction as a reporting issuer.

18. The Purchaser is not in default of any of its obligations under securities legislation in any jurisdiction as a reporting issuer.

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

20. The Filer has no intention to seek public financing by way of an offering of securities.

21. 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.

Order

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

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

DATED at Toronto, Ontario on this 15th day of November 2019.

"Craig Hayman"
Commissioner
Ontario Securities Commission

"Lawrence Haber"
Commissioner
Ontario Securities Commission

This page intentionally left blank

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Money Gate Mortgage Investment Corporation et al. – s. 127(1)

Citation: *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 4
Date: December 17, 20
File No. 2017-7

IN THE MATTER OF
MONEY GATE MORTGAGE INVESTMENT CORPORATION,
MONEY GATE CORP.,
MORTEZA KATEBIAN and
PAYAM KATEBIAN

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

Hearing:	January 7, 9, 10, 11, 14, 15, 16; February 25; March 4, 6, 7, 8; May 10, 14, 15; June 27, 28, 2019	
Decision:	December 17, 2019	
Panel:	Timothy Moseley	Vice-Chair and Chair of the Panel
	M. Cecilia Williams	Commissioner
	Lawrence P. Haber	Commissioner
Appearances:	Jamie Gibson Dihim Emami	For Staff of the Commission
	James Camp Anisah Hassan	For Money Gate Corp., Morteza Katebian and Payam Katebian
	No one appearing for Money Gate Mortgage Investment Corporation	

TABLE OF CONTENTS

REASONS AND DECISION

I. OVERVIEW

[1] From August 2014 to December 2017 (the **Material Time**), Morteza ("Ben") Katebian (**Ben**) and his son Payam Katebian (**Payam**)[1] raised over $10 million from more than 150 investors, by continuously selling preferred shares in Money Gate Mortgage Investment Corporation (**MGMIC**).

[1] Throughout these reasons, we refer to Messrs. Katebian by their first names, solely for convenience in distinguishing between them. We mean no disrespect in doing so.

[2] Staff of the Commission (**Staff**) alleges that through these activities, among other things:

a. MGMIC, Ben and Payam, along with Money Gate Corporation (**MGC**), a related mortgage brokerage firm, engaged in the business of trading in MGMIC's securities, without being registered to do so;

b. all four respondents (MGMIC, Ben, Payam and MGC) effected illegal distributions of those securities, since MGMIC did not file a prospectus, and MGMIC was not entitled to any exemption from the prospectus requirements; and

c. all four respondents defrauded MGMIC's investors, by knowingly deploying the raised funds in a manner that was inconsistent with the commitments MGMIC had made to those investors, and by diverting some of those funds instead to Ben, Payam, or entities controlled by or associated with them.

[3] For the reasons set out below, we find that MGMIC, Ben and Payam were engaged in the business of trading in securities, and that they effected illegal distributions of MGMIC's securities. We also find that all four respondents improperly put investors' funds at risk and ultimately caused investor losses by, among other things:

a. failing to disclose the considerable influence of two individuals over MGMIC's business;

b. failing to comply with promised procedures regarding the management of conflicts of interest;

c. failing to comply with promised lending criteria, and making lending decisions that were imprudent for other reasons; and

d. improperly diverting loan advances.

II. BACKGROUND

A. MGC

[4] MGC was founded by Bita Ghaffari, who is not a respondent in this proceeding and whom Staff called as a witness.

[5] MGC was federally incorporated in 2007. MGC was licensed as a mortgage brokerage firm in 2008. At that time, Ms. Ghaffari operated the brokerage on her own and acted as its principal broker.

[6] The primary business of MGC was mortgage origination, which included soliciting borrowers and helping them obtain mortgages, usually from a financial institution such as a bank. MGC also brokered mortgages for its own pool of private lenders. Under this model, the private lender remained in control of their own funds and made their own investment and loan decisions with MGC's advice.

[7] In 2011, Ms. Ghaffari and Ben, who at the time was operating his own mortgage brokerage business, agreed to conduct business together, as co-brokerages. In 2012, they decided to merge the brokerages, operating the combined business under the MGC name. Ben became a director of MGC. Ms. Ghaffari remained the principal broker until she left MGC in 2016.

[8] MGC has never been registered with the Commission.

B. MGMIC

[9] MGMIC was incorporated in Ontario in May 2014 with Ben, Payam and Ms. Ghaffari as its directors. Ben was appointed as president, with Payam as secretary, and Ms. Ghaffari as treasurer.

[10] MGMIC has never been registered with the Commission and is not a reporting issuer.

[11] Beginning in August 2014, MGMIC acted as a private lender, using a pool of funds generated by sales of its preferred shares. MGMIC issued offering memoranda in which MGMIC committed to invest the funds in a portfolio of residential and commercial mortgage loans to borrowers in market segments that were typically underserviced by large financial institutions.

[12] MGMIC operated out of the same office space as MGC. MGC acted as the broker for every mortgage loan advanced by MGMIC, and it provided related services to MGMIC. MGC also paid most of MGMIC's operating expenses.

C. Ben Katebian

[13] Ben was present for portions of the merits hearing, but he did not testify.

[14] Ben became a director of MGC when the brokerages merged in 2012. In 2014, he became MGC's chief executive officer (**CEO**). He was a licensed mortgage broker of MGC. When Ms. Ghaffari left MGC in 2016, Ben became MGC's principal broker.

[15] When MGMIC was incorporated in 2014, Ben became one of its directors as well as its president and CEO. He was involved in investor relations, he met with potential investors and sources who could refer investors, he produced promotional materials for MGMIC, and he made lending decisions on behalf of MGMIC.

[16] MGMIC's offering memoranda stated that Ben was a member of MGMIC's Credit Committee and its Investment Committee throughout the Material Time.

[17] Apart from his involvement with MGC and MGMIC, Ben also owned 2399029 Ontario Inc. (**Ben's Numbered Company**).

[18] Ben has never been registered with the Commission.

D. Payam Katebian

[19] Payam is Ben's son. Payam graduated from York University's Business Administration program and Seneca College's Financial Services Underwriting program. He completed additional education in order to become a licensed mortgage agent.

[20] In the summer of 2012, Payam began working at MGC as Ms. Ghaffari's assistant. At the time, he had no experience in mortgage lending.

[21] When MGMIC was incorporated in 2014, Payam was appointed as its secretary and as a director. According to MGMIC's offering memoranda, he was also MGMIC's chief operating officer and operations manager for the administration division of MGC.

[22] By 2015, Payam was no longer acting as Ms. Ghaffari's assistant. By no later than May 2016, Payam was MGMIC's treasurer (according to a government filing) and a member of its Credit Committee and Investment Committee (according to MGMIC's offering memorandum).

[23] In addition to his roles at MGC and MGMIC, Payam was associated with two numbered companies:

a. 2450531 Ontario Ltd. (**245 Ltd.**), of which Payam was the manager and a 50% shareholder; and

b. 2546456 Ontario Inc. (**254 Inc.**), of which Payam was a director and the president, treasurer and secretary.

[24] Payam has never been registered with the Commission.

E. 1PLUS12 and Undisclosed Principals

[25] Staff alleges that over the Material Time, two individuals became undisclosed principals of MGMIC.

[26] The first is Arash Missaghi, whose connection to MGMIC originated as a result of Ben's prior business relationship with Mr. Missaghi's father beginning in 1989.

[27] Mr. Missaghi has been an undischarged bankrupt since April 2000. He is therefore disqualified from being a director of an Ontario corporation.[2] Notwithstanding that disqualification, Mr. Missaghi was a registered director of many corporations, including many of MGMIC's borrowers.

[28] Mr. Missaghi had office space in a building, some of which he sublet to MGC and MGMIC.

[29] The second alleged undisclosed principal is Mohamed Moshin Jiwani, who has used the alias Sai Mohammed since 2001, around the time that he became an undischarged bankrupt.

[30] Ben and Payam met Mr. Mohammed through an organization known as 1PLUS12. The formal structure of 1PLUS12, if it had one, was not clear, but the evidence establishes that 1PLUS12 brought together individuals who were interested in investing in real estate. The organization's name appears to derive from the fact that it was a collection of investment groups, each of which had twelve investors and one "influencer". Payam testified that about 75% of MGMIC's investors came from 1PLUS12.

[2] *Business Corporations Act,* RSO 1990, c B.16, s 118(1)4

III. PRELIMINARY MATTERS

[31] Before we begin our analysis of the issues in this proceeding, we address three preliminary matters:

a. a temporary order issued in April 2017;

b. the respondents' participation in the merits hearing; and

c. a motion brought by Ben, Payam and MGC for an adjournment of the merits hearing, which motion we dismissed with reasons to follow.

A. Temporary orders

[32] On April 27, 2017, the Commission issued a temporary order (the **Temporary Order**), which provided that all trading in securities of MGMIC cease, and that any exemptions contained in Ontario securities law would not apply to any of the four respondents, except that Ben and Payam could rely on exemptions in order to purchase securities in their personal capacities.

[33] The portion of the Temporary Order that denied the use of exemptions expired on July 4, 2017.

[34] The portion of the Temporary Order that cease traded securities of MGMIC was extended several times, with the last extension being on January 11, 2018, until the conclusion of the merits hearing. Staff did not seek a further extension. Therefore, as this decision and these reasons conclude the merits hearing, the Temporary Order expires on its own terms, effective the date of issuance of these reasons (*i.e.*, December 17, 2019).

B. The respondents' participation in this proceeding

[35] On November 6, 2018, while this proceeding was underway but before the merits hearing began, the Superior Court of Justice issued an order appointing a receiver over MGMIC. As of December 3, 2018, MGMIC withdrew from active participation in this proceeding. It did so having been advised by Staff that Staff did not intend to seek any monetary sanctions against MGMIC.

[36] The three remaining respondents (Ben, Payam and MGC) appeared at the merits hearing with counsel. We refer to them as the **Remaining Respondents**.

C. Motion for adjournment of the merits hearing

1. Overview of the adjournment motion

[37] The merits hearing was scheduled to begin on January 7, 2019. On January 3, 2019, two business days before the hearing, the Remaining Respondents filed a motion seeking an adjournment. They asked that the merits hearing begin on February 25, 2019, seven weeks after its scheduled start, because they had recently retained new counsel.

[38] After hearing submissions from Staff and from the Remaining Respondents, we dismissed the motion. We advised that our reasons for that decision would be included in our reasons at the conclusion of the merits hearing. The following are our reasons.

2. History of the proceeding

[39] Staff filed its original Statement of Allegations on December 19, 2017. A Notice of Hearing was issued on December 21, 2017, fixing January 11, 2018, as the date for the first attendance. At that hearing, and at second and third attendances on May 9 and July 6, 2018, counsel from the firm of Groia & Company appeared on behalf of all four respondents. At the third attendance, on consent of all parties the Commission ordered that the merits hearing would begin on November 15, 2018, and would conclude on January 11, 2019.

[40] On September 5, 2018, Mr. Richard of Groia & Company, counsel for the four respondents, wrote to the Registrar to advise that at the time the merits hearing dates were set, he had been unaware that one of the individual respondents would be out of the country in November. The respondents therefore requested that the merits hearing be adjourned to accommodate that absence. With Staff's consent, the Commission granted the requested adjournment. The revised schedule contemplated 23 hearing days, and called for the hearing to begin on December 3, 2018, and to conclude on January 30, 2019.

[41] The next preliminary attendance took place on October 16, 2018. At that time, Staff advised the Commission that the previous day it had served the respondents with proposed amendments to the Statement of Allegations. The Commission ordered that a motion be heard on October 31, 2018, at which time consideration would be given as to whether the proposed amendments would necessitate an adjournment of the merits hearing.

[42] At the hearing of the motion on October 31, 2018, the respondents did not object to Staff's proposed amendments to the Statement of Allegations. Staff advised, however, that:

a. it had obtained a direction under s. 126(1) of the *Securities Act*[3] (the **Act**), freezing the bank account held by MGMIC, and that Staff would apply to the Superior Court of Justice for a continuation of that freeze direction;

b. it had brought an application in the Superior Court of Justice for the appointment of a receiver over the respondent MGMIC; and

c. Staff had not yet provided full disclosure to the respondents, since Staff was still awaiting the production from a third party of banking documents that might be relevant to the new allegations, and Staff was uncertain as to when those documents would be produced.

[43] Counsel for the respondents advised that he had been planning to ask for an adjournment of the hearing on the merits from December 3, 2018, to January 7, 2019, as a result of Staff's amendments to the Statement of Allegations. As he correctly observed, though, he would be unlikely to continue as counsel for MGMIC if Staff were to be successful in having a receiver appointed. In his submission, the uncertainty regarding who would be able to speak on behalf of MGMIC, and the freezing of MGMIC's funds, also warranted an adjournment of the hearing.

[44] After hearing submissions, the Commission ordered that the hearing take place over 25 hearing days beginning on January 7, 2019, and concluding on May 10, 2019. The Commission also ordered that an interlocutory attendance be held on December 3, 2018.

[45] At the interlocutory attendance on December 3, 2018, the parties advised that on November 6, 2018, the Superior Court of Justice had appointed a receiver over MGMIC. The receiver's counsel, who was present at the hearing, advised that in light of Staff's representation that Staff would not be seeking monetary sanctions or costs against MGMIC, the receiver would not further participate in the proceeding. The Remaining Respondents continued to be represented by Mr. Richard of Groia & Company.

[46] Staff confirmed at that time that it had completed disclosure, and that it was ready to proceed with the hearing on January 7, 2019, as scheduled.

[47] Staff also advised that on December 2, 2018, the day before the interlocutory attendance, Staff had received an email from Mr. Richard, advising that his firm may be withdrawing as counsel of record. In addressing this issue at the interlocutory attendance, Mr. Richard advised that "we are not retained to do the hearing." Mr. Richard identified several possible scenarios, one of which was that the Remaining Respondents would be self-represented during the hearing but that some counsel, possibly but not necessarily Mr. Richard's firm, would have a limited retainer to assist with part of the hearing.

[48] Staff acknowledged that it had no direct interest in the question of whether the Remaining Respondents would be represented, and if so, by whom. Staff's primary concern was that the hearing should proceed as scheduled.

[49] On December 5, 2018, two days following that attendance, the Remaining Respondents formally advised that they no longer had counsel and that they would be self-represented, with Ben representing MGC.

[50] On December 28, 2018, the Remaining Respondents formally advised that they would be represented by new counsel, Mr. Camp. In the afternoon of Thursday, January 3, 2019, with the merits hearing scheduled to begin on the following Monday, the Remaining Respondents filed a motion requesting that the hearing be adjourned and that it commence on February 25, 2019.

[51] In bringing the motion, the Remaining Respondents cited the complexity of this matter, the extensive evidentiary record, and the potentially serious consequences. The Remaining Respondents relied on Payam's affidavit, which:

a. requested the adjournment "to allow our newly retained lawyer time to prepare so that we can fairly respond to Staff's allegations"; and

b. indicated that the Remaining Respondents had decided as of December 5, 2018, to represent themselves, believing that they could do so adequately, but then in mid-December came to the realization that they required the assistance of legal counsel.

[3] RSO 1990, c S.5

3. Analysis

[52] Rule 29(1) of the *Ontario Securities Commission Rules of Procedure* (**Rules**)[4] provides that every merits hearing shall proceed on the scheduled date unless the party requesting an adjournment "satisfies the Panel that there are exceptional circumstances requiring an adjournment."

[53] The requirement for "exceptional circumstances" was introduced in the new Rules in 2017. The former rules of procedure[5] set out, in Rule 9, the procedure for requesting an adjournment and factors to be considered by a Panel in making its decision. The former rule did not prescribe a standard that a requesting party had to meet.

[54] As the Commission has previously held, the new standard is a "high bar"[6] that reflects the important objective set out in current Rule 1, that Commission proceedings be "conducted in a just, expeditious and cost-effective manner." This objective must be balanced against parties' ability to participate meaningfully in the hearing and to present their case. A determination as to whether an adjournment should be granted is necessarily fact-based, and will include consideration of, among other things, how the requesting parties have conducted themselves in the case.[7]

[55] We begin our analysis of the circumstances in this case by noting that the merits hearing had already been adjourned twice. The first adjournment was for two and a half weeks due to miscommunication between the respondents and their prior counsel. The second adjournment was for approximately one month due primarily to the appointment of a receiver over MGMIC.

[56] In our view, both of these adjournments are neutral factors with respect to the Remaining Respondents' current adjournment request. While the first adjournment was attributable entirely to the respondents, it was for a relatively short time, and its effects were rendered moot by the second adjournment. The second adjournment was attributable to the appointment of a receiver, the freezing of funds, and the amendment of the Statement of Allegations. All of those were actions taken by Staff, so the second adjournment ought not to be held against the Remaining Respondents when their current adjournment request is considered.

[57] The firm of Groia & Company was counsel of record for the respondents from the first appearance in January 2018. It was not until December 2018 that there was any suggestion that the firm might not appear for the Remaining Respondents at the merits hearing. At the interlocutory attendance on December 3, 2018, Mr. Richard held open the possibility that his firm might appear but in a limited capacity.

[58] The Remaining Respondents have offered no reason for their decision, effected two days later, to appear on their own behalf. Similarly, they have offered no reason for their decision, once they changed their mind and realized they needed legal assistance after all, to retain new counsel instead of reappointing Groia & Company. While a party's relationship with its counsel is generally protected by solicitor-client privilege, and while a party is generally entitled to choose its counsel without any obligation to explain its choice, that rule cannot apply when the party seeks to rely on a change of counsel to justify an adjournment request. In those circumstances, the party opens itself to inquiry as to the reason for its choice and as to why that reason constitutes exceptional circumstances.

[59] In this case, it is reasonable to assume, absent any evidence to the contrary, that if the Remaining Respondents had reappointed Groia & Company in mid-December when they realized they needed counsel (no more than two weeks after they decided to appear on their own behalf), no adjournment would have been required. Groia & Company had carriage of the matter from the beginning, and it was the change in counsel that the Remaining Respondents submitted was the reason they needed an adjournment.

[60] These circumstances therefore cried out for an explanation. The Remaining Respondents did not offer an explanation; nor did they explain why none was offered.

