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CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice 62-306
Update on Proposed National Instrument 62-105 *Security Holder Rights Plans* and AMF Consultation Paper *An Alternative Approach to Securities Regulators' Intervention in Defensive Tactics*

September 11, 2014

Introduction

On March 14, 2013, the Canadian Securities Administrators (the **CSA** or **we**) published for comment proposed National Instrument 62-105 *Security Holder Rights Plans* and proposed Companion Policy 62-105CP *Security Holder Rights Plans* (together, the **CSA Proposal**). The Autorité des marchés financiers (the **AMF**), while participating in the publication for comment of the CSA Proposal, concurrently published a consultation paper entitled *An Alternative Approach to Securities Regulators' Intervention in Defensive Tactics* (the **AMF Proposal**). This notice provides an update on the CSA's consideration of these two defensive tactics policy proposals and our proposed regulatory approach going forward.

The CSA Proposal and the AMF Proposal sought to address, in different ways, concerns raised with the CSA's current approach to reviewing defensive tactics adopted by boards of directors of target issuers in response to, or in anticipation of, unsolicited or "hostile" take-over bids.

Canadian securities regulators currently review defensive tactics under their respective public interest jurisdictions in light of the guidance in National Policy 62-202 *Defensive Tactics* (the **Defensive Tactics Policy**). We developed the CSA Proposal, and the AMF developed the AMF Proposal, with a view to revising the application of the Defensive Tactics Policy by securities regulators in response to developments subsequent to the implementation of the Defensive Tactics Policy.

New Harmonized Bid Amendments Proposal

In light of the comments received and following further reflection and analysis, the CSA have determined not to proceed with the CSA Proposal and the AMF has determined not to proceed with the AMF Proposal. Instead, the CSA intend to publish for comment, subject to necessary approvals, a new harmonized regulatory proposal based on amendments to the take-over bid regime contained in Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (for jurisdictions other than Ontario) and Part XX of the *Securities Act* (Ontario) and Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuer Bids* (for Ontario) (collectively, the **Proposed Bid Amendments**).

The Proposed Bid Amendments will address key issues identified in the CSA Proposal and the AMF Proposal, as further informed by the comments received in respect of those proposals. In general, the Proposed Bid Amendments will aim to facilitate the ability of shareholders to make voluntary, informed and co-ordinated tender decisions and provide target boards with additional time to respond to hostile bids, each with the objective of rebalancing the current dynamics between hostile bidders and target boards.

Specifically, the Proposed Bid Amendments would require that all non-exempt take-over bids:

(1) be subject to a mandatory tender condition that a minimum of more than 50% of all outstanding target securities owned or held by persons other than the bidder and its joint actors be tendered and not withdrawn before the bidder can take up any securities under the bid;

(2) be extended by the bidder for an additional 10 days after the bidder achieves the mandatory minimum tender condition and the bidder announces its intention to immediately take up and pay for the securities deposited under the bid; and

(3) remain open for a minimum of 120 days, subject to the ability of the target board to waive, in a non-discriminatory manner when there are multiple bids, the minimum period to a period of no less than 35 days.

At this time, the CSA are not contemplating any changes to the current take-over bid exemptions or the Defensive Tactics Policy.

Subject to necessary approvals, we will publish for comment the complete details of the Proposed Bid Amendments and their application.

Overview of 2013 CSA Proposal and AMF Proposal

CSA Proposal

The purpose of the CSA Proposal was to create a framework for the regulation of security holder rights plans (**Rights Plans**) adopted by boards of directors of target issuers in response to, or in anticipation of, hostile bids. Rights Plans are the most common form of defensive measure adopted by target boards and, under the CSA's current approach, are typically cease traded by securities regulators within 45 to 55 days after the commencement of the hostile bid.