[61] We acknowledge the possibility that even if the Remaining Respondents had wanted to reappoint Groia & Company at that time, Groia & Company might not have been prepared to act, for any number of reasons. However, the Remaining Respondents made no such suggestion, and we therefore have no basis to conclude that the Remaining Respondents were unable to continue with their previous counsel.

[62] We accept that because of the timing of Mr. Camp's retainer, he found himself in a difficult situation due to circumstances beyond his control. We accept that he had less time to prepare for the hearing than he and the Remaining Respondents would have preferred. However, we reject the Remaining Respondents' submission that denying them the requested adjournment would prevent them from meaningfully exercising their right to counsel. They had the counsel of their choosing throughout the proceeding. They appointed new counsel, without explaining why that

[4] (2017) 40 OSCB 8988 (the ***Rules***)
[5] (2014) 37 OSCB 4168
[6] *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18, (2018) 41 OSCB 3512 at para 28
[7] *Cheng (Re)*, 2018 ONSEC 13, (2018) 41 OSCB 2359 at paras 5-6

was necessary, or even if it was necessary. That is their choice, but having made that choice they cannot complain that the cause of their new counsel's difficulties lies elsewhere.

[63] It is important that proceedings such as this one advance expeditiously. To accede to the Remaining Respondents' position would permit respondents to manipulate the process by delaying hearings without having to justify doing so. Such a result is precisely what Rule 29 seeks to avoid and would be contrary to the public interest.

[64] In our view, the Remaining Respondents failed to demonstrate any "exceptional circumstances" that might warrant a further adjournment of the merits hearing. For that reason, we dismissed their request.

IV. ANALYSIS

A. Issues

[65] Staff's allegations present the following three principal issues:

a. Did the respondents engage in, or hold themselves out as engaging in, the business of trading in securities?

b. In distributing the preferred shares of MGMIC without a prospectus, were the respondents entitled to rely on an exemption from the prospectus requirement? In particular, can they rely on the (i) private issuer, (ii) minimum amount, (iii) accredited investor, and/or (iv) friends, family and business associates exemptions?

c. Did the respondents engage in or participate in acts, practices, or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud?

[66] Before turning to our analysis of each of those issues, we consider several evidentiary questions that apply to our analysis generally.

B. Evidentiary Matters

1. Standard of proof

[67] The standard of proof applicable to Commission proceedings is the balance of probabilities. Staff must prove, based on clear, convincing and cogent evidence, that it is more likely than not that the alleged events occurred.[8]

2. Hearsay

[68] Section 15 of the *Statutory Powers Procedure Act* (**SPPA**),[9] which applies to proceedings before the Commission, provides that a panel may admit as evidence any relevant oral testimony or document, even if not given under oath or affirmation, or admissible in court. This extends to hearsay evidence.

[69] As with all evidence, we must determine what weight to give to admissible hearsay evidence. Hearsay evidence is not necessarily less reliable than direct evidence, but we must avoid placing undue weight on uncorroborated hearsay evidence that does not sufficiently support a conclusion that it is reliable.[10]

3. Adverse inference against Ben

[70] Staff submits that because Ben did not testify at the hearing, we ought to draw the adverse inference that his evidence would not have been helpful to him.

[71] A panel may draw such an inference in respect of a party who does not testify, if the opposite party has made out a *prima facie* case against that party, and if there is no sufficient explanation for the party not testifying. If both those conditions are satisfied, then the party's failure to testify amounts to an implied admission that the party's evidence would not have been helpful to that party.[11]

[72] We conclude that Staff has made out a *prima facie* case against Ben. As we explain more fully below in our analysis of the substantive issues, Staff led evidence that, if believed, would establish wrongdoing on his part. Such evidence includes the oral testimony of Ms. Ghaffari, certain admissions made by Payam during his oral testimony, statements made by Ben himself when he was interviewed by Staff in 2016, and various documents.

---

[8] *FH v McDougall*, 2008 SCC 53 at paras 40, 46, 49; *Meharchand (Re)*, 2018 ONSEC 51, (2018) 41 OSCB 8434 (***Meharchand***) at paras 28-29
[9] RSO 1990, c S.22
[10] *Rex Diamond Mining Corp v Ontario (Securities Commission)*, 2010 ONSC 3926 (Div Ct) at para 4; *Meharchand* at para 52
[11] Sidney N Lederman, Alan W Bryant & Michelle K Fuerst, *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 5th ed (Toronto: LexisNexis Canada, 2018) (***Lederman***), at 406-407

[73] We must therefore consider whether there are circumstances that justify Ben's decision not to testify and that would therefore preclude us from drawing the adverse inference.

[74] While re-examining Payam during the hearing, the Remaining Respondents' counsel noted that Ben had been in attendance for parts of the hearing but not for the entire hearing. Counsel asked Payam whether that fact was connected to Ben's health problems. Payam stated that it was. When asked whether Ben had received any doctor's advice regarding his attendance at the hearing, Payam said: "It was I guess more general advice regarding stressful situations, heart issues, concerns. He's been in and out of the hospital a little bit."[12]

[75] That was the extent of the explanation. It is insufficient. Even on Payam's description, the medical advice was general and unrelated specifically to this hearing, to litigation generally, or to what Ben's role at a hearing might be (*e.g.*, as a witness, or as a non-testifying party). Payam's testimony was unsupported by any document or by any mention of a particular medical professional, and it was completely vague as to time. We cannot accept his testimony as a reason not to draw an adverse inference.

[76] In closing written submissions delivered five weeks after the conclusion of the evidentiary portion of the hearing, the Remaining Respondents offered to provide documentary evidence, such as a doctor's letter, if necessary. No reason was given as to why this step was not taken earlier. It was not in the public interest to re-open the evidence at that late stage. We declined to do so.

[77] We conclude that an adverse inference against Ben is justified. We return to this finding below as appropriate, in the context of specific questions of fact.

4. Witnesses' credibility and reliability

(a) Introduction

[78] In assessing the credibility and reliability of the witnesses who testified at the hearing, we are guided by the decision of the Ontario Superior Court of Justice in *Springer v Aird & Berlis LLP*,[13] in which Newbould J. adopted the following words from a British Columbia Court of Appeal decision:

> The most satisfactory judicial test of truth lies in its harmony or lack of harmony with the preponderance of probabilities disclosed by the facts and circumstances in the conditions of the particular case.[14]

[79] We need not necessarily come to one overarching conclusion about a witness's credibility or reliability. It is open to us to find that a witness was credible in some respects but not in others. We may conclude that some aspects of a witness's testimony are reliable, but that other aspects are not.[15]

[80] In this case, the oral evidence of Ms. Ghaffari and of Payam features prominently. Their evidence conflicts in material respects. Therefore, to assist our assessment of their credibility and reliability, we will review the most significant evidentiary contradictions, which arise in the context of two issues:

a. the extent of Ms. Ghaffari's involvement in approving loans, including certain loans made by MGMIC to parties alleged by Staff to have been related to MGMIC (the **Related Party Loans**, which are more particularly described beginning at paragraph [236] below); and

b. whether Messrs. Missaghi and Mohammed exercised some control over MGMIC.

(b) Ms. Ghaffari's involvement in approving loans

[81] Staff and the Remaining Respondents take opposing positions regarding Ms. Ghaffari's involvement in approving loans, including the Related Party Loans. The Remaining Respondents submit that she was fully involved. Staff contends that she was not. The parties offered conflicting evidence in support of their positions.

[82] In a transcribed interview in July 2016, Ben told Staff that Ms. Ghaffari "was never being active in" and "never took a serious role in" MGMIC.[16] He stated that because Ms. Ghaffari was busy "on the broker side [MGC]", dealing with financial institutions, she did not take part in MGMIC's private lending decisions, other than "one or two deals".[17] According to Ben, it was Payam who did the underwriting on MGMIC's private deals.

[12] Hearing Transcript, Money Gate Mortgage Investment Corporation (Re) (***Hearing Transcript***), May 15, 2019, at 121
[13] (2009) 96 OR (3d) 325 (***Springer***)
[14] *R v Pressley*, [1949] 1 WWR 692 (BCCA) at para 12, cited in *Springer* at para 14
[15] *Meharchand* at para 62
[16] Exhibit 228, List of read-ins for Ben Katebian, Tab 6 at 36 lines 2-3 and Tab 20 at 206 line 25
[17] Exhibit 228, List of read-ins for Ben Katebian, Tab 15 at 169 lines 4-5 and Tab 23 at 238

[83] Payam gave a similar description in Staff's 2016 interview of him. When asked what Ms. Ghaffari's role was at MGMIC, Payam stated that "[s]he didn't really have an active role."[18]

[84] In her testimony before us, Ms. Ghaffari gave different reasons for her limited role, but her characterization was largely consistent with Ben's and Payam's prior evidence.

[85] Ben and Payam now take a position that is inconsistent with their 2016 statements. They, and MGC, rely on Payam's evidence at the hearing that Ms. Ghaffari was fully involved. They also rely on documents and information regarding some specific loans.

[86] One such loan was to Payam, in the amount of $82,500 and secured by a second mortgage on the residential property at 26 Heron Hollow Avenue in Richmond Hill (**Heron Hollow**). Ms. Ghaffari testified that she believed that Carlo Esposito, who owned a real estate appraisal company, was the original owner of Heron Hollow. She testified that Ben and Payam told her that Mr. Esposito lived there when MGMIC made the loan. Mr. Esposito used the Heron Hollow address as his address on appraisal reports that he issued.

[87] Payam testified that he purchased Heron Hollow in 2015 and sold it in 2016, and that during that time, the home was rented by a Russian couple. Payam denied that Mr. Esposito lived at Heron Hollow. He was unable to explain why Mr. Esposito used Heron Hollow as his business address. Payam testified that he didn't "have that close of a relationship with Mr. Esposito."[19]

[88] On direct examination, Ms. Ghaffari testified that she became aware of the mortgage loan on Heron Hollow only after it had been made. On cross-examination, however, when confronted with a disclosure statement relating to Heron Hollow and bearing her signature, she agreed that she had been aware of the proposed loan before it was made. She said that initially, she was opposed to MGMIC making the loan, but that she was satisfied after receiving answers from Ben and Payam.

[89] Ms. Ghaffari also testified regarding a loan of $665,000 made by MGMIC and secured by a second mortgage on a condominium unit at 2045 Lakeshore Boulevard West in Toronto (**Palace Pier**). The borrower was Atlas Capital Corporation, whose principal was Jonathane Ricci, a lawyer whose office was in the same premises as those of the respondents.

[90] When shown a disclosure document relating to Palace Pier and purporting to bear her signature, Ms. Ghaffari testified that she had not seen the document before her interview by Staff during the investigation. However, she agreed that the document bore her signature. She testified that she must have been given the document to sign, and that she did so because she trusted that Payam had made the required disclosure to Mr. Ricci.

[91] The conflict between Ms. Ghaffari's statement that she had not seen the document at the time of the loan and her explanation as to why she signed it was not resolved.

[92] We decline the Remaining Respondents' invitation for us to conclude from the presence of Ms. Ghaffari's signature on various documents, and from Ms. Ghaffari's testimony that she was "very, very particular"[20] about transaction documents (a sentiment echoed by Payam),[21] that Ms. Ghaffari was fully involved in MGMIC's lending decisions.

[93] We believe Ms. Ghaffari's description of the usual process, when she says that as the broker of record for MGC she signed disclosure certifications based on a representation to her from an agent (whether Payam or someone else) that the agent had made the necessary disclosure to the borrower.[22] In our view, such a practice is not inconsistent with her being particular about the documents, since that description could refer to a number of things, including the completeness of the documents, and/or the safeguard of the documents and the filing of documents as necessary.

[94] The Remaining Respondents sought to bolster their submission about Ms. Ghaffari's level of involvement by relying on some transaction documents (*e.g.*, mortgage applications) that showed her name. However, we accept Ms. Ghaffari's testimony that for a time, the mortgage application software automatically identified her as the agent, whether or not she was in fact the agent. Her evidence is corroborated by a mortgage application that showed her name but that was printed months after she had left the company.

[95] The Remaining Respondents are correct in noting that on occasion, Ms. Ghaffari gave unclear and sometimes conflicting evidence about the point at which she was aware of an intended or completed loan. However, in our view, the Remaining Respondents conflate Ms. Ghaffari's compliance role for MGC with the activities of MGMIC. We do not

[18] Exhibit 253, Excerpt from transcript of voluntary interview of Payam Katebian, September 13, 2016, at 43 lines 15-16
[19] *Hearing Transcript*, May 10, 2019, at 31 line 9
[20] *Hearing Transcript*, January 11, 2019, at 116 line 1
[21] *Hearing Transcript*, March 7, 2019, at 58 line 8
[22] *Hearing Transcript*, January 9, 2019, at 122

accept that Ms. Ghaffari's unclear recollection or lack of precision about some loans indicates that she was being untruthful.

[96] Further, and significantly in our view, Ms. Ghaffari's description of her role is corroborated by Ben's and Payam's statements to Staff in 2016. We prefer that evidence to Payam's testimony at the hearing.

[97] We conclude that Ms. Ghaffari was involved to some extent in lending decisions for some of the Related Party Loans, but we cannot conclude that she was fully involved in approving all loans on behalf of MGMIC. It is clear that by no later than early March of 2016, she felt that there was a lack of integrity in the business and she "took a back seat" and "just watched but did not do anything."[23]

(c) Whether Messrs. Missaghi and Mohammed exercised some control over MGMIC

[98] Ms. Ghaffari testified that Mr. Missaghi was involved in MGMIC's affairs. She stated that he set mortgage rates and interest payments, and that he chose MGMIC's lawyers and appraisers. Her testimony to that effect was not challenged on cross-examination.

[99] Further, her evidence is consistent with an email that Ben wrote to Ms. Ghaffari in March 2016, in which Ben said: "[MGMIC] is no longer a business that we control. Its [*sic*] a company that now has 3 main Players. Myself, Sai [Mohammed] and Ara [Missaghi]. There is no real say in my opinion alone, except when the decisions are made collectively between the 3 Key players."[24]

[100] The Remaining Respondents submit that we should attribute little or no weight to Ben's email, for four reasons.

a. First, the Remaining Respondents question the completeness and accuracy of the document, tendered into evidence, that includes the email. Their concern relates to page numbers and blank spaces between emails. In our view, the page numbers and footers simply suggest that the emails are excerpted from search results. Without more, the blank spaces do not suggest that the content is inaccurate. Further, Ms. Ghaffari testified that she specifically recalled receiving this email. If Ben believed that the apparent content of the email was inaccurate or misleading, it was open to him to testify to that effect. He did not.

b. Second, the Remaining Respondents submit that the email is hearsay. While this is true, the statements in the email were made in circumstances that are consistent with their reliability. They are contained in a communication from Ben to Ms. Ghaffari, with no apparent reason for Ben to be untruthful at the time.

c. Third, the Remaining Respondents say that because English is not Ben's first language, Ben may not have intended "control" to have its ordinary meaning, and Staff is placing undue and extreme emphasis on the word "control". We do not accept that submission. The record contains numerous emails written by Ben, and there is nothing about those emails that causes us to doubt his ability to express himself clearly in English. Further, the portion quoted above is consistent throughout, with its references to the three individuals and to the fact that Ben's opinion alone was insufficient. Staff's position does not depend on the word "control" alone.

d. Finally, the Remaining Respondents submit that Staff's suggested conclusion is inconsistent with Ms. Ghaffari's and Payam's oral evidence. However, as noted above in paragraph [98], Ms. Ghaffari did testify that Mr. Missaghi made decisions for MGMIC. We characterize those decisions as being of a kind that one would expect from someone with some measure of control. Further, we disagree with the Remaining Respondents' description of other evidence given by Ms. Ghaffari and cited by the Remaining Respondents. In those excerpts, Ms. Ghaffari describes disagreements between Ben and Messrs. Missaghi and Mohammed, and she testifies that Ben wanted control and that Mr. Mohammed and 1PLUS12 also wanted control. None of these facts is inconsistent with Messrs. Missaghi and Mohammed having some control.

[101] In addition, we note that over the Material Time, an increasing and ultimately significant proportion of the MGMIC loan portfolio was invested in properties in which one or both of Messrs. Missaghi and Mohammed, and/or entitles related to them, had some financial interest. While this fact is not determinative of the control issue, it is consistent with Staff's allegation.

[102] Finally, the Remaining Respondents submit that when we consider Staff's allegation regarding Mr. Missaghi's and Mr. Mohammed's control over the respondents' business, we ought to draw an adverse inference against Staff due to Staff's failure to call either of them as a witness.

[103] We reject that submission. Staff relies on evidence that is in the record in support of the allegation regarding Messrs. Missaghi's and Mohammed's involvement. Staff's choice not to call them is unsurprising, given various concerns about

[23] Exhibit 22, Email correspondence between Ben and Ms. Ghaffari
[24] Exhibit 22, Email correspondence between Ben and Ms. Ghaffari

their reliability and about whether it was likely that their evidence would assist in proving Staff's case. Those concerns include Mr. Mohammed's use of an alias, and may be borne out by a 2018 finding in the Superior Court of Justice that Mr. Missaghi was "careless with his words and consequently unreliable."[25]

[104] We repeat the caution referred to above in paragraph [72]. An adverse inference ought to be drawn only where the missing evidence would be superior to that called. Further, it ought to apply only where the witness would be assumed to be willing to assist the party who fails to call the witness.[26]

[105] Staff is entitled to call the evidence that it wishes in support of its contention that Messrs. Missaghi and Mohammed were undisclosed principals. Staff's success in proving that fact will depend on the evidence called, not on Staff's tactical decisions.

[106] Taking all of the above into account, we have no difficulty concluding that Messrs. Missaghi and Mohammed exercised increasing and considerable control over the affairs of MGMIC during the Material Time. Ms. Ghaffari's evidence in support of that conclusion was not successfully challenged on cross-examination. Payam's evidence to the contrary is self-serving and uncorroborated, and it conflicts with Ben's own statements made in circumstances that suggest that Ben's statements are reliable. To the extent that Payam's evidence conflicts with that of Ms. Ghaffari on this point, we reject it.

(d) Conclusion as to Ms. Ghaffari's and Payam's credibility and reliability

[107] In general, Ms. Ghaffari's evidence is better corroborated, is more consistent with both documentary evidence and Ben's own evidence, and is inherently more believable, than Payam's evidence. However, each of Payam and Ms. Ghaffari gave us reasons to approach their evidence with some skepticism.

[108] While we are more likely to prefer Ms. Ghaffari's evidence to Payam's in the event of a conflict, we choose to abide by the caution described in paragraphs [78] and [79] above. We will comment further on this topic as appropriate in our analysis below.

(e) Investors

[109] Staff called four MGMIC investors as witnesses.

[110] S.B. described his investment knowledge as below average. He became aware of MGMIC through a co-worker who was involved in 1PLUS12 and who had previously invested. He invested in MGMIC in December 2015 and recalls seeing the offering memorandum at that time, as well as a revised offering memorandum in January 2017. His account statement dated February 2017 shows him holding approximately $103,000 worth of MGMIC shares. He has requested the return of his investment but has received only $24,000.

[111] J.A. described his investment knowledge as average. He invested more than $110,000 in MGMIC from July 2015 to November 2016. He has received none of his original investment.

[112] A.P. testified that he knew "basically nothing" about investing. He learned of MGMIC through a connection of his daughter's. He invested in MGMIC beginning in February 2016 after seeing some promotional materials he received from his connection. His most recent account statement, dated October 2017, shows him holding approximately $110,000 worth of MGMIC shares. He has requested a return of his funds but has received nothing.

[113] R.P. described his investment knowledge as average. He became aware of MGMIC through an acquaintance who identified himself as a representative of MGMIC. He invested $11,710.

[114] Of the four investor witnesses, J.A. was the only one who was cross-examined. The cross-examination did not undermine his original testimony.

[115] None of the four investor witnesses' testimony was contradicted in any way. We found all of them to be credible and their testimony to be reliable. We accept it.

5. Weight to be attributed to Payam's undisclosed evidence

(a) Introduction

[25] *B&M Handelman Investments Limited v Christine Drotos*, 2018 ONSC 7124 at para 30
[26] *Lederman* at 406

[116] Staff submits that we should give some of Payam's evidence diminished weight because it was not disclosed to Staff as required prior to the hearing. Staff's concern arises primarily with respect to Payam's evidence regarding the relationship between Mr. Missaghi, 1PLUS12 and MGMIC, and the allegations that the respondents improperly diverted funds. We accept Staff's submission as it applies to some elements of Payam's evidence, for the following reasons.

[117] The Rules require that each party serve on the other parties, prior to the hearing, a summary of the evidence that each witness is expected to give at the hearing, including by identifying any document to which the witness is expected to refer.[27] A party may not rely on evidence that was not disclosed as required, without the permission of a panel.[28]

[118] The Remaining Respondents served a witness statement regarding Payam's anticipated evidence. The statement said simply that Payam would testify in accordance with the transcripts of the examinations that Staff had conducted of him during the investigation.

[119] After the Remaining Respondents retained new counsel, Staff agreed to extend the deadline for delivery of revised witness statements, to February 15, 2019. Despite this, the Remaining Respondents did not deliver any revised statements prior to the hearing.

[120] During his testimony at the merits hearing, Payam began to give evidence that Staff submitted was outside the bounds of Payam's examination transcripts and had therefore not been properly disclosed. Because this issue was likely to recur, the parties agreed to note Staff's blanket objection to previously undisclosed evidence and to have Payam continue to testify. Staff would raise any such issues in written submissions, following which we would take the parties' submissions into account in determining the weight to be given to the evidence.

[121] The parties also agreed that the Remaining Respondents could be taken to have properly disclosed evidence contained in an affidavit sworn by Payam in a civil proceeding that overlaps with this proceeding,[29] which affidavit had been included in Staff's hearing brief served prior to the hearing.

(b) Analysis of the general principles

[122] Staff submits that it is important to respect the policy underlying the disclosure obligation, and that we should attach little or no weight to uncorroborated evidence that was not previously disclosed. The failure to disclose evidence before the hearing deprives the opposite party of the opportunity to test the evidence through further investigation. We agree with this submission.

[123] Staff further submits that Payam had the advantage of hearing Staff's entire case in chief and could therefore tailor his evidence. While there is some truth to that, the fact that Staff disclosed its witnesses' anticipated evidence prior to the hearing minimizes the extent of that advantage.

[124] The Remaining Respondents explain that any failure on their part to provide pre-hearing disclosure in as formal a way as Staff would like is attributable in part to their late change of counsel. Even if that explanation is factually accurate, we reject it for the same reasons for which we declined the Remaining Respondents' request to adjourn the merits hearing.

[125] The Remaining Respondents also note that Staff's Amended Statement of Allegations does not mention a number of the topics that are the subject of Staff's objection, and that it does not mention 1PLUS12 or Mr. Missaghi. We reject that response as well. There is no logical connection between the scope of the Amended Statement of Allegations and Staff's objection to Payam's evidence. It was Payam who first introduced the impugned topics during his examination-in-chief by his counsel. Staff objected at that time. Staff's objection was well-founded, given that Payam was putting forward this evidence for the first time without having previously disclosed it.

[126] For all these reasons, we place no weight on Payam's evidence with respect to two topics. The Remaining Respondents concede that neither topic was the subject of any pre-hearing disclosure by them. Those topics are:

a. a supposed relationship between Ms. Ghaffari and Mr. Missaghi that pre-dated the events at issue in this proceeding; and

b. Staff's allegations that the respondents improperly diverted funds in connection with a property at 4 Birchmount Road in Toronto, which allegations we review in detail beginning at paragraph [288] below.

[27] *Rules*, r 27(3)
[28] *Rules*, r 27(8)
[29] *Estrabillo et al. v Katebian et al.*, Ontario Superior Court File No. CV-18-589395-00CL; affidavit sworn September 13, 2018.

[127] The other areas of evidence about which Staff objects are more difficult to resolve, because the Remaining Respondents do not concede that the evidence was not properly disclosed. They submit that these areas, including the involvement of Mr. Missaghi and 1PLUS12, "are more complicated",[30] in that Payam's affidavit speaks generally about how loans were approved.

[128] Staff responds that it "can advise that the affidavit does not disclose much of Payam's new evidence, including evidence on, among other things [four specified areas]…".[31] Staff's description is insufficiently precise for us to use it as a basis to resolve Staff's objection.

[129] We are therefore unable to be certain about the extent to which the affidavit gave Staff notice of Payam's evidence on this topic, because the parties chose not to enter that affidavit into the record. This was so despite the panel's warning during the hearing that if we were asked to resolve this objection, we might need to review documents that were not then in evidence.

[130] Staff seeks to lay responsibility for this choice at the feet of the Remaining Respondents. Staff submits that on cross-examination, Staff suggested to Payam that his evidence was a fabrication. According to Staff, the Remaining Respondents' failure to adduce the affidavit in response to that suggestion deprives them of the ability to argue that proper pre-hearing disclosure was made.

[131] We disagree. There is no logical connection between the issue of pre-hearing disclosure and a suggestion that Payam was fabricating evidence.

[132] We conclude by finding that where Staff seeks to exclude, or to minimize weight given to, testimony given by a respondent, because of an alleged failure to make proper pre-hearing disclosure, the onus lies on Staff to provide the panel with such documents and information as is necessary to enable the panel to compare the testimony to the disclosure. Where, as in this case, Staff fails to do so, it runs the risk that its objection will not be sustained. In our view, that is the appropriate result in this case, except for the two areas conceded by the Remaining Respondents, referred to in paragraph [126] above.

[133] As it turns out, our decision on that point is inconsequential for Staff, because we prefer Ms. Ghaffari's evidence over that of Payam with respect to the role played by Mr. Missaghi and 1PLUS12. Accordingly, while Payam's evidence on the point is admissible, we give it no weight.

6. Staff's expert witness, Mr. Philippe Hébert

[134] Staff called Mr. Philippe Hébert, an expert in real estate appraisals, as a witness. Mr. Hébert gave opinion evidence about two properties in northern Ontario on which MGMIC made significant loans (the Timmins property and the Temiskaming property) and about the methodology underlying the appraisals that MGMIC obtained regarding those properties. Mr. Hébert also gave his opinion regarding the market value of each property as of the date of the appraisal obtained by MGMIC. In both cases, Mr. Hébert's ascribed value was a fraction of the value shown in the MGMIC's appraisals.

[135] In closing submissions, the Remaining Respondents contended that some of Mr. Hébert's opinion evidence was outside the scope of the issue for which he was qualified as an expert, and that we must therefore ignore his evidence. We disagree, but little turns on it. In closing submissions, Staff chose not to rely on any aspect of Mr. Hébert's evidence other than the retrospective value of the two properties. When we asked Staff whether it submitted that the respondents ought to have been aware of the deficiencies identified by Mr. Hébert, Staff advised that it was not taking that position.

[136] For reasons we explain below beginning at paragraph [272], we find that it was inappropriate for MGMIC to rely on the appraisals it obtained with respect to the two properties. We reach that conclusion based on conditions that are evident on the face of the appraisals, and without reference to Mr. Hébert's evidence regarding the value of the properties at the relevant time.

[137] As a result, while we found Mr. Hébert to be a professional, candid and careful witness, and while we have no reason to discount any of his evidence, we need not and do not rely on it in coming to our conclusions.

C. Did the respondents engage in, or hold themselves out as engaging in, the business of trading in securities?

1. Introduction

[138] We now turn to consider Staff's three principal allegations against the respondents.

[30] *Hearing Transcript*, June 28, 2019, at 4 line 27
[31] Reply Submissions of Staff dated June 25, 2019, at para 19

[139] The first relates to s. 25(1) of the Act, which provides that no person or company shall engage in, or hold themselves out as engaging in, the business of trading in securities, unless the person or company is registered to do so. None of the respondents was ever registered.

[140] The registration requirement is a cornerstone of the securities regulatory framework. It is an important gate-keeping mechanism that protects investors and the capital markets by imposing obligations of proficiency, integrity and solvency on those who seek to be engaged in the business of trading in securities with or on behalf of the public.[32]

[141] While the respondents suggested, in 2015 correspondence with Staff, that MGMIC could offer and sell shares "under an exemption",[33] that correspondence did not specify the applicable exemption(s). In closing submissions, the Remaining Respondents did not assert that they were entitled to an exemption from the registration requirement.

[142] Accordingly, we must determine whether the respondents engaged in "the business of trading in securities" or held themselves out as doing so.

2. Business trigger

(a) The test

[143] For the registration requirement to apply to a person or company, the business of trading in securities need not be the only business in which that person or company is engaged.[34] As the Commission has previously held, we "must determine whether the activities in this case cross the line between permissible solicitation and the business of trading."[35]

[144] The Commission has adopted Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**31-103CP**), which, among other things, sets out criteria to be considered in determining whether a person or company is engaged in a business when trading or advising in securities.

[145] While 31-103CP is not part of Ontario securities law, and therefore is not directly binding on the respondents, the "business purpose" test in s. 1.3 (also referred to as the "business trigger") includes the following factors, on which Staff relies and which the Commission has adopted in other proceedings.[36] We consider it appropriate to apply these factors in assessing the respondents' conduct in this case:

a. trading with repetition, regularity or continuity, whether or not that activity is the sole or even primary endeavour;

b. directly or indirectly soliciting securities transactions;

c. receiving or expecting to receive compensation for trading; and

d. engaging in activities similar to those of a registrant, including by setting up a company to sell securities, or by promoting the sale of securities.

[146] We now review each of these factors in turn.

(b) Trading with repetition, regularity, continuity

[147] In the first 33 months of the Material Time,[37] the respondents raised approximately $11 million through about 228 separate distributions to 150 investors. There were almost seven distributions per month during that time, and they occurred in all but six of the 33 months.

[148] As Staff notes, the distributions in this case continued over a similar or longer time period than that found in numerous previous Commission decisions in which the business trigger test was found to have been met:

a. 37 months in *Moncasa Capital Corp. (Re)*, in which the issuer raised over $1.2 million;[38]

b. 26 months in *Majestic Supply Co. (Re)*, in which the issuer raised $2.1 million;[39]

[32] *Al-Tar Energy Corp (Re)*, 2010 ONSEC 11, (2010) 33 OSCB 5535 (***Al-Tar***) at para 81
[33] Exhibit 60, Letter from MGMIC to Staff Re: Money Gate MIC Questions
[34] *Momentas Corp (Re)*, 2006 ONSEC 15, (2006) 29 OSCB 7408 (***Momentas***) at para 56
[35] *Blue Gold Holdings Ltd (Re)*, 2016 ONSEC 24, (2016) 39 OSCB 6947 (***Blue Gold***) at para 20
[36] See, *e.g.*, *Momentas* at paras 52-56; *Meharchand* at para 111
[37] The Material Time for all allegations is approximately 40 months, from August 2014 to December 2017 (*Amended Statement of Allegations*, para 6). However, the allegation relating to the raising of capital is confined to the period from August 2014 to April 2017 (*Amended Statement of Allegations* at para 4)
[38] 2013 ONSEC 20, (2013) 36 OSCB 5320 at paras 2, 32, 55, 57

c. 19 months in each of *McCarthy (Re)*[40] and *MRS Sciences Inc (Re)*,[41] in which the issuers raised $360,000 and almost $840,000, respectively; and

d. 17 months in *Richvale Resource Corp. (Re)*,[42] in which the issuer raised approximately $750,000.

[149] The frequency and regularity of distributions in this case, combined with the extended time over which the distributions were made, amply meet this component of the business trigger test. We reject the Remaining Respondents' submission that the above facts are not useful indicators.

(c) Directly and indirectly soliciting securities transactions

[150] Staff submits, and it is not disputed, that MGMIC actively solicited the sale of its preferred shares through the following means, among others:

a. promotional events and seminars hosted at MGMIC's offices, to which existing and potential investors were invited;

b. participation in training sessions held by 1PLUS12, at which Ben and Payam talked about how individuals could obtain funds (including by borrowing against home equity) to invest in MICs generally and MGMIC in particular;

c. MGMIC's website, which included an "Investing" page that promoted the sale of MGMIC shares;

d. the use of various promotional materials, including fliers and videos, and the distribution of these materials through social media and other methods; and

e. attendance at trade shows to promote MGMIC's business.

[151] Ben's active participation in MGMIC's solicitation efforts is confirmed by:

a. his own description of his role as CEO ("mostly to coach people to see what is really good for them… [and if] it suitable for them, I introduce them to our own company");[43]

b. his statement that twice he gave presentations in Ottawa to promote MGMIC to existing or potential investors;[44] and

c. the uncontradicted evidence of Payam and Ms. Ghaffari that Ben, among other things:

i. was responsible for investor relations;[45]

ii. called individuals who had previously invested through MGC and solicited their investment in MGMIC;[46]

iii. created one or more of the offering memoranda;[47]

iv. was involved in the 1PLUS12 presentations referred to in paragraph [150] above;[48] and

v. was responsible for the content of promotional videos, at least one of which featured him.

[152] Payam, whose employment agreement described him as MGMIC's "Business Development Manager", was also central to MGMIC's solicitation efforts. Among other things, he:

a. called individuals who had previously invested through MGC and solicited their investment in MGMIC;

b. created investment fliers to promote the sale of MGMIC's shares;

[39] 2013 ONSEC 5, (2013) 36 OSCB 2104 at paras 2, 41, 46, 145
[40] 2014 ONSEC 1, (2014) 37 OSCB 510 at paras 18, 25
[41] 2011 ONSEC 5, (2011) 34 OSCB 1547 (***MRS Sciences***) at paras 3, 161-164
[42] 2012 ONSEC 13, (2012) 35 OSCB 4286 at paras 5, 39
[43] Exhibit 228, List of read-ins for Ben Katebian, Tab 3 at 27 lines 23-25
[44] Exhibit 228, List of read-ins for Ben Katebian, Tab 12 at 112
[45] *Hearing Transcript*, January 7, 2019, at 78 line 3; March 4, 2019 at 67 lines 23-24
[46] *Hearing Transcript*, January 9, 2019, at 15 lines 7-13
[47] *Hearing Transcript*, January 9, 2019, at 43 line 23
[48] *Hearing Transcript*, January 9, 2019, at 49 line 13

c. prepared a slide deck that was used to market to existing and potential investors;

d. was involved in the 1PLUS12 presentations referred to in paragraph [150] above; and

e. reviewed the content of promotional videos.

[153] The evidence clearly establishes that each of MGMIC, Ben and Payam was actively involved in soliciting investment in shares of MGMIC.

(d) Being, or expecting to be, remunerated or compensated for trading

[154] Payam testified that he received an annual salary of $60,000 from MGMIC beginning in 2015. Given his title and his activities as described above, we have no hesitation in finding that he was remunerated at least in part, if not entirely, in respect of MGMIC's trading activities.

[155] We cannot accept Payam's submission that because the amount of his compensation was not tied directly to the amount of capital raised, he neither received nor expected to receive compensation for those activities.

[156] Further, even if we were to accept Payam's submission that he devoted the majority of his efforts to the management of MGMIC's lending business and not to the raising of capital (and we do not accept that submission), the fact remains that at least a portion of Payam's time was devoted to raising capital, an activity for which a corresponding portion of his salary would be attributable.

[157] Staff submits that Ben was indirectly compensated for MGMIC's trading activities, because MGC earned its fee based on the size of MGMIC's portfolio, and Ben shared in MGC's profits. We accept that submission.

(e) Engaging in activities similar to those of a registrant

[158] Staff submits, and we agree, that the respondents' activities were similar to those of an exempt market dealer and its principals. Specifically, the respondents:

a. promoted the sale of MGMIC's preferred shares;

b. met with potential investors to discuss details of the investment and the offering memoranda; and

c. discussed subscription documents with investors, filled in information on those documents, and signed as a witness.

3. Overall nature of MGMIC's business

[159] The Remaining Respondents submit that they did not breach s. 25(1), because the capital raising was incidental to MGMIC's business of operating a mortgage investment corporation.