The CSA Proposal would have allowed a target board to maintain a Rights Plan in the face of a hostile bid if a majority of the equity or voting securities of the target issuer (excluding the securities of the hostile bidder and its joint actors) were voted in favour of the Rights Plan either in the face of the hostile bid or at the issuer's previous annual meeting. The CSA Proposal contemplated that securities regulators would generally not intervene to cease trade Rights Plans adopted under the CSA Proposal when security holders had approved the Rights Plan within 90 days from its adoption by the board or the commencement of the hostile bid.

We intended the CSA Proposal to address concerns about the utility of a Rights Plan to the target issuer in response to a hostile bid, while ensuring that a majority of the holders of equity or voting securities of the target issuer supported the application of the Rights Plan as proposed by the target board. The CSA Proposal would have potentially provided additional time for a target board to exercise its discretion in responding to a hostile bid, allowed target issuer security holders to, effectively, make a collective decision about a hostile bid by endorsing a Rights Plan and enhanced harmonization in the review of Rights Plans among the CSA.

AMF Proposal

While the CSA Proposal only addressed the use of Rights Plans by target boards, the AMF Proposal raised more fundamental issues regarding the regulation of defensive measures in Canada, including the role of boards of directors when faced with unsolicited take-over bids and the structural imbalance between bidders and target boards, and sought comments on the specific changes to the take-over bid regime set out in the AMF Proposal.

The AMF Proposal identified three main concerns with the current take-over bid regime and application of the Defensive Tactics Policy:

(1) the take-over bid regime has become too "bidder friendly" and is inconsistent with its stated goal of neutrality as between bidders and target boards and their management;

(2) the Defensive Tactics Policy is being applied to inappropriately limit the target board's ability to exercise its fiduciary duty, including to maximize security holder value in the long term; and

(3) the take-over bid regime is structurally coercive to target security holders as it does not permit them to make a collective decision about the transaction.

The AMF Proposal proposed two changes to address these concerns. First, it suggested replacing the Defensive Tactics Policy with a new policy that would recognize the fiduciary duty of the target board to the issuer when responding to a hostile bid. The new policy would limit the intervention of securities regulators to circumstances where security holders are deprived from considering a *bona fide* offer because the target board failed to take measures to address its conflicts of interest and risk of entrenchment.

Second, the AMF Proposal contemplated that the take-over bid regime be amended to require a minimum tender condition of more than 50% of all outstanding target securities owned or held by persons other than the bidder and its joint actors, along with a mandatory 10 day extension of the bid following the announcement that the minimum tender condition has been met to give the remaining security holders the opportunity to tender to the bid.

Public Comments on the CSA Proposal and the AMF Proposal

The comment period on the CSA Proposal and the AMF Proposal ended on July 12, 2013. We received approximately 70 comment letters from various market participants, including issuers, institutional investors, industry associations and law firms that reflected a broad diversity of opinions on the CSA Proposal and the AMF Proposal. Many commenters provided helpful substantive submissions, information and alternative considerations. We have reviewed the comments and wish to thank all of the commenters for their contributions.

We intend to provide a general summary of comments received in respect of the CSA Proposal and AMF Proposal when, subject to necessary approvals, we publish the Proposed Bid Amendments for comment.

Next Steps

We are in the process of developing the Proposed Bid Amendments and, subject to necessary approvals, intend to publish them for comment in the first quarter of 2015.

Questions

Please refer your questions to any of the following:

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1.2 Notice of Hearing

1.2.1 Keith Macdonald Summers et al. – s. 127

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

AND

IN THE MATTER OF
KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC, AND
TRICOASTAL CAPITAL MANAGEMENT LTD.

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC, AND
TRICOASTAL CAPITAL MANAGEMENT LTD.

NOTICE OF HEARING
(Section 127 of the Securities Act)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the *Securities Act,* R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on September 4, 2014 at 2:00 p.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve a settlement agreement between Staff of the Commission and Keith MacDonald Summers, Tricoastal Capital Partners LLC, and Tricoastal Capital Management Ltd.;

BY REASON OF the allegations set out in the Statement of Allegations of Staff of the Commission dated February 27, 2014 and such further additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceedings may be represented by counsel at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place foresaid, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceedings.