[160] It is true that, as the Remaining Respondents submit and the Commission has previously held, our role is to "take a holistic view" of the capital-raising and other activities of MGMIC.[49] However, as we have explained above at paragraph [143], such a view does not preclude a finding that MGMIC was simultaneously engaged in the business of trading in securities and the business of investing the proceeds in mortgages.

[161] Indeed, Payam's employment agreement with MGMIC recited that MGMIC was "in the business of raising capital for mortgage investments".[50] These are compelling facts in support of the conclusion that MGMIC was engaged in the business of trading in securities.[51] The fact that the capital was being deployed for uses that did not involve securities does not diminish that conclusion.

[162] Further, we do not agree with the Remaining Respondents that we should apply previous findings of this Commission to the effect that any business seeking equity financing must of necessity trade in its own securities, and that any new corporation seeking capital must solicit trades.[52] Those findings merely confirm that by trading in its own shares, an issuer is not necessarily engaged in the business of trading those securities; a full analysis of all relevant factors is necessary.

[163] Finally, MGMIC's capital-raising activities were not confined to a start-up phase pending the establishment of a revenue-generating business. MGMIC had reached its steady state, with continuous raising of capital, early in the

[49] *Future Solar Developments Inc (Re)*, 2016 ONSEC 17, (2016) 39 OSCB 4495 at para 45
[50] Exhibit 67, Employment Agreement between MCMIC and Payam Katebian at 2
[51] *Momentas* at para 61
[52] *Meharchand (Re)*, 2015 ONSEC 43, (2015) 38 OSCB 10761 at para 44; *Blue Gold* at para 20

Material Time. MGMIC's failure to be profitable in the several years that it operated cannot be used as a basis for saying that MGMIC was in a start-up phase until it became profitable.

4. Conclusion as to whether MGMIC, Ben and Payam engaged in the business of trading in securities

[164] From its inception and throughout its existence, MGMIC traded in its securities repeatedly, regularly and continuously. Through its principals Ben and Payam, it directly and indirectly solicited those trades, and compensated Ben and Payam for doing so. MGMIC's activities related to the trades were similar to those of a registrant.

[165] MGMIC, Ben and Payam were therefore engaged in the business of trading in securities, as contemplated by s. 25(1) of the Act. While MGC played a role in the overall business, as the broker for all of MGMIC's loans, it does not follow that MGC itself was engaged in the business of trading shares of MGMIC. That allegation is dismissed.

[166] Staff did not submit, and we do not find, that all MICs are necessarily engaged in the business of trading in securities, simply because of the nature of a MIC. The question of whether a particular business, including a MIC, is engaged in the business of trading in securities remains one that must be resolved in light of all the relevant facts.

D. In distributing the preferred shares of MGMIC without a prospectus, were the respondents entitled to rely on an exemption from the prospectus requirement? In particular, can they rely on the (i) private issuer, (ii) minimum amount, (iii) accredited investor, and/or (iv) friends, family and business associates exemptions?

1. Introduction

[167] Subsection 53(1) of the Act provides that unless a prospectus has been properly filed and receipted, no person or company shall trade in a security on their own account or on behalf of any other person or company if the trade would be a distribution of the security.

[168] Like the registration requirement discussed above, the prospectus requirement is a cornerstone of Ontario's securities regulatory regime. The requirement is an important one because it seeks to ensure that investors are properly equipped to assess the risks of an investment and to make an informed investment decision.[53]

[169] It is undisputed in this proceeding that:

a. MGMIC traded in its own securities;

b. the trades were in previously unissued securities, and were therefore distributions (as defined in s. 1(1) of the Act);

c. no prospectus was filed or receipted; and

d. Ben and Payam, through their activities, engaged in acts in furtherance of the trades (including as set out in paragraphs [151] to [153] above), and would therefore be equally subject to this provision.

[170] Each of the essential elements of a contravention of s. 53(1) of the Act has therefore been established. It remains to be determined whether MGMIC was entitled to an exemption.

[171] An issuer that purports to make an exempt distribution is required to file with the Commission a Form 45-106F1 *Report of Exempt Distribution*. When properly completed, that form discloses details of any exempt distribution, including the exemption on which the issuer relies. MGMIC filed some reports of exempt distribution, although none was filed before April 1, 2015.

[172] In closing submissions, the Remaining Respondents assert four possible exemptions, which we will address in turn. Before doing so, we note that an issuer that purports to rely on an exemption bears the burden of demonstrating that it is entitled to the claimed exemption.[54]

2. Private issuer exemption

[173] For its first two distributions during the Material Time (in August 2014),[55] MGMIC purported to rely on the "private issuer exemption" provided for in s. 73.4(2) of the Act. In order to qualify for that exemption, MGMIC had to meet the definition of "private issuer" set out in s. 2.4(1) of National Instrument 45-106 *Prospectus Exempt Distributions* (**NI 45-106**). Specifically, MGMIC had to have distributed its securities only to persons listed in s. 2.4(2.1) of NI 45-106 (*e.g.*, a director, officer, employee, founder or control person of the issuer, or persons who are related to any of those, or who

[53] *Limelight Entertainment Inc (Re)*, 2008 ONSEC 4, (2008) 31 OSCB 1727 at para 139
[54] *Meharchand* at para 95
[55] Exhibit 91, List of distributions

are close personal friends or close business associates of any of those).

[174] For MGMIC's third distribution during the Material Time (in October 2014), MGMIC purported to rely on a different exemption. Staff submitted, and the Remaining Respondents did not contend otherwise, that once an issuer that previously relied on the private issuer exemption distributes its securities to a person not listed in s. 2.4(2.1) of NI 45-106, that issuer becomes disentitled to the private issuer exemption for future distributions. This is so even if the subsequent distributions are made in reliance on another exemption. In this respect, we agree with and adopt the language to this effect contained in s. 3.6(5) of the Companion Policy to NI 45-106 (**45-106CP**).

[175] Despite the fact that MGMIC was no longer entitled to the private issuer exemption, it made 25 subsequent distributions in respect of which it purported to rely on that exemption. These distributions, which raised more than $1.1 million, included two distributions in December 2014, one in February 2015, and the remaining 22 between March 2015 and June 2015. That last group of 22 distributions came after a total of ten distributions during the Material Time that purported to rely on other exemptions.

[176] Even if MGMIC was still entitled to the private issuer exemption in respect of the above-mentioned distributions, Staff submitted, and again the Remaining Respondents did not dispute, that MGMIC failed to adduce any evidence that the investors to whom the distributions were made were included in the list set out in s. 2.4(2.1) of NI 45-106. We therefore conclude that MGMIC failed to meet the burden of demonstrating that it is entitled to the private issuer exemption.

3. Friends, family and business associates exemption

[177] For 170 distributions from July 2015 to April 2017, totaling more than $7.1 million, MGMIC claimed entitlement to the "friends, family and business associates" exemption (**FFBA exemption**) provided for in s. 2.5(1) of NI 45-106. That exemption is available when the distribution is to a person listed in that subsection (*e.g.*, specified family members, close personal friends, and close business associates). None of the impugned distributions was to a specified family member; accordingly, the relevant elements of that list are a close personal friend, or a close business associate, of a director, executive officer or control person of MGMIC.

[178] Staff submits that few or none of the investors to whom distributions were made in reliance on the FFBA exemption qualified as close personal friends or close business associates.

[179] The Remaining Respondents' only submission in response is that the majority of MGMIC's investors qualified for the purposes of the exemption because they "were drawn from Ben's friends made through his membership in Landmark [Education]".[56]

[180] According to Ms. Ghaffari, Ben was "heavily involved" in Landmark Education, an organization that provides motivational seminars.[57] Payam testified that Ben's role with Landmark Education "led him to have a huge number of people he's done business with and became friends with."[58]

[181] For the purposes of the FFBA exemption, it is not enough merely to have done business with someone, or to call someone a friend.

[182] Staff submits, and we agree, that we should adopt the guidance set out in s. 2.7 and 2.8 of 45-106CP, which provide, respectively, that:

a. for an individual to qualify as a "close personal friend", that person must know the director, executive officer or control person well enough, and must have known them for long enough, to be able "to assess their capabilities and trustworthiness and to obtain information from them with respect to the investment"; and

b. for an individual to qualify as a "close business associate", that individual must have had sufficient prior business dealings with the director, executive officer or control person, to make the same assessment as described above.

[183] Staff further submits, and we agree, that we should adopt the guidance set out in s. 3.7 of 45-106CP, which explains that while there is no absolute limit on the number of investors in respect of whom an issuer may rely on the FFBA exemption, a larger number of such persons will be more likely to give rise to a presumption that not all of the investors qualify. In this regard, we recall Payam's description of the "huge number" of people with whom Ben had done business, and whom Ben called friends.

[56] Remaining Respondents' Closing Submissions dated June 19, 2019, at para 159
[57] *Hearing Transcript*, January 7, 2019, at 93
[58] *Hearing Transcript*, March 4, 2019, at 120, beginning at line 26

[184] In our view, the number of investors in this case in respect of whom the FFBA exemption is claimed, when combined with Ms. Ghaffari's and Payam's evidence about the connection between the investors and Ben, is sufficient to raise the presumption that many of the investors did not qualify as close personal friends or close business associates.

[185] Even if that presumption did not apply, we cannot accept the Remaining Respondents' assertion that all of the individuals qualified. Payam gave no specific evidence in support of that assertion, beyond the general statement quoted above. The Remaining Respondents neither called any investors as witnesses, nor adduced any other evidence in support of the assertion.

[186] Further, two of the four investor witnesses who testified at the hearing (S.B. and A.P.), and in respect of whom the FFBA was claimed, said that they had never met either Ben or Payam before investing. The evidence was not clear as to which exemption the Remaining Respondents relied on in respect of investor R.P., who also testified that he had never met Ben or Payam before investing. As we noted above, the investors' evidence was credible and was not challenged on cross-examination. We accept it.

[187] We therefore conclude that each of the distributions made in reliance on the FFBA exemption was made without the benefit of that exemption.

4. Accredited investor exemption

[188] For seventeen distributions between December 2014 and January 2017, which raised over $1.7 million, MGMIC purported to rely on the "accredited investor exemption" provided for in s. 73.3(2) of the Act. In order for an issuer to claim the benefit of that exemption in respect of a distribution, the investor must qualify as an "accredited investor" as that term is defined in s. 1.1 of NI 45-106. For the purposes of this proceeding, the relevant elements of that definition are clauses (j) through (m), which set out various income and asset tests.

[189] The Remaining Respondents submit that with respect to these seventeen distributions, it was appropriate for MGMIC to rely, as Payam testified that it did, on the declarations of the investor that she/he was an accredited investor. The Commission has rejected this position on numerous occasions, holding that the burden lies on the issuer to ensure that its distributions comply with applicable law, and that the issuer cannot simply rely on an investor's certification without further investigation:

> Reasonable diligence demands that the seller conduct a serious factual inquiry in good faith before accepting a prospective subscription, which includes a duty to look behind the boilerplate language of a subscription agreement.[59]

[190] Staff submitted, and the Remaining Respondents did not seriously dispute, that MGMIC adduced no evidence to demonstrate that it satisfied this obligation. We accept Staff's submission. We conclude that MGMIC has failed to establish that it was entitled to the benefit of the accredited investor exemption in respect of any of the distributions.

5. Minimum amount exemption

[191] Staff's evidence regarding MGMIC's purported exempt distributions establishes that five distributions were made in reliance on the "minimum amount exemption" set out in s. 2.10 of NI 45-106. For an issuer to be entitled to that exemption, the distribution cannot be to an individual, and must be in an amount not less than $150,000, paid in cash at the time of the distribution.

[192] Three of the five distributions were in amounts less than $150,000. Payam explained that at the time, he misunderstood the requirement. Nonetheless, we conclude that MGMIC was not entitled to the benefit of the minimum amount exemption in respect of those three distributions.

6. Legal advice defence

[193] Payam testified that in relying on the various exemptions, MGMIC sought legal advice from three law firms.

[194] Staff submits that this fact cannot assist the respondents, because:

a. legal advice can be relevant to the determination of whether a breach has occurred only where a due diligence defence is available; no such defence is available in response to an allegation that a respondent has distributed securities without a prospectus;[60] and

b. in any event, such legal advice as there may have been was given to MGMIC, which did not participate in this hearing and which has never waived privilege over legal advice it received; accordingly, there was no admissible evidence as to the content of that advice.

[59] *York Rio Resources Inc (Re)*, 2013 ONSEC 10, (2013) 36 OSCB 3499 at paras 109-110; *MRS Sciences* at para 189; *Meharchand* at para 101
[60] *Rezwealth Financial Services Inc (Re)*, 2013 ONSEC 28, (2013) 36 OSCB 7446 at para 236

[195] We agree. Therefore, for the purposes of the merits hearing and this decision, we must disregard the Remaining Respondents' assertion with respect to legal advice sought by MGMIC.

7. Conclusion as to distributions without a prospectus

[196] For the above reasons, we conclude that all distributions of shares by MGMIC during the Material Time were effected in violation of s. 53(1) of the Act, except for:

a. the two distributions in August 2014, made in reliance on the private issuer exemption;

b. one distribution made in reliance on the minimum amount exemption, where the distribution was to a person other than an individual, and the amount of the distribution was at least $150,000; and

c. one distribution made in reliance on the minimum amount exemption, about which there was no clear evidence as to the amount of the distribution.

[197] As we noted in paragraph [169] above, Ben and Payam engaged in acts in furtherance of these trades. Accordingly, all of MGMIC's illegal distributions represent contraventions of s. 53(1) of the Act by Ben and Payam as well.

[198] With respect to MGC, we reach the same conclusion as we did regarding the allegations of trading without being registered. While MGC played a role in the overall business, as the broker for all of MGMIC's loans, it does not follow that MGC was distributing shares of MGMIC. That allegation is dismissed.

E. Did the respondents engage in or participate in acts, practices, or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud?

1. Introduction

[199] We turn now to Staff's third principal allegation. Staff alleges that during the Material Time, the respondents engaged in various conduct relating to securities that they knew perpetrated a fraud on existing and potential investors in MGMIC, contrary to s. 126.1(1)(b) of the Act.

[200] The Commission has consistently held that fraud is "one of the most egregious securities regulatory violations."[61] Fraud causes direct harm to investors and undermines confidence in the capital markets.

[201] In this case, Staff alleges the following fraudulent misconduct by all of the respondents:

a. a failure to disclose the true nature of MGMIC's operations, controls and processes, including in particular a failure to:

i. fulfill the mandate of MGMIC's Credit Committee;

ii. fulfill the mandate of MGMIC's Investment Committee;

iii. qualify as a MIC under the *Income Tax Act*; and

iv. properly disclose who had control of MGMIC;

b. a failure to abide by MGMIC's lending parameters, policies and restrictions, by:

i. making undisclosed investments in third mortgages;

ii. investing in mortgages that exceeded the self-imposed limitations on size and concentration; and

iii. investing in imprudent mortgages, including mortgages in excess of appraised values; and

c. diverting loan advances to the benefit of the respondents or companies under their control.

[202] The alleged frauds took place against a backdrop of MGMIC and MGC experiencing financial difficulty. MGMIC's financial statements for the years ending May 31, 2015, and May 31, 2016, showed net losses of $184,048 and $101,951, respectively. MGC's financial statements for the year ending December 31, 2016, showed a net loss of $29,165. In an email to Ms. Ghaffari on February 29, 2016, Ben said: "I don't know how [we] are going to pay our bills this month unless [there is] money… coming [in] that I am not aware [of]." Ms. Ghaffari testified at the hearing that MGMIC and MGC were in crisis, in that they were unable to pay their expenses on a day-to-day basis.

[61] *Al-Tar* at para 214, quoting David Johnston & Kathleen D Rockwell, *Canadian Securities Regulation*, 4th ed (Markham: LexisNexis, 2007) at 420

[203] At the time that the receiver was appointed over MGMIC, the company had approximately $164,000 in its bank accounts, and had approximately $11.2 million in preferred shares outstanding. At that time, most of the loans in MGMIC's portfolio were in default.

2. Need for expert evidence

[204] Before we consider the specific fraud allegations, we review the Remaining Respondents' submission that without expert evidence (which Staff did not lead on these points), we do not have the ability to assess:

a. whether MGMIC's business was conducted in a manner that was riskier to investors than was represented to them;

b. even if so, whether the respondents should have known that certain loans were high-risk; or

c. whether MGMIC conducted appropriate due diligence regarding the loans on the Temiskaming property and the Birchmount property.

[205] The Remaining Respondents rely on the decision of the Ontario Superior Court of Justice (Divisional Court) in *Hanif v College of Veterinarians of Ontario* (***Hanif***), in which the Court held that "[e]xpert evidence is generally required in order to establish the relevant standard of practice of the profession".[62] However, the issue in *Hanif* was not whether the panel could make a decision without the benefit of expert evidence; rather, the Court's comment was in response to the appellant veterinarian's complaint that the Discipline Committee panel did in fact use an expert. The Court upheld the panel's ability to rely on an expert and to determine what weight to assign to the expert's opinion.[63]

[206] The Remaining Respondents also rely on a decision by the Divisional Court that a Discipline Committee of the Association of Professional Engineers of Ontario, not all of whose members were engineers, was not entitled to consider whether the standard of practice had been met by a professional engineer regarding structural engineering in the agricultural sector.[64] As in *Hanif*, the issue was whether an individual met a professional standard of practice. We agree with Staff's submission that no such issue arises in this proceeding.

[207] The Remaining Respondents further rely on a decision by the Divisional Court that a hearing officer of the Ontario Civilian Commission on Police Services erred in purporting to take judicial notice of the combined effects of alcohol and Percocet.[65] That case is of no assistance here. The decision followed explicit authority from the Court of Appeal that while judicial notice may be taken of the fact that alcoholic spirits can be intoxicating, a similar conclusion cannot be reached with respect to various pills or narcotic substances.

[208] In summary, none of these authorities supports the Remaining Respondents' submission that expert evidence was needed to support Staff's fraud allegations.

[209] Specialized tribunals such as the Commission may draw on their own expertise. As a general matter, it is for a tribunal to determine whether it needs the assistance of an expert.[66] Concerns about the need for expert evidence typically arise in the context of a criminal trial with a jury, or in other cases where the decision-maker is unable to formulate the necessary inference. Where, on proven facts, the decision-maker can reach its own conclusions without assistance, no expert opinion is necessary.[67]

[210] Staff's allegations that the respondents failed to disclose the true nature of MGMIC's operations, controls and processes require us to examine the respondents' statements from the perspective of an investor. We are not measuring the respondents' conduct against a professional standard; rather, we are considering whether a reasonable investor would have been misled, and whether the respondents complied with their own promises. Those issues are squarely within the expertise of this tribunal.

3. Analysis

[211] We will address each of Staff's fraud allegations in turn below, following a review of the relevant law.

(a) Law regarding fraud

[212] It is well established that the elements of fraud under the Act are:

[62] 2017 ONSC 497 at para 88
[63] *Hanif* at para 91
[64] *Katsoulakos v Association of Professional Engineers of Ontario*, 2014 ONSC 5440
[65] *McCormick v Greater Sudbury Police Services*, 2010 ONSC 270 at paras 129-132
[66] *Sutton (Re)*, 2018 ONSEC 42, (2018) 41 OSCB 6675 at para 153
[67] *R v Abbey*, [1982] 2 SCR 24 at 42

a. the *actus reus*, or objective element, which must consist of:

i. an act of deceit, falsehood, or some other fraudulent means; and

ii. deprivation caused by that act; and

b. the *mens rea*, or subjective element, which must consist of:

i. subjective knowledge of the act referred to above; and

ii. subjective knowledge that the act could have as a consequence the deprivation of another.[68]

[213] Clause 126.1(1)(b) of the Act prohibits acts "of deceit, a falsehood or some other fraudulent means". An act is of deceit or is a falsehood if the person who committed it "as a matter of fact, represented that a situation was of a certain character, when, in reality it was not." The third category, "other fraudulent means", includes acts that a reasonable person would consider to be dishonest, such as "non-disclosure of important facts,… unauthorized diversion of funds, and unauthorized arrogation of funds or property."[69]

[214] The second component of the *actus reus*, deprivation, is satisfied on proof of actual loss to one or more investors, actual prejudice to investors' economic interests, or even the risk of prejudice to those interests.[70] Given that a mere risk of prejudice is sufficient to establish a fraud allegation, then as long as there is a sufficient causal connection between the fraudulent act and the risk of deprivation,[71] Staff need not prove that investors actually relied on the misleading statements. In this regard, we reject the Remaining Respondents' submission that reliance is an essential element of the *actus reus* of fraud.

[215] In order to establish *mens rea* (*i.e.*, the necessary subjective element) for a finding under clause 126.1(1)(b) of the Act, Staff must show that the respondent who has allegedly committed the offence "knows or ought reasonably to know" that the conduct involved perpetrates a fraud. As the Supreme Court of Canada has held in the context of a criminal case, the "accused must have subjective awareness, at the very least, that his or her conduct will put the property or economic expectations at risk."[72]

[216] The Court further stated that "where the accused tells a lie knowing others will act on it and thereby puts their property at risk, the inference of subjective knowledge that the property of another would be put at risk is clear."[73]

[217] It is no answer for a person accused of fraud to maintain that they did not think the acts were wrong, or that they hoped that no deprivation would occur.[74]

(b) Fraud effected by way of false or misleading statements in promotional materials and in MGMIC's offering memoranda

[218] Before turning to consider the specific fraud allegations, some general comments are in order.

[219] Full, true and plain disclosure of all material facts has long been held to be a cornerstone of securities regulation.[75] In *Philip Services Corp. (Re)*, the Commission stated:

> Disclosure is the cornerstone principle of securities regulation. All persons investing in securities should have equal access to information that may affect their investment decisions.[76]

[220] Disclosure is fundamental to the fairness of Ontario's capital markets and to the protective mandate of the Act. However, that disclosure must be accurate and complete to be meaningful.[77] Accurate and complete public disclosure allows investors to

[68] *R v Théroux*, [1993] 2 SCR 5 at 27 (***Théroux***), cited in *Richvale Resource Corp (Re)*, 2012 ONSEC 13, (2012) 35 OSCB 4286 at para 102; *Meharchand* at para 119
[69] *Théroux* at para 18; *Meharchand* at para 120
[70] *Théroux* at para 16-17; *Quadrexx Hedge Capital Management Ltd. (Re),* 2017 ONSEC 3, (2017) 40 OSCB 1308 at para 21; *Meharchand* at para 121
[71] *R v Riesberry*, 2015 SCC 65 at para 22
[72] *Théroux* at para 29; *Meharchand* at para 122
[73] *Théroux* at para 29; *Meharchand* at para 123
[74] *R v Drabinsky*, [2009] 242 CCC (3d) 449 (ON SC) at para 473, cited in *Meharchand* at para 124
[75] *Cornish v Ontario (Securities Commission)*, 2013 ONSC 1310 (CanLII) (Div Ct) (***Cornish***) citing *Ontario Securities Commission and Brigadoon Scotch Distributors (Canada) Ltd. (Re)*, [1970] 3 OR 714 (HCJ) at 717. This language was adopted by the majority in *Pacific Coast Coin Exchange of Canada Ltd. v. Ontario (Securities Commission)*, [1978] 2 SCR 112 at 126.
[76] *Philip Services Corp. (Re)* (2006), 29 OSCB 3971 (***Philip Services***) at para 7
[77] *Cornish* at para 38 citing *Philip Services* at para 7

assess the risks involved with making an investment, and serves to level the playing field between investors.[78]

[221] In *Rex Diamond Mining Corp. (Re)*, the Commission held that the burden rests on the company to broadly disclose information to the public. It should not be necessary for individual shareholders to make specific inquiries in order to find out information that should be disclosed.[79] The policy of equal access to information that is reflected in the disclosure requirements under the Act has been characterized as the "most fundamental principle of securities regulation."[80]

[222] When an issuer tells prospective and actual investors how funds raised will be invested, the issuer has considerable latitude in deciding what constraints to subject itself to, unless such constraints are specifically prescribed by applicable law. Subject to any prescribed legal constraints, an issuer may reserve for itself the ability to exercise wide discretion as to how funds will be deployed. Alternatively, the issuer may explicitly impose strict limitations on the use of funds.

[223] Once the issuer makes that choice, however, the choice is binding. The disclosure must be true; it must also not be misleading. Non-disclosure of material facts is sufficient to satisfy the *actus reus* element of fraud.[81]

[224] The Remaining Respondents submit that they were not required to comply strictly with representations and commitments made in MGMIC's offering memoranda. In making this submission, the Remaining Respondents contend that the offering memoranda contain two types of representations: (i) MGMIC's "investment policies, practices and restrictions", and (ii) general descriptions of MGMIC's business. We consider each of these in turn.

[225] The section of the offering memoranda that is headed "Investment Policies, Practices and Restrictions" includes the following:

a. MGMIC would maintain "at least 50% of its portfolio in mortgages secured on Canadian residential real estate and in short term deposits";

b. "investments are made only when recommended by the Manager and approved by the Credit Committee";

c. MGMIC "does not invest in any mortgage or make any investment that would result in its failure to qualify as a Mortgage Investment Corporation as defined in the Income Tax Act";

d. MGMIC "does not loan money to… non-arm's length parties"; and

e. MGMIC's "investment policies, practices and restrictions set out above may be amended… from time to time by unanimous approval of [MGMIC's] Board of Directors."[82]

[226] Even though the Remaining Respondents described MGMIC's investment policies, practices and restrictions set out above as "mandatory",[83] the Remaining Respondents rely on the language quoted in paragraph [225](e) above in support of their submission that the investment policies, practices and restrictions were subject to change at MGMIC's discretion and without limitation. We do not accept this submission. The quoted language merely describes the authority to make a change. It does not relieve MGMIC of its disclosure obligations to investors, including the obligation to give investors proper notice of planned changes.

[227] Similarly, we cannot accept the Remaining Respondents' submission that representations that were contained in the offering memoranda but that were outside the "Investment Policies, Practices and Restrictions" section, merely constituted a description of how the business was to be operated, were "not mandatory", and therefore allowed "more scope for change"[84] without notice to investors.

[228] For example, the explicit statement that "approximately 85% [of MGMIC's investments] will be secured by second mortgages with the balance by first mortgages" is outside the investment policies, practices and restrictions section, but it unambiguously excludes the possibility that MGMIC will invest in third mortgages. No reasonable investor would see that statement as a casual and non-binding description of how the business was to be operated. In our view, that commitment is no less "mandatory" than those listed in paragraph [225] above.

[229] In summary, we do not distinguish between those commitments that are found within the investment policies, practices and restrictions section, and those that are elsewhere in the offering memoranda. The conclusions proposed by the

[78] *Sino-Forest Corporation (Re)*, 2017 ONSEC 27, (2017) 40 OSCB 6291 at para 1124, citing *AiT Advanced Technologies Corp (Re)*, 2008 ONSEC 3, (2008) 31 OSCB 712 at para 198
[79] *Rex Diamond Mining Corp. (Re)*, 2008 ONSEC 18, (2008) 31 OSCB 8337 at para 263
[80] *Cornish* at para 40, citing *Cartaway Resources Corp. (Re)*, [2000] BCSCD No 92 (BCSC) at para 216
[81] *Théroux* at para 18
[82] Exhibit 5, Offering Memorandum dated August 1, 2014, at 11
[83] *Hearing Transcript*, June 27, 2019, at 131
[84] *Hearing Transcript*, June 27, 2019, at 131

Remaining Respondents would be fundamentally at odds with the nature of an offering document.

[230] Finally, we reject the Remaining Respondents' invitation to give significant weight to warnings contained in the offering memoranda to the effect that investment in MGMIC was speculative and risky. Such warnings do not absolve an issuer from complying with representations and commitments it makes in those offering memoranda.

[231] We will now examine each of the alleged failures to comply with statements made in the offering memoranda, as well as in MGMIC's promotional materials.

(c) Failure to disclose the true nature of MGMIC's operations, controls and processes

i. Failure to fulfill the mandate of MGMIC's Credit Committee

[232] Staff alleges that the respondents represented to investors that MGMIC would make investment decisions (including decisions relating to loans, borrowings, acquisitions and dispositions) only if recommended by MGC and approved by MGMIC's Credit Committee. That committee was to meet as required and no less frequently than quarterly.

[233] Staff alleges that the Credit Committee did not meet as required and that it did not review and approve many of MGMIC's investments. Staff submits that MGMIC made numerous investment decisions without the involvement of Ms. Ghaffari, who was the head of the Credit Committee.

[234] The Remaining Respondents submit, and we agree, that as a practical matter, the Credit Committee "met" frequently. Its only members were Ben and Ms. Ghaffari, and there is no dispute that the two of them spoke very often, typically one or more times daily. While better practice would include minutes that record the required discussions and approvals, and while in this case there are no such minutes, we do not find that the non-existence of any minutes requires the conclusion that the Credit Committee did not meet.

[235] However, even if it could be said that the Credit Committee met frequently, we are unable to find that Ms. Ghaffari was involved in approving all of MGMIC's lending decisions, as we explained above, concluding at paragraph [97]. We therefore accept Staff's submission that at least in some instances, the Credit Committee did not operate in the way that was set out in the offering memoranda. As a result, there was no proper substantive review of some of the loan applications.

ii. Failure to fulfill the mandate of MGMIC's Investment Committee

[236] The respondents represented to investors that MGMIC established an Investment Committee to, among other things, adjudicate and advise on transactions involving potential conflicts of interest, and approve or reject investments in mortgages that might adversely affect MGMIC's status as a MIC. The Investment Committee's two members were Ben and Ms. Ghaffari.

[237] Staff alleges that the following transactions (the Related Party Loans) were non-arm's length, either because they were loans to Ben or Payam, or because they were loans to other individuals or corporations related to MGMIC:

a. *to Payam* – in January 2015, a loan of $82,500 regarding Heron Hollow (referred to beginning at paragraph [86] above);

b. *to Ben* – in April 2015, $500,000 secured by a third mortgage on 133 Boake Trail and a collateral mortgage on 11 King High Drive;

c. *to Atlas Capital Corporation*, of which Mr. Ricci was a director and officer – in August 2015, a loan of $665,000 regarding Palace Pier (see paragraph [89] above), which Ben listed in court filings as Mr. Mohammed's address;

d. *to Alijan Alijanpour* – in October 2015, a loan of $650,000 secured by a second mortgage on 23 Thornridge Drive, a property that Ben advised Ms. Ghaffari was being held for Mr. Missaghi so that Mr. Missaghi could carry out a power of sale and recover funds owing to him;

e. *to Enigma Land Ltd.*, of which Payam was a director – in November 2015, a loan of $320,000 secured by a second mortgage on 4342 Steeles Avenue, which was owned by Mr. Missaghi;

f. *to World Properties Corporation*, which was controlled by Mr. Mohammed (according to Ben's statement to Staff) or Mr. Missaghi (according to Ben's statement to Ms. Ghaffari) – in December 2015, a loan of $700,000 secured by a second mortgage on a retail commercial plaza;

g. *to Canadian Land Corporation*, which MGMIC has stated was controlled by what it described as "the Missaghi gang", and of which Mr. Missaghi was a director – in February 2016, a loan of approximately $2.7 million

secured by a first mortgage on a property in Timmins;

h. *to Mansteel New Liskeard Inc.* (**Mansteel**), of which Ben's father-in-law was a director – in June and July 2016, loans totalling approximately $3.9 million, which were guaranteed by Ben's father-in-law, and which were secured by first and second mortgages over a property in Temiskaming that Payam testified Messrs. Missaghi and Mohammed and another individual were "in charge of";[85]

i. *to 245 Ltd.*, one of Payam's numbered companies (see paragraph [23] above) – in September 2016, a loan of $282,500 secured by a second mortgage on 293 Euclid Avenue, a residential property in Toronto;

j. *to Ben* – in March 2017, a loan of $1 million secured in the same fashion as the April 2015 loan in (b) above, *i.e.*, a third mortgage on 133 Boake Trail and a collateral mortgage on 11 King High Drive;

k. *to 254 Inc.*, one of Payam's numbered companies (see paragraph [23] above) – in May 2017, a loan of $611,000 secured by a second mortgage on 558 Dovercourt Road, a residential property in Toronto; and

l. *to World Finance Corporation* (**World Finance**), Mr. Missaghi's company – in November 2017, a loan of $1.6 million secured by an interest in a third mortgage on the Birchmount property.

[238] Each of these loans was to Ben, Payam, Mr. Missaghi or Mr. Mohammed, or to corporations controlled by them. Given our finding that Messrs. Missaghi and Mohammed exercised considerable control over MGMIC, it follows that each of these Related Party Loans presented a conflict of interest.

[239] With respect to the two instances where Staff submits that Ben had a conflict of interest (*i.e.*, the loans identified in (b) and (j) above), Payam testified that in his view, as long as the offering memoranda disclosed that MGMIC directors could borrow funds from MGMIC, and as long as such transactions were later disclosed in MGMIC's financial statements, no conflict of interest existed. We disagree. The conflict existed, whether it was disclosed or not.

[240] Staff alleges that the failures to comply with the commitment regarding the Investment Committee arose in one of two ways: (i) where Ms. Ghaffari did not approve a Related Party Loan, or (ii) where Ben approved a Related Party Loan in respect of which he was in a conflict of interest.

[241] As was the case with the Credit Committee, we accept the Remaining Respondents' submission that because Ben and Ms. Ghaffari spoke so frequently, we cannot find that the Investment Committee did not meet. However, there are no minutes or other evidence to show that the committee considered everything it was required to. We repeat our conclusion, stated above, that Ms. Ghaffari was not involved in approving all of the Related Party Loans. We therefore accept Staff's submission that at least in those instances, the Investment Committee did not operate in the way that was set out in the offering memoranda.

[242] The Remaining Respondents submit that because the offering memoranda contemplated that conflicts might not always be resolved in favour of investors, it cannot be said that the respondents failed to comply with their obligations in this regard. We disagree. MGMIC's by-laws explicitly prohibited directors or officers who had a material interest in a transaction from voting on any resolution to approve the transaction. Both Ben (in his statements to Staff) and Ms. Ghaffari (in her testimony before us) stated that the Investment Committee did nothing at any time.

[243] The investors were promised, and were entitled to assume, that the Investment Committee would abide by its obligations and follow its process, by which unconflicted members of the committee would turn their mind to the relevant issues. In our view, it is at least misleading, if not bad faith, to ignore the process completely.

[244] We conclude that in all of these instances, the Investment Committee failed to operate as required.

iii. Failure to qualify as a MIC under the Income Tax Act

[245] In the offering memoranda, MGMIC represented to investors that it would at all times conduct its affairs so as to qualify as a MIC. While MGMIC did warn that there could be no assurance that it would be able to meet the MIC qualifications at all material times, MGMIC represented that its directors would use their best efforts in this regard.

[246] This was an important selling point for MGMIC. Maintaining status as a MIC would ensure that shares of MGMIC would be qualified investments for the purpose of registered retirement savings plans, deferred profit-sharing plans, registered retirement income funds and registered education savings plans. MGMIC also represented that it operated as a tax-free flow-through conduit of profit to its preferred shareholders, most of whom invested through registered accounts.

[247] MGMIC did not qualify as a MIC until mid-2016 at the earliest. MGMIC's audited financial statements for the years ending as at May 31, 2015, and May 31, 2016, disclosed this fact. MGMIC did not produce audited financial statements

[85] *Hearing Transcript*, March 8, 2019, at 11-12

for the following year, despite the requirement that such statements be produced in order to qualify as a MIC.

[248] The failure to qualify jeopardized MGMIC's ability to pay returns to its investors and exposed them to adverse tax consequences.

[249] The fact that MGMIC did not qualify as a MIC was noted in the financial statements. However, the statements for the year ending and as at May 31, 2015, were not issued until June 28, 2016, and the May 31, 2016, statements were not issued until September 30, 2016. As a result, the disclosure was not timely.