DATED at Toronto this 2nd day of September, 2014.

"Josée Turcotte"
Acting Secretary to the Commission

1.2.2 Garth H. Drabinsky et al. – s. 127, 127.1

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

AND

IN THE MATTER OF
GARTH H. DRABINSKY,
MYRON I. GOTTLIEB AND GORDON ECKSTEIN

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND MYRON I. GOTTLIEB

NOTICE OF HEARING
(Pursuant to sections 127 and 127.1 of the Securities Act)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto, commencing on September 9, 2014 at 3:30 p.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve a settlement agreement dated August 22, 2014 entered into between Staff of the Commission ("Staff") and Myron I. Gottlieb pursuant to sections 127 and 127.1 of the Act, and such other order as the Commission may consider appropriate;

BY REASON OF the allegations set out in the Amended Statement of Allegations of Staff dated February 20, 2013, and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by counsel at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 5th day of September, 2014.

"Josée Turcotte"
Acting Secretary to the Commission

1.2.3 The Gatekeepers of Wealth Inc. and Joseph Bochner – ss. 127, 127.1

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

AND

IN THE MATTER OF
THE GATEKEEPERS OF WEALTH INC. AND
JOSEPH BOCHNER

NOTICE OF HEARING
(Sections 127 and 127.1)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto, Ontario on Wednesday October 8, 2014 at 10:00 a.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether, in the Commission's opinion, it is in the public interest for the Commission to make the following orders against The Gatekeepers of Wealth Inc. ("Gatekeepers"), and Joseph Bochner ("Bochner", and, collectively, the "Respondents"):

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

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

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

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

(v) that Bochner resign one or more positions that he holds as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;

(vi) that Bochner be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act;

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

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

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

(x) that the Respondents be ordered to pay the costs of the Commission investigation and hearing, pursuant to section 127.1 of the Act; and

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

BY REASON OF the allegations as set out in the Statement of Allegations of Staff of the Commission dated September 3, 2014, and such further allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceedings may be represented by counsel at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place stated above, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceedings.

DATED at Toronto this 3rd day of September, 2014.

"Josée Turcotte"
Acting Secretary to the Commission

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

AND

IN THE MATTER OF
THE GATEKEEPERS OF WEALTH INC. AND
JOSEPH BOCHNER

STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

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

I. OVERVIEW

1. Between September 21, 2006 and May 30, 2013, (the "Relevant Period"), The Gatekeepers of Wealth Inc. ("Gatekeepers"), and Joseph Bochner ("Bochner", and, collectively, the "Respondents") (1) traded and advised in securities without being registered, and (2) committed securities fraud. As a result, during the Relevant Period, the Respondents received in excess of $160,000 in advisory fees, and at least nine investors were defrauded of over $170,000.

2. Bochner also misled Staff during Staff's investigation of this matter.

3. By this conduct, the Respondents breached sections 25 and 126.1, and of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"). Bochner also breached subsection 122(1) and section 129.2 of the Act. The Respondents also acted in a manner that was contrary to the public interest.

II. THE RESPONDENTS

4. Gatekeepers is an Ontario corporation that has its registered office in Toronto, Ontario.

5. Bochner is a resident of Toronto, Ontario. Bochner is the directing mind of Gatekeepers. Bochner is the Secretary and President and a Director of Gatekeepers.