[250] While we have concerns about the timeliness and effectiveness of the disclosure, the record on this point is insufficient for us to conclude that the respondents committed fraud, either through a failure to take adequate steps to ensure MGMIC's status, or through inadequate disclosure, or both.

iv. Failure to properly disclose who had control of MGMIC

[251] Staff alleges that until May 30, 2016, the respondents represented to investors that Ben, Payam and Ms. Ghaffari were the directors and senior officers of MGMIC. The revised offering memoranda disclosed beginning May 30, 2016, after Ms. Ghaffari had left MGMIC, that Ben and Payam were the sole directors and senior officers.

[252] Staff alleges that this disclosure was false, in that by no later than March 2016, MGMIC was controlled by Ben, Mr. Missaghi, and Mr. Mohammed. As we have explained above, we agree.

[253] As Staff alleges, no disclosure was ever made to investors, through revised offering memoranda or otherwise, regarding this change in control. Accordingly, investors had no way of evaluating the management experience or qualifications of Messrs. Missaghi or Mohammed, and were therefore unable to make fully informed decisions about the potential risks of investing in MGMIC.

(d) Failure to abide by MGMIC's lending parameters, policies and restrictions

i. Undisclosed investments in third mortgages

[254] Staff alleges that until January 2017, the respondents represented to investors that loans by MGMIC would be limited to certain specified types of mortgages. These permitted loans included first and second mortgages but did not include third mortgages. The offering memoranda stated that approximately 85% of MGMIC's investments would be secured by second mortgages, with the balance secured by first mortgages.

[255] A revised offering memorandum dated January 31, 2017, contemplated investment in third mortgages "where the equity in a property, relative to amounts owing under prior mortgages, and/or additional collateral provided are sufficient security for the Corporation's mortgage investment."[86] However, Staff alleges, and the Remaining Respondents concede, that before that change, MGMIC did invest in a third mortgage loan to Ben on 133 Boake Trail (see paragraph [237](b) above).

[256] Staff alleges that by investing in third mortgages, MGMIC used investor funds in a manner contrary to the limitations set out in the offering memoranda and thereby exposed the investors to greater risk.

[257] On cross-examination, Payam testified that the risk is greater where the lender is the second or third mortgagee, and another lender holds the higher priority mortgage(s). We agree. Indeed, it is evident from the limiting language quoted in paragraph [255] above that MGMIC had that view at the time.

[258] We find that MGMIC, by investing in the third mortgage, failed to abide by the lending parameters, policies and restrictions set out in the offering memoranda in effect at the time.

[259] We note also that, as Staff submits, the third mortgage granted on the Richmond Hill Property brought the total mortgages on that property to almost $2.3 million, thereby causing the loan-to-value ratio for that property to exceed 100%, given the property's appraised value of $2.15 million. While MGMIC purported to take additional collateral for this mortgage, in the form of security on a property owned by Ben in Vaughan, Staff alleges that this collateral was of no value to MGMIC, since the property was already funded by mortgages totalling approximately $1.75 million, which exceeded its appraised value. We agree.

ii. Investments in mortgages that exceeded the self-imposed limitations on size and concentration

[260] Until January 2017, MGMIC represented in its offering memoranda that a "typical loan size" for MGMIC would range up to $2 million. Promotional materials distributed by MGMIC stated that mortgage loans would range up to $1 million.

[86] Exhibit 49, Offering Memorandum revised January 31, 2017, at 10

[261] MGMIC also promised that there would be concentration limits for its loans. In particular, a maximum of 35% of MGMIC's assets would consist of mortgages on commercial and industrial properties, and at least half of MGMIC's assets would consist of mortgages on "new, existing, proposed or in construction" residential properties.[87]

[262] The offering memoranda also represented to investors that MGMIC had "established a policy that limits its credit exposure to any one borrowing group."[88] Ms. Ghaffari testified that there was no such policy, and the respondents did not adduce evidence of the existence of such a policy.

[263] Staff alleges that MGMIC did not abide by these representations to investors. In particular, MGMIC exceeded the stated maxima:

a. in early 2016, by advancing $2,372,500 on the industrial property in Timmins referred to in paragraph [237](g) above; and

b. in June and July 2016, by lending approximately $3.9 million on the industrial Temiskaming property referred to in paragraph [237](h) above.

[264] By March 2017, those two loans alone made up over 60% of MGMIC's portfolio, thereby exceeding the 35% limit for commercial and industrial properties. We cannot accept the Remaining Respondents' submission that at least some portion of, if not all of, the Timmins and the Temiskaming properties were residential properties. The Remaining Respondents say this is so because when the loans were made there was a residential development planned, thereby bringing the properties within the word "proposed" referred to in the offering memoranda and in paragraph [261] above.

[265] The only evidence in this respect was Payam's assertion that a substantial portion of the Timmins property was "designated for residential development" because that is what Troy Wilson, a close associate of Mr. Missaghi's, and the 1PLUS12 group were planning to do.[89] Payam's hearsay evidence about Mr. Wilson's untested hope does not rise to the necessary level to establish that any portion of the Timmins property was "proposed" to be residential. A reasonable investor would not include, within "residential property", an industrial property that was not zoned to be residential and in respect of which there was not at least a formal application to allow the property to be used for that purpose.

[266] With respect to the Temiskaming property, there was no evidence to support the Remaining Respondents' submission that there were plans for a residential development there, let alone a formal proposal. The portion of Payam's testimony that the Remaining Respondents cite in this regard relates only to the Timmins property and not to the Temiskaming property. Further, the appraisal obtained by MGMIC from Mr. Esposito describes the property type as "industrial manufacturing facility", the zoning as "Legal, Non-Conforming Industrial Use (Rural)", and the highest and best use of the property to be continuation "of its current industrial use until the site becomes economically feasible for redevelopment in accordance with the governing land use regulations."[90]

[267] In addition, Staff alleges, and we agree, that these two loans of $2.4 million and $3.9 million were inconsistent with MGMIC's description of the "typical" loan size being less than $1 million (according to MGMIC's promotional materials) or less than $2 million (according to the offering memoranda). We reject the Remaining Respondents' submission that because two loans represented a small fraction of the number of loans (*i.e.*, by counting the number of loans rather than focusing on the dollar amount of the loans), the representation regarding typical loans was complied with. While the representation was arguably true in a strictly literal sense, we find that it was substantively misleading to investors, in that it conveyed an inaccurate picture of the overall portfolio (*i.e.*, the two loans represented 60% of the portfolio) and fundamentally undermined what the investors bargained for.

[268] Further, approximately 75% of the portfolio consisted of loans made to borrowers related to Mr. Missaghi. While MGMIC failed to establish a policy regarding concentration, as it had promised to do, we have no difficulty concluding that this level of concentration was inconsistent with what the reasonable expectations of investors would have been, given the promise to limit MGMIC's exposure to any one borrowing group. The representation promised investors a diversified portfolio. MGMIC's portfolio was not diversified.

[269] We find that by making the two loans, MGMIC knowingly breached the promised limit regarding commercial and industrial properties and misled investors regarding typical loans. Those two loans, together with other loans in the portfolio, constituted a deliberate contravention by MGMIC of its representation regarding borrowing group concentration. In all these ways, MGMIC exposed investors to greater risk than had been disclosed and that they had agreed to assume in making their investment in preferred shares of MGMIC.

[87] See, *e.g.*, Offering Memorandum dated August 1, 2014, (Exhibit 5) at 8
[88] See, *e.g.*, Offering Memorandum dated August 1, 2014, (Exhibit 5) at 10
[89] *Hearing Transcript*, March 8, 2019, at 61 lines 20-26
[90] Exhibit 111, Appraisal re: 1107 Lakeshore Road South (Temiskaming Property) (***Temiskaming Appraisal***) at 4

iii. Investing in imprudent mortgages, including mortgages in excess of appraised values, and loan-to-value ratios exceeding maxima

[270] In the offering memoranda, MGMIC represented to investors that it would attempt "to minimize risk by being prudent in both its credit decisions and in assessing the value of the underlying real property offered as security."[91] In promotional materials that MGMIC prepared for potential investors, MGMIC explicitly set out "lending parameters", including a maximum loan-to-value ratio of 85% on second mortgages, or 90% on bundled first and second mortgages, and a maximum mortgage amount of $1 million.

[271] Staff cites five instances in which it alleges that MGMIC did not conduct appropriate due diligence, and/or where MGMIC made imprudent lending decisions.

(a) Timmins property

[272] The first instance is the Timmins property. Staff's concerns, which we address in turn, are as follows.

[273] First, MGMIC did not obtain any information about the ability of the borrower (Canadian Land Corporation) to pay the monthly interest payments of over $24,000, or to repay the principal; nor did MGMIC obtain information about the creditworthiness of Mr. Wilson, who was the guarantor. We accept the Remaining Respondents' submission that for mortgages of this nature, the necessary comfort may be derived from the value of the property, rather than the borrower's creditworthiness. As we discuss below, however, we find that MGMIC had no reasonable basis to assess the value of the property.

[274] Second, Staff raised a concern regarding a condition contained in MGMIC's commitment letter to Canadian Land Corporation. That condition required that there be an appraisal reflecting a minimum value of $3.65 million based on a maximum "marketing time" of 60 to 90 days. Staff submits, and we agree, that the appraisal that MGMIC obtained from Mr. Esposito did not meet this condition. In reaching that conclusion, we considered the following evidence:

a. Ms. Ghaffari's testimony that marketing time is the time required, in the event of a default by the mortgagor, for a lender to sell the property and to recover the lender's investment; and

b. the statement in Mr. Esposito's appraisal that "reasonable exposure time" (which the context makes clear is synonymous with "marketing time") is the:

> estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal.[92]

[275] We accept that evidence, and we reject Payam's contrary suggestion that marketing time merely means the period during which a particular listing agreement would be valid. The logical connection between the appraised value of a property and the time that would be required to obtain that value is obvious. There is no logical connection between an appraised value and the length of one particular listing agreement, especially given that a listing agreement can be either renewed or extended indefinitely.

[276] We find that marketing time in the context of the MGMIC commitment letter means the time required to expose the property to market in order to sell it for close to its fair market value.

[277] Mr. Esposito's appraisal of the Timmins property concluded that the exposure time for that property would be "in the order of five years, assuming that the property is not sold as part of a portfolio and marketed in a professional manner."[93] This qualification on the appraised value falls well short of the 60-to-90-day condition set out in the commitment letter. It renders the appraised value worthless for MGMIC's immediate-term lending decisions, especially given MGMIC's stated reliance on asset value for lending purposes. The respondents ought not to have relied on the appraisal.

[278] Staff's third concern regarding the Timmins property is that the appraisal obtained by MGMIC recommended an environmental audit, but none was obtained by MGMIC. We agree with Staff's submission that it was imprudent to make the loan without doing so.

[279] Fourth, in its promotional materials, MGMIC committed to make mortgage loans only where the loan-to-value ratio was no more than 85% on second mortgages and no more than 90% on bundled first and second mortgages. On cross-examination, Payam agreed that as the loan-to-value ratio increases, so does the risk. As discussed above, we

[91] See, *e.g.*, Offering Memorandum dated August 1, 2014, (Exhibit 5) at 9
[92] Exhibit 111, *Temiskaming Appraisal* at 8
[93] Exhibit 111, *Temiskaming Appraisal* at 8

find that the respondents were not entitled to rely on the appraisal obtained by MGMIC, which suggested a value of $3,650,000. They therefore had no basis to conclude that they complied with their promised maximum loan-to-value ratio.

[280] In summary, by lending on the Timmins Property, MGMIC violated its promise to follow prudent lending practices, because MGMIC failed to obtain an environmental audit, and because MGMIC relied on an appraisal that had as an essential underlying assumption a marketing time of five years, a period that is unsupportable, and that is significantly longer than the 60-90 day maximum called for in the commitment letter.

(b) Temiskaming Property

[281] The second instance that Staff cites as being imprudent is the loan on the Temiskaming property. Staff identifies the following concerns.

[282] First, Ben and Payam knew, before MGMIC took an assignment of the first mortgage, that the borrower Mansteel had defaulted on that mortgage, not having made any interest payments for nearly three years. MGMIC did not obtain any information about Mansteel's ability to pay the monthly interest payments of over $36,000, or to repay the principal; nor did MGMIC obtain information about the creditworthiness of Ben's father-in-law, who was the guarantor but who had no economic interest in the property. Rather, Payam testified that he had relied on "new structures of individual shareholders";[94] however, there was no evidence as to what these new structures were.

[283] Once again, even if we accept the Remaining Respondents' submission that for loans of this kind, the lender's comfort as to the value of the property may obviate the need to be confident about the borrower's ability to repay, the fact is that MGMIC had no reasonable basis to assess the value of the property. MGMIC's commitment letter to Mansteel required that there be an appraisal reflecting a minimum value of $4.63 million that could be achieved with a 365-day maximum marketing time. The appraisal that was delivered indicated that the property needed a marketing time of five years to sell at that price. For the same reasons as discussed above, this assumption easily disqualifies the appraisal as a basis for determining value for a prudent lender.

[284] Payam also testified that he relied on an additional $4 million, referring to funds held by the Ministry of the Environment and funds paid into court relating to environmental work performed by Mansteel. Staff submits that these funds were not available as security for repayment of Mansteel's debt to MGMIC. We agree.

[285] Further, the appraisal recommended an environmental audit, but none was obtained by MGMIC. This is of particular concern with respect to Temiskaming, since Mansteel had been fined $9,000 for environmental violations in connection with the property. We agree with Staff's submission that MGMIC's failure to obtain an environmental audit was inconsistent with the position that MGMIC followed prudent lending practices.

[286] Finally, Staff notes that Payam did not visit the property. We do not regard this as requiring the conclusion that the loan was therefore imprudent.

[287] In summary, by lending on the Temiskaming property, MGMIC violated its promise to follow prudent lending practices, because MGMIC failed to obtain an environmental audit, and because MGMIC relied on an appraisal that had as an essential underlying assumption a marketing time of five years, a period that is unsupportable, and that is significantly longer than the 60-90 day maximum called for in the commitment letter.

(c) Birchmount property

[288] The third instance of imprudent lending cited by Staff is the Birchmount property.

[289] By November 2017, Payam and Ben had advised Staff of their desire to wind up MGMIC, and MGMIC's shareholders had approved of a wind-up. Despite that, soon afterwards MGMIC committed to purchase an interest in a third mortgage on the Birchmount property, which mortgage was held by World Finance. As Payam acknowledged he knew at the time, Mr. Missaghi controlled World Finance.

[290] MGMIC agreed to lend $1.85 million to World Finance in return for a 30% interest in the third mortgage. Under this agreement, World Finance was to be responsible for all mortgage payments and fees.

[291] By December 11, 2017, MGMIC had advanced $1.6 million to World Finance. It did so even though:

a. the underlying security for the agreement was a third mortgage that had been in default for nine years and that had been granted by an owner who was bankrupt;

b. MGMIC did not require any personal guarantees to support the loan;

[94] *Hearing Transcript*, May 14, 2019, at 132 lines 12-15

c. MGMIC did not obtain any evidence to support its reliance on World Finance to make the mortgage payments; and

d. MGMIC relied on an appraisal valuing the property at $9.25 million, based on a condition that the property could be developed to include a senior citizens' apartment, a use that was not permitted by existing zoning restrictions.

[292] As Staff notes, it subsequently became clear that the appraisal significantly overvalued the property, as is evidenced by the June 2018 approval of a sale of the property by a receiver, for $3.45 million (about one third of the "appraised" value of $9.25 million). As of the conclusion of the evidence portion of the merits hearing, MGMIC had not received any funds from the sale or recovered any amounts under its agreement with World Finance. Some proceeds remained following the disqualification of the first mortgagee and payment to the second mortgagee, but World Finance and a fourth mortgagee dispute MGMIC's entitlement to any share of the proceeds.

[293] The deficiencies cited above are serious. We find that they combine to require the conclusion that by making this loan, MGMIC violated its promise to follow prudent lending practices.

[294] In reaching that conclusion, we reject Payam's evidence that MGMIC was appropriately comfortable with the risk associated with the loan. Payam sought to explain that by advancing the funds to World Finance, MGMIC was enabling the 1PLUS12 investors to repay approximately $1 million they owed to Ben in respect of other properties. Staff submits that we ought not to give any weight to Payam's testimony on this point, because of his failure to make proper pre-hearing disclosure of his evidence (see the analysis beginning at paragraph [116] above). We do not find it necessary to resolve that issue, because we would reach the same conclusions even if we were to take Payam's testimony into account.

[295] With or without Payam's testimony, it is clear to us that the loan had no legitimate economic purpose that was in the interests of all MGMIC shareholders. The loan may have served the interests of Ben and Payam, but it was imprudent for MGMIC.

(d) Loan-to-value ratios exceeding maxima on two properties

[296] Finally, Staff notes that MGMIC exceeded the promised maximum loan-to-value ratio on the Heron Hollow property and on 293 Euclid Avenue. The actual loan-to-value ratios were 90% and 91% respectively, on second mortgages alone, without any bundled first mortgage. The ratios therefore exceeded the promised maximum of 85%.

(e) Diverting loan advances to the benefit of the respondents or companies under their control

[297] Staff's final fraud allegation is that the respondents improperly diverted MGMIC loan advances relating to two properties.

i. The Temiskaming property: Diversion of $435,196 to Ben's Numbered Company

[298] Staff alleges that in January 2017, Ben arranged for the diversion of $435,196 from the final $445,000 advance to Mansteel regarding the Temiskaming property to go instead to his numbered company. Staff led the following evidence, which was not challenged, and which we accept:

a. MGMIC advanced $445,000 to its own solicitor;

b. MGMIC's solicitor deducted fees and remitted the balance to Mansteel's solicitor;

c. Mansteel's solicitor remitted $435,196 to Ben's Numbered Company; and

d. both Ben and Payam took steps to effect these transfers.

[299] Payam testified that the funds were remitted to Ben's Numbered Company because Mansteel did not have a bank account.

[300] After Ben's Numbered Company received the funds, it made the following payments:

a. $100,007 to Canada Capital Corporation, a company related to Mr. Missaghi;

b. two payments totaling $208,874 to 245 Ltd. (which was 50% owned by Payam, and over which company's account both Ben and Payam had signing authority);

c. $13,326 to Ben in cash; and

d. $116,007 to C&K Mortgage Services, with a notation saying “High Point Missaghi”.

[301] Payam attempted to justify these payments, including by explaining that Ben’s father-in-law guaranteed the loan and was added as a director of Mansteel, to ensure that payments on the mortgage were made as required. Payam’s testimony on this point was not cogent, and we were left with no convincing explanation as to how the significant payments to the parties mentioned above were made for legitimate reasons in the interests of MGMIC’s shareholders. We were similarly unconvinced by the Remaining Respondents’ submission that the funds were available to be paid back to MGMIC, and that therefore it could not be said that the funds were not diverted.

[302] Accordingly, we find that MGMIC deliberately diverted these funds to Ben and Payam, and to entities in which they or the 1PLUS12 investors had a significant or controlling interest. We reject the Remaining Respondents’ submission that Staff’s choice not to call Messrs. Missaghi or Mohammed as witnesses precludes this finding. The uncontroverted evidence shows the flow of funds as described, and makes it more likely than not that MGMIC diverted the funds to the Remaining Respondents’ benefit. The respondents failed to rebut that conclusion.

ii. The Birchmount property: Diversion of $1.1 million to Ben

[303] Staff alleges that in December 2017, Ben diverted approximately $1.1 million to himself from the $1.6 million that MGMIC advanced regarding the Birchmount property. Staff led unchallenged evidence, which we accept, that establishes that on each of November 28, December 5 and December 6, 2017:

a. MGMIC advanced $400,000 to its solicitor;

b. MGMIC’s solicitor deducted the firm’s fees and remitted the balance to World Finance’s solicitor;

c. World Finance’s solicitor deducted that firm’s fees and remitted the balance to a corporation of which Mr. Wilson (Mr. Missaghi’s associate, referred to in paragraph [265] above) was the sole registered director and officer;

d. that corporation transferred the funds to Ben’s Numbered Company; and

e. Ben’s Numbered Company transferred part or all of the funds to Ben’s personal account.

[304] As a result of the above transactions, Ben received $1,115,000 into his personal account. Ben used the funds to repay his personal indebtedness to MGMIC in respect of the mortgages on Boake Trail and King High Drive referred to in paragraphs [237](b) and (j) above.

[305] In his testimony, Payam attempted to explain these transactions as a “solution” advanced by the 1PLUS12 group to repay an alleged $1 million debt owed to Ben by the 1PLUS12 group. Once again, Payam’s explanation was not cogent, and in any event it was not disclosed to Staff before the hearing, as a result of which we give it no weight, for the reasons set out in paragraphs [122] to [126] above.

4. Conclusion regarding Staff’s fraud allegations

[306] In summary, we find that in circumstances when the respondents were experiencing significant financial pressure, MGMIC perpetrated frauds on MGMIC’s investors, and thereby contravened s. 126.1(1)(b) of the Act when it:

a. knowingly engaged in acts of deceit by failing to:

i. disclose that MGMIC’s Credit Committee did not operate as promised in the offering memoranda;

ii. disclose that MGMIC’s Investment Committee did not properly review and advise regarding transactions in which MGMIC had a conflict of interest;

iii. disclose that Messrs. Missaghi and Mohammed exercised considerable control over MGMIC;

iv. comply with MGMIC’s commitment not to invest in third mortgages;

v. comply with the $1 million maximum loan amount set out in MGMIC’s promotional materials and the maximum “typical” loan amount of $2 million specified in MGMIC’s offering memoranda;

vi. establish and comply with a policy to limit MGMIC’s exposure to one borrowing group; and

vii. comply with MGMIC’s commitment to be prudent in its credit decisions and in assessing the value of underlying real property offered as security;

all of which were facts that would, as the respondents knew, have been material to investors; and

b. thereby caused a deprivation to MGMIC's investors, in that they exposed the investors to greater risk than the investors had agreed to assume; and

c. did so knowing that their conduct could result in the MGMIC suffering that deprivation.

[307] We also find that MGMIC perpetrated frauds on its investors when, without proper authority, MGMIC deliberately diverted to Ben's and Payam's benefit portions of the advances on the Temiskaming property and the Birchmount property. We reject the Remaining Respondents' submission that the payments were not a "course of conduct relating to securities", and that they therefore fall outside the scope of s. 126.1 of the Act.

[308] The diversion frauds consist of two inextricably intertwined elements: (i) the sale of securities to MGMIC shareholders on the strength of promises that the investors' funds would be used for a particular purpose; and (ii) the diversion, instead, of those funds to the benefit of Ben, Payam, and their related entities.

[309] Finally, we find that Ben, Payam and MGC were inextricably wound up in all of MGMIC's frauds, and that Ben and Payam were fully knowledgeable about the extent of MGMIC's misconduct described above. They knew that by failing to comply with their disclosure and risk management obligations, they were exposing investors to greater risk than those investors had bargained for. Therefore, all three of the Remaining Respondents (*i.e.*, Ben, Payam and MGC) contravened s. 126.1(1)(b) of the Act, which brings within its scope those who "directly or indirectly… participate in" any conduct prohibited by that section.

[310] Given these findings, it is unnecessary to address Staff's allegations that the respondents breached s. 122(1)(b) of the Act by making misleading or untrue statements in the offering memoranda. That conduct is subsumed within our findings with respect to the fraud allegations.

V. CONCLUSION

[311] The full extent of the relationships among the four respondents, Messrs. Missaghi and Mohammed, 1PLUS12 and others was not made clear by the evidence in this hearing. However, that evidence did establish a mosaic that includes:

a. the close relationships between the respondents and Messrs. Missaghi and Mohammed;

b. the considerable influence that Messrs. Missaghi and Mohammed exercised over MGMIC;

c. the large and late-in-the-day Related Party Loans; and

d. the various conflicts that were neither properly disclosed nor properly managed by Ben and Payam.

[312] All of that led to investors in MGMIC making an investment that in material respects was different than what they had bargained for, and that led ultimately to the destruction of MGMIC's portfolio at the expense of the investors and for the benefit of Ben and Payam. The conduct shows a profound disregard by MGMIC for its investors, and a profound disregard by Ben and Payam of their duties as directors and officers of MGMIC.

[313] Staff has established that:

a. MGMIC, Ben and Payam were engaged in the business of trading in securities, contrary to s. 25(1) of the Act;

b. MGMIC, Ben and Payam contravened s. 53(1) of the Act as a result of their conduct associated with all of MGMIC's distributions of shares during the Material Time, except for the four distributions referred to in paragraph [196] above; and

c. contrary to s. 126.1(1)(b) of the Act, all four respondents perpetrated frauds on MGMIC's investors as described in paragraphs [306] and [307] above.

[314] Given our findings that Ben and Payam directly contravened the Act as described in the preceding paragraph, we need not address Staff's request that we find that Ben and Payam "authorized, permitted or acquiesced in" MGMIC's and MGC's misconduct, as contemplated by s. 129.2 of the Act.

[315] The parties shall contact the Registrar on or before January 10, 2020, to arrange a first attendance in respect of a hearing regarding sanctions and costs. That first attendance is to take place on a date that is mutually convenient, that is fixed by the Secretary, and that is no later than January 31, 2020.

[316] If the parties are unable to present a mutually convenient date to the Registrar, then each of Staff and the Respondents

may submit to the Registrar, for consideration by a panel of the Commission, a one-page written submission regarding a date for the first attendance. Any such submission shall be submitted on or before January 10, 2020.

Dated at Toronto this 17th day of December, 2019.

"Timothy Moseley"

"M. Cecilia Williams" "Lawrence P. Haber"

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

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

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
CordovaCann Corp.	November 1, 2019	December 19, 2019
CBLT Inc.	October 4, 2019	December 18, 2019
The Wonderfilm Media Corporation	December 30, 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
CannTrust Holdings Inc.	15 August 2019	
Voyager Digital (Canada) Ltd.	05 November 2019	

This page intentionally left blank

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 9

Legislation

9.1.1 Bill 138, Plan to Build Ontario Together Act, 2019

BILL 138, *PLAN TO BUILD ONTARIO TOGETHER ACT, 2019*

Schedule 7 of Bill 138 *Plan to Build Ontario Together Act, 2019* contained two amendments to the *Commodity Futures Act* (CFA). Schedule 34 of Bill 138 contained several amendments to the *Securities Act* (OSA). Bill 138 received Royal Assent on December 10, 2019 and has become chapter 15 of the Statutes of Ontario, 2019.

Schedules 7 and 34 may be viewed on the Ontario Legislative Assembly's website at www.ola.org/en/legislativebusiness/bills. The text of these schedules will also be reflected in the consolidated versions of the of the CFA and the OSA on the Ontario e-laws website at www.ontario.ca/laws. An explanation of these amendments is contained below.

SCHEDULE 7
COMMODITY FUTURES ACT

The Schedule amends the *Commodity Futures Act*.

Section 12 of the Act currently prohibits persons or companies from disclosing certain information about investigations and examinations under the Act, except to the person's or company's counsel. The Schedule amends section 12 to permit disclosure of certain information to a person's or company's insurer or insurance broker under specified conditions.

Section 75 of the Act currently prohibits the Ontario Securities Commission from making orders or rulings of general application. The Schedule amends the Act to allow the Commission to make an order exempting a class of persons or companies, contracts, trades or intended trades from any requirement of Ontario commodity futures law on such terms or conditions as may be set out in the order. The amendments provide for the duration of such an order as well as rules requiring the publication of a notice respecting such an order.

SCHEDULE 34
SECURITIES ACT

The Schedule amends the *Securities Act*.

Section 16 of the Act currently prohibits persons or companies from disclosing certain information about investigations and examinations under the Act, except to the person's or company's counsel. The Schedule amends section 16 to permit disclosure of certain information to a person's or company's insurer or insurance broker under specified conditions.

Section 109 of the Act currently requires that where voting securities are registered in the name of a person or company other than the beneficial owner and the person or company knows that they are beneficially owned by an insider and that the insider has failed to file a report of such ownership with the Ontario Securities Commission as required by Part XXI of the Act, the person or company shall file a report. The Schedule repeals section 109.

Section 143.11 of the Act currently prohibits the Commission from making orders or rulings of general application. The Schedule amends the Act to allow the Commission to make an order exempting a class of persons or companies, trades, intended trades, securities or derivatives from any requirement of Ontario securities law on such terms or conditions as may be set out in the order. There is ordinarily a sunset of 18 months for such an order. The amendments also provide as rules requiring the publication of a notice respecting such an order.

This page intentionally left blank

Chapter 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

[Editor's Note: This report covers the time period December 17, 2019 to January 3, 2020.]

Issuer Name:
CMP 2020 Resource Limited Partnership
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 18, 2019
NP 11-202 Preliminary Receipt dated December 19, 2019
Offering Price and Description:
Maximum Offering: $50,000,000 - 50,000 Limited Partnership Units
Minimum Offering: $5,000,000 - 5,000 Limited Partnership Units
Price per Unit: $1,000
Minimum Subscription: $5,000 (Five Units)
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
Industrial Alliance Securities Inc.
Echelon Wealth Partners Inc.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Raymond James Ltd.
Promoter(s):
Goodman & Company, Investment Counsel Inc.
Project #3001356

Issuer Name:
MRF 2020 Resource Limited Partnership
Principal Regulator - Alberta (ASC)
Type and Date:
Preliminary Long Form Prospectus dated December 19, 2019
NP 11-202 Preliminary Receipt dated December 20, 2019
Offering Price and Description:
Maximum: $50,000,000 – 2,000,000 Class A Units and/or Class F Units
Minimum: $5,000,000 – 200,000 Class A Units and/or Class F Units
Price: $25.00 per unit
Minimum Subscription: $2,500 (One Hundred Units)
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Manulife Securities Incorporated
Stifel Nicolaus Canada Inc.
Industrial Alliance Securities Inc.
Canaccord Genuity Corp.
Middlefield Capital Corporation
Echelon Wealth Partners Inc.
Raymond James Ltd.
Promoter(s):
Middlefield Resource Corporation
Project #3002413

Issuer Name:
Probity Mining 2020 Short Duration Flow-Through Limited Partnership - British Columbia
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated December 19, 2019
NP 11-202 Preliminary Receipt dated December 19, 2019
Offering Price and Description:
Maximum Offering: aggregate of $40,000,000 comprising $20,000,000 for National Class Units; $10,000,000 for British Columbia Class Units; and $10,000,000 for Québec Class Units
(2,000,000 NC-A and/or NC-F Units; 1,000,000 BC-A and/or BC-F Units; and 1,000,000 QC-A and/or QC-F Units)
Minimum Offering: $1,500,000 - 150,000 Class A and/or Class F Units
Price per Unit: $10.00
Minimum Purchase: $5,000 - 500 Units
Underwriter(s) or Distributor(s):
Industrial Alliance Securities Inc.
Canaccord Genuity Corp.
Raymond James Ltd.
Echelon Wealth Partners Inc.
PI Financial Corp.
Hampton Securities Limited
Laurentian Bank Securities Inc.
Promoter(s):
Probity 2020 Mining Flow Through Management Corp and Probity Capital
Project #3001784

Issuer Name:
Probity Mining 2020 Short Duration Flow-Through Limited Partnership - National Class
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated December 19, 2019
NP 11-202 Preliminary Receipt dated December 19, 2019
Offering Price and Description:
Maximum Offering: aggregate of $40,000,000 comprising $20,000,000 for National Class Units; $10,000,000 for British Columbia Class Units; and $10,000,000 for Québec Class Units
(2,000,000 NC-A and/or NC-F Units; 1,000,000 BC-A and/or BC-F Units; and 1,000,000 QC-A and/or QC-F Units)
Minimum Offering: $1,500,000 - 150,000 Class A and/or Class F Units
Price per Unit: $10.00
Minimum Purchase: $5,000 - 500 Units
Underwriter(s) or Distributor(s):
Industrial Alliance Securities Inc.
Canaccord Genuity Corp.
Raymond James Ltd.
Echelon Wealth Partners Inc.
PI Financial Corp.
Hampton Securities Limited
Laurentian Bank Securities Inc.
Promoter(s):
Probity 2020 Mining Flow Through Management Corp and Probity Capital
Project #3001786

Issuer Name:
Probity Mining 2020 Short Duration Flow-Through Limited Partnership - Quebec
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated December 19, 2019
NP 11-202 Preliminary Receipt dated December 19, 2019
Offering Price and Description:
Maximum Offering: aggregate of $40,000,000 comprising $20,000,000 for National Class Units; $10,000,000 for British Columbia Class Units; and $10,000,000 for Québec Class Units
(2,000,000 NC-A and/or NC-F Units; 1,000,000 BC-A and/or BC-F Units; and 1,000,000 QC-A and/or QC-F Units)
Minimum Offering: $1,500,000 - 150,000 Class A and/or Class F Units
Price per Unit: $10.00
Minimum Purchase: $5,000 - 500 Units
Underwriter(s) or Distributor(s):
Industrial Alliance Securities Inc.
Canaccord Genuity Corp.
Raymond James Ltd.
Echelon Wealth Partners Inc.
PI Financial Corp.
Hampton Securities Limited
Laurentian Bank Securities Inc.
Promoter(s):
Probity 2020 Mining Flow Through Management Corp and Probity Capital
Project #3001789

Issuer Name:
Vertex Bond Alpha Fund
Principal Regulator - British Columbia
Type and Date:
Amendment #3 to Final Simplified Prospectus dated December 18, 2019
Received on December 19, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Vertex One Asset Management Inc.
Project #2831383

Issuer Name:
AGF Canadian Large Cap Dividend Class
AGF Canadian Large Cap Dividend Fund
AGFiQ Dividend Income Fund (formerly, AGF Dividend Income Fund)
Principal Regulator - Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated December 13, 2019
NP 11-202 Receipt dated December 19, 2019
Offering Price and Description:
Classic Series, Mutual Fund Series, Series F, Series FV, Series I, Series O, Series Q, Series T, Series V and Series W Securities
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
N/A
Project #2885099

Issuer Name:
Lysander-18 Asset Management Canadian Equity Fund
Lysander-Canso Balanced Fund
Lysander-Canso Bond Fund
Lysander-Canso Broad Corporate Bond Fund
Lysander-Canso Corporate Value Bond Fund
Lysander-Canso Equity Fund
Lysander-Canso Short Term and Floating Rate Fund
Lysander-Canso U.S. Credit Fund
Lysander-Crusader Equity Income Fund
Lysander-Fulcra Corporate Securities Fund
Lysander-Seamark Balanced Fund
Lysander-Seamark Total Equity Fund
Lysander-Slater Preferred Share Dividend Fund
Lysander-Triasima All Country Equity Fund
Lysander-Triasima Balanced Income Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Dec 23, 2019
NP 11-202 Final Receipt dated Dec 23, 2019
Offering Price and Description:
Series A Units, Series O Units, Series A5 Units, Series F5 Units and Series F Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2986536

Issuer Name:
Horizons Cash Performer ETF
Horizons S&P/TSX Capped Composite Index ETF
Horizons US Large Cap Index ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Dec 23, 2019
NP 11-202 Preliminary Receipt dated Dec 23, 2019
Offering Price and Description:
ETF Shares
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3003053

Issuer Name:
Pender Bond Universe Fund
Pender Small/Mid Cap Dividend Fund
Principal Regulator – British Columbia
Type and Date:
Preliminary Simplified Prospectus dated Dec 17, 2019
NP 11-202 Preliminary Receipt dated Dec 17, 2019
Offering Price and Description:
Class F Units, Class H Units, Class I Units, Class A Units, Class N Units, Class D Units, Class O Units and Class E Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3000875

Issuer Name:
PIMCO Managed Conservative Bond Pool
PIMCO Managed Core Bond Pool
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Dec 20, 2019
NP 11-202 Preliminary Receipt dated Dec 23, 2019
Offering Price and Description:
Series A units, ETF Series units and Series F units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3002561

Issuer Name:
Mackenzie Asian Opportunities Fund
Mackenzie European Opportunities Fund
Mackenzie Global Opportunities Fund
Mackenzie US Opportunities Fund
Mackenzie US Quantitative Large Cap Fund
Mackenzie US Quantitative Small Cap Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Dec 19, 2019
NP 11-202 Preliminary Receipt dated Dec 19, 2019
Offering Price and Description:
Series PWX8 Units, Series T8 Units, Series F8 Units, Series AR Units, Series PWX Units, Series R Units, Series PWR Units, Series PWFB Units, Series FB Units, Series A Units, Series PW Units, Series PWT5 Units, Series D Units, Series O Units, Series T5 Units, Series FB5 Units, Series PWFB5 Units, Series F5 Units, Series PWT8 Units and Series F Units
Underwriter(s) or Distributor(s):
N/A.
Promoter(s):
N/A
Project #3001722

Issuer Name:
HSBC AsiaPacific Fund
HSBC BRIC Equity Fund
HSBC Canadian Balanced Fund
HSBC Canadian Bond Fund
HSBC Canadian Bond Pooled Fund
HSBC Canadian Dividend Pooled Fund
HSBC Canadian Equity Pooled Fund
HSBC Canadian Money Market Fund
HSBC Canadian Money Market Pooled Fund
HSBC Canadian Short/Mid Bond Fund
HSBC Canadian Small Cap Equity Pooled Fund
HSBC Chinese Equity Fund
HSBC Dividend Fund
HSBC Emerging Markets Debt Fund
HSBC Emerging Markets Debt Pooled Fund
HSBC Emerging Markets Fund
HSBC Emerging Markets Pooled Fund
HSBC Equity Fund
HSBC European Fund
HSBC Global Corporate Bond Fund
HSBC Global Equity Fund
HSBC Global Equity Volatility Focused Fund
HSBC Global High Yield Bond Pooled Fund
HSBC Global Inflation Linked Bond Pooled Fund
HSBC Global Real Estate Equity Pooled Fund
HSBC Indian Equity Fund
HSBC International Equity Pooled Fund
HSBC Monthly Income Fund
HSBC Mortgage Fund
HSBC Mortgage Pooled Fund
HSBC Small Cap Growth Fund
HSBC U.S. Dollar Money Market Fund
HSBC U.S. Dollar Monthly Income Fund
HSBC U.S. Equity Fund
HSBC U.S. Equity Pooled Fund
HSBC Wealth Compass Aggressive Growth Fund
HSBC Wealth Compass Balanced Fund
HSBC Wealth Compass Conservative Fund
HSBC Wealth Compass Growth Fund
HSBC Wealth Compass Moderate Conservative Fund
HSBC World Selection Diversified Aggressive Growth Fund
HSBC World Selection Diversified Balanced Fund
HSBC World Selection Diversified Conservative Fund
HSBC World Selection Diversified Growth Fund
HSBC World Selection Diversified Moderate Conservative Fund
Principal Regulator – British Columbia
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Dec 18, 2019
NP 11-202 Final Receipt dated Dec 19, 2019
Offering Price and Description:
Units, Premium Series units, Investor Series units, Manager Series units, Premium T Series units, Institutional Series units and Investor T Series units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2982223

Issuer Name:
The McElvaine Investment Trust
Principal Regulator – British Columbia
Type and Date:
Preliminary Simplified Prospectus dated Dec 20, 2019
NP 11-202 Final Receipt dated Dec 23, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2971023

Issuer Name:
BlueBay Global Convertible Bond Class (Canada)
BlueBay $U.S. Global Convertible Bond Class (Canada)
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated December 12, 2019
NP 11-202 Final Receipt dated Dec 17, 2019
Offering Price and Description:
Series A, Advisor Series, Advisor T5 Series, Series D, Series F, Series FT5, Series H, Series I, Series O and Series T5
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2967162

Issuer Name:
Symmetry Balanced Portfolio
Symmetry Balanced Portfolio Class
Symmetry Conservative Income Portfolio
Symmetry Conservative Portfolio
Symmetry Equity Portfolio Class
Symmetry Fixed Income Portfolio
Symmetry Growth Portfolio
Symmetry Growth Portfolio Class
Symmetry Moderate Growth Portfolio
Symmetry Moderate Growth Portfolio Class
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Annual Information Form dated December 23, 2019
NP 11-202 Final Receipt dated Dec 30, 2019
Offering Price and Description:
Series A, AR, D, F, F5, F8, FB, FB5, G, O, O5, PW, PWFB, PWFB5, PWR, PWT5, PWT8, PWX, PWX8, T5 and T8 securities
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2951797

Issuer Name:
AGFiQ US Market Neutral Anti-Beta CAD-Hedged ETF
AGFiQ US Long/Short Dividend Income CAD-Hedged ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated December 13, 2019
NP 11-202 Final Receipt dated Dec 18, 2019
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2940823

Issuer Name:
BlueBay Global Convertible Bond Fund (Canada)
BlueBay $U.S. Global Convertible Bond Fund (Canada)
RBC Target 2020 Education Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated December 12, 2019
NP 11-202 Final Receipt dated Dec 18, 2019
Offering Price and Description:
Advisor Series units, Advisor T5 Series units, Series A units, Series D units, Series F units, Series FT5 units, Series H units, Series I units, Series O units and Series T5 units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2918773

Issuer Name:
Horizons Morningstar Hedge Fund Index ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated December 24, 2019
NP 11-202 Final Receipt dated Dec 30, 2019
Offering Price and Description:
Class E Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3002561

Issuer Name:
TD Canadian Money Market Fund
TD Short Term Bond Fund
TD Canadian Bond Fund
TD Income Advantage Portfolio
TD Canadian Core Plus Bond Fund
TD Canadian Corporate Bond Fund
TD Corporate Bond Plus Fund
TD U.S. Corporate Bond Fund
TD Real Return Bond Fund
TD Global Income Fund
TD Global Core Plus Bond Fund
TD Global Unconstrained Bond Fund
TD High Yield Bond Fund
TD Global Conservative Opportunities Fund
TD Global Balanced Opportunities Fund
TD Monthly Income Fund
TD Tactical Monthly Income Fund
TD U.S. Monthly Income Fund
TD U.S. Monthly Income Fund - C$
TD Diversified Monthly Income Fund
TD Global Tactical Monthly Income Fund (formerly TD Strategic Yield Fund)
TD Balanced Growth Fund
TD Dividend Income Fund
TD Canadian Low Volatility Fund
TD Dividend Growth Fund
TD Canadian Equity Fund
TD Canadian Small-Cap Equity Fund
TD U.S. Risk Managed Equity Fund
TD U.S. Low Volatility Fund
TD North American Dividend Fund
TD U.S. Dividend Growth Fund
TD U.S. Blue Chip Equity Fund
TD U.S. Equity Portfolio
TD North American Small-Cap Equity Fund
TD U.S. Mid-Cap Growth Fund
TD U.S. Small-Cap Equity Fund
TD Global Risk Managed Equity Fund
TD Global Low Volatility Fund
TD International Growth Fund
TD Emerging Markets Low Volatility Fund
TD Asian Growth Fund
TD Emerging Markets Fund
Epoch U.S. Shareholder Yield Fund
Epoch U.S. Large-Cap Value Fund
Epoch Global Shareholder Yield Fund
Epoch Global Equity Fund
Epoch International Equity Fund
TD Resource Fund
TD Precious Metals Fund
TD Global Entertainment & Communications Fund
TD Science & Technology Fund
TD Health Sciences Fund
TD US$ Retirement Portfolio
TD Retirement Conservative Portfolio
TD Retirement Balanced Portfolio
TD Advantage Balanced Income Portfolio
TD Advantage Balanced Portfolio
TD Advantage Balanced Growth Portfolio
TD Short Term Investment Class
TD Tactical Monthly Income Class
TD Dividend Income Class

TD Canadian Low Volatility Class
TD Dividend Growth Class
TD Canadian Equity Class
TD Canadian Small-Cap Equity Class
TD U.S. Risk Managed Equity Class
Epoch U.S. Large-Cap Value Class
TD U.S. Mid-Cap Growth Class
TD Global Risk Managed Equity Class
TD Global Low Volatility Class
Epoch Global Equity Class
TD International Growth Class
TD Emerging Markets Class
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated December 13, 2019
NP 11-202 Final Receipt dated Dec 20, 2019
Offering Price and Description:
Advisor Series, T5 Series and T8 Series
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2930481

Issuer Name:
BMO SIA Focused North American Equity Fund
Principal Regulator – Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus and Amendment #4 to Annual Information Form dated December 13, 2019
NP 11-202 Final Receipt dated Dec 17, 2019
Offering Price and Description:
Advisor Series, ETF Series, Series A, Series D, Series F, Series I and Series S
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2898872

Issuer Name:
AGFiQ US Long/Short Dividend Income CAD-Hedged Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated December 13, 2019
NP 11-202 Final Receipt dated Dec 18, 2019
Offering Price and Description:
Mutual Fund Series Securities, Series F Securities, Series FV Securities, Series I Securities, Series O Securities, Series T Securities and Series V Securities
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2940822

Issuer Name:
Manulife Fundamental Balanced Class
Manulife Fundamental Income Class
Manulife Fundamental Income Fund
Manulife Monthly High Income Class
Manulife Monthly High Income Fund
Manulife Tactical Income Fund
Manulife Value Balanced Class
Manulife Value Balanced Fund
Manulife Yield Opportunities Fund
Manulife Dollar-Cost Averaging Fund
Manulife Money Market Fund
Manulife Bond Fund
Manulife Canadian Unconstrained Bond Fund
Manulife Corporate Bond Fund
Manulife Balanced Equity Private Pool
Manulife Balanced Income Private Trust
Manulife Canadian Balanced Private Pool
Manulife Canadian Growth and Income Private Trust
Manulife Corporate Fixed Income Private Trust
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Amended and Restated Simplified Prospectus dated December 18, 2019
NP 11-202 Final Receipt dated Dec 19, 2019
Offering Price and Description:
Advisor CT6 securities, Advisor Series securities, Series C securities, Series CT6 securities, Series D securities, Series F securities, Series FT6 securities, Series L securities, Series LT6 securities, Series T6 securities and Series N securities
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2928268

Issuer Name:
Symmetry Balanced Portfolio
Symmetry Balanced Portfolio Class
Symmetry Conservative Income Portfolio
Symmetry Conservative Portfolio
Symmetry Equity Portfolio Class
Symmetry Fixed Income Portfolio
Symmetry Growth Portfolio
Symmetry Growth Portfolio Class
Symmetry Moderate Growth Portfolio
Symmetry Moderate Growth Portfolio Class
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Annual Information Form dated December 23, 2019
NP 11-202 Final Receipt dated Dec 30, 2019
Offering Price and Description:
Series LB securities, Series LF securities, Series LF5 securities, Series LM securities, Series LW securities, Series LW5 securities and Series LX securities
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2972290

Issuer Name:
RP Alternative Global Bond Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated December 17, 2019
NP 11-202 Final Receipt dated Dec 19, 2019
Offering Price and Description:
Class A Units, Class A-USD Units, Class F Units, Class F-USD Units, Class M Units, Class M-USD Units, Class O Units and Class O-USD Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2905151

NON-INVESTMENT FUNDS

[Editor's Note: This report covers the week ending December 27, 2019.]

Issuer Name:
BELLUS Health Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Shelf Prospectus dated December 20, 2019
NP 11-202 Preliminary Receipt dated December 23, 2019
Offering Price and Description:
US$200,000,000.00
Common Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3002482

Issuer Name:
CINDRIGO ENERGY LTD.
Type and Date:
Preliminary Long Form Prospectus dated December 20, 2019
(Preliminary) Receipted on December 23, 2019
Offering Price and Description:
No securities are being offered pursuant to this Prospectus
Underwriter(s) or Distributor(s):
-
Promoter(s):
Mustaq Patel
Project #3002634

Issuer Name:
Denison Mines Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated December 18, 2019
NP 11-202 Preliminary Receipt dated December 19, 2019
Offering Price and Description:
$175,000,000.00 - Common Shares, Subscription Receipts, Units, Debt Securities, Share Purchase Contracts, Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3001374

Issuer Name:
Fairfax Africa Holdings Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated December 20, 2019
NP 11-202 Preliminary Receipt dated December 20, 2019
Offering Price and Description:
US$1,000,000,000.00
Subordinate Voting Shares
Preference Shares
Debt Securities
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
FAIRFAX FINANCIAL HOLDINGS LIMITED
Project #3002441

Issuer Name:
Fairfax India Holdings Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated December 20, 2019
NP 11-202 Preliminary Receipt dated December 20, 2019
Offering Price and Description:
US$1,500,000,000.00
Subordinate Voting Shares
Preference Shares
Debt Securities
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
FAIRFAX FINANCIAL HOLDINGS LIMITED
Project #3002440

Issuer Name:
IntelGenx Technologies Corp.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated December 18, 2019
NP 11-202 Preliminary Receipt dated December 19, 2019
Offering Price and Description:
Minimum: $4,000,000.00 (* Units)
Maximum: $10,000,000.00 (* Units)
Units consisting of Common Stock and
Warrants to purchase shares of Common Stock
Price: $* per Unit
Underwriter(s) or Distributor(s):
Echelon Wealth Partners Inc.
Promoter(s):
-
Project #3001517

Issuer Name:
Just Energy Group Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated December 16, 2019
NP 11-202 Preliminary Receipt dated December 17, 2019
Offering Price and Description:
$1,000,000,000.00
Common Shares
Preferred Shares
Subscription Receipts
Warrants
Debt Securities
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3000853

Issuer Name:
Natures Hemp Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated December 19, 2019
NP 11-202 Preliminary Receipt dated December 19, 2019
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3001988

Issuer Name:
Starlight U.S. Multi-Family (No. 1) Core Plus Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 19, 2019
NP 11-202 Preliminary Receipt dated December 19, 2019
Offering Price and Description:
Maximum: US$202,950,000.00 of
Class A Units and/or Class C Units and/or Class D Units and/or
Class E Units and/or Class F Units and/or Class U Units
Price: C$10.00 per Class A Unit
C$10.00 per Class C Unit
C$10.00 per Class D Unit
US$10.00 per Class E Unit
C$10.00 per Class F Unit
US$10.00 per Class U Unit
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
Promoter(s):
STARLIGHT GROUP PROPERTY HOLDINGS INC.
Project #3001815

Issuer Name:
CI Financial Corp.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated December 17, 2019
NP 11-202 Receipt dated December 18, 2019
Offering Price and Description:
$2,000,000,000.00
Debt Securities (unsecured)
Subscription Receipts
Preference Shares
Common Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2998069

Issuer Name:
Direct Communication Solutions, Inc.
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated December 20, 2019
NP 11-202 Receipt dated December 20, 2019
Offering Price and Description:
1,500,000 shares of common stock
for an aggregate amount of $3,000,000.00
Price: $2.00 per share
Underwriter(s) or Distributor(s):
INDUSTRIAL ALLIANCE SECURITIES INC.
Promoter(s):
Chris Bursey
Project #2974427

Issuer Name:
Inovalis Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated December 17, 2019
NP 11-202 Receipt dated December 17, 2019
Offering Price and Description:
$45,000,510.00 - 4,225,400 Units
Price: $10.65 per Offered Unit
Underwriter(s) or Distributor(s):
DESJARDINS SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
INDUSTRIAL ALLIANCE SECURITIES INC.
ECHELON WEALTH PARTNERS INC.
GMP SECURITIES L.P.
LAURENTIAN BANK SECURITIESINC.
MANULIFE SECURITIES INCORPORATED
Promoter(s):
INOVALIS S.A.
Project #2997787

Issuer Name:
Subversive Real Estate Acquisition REIT LP
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated December 23, 2019
NP 11-202 Receipt dated December 23, 2019
Offering Price and Description:
U.S.$200,000,000.00 - 20,000,000 Class A Restricted Voting Units
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
ECHELON WEALTH PARTNERS INC.
Promoter(s):
SUBVERSIVE REAL ESTATE SPONSOR LLC
INCEPTION ALTANOVA SPONSOR, LLC
CG INVESTMENTS INC. IV
Project #2999661

Issuer Name:
TerraX Minerals Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated December 20, 2019
NP 11-202 Receipt dated December 20, 2019
Offering Price and Description:
$5,000,000.00
20,000,000 Common Shares
Price: $0.25 per Common Share
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
Promoter(s):
-
Project #2999377

Issuer Name:
Trisura Group Ltd.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated December 20, 2019
NP 11-202 Receipt dated December 23, 2019
Offering Price and Description:
$200,000,000.00
Common Shares
Preference Shares
Debt Securities
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2999414

Issuer Name:
Xebec Adsorption Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated December 19, 2019
NP 11-202 Receipt dated December 19, 2019
Offering Price and Description:
$20,000,400.00
9,524,000 Common Shares
$2.10 per Common Shares
Underwriter(s) or Distributor(s):
DESJARDINS SECURITIES INC.
BEACON SECURITIES LIMITED
CANACCORD GENUITY CORP.
TD SECURITIES INC.
PARADIGM CAPITAL INC.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #2998812

[Editor's Note: This report covers the week ending January 3, 2020.]

Issuer Name:
NervGen Pharma Corp.
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Shelf Prospectus
dated December 23, 2019
NP 11-202 Preliminary Receipt dated December 24, 2019
Offering Price and Description:
CDN$100,000,000.00
Common Shares
Debt Securities
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2997052

_____

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Farber Securities Inc.	Exempt Market Dealer	December 17, 2019
Consent to Suspension (Pending Surrender)	Ryan Mortgage Income Fund Inc.	Exempt Market Dealer	December 19, 2019

This page intentionally left blank

Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Bloomberg Trading Facility Limited – Notice of Commission Order

BLOOMBERG TRADING FACILITY LIMITED

NOTICE OF COMMISSION ORDER

On December 13, 2019, the Commission issued a variation order pursuant to section 144 of the *Securities Act* (Ontario) extending the interim order exempting Bloomberg Trading Facility Limited (BMTF) from the requirement to be recognized as an exchange, so that the interim order will expire on the earlier of (i) December 31, 2020 and (ii) the effective date of a subsequent order exempting BMTF from the requirement to be recognized as an exchange.

A copy of the order is published in Chapter 2 of this Bulletin.

This page intentionally left blank

Index

This page intentionally left blank