III. UNREGISTERED TRADING AND ADVISING

6. During the Relevant Period, none of the Respondents were registered in any capacity with the Commission.

7. During the Relevant Period, the Respondents held themselves out as engaging in the business of advising with respect to investing or buying securities without registration. Among other things, from or in Ontario the Respondents spoke to or met with individual investors and provided advice to them including the Respondents' opinion on the wisdom or the desirability of the individual investors investing in their specific investments. The Respondents also emailed advice to these individual investors. The Respondents also spoke with and advised investment representatives managing the portfolios of some of these investors. Some of these investors were charged by the Respondents a fee for this investment advice of approximately $2,000 to $2,600 per year, and in at least one instance $10,000 per year. These fees added to in excess of $160,000 during the Relevant Period

8. During the Relevant Period, the Respondents participated in acts, solicitations, conduct, or negotiations, directly or indirectly, in furtherance of the sale or disposition of securities for valuable consideration, in circumstances where there were no exemptions available to the Respondents under the Act. Among other things, the Respondents from Ontario advised and solicited a number of individuals to provide their money to Gatekeepers on the promise that the money would be used to purchase Government of Canada bonds on their behalf. As a result, the Respondents received in excess of $170,000 of investor funds.

9. Through these acts, the Respondents (1) traded in securities without being registered to trade in securities and (2) held themselves out as engaging in the business of advising with respect to investing or buying securities without being registered to advise in securities contrary to section 25 of the Act as that section existed at the time the conduct at issue commenced in September 2006, contrary to section 25(1) of the Act, as subsequently amended on September 28, 2009.

IV. FRAUDULENT CONDUCT

10. During the Relevant Period, in or from Ontario, the Respondents advised and solicited a number of individuals with respect to securities; and, in doing so, the Respondents provided information to them that was false, inaccurate and/or misleading with respect to, but not limited to, the following matters:

    a. their money would be used to purchase Government of Canada bonds on their behalf;

    b. the bonds they purchased would be held in trust for them by Gatekeepers; and

    c. their investments were redeemable and safe as their money was placed in government bonds.

11. As a result, at least nine investors invested over $170,000 with the Respondents in this manner.

12. Once in possession of these investor funds, the Respondents caused the funds raised to be utilized for purposes other than as intended and disclosed to the investors. Once the investor funds were received into the Gatekeeper bank account in Toronto, Ontario, they were transferred in a short period of time to the bank account of Bochner's wife. These funds were then used to pay Bochner's day-to-day expenses; for example, they were used to pay Bochner's groceries, rent, and credit card payments. None of the investor funds was invested in Government of Canada Bonds or in other investments. The Gatekeepers bank account was closed on May 30, 2013.

13. By this conduct, during the Relevant Period, the Respondents directly or indirectly engaged or participated in an act, practice or course of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons purchasing securities, contrary to section 126.1 of the Act.

V. MISLEADING STATEMENTS

14. During Bochner's compelled examination during Staff's investigation, he made numerous statements that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading.

15. In particular, Bochner misled Staff by:

    a. advising Staff that the investor funds had been used to purchase Government of Canada bonds;

    b. advising Staff that the investor funds had not been used to pay his day-to-day expenses;

    c. advising Staff that Gatekeepers had another bank account in Calgary, Alberta; and

    d. advising Staff that the investors' bonds were in a trading account in New York State.

16. These statements were materially misleading and were not corrected by Bochner until he was confronted with evidence to the contrary by Staff. These statements concealed the truth, which was that, shortly after they were received, Bochner had transferred the investor funds from the Gatekeepers' bank account to his wife's bank account and then used the funds to pay his day-to-day expenses. The bank account in Calgary does not exist and the investors' bonds were not in a trading account in New York State.

17. Bochner's conduct in making misleading statements to Staff was a breach of subsection 122(1) of the Act.

VI. LIABILITY OF DIRECTORS AND OFFICERS

18. During the Relevant Period, Bochner as a director and officer of Gatekeepers authorized, permitted or acquiesced in Gatekeeepers' non-compliance with Ontario securities law, and accordingly, failed to comply with Ontario securities law contrary to section 129.2 of the Act.

VII. CONDUCT CONTRARY TO THE PUBLIC INTEREST

19. By reason of the foregoing, the Respondents engaged in conduct contrary to the public interest.

20. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

Dated at Toronto this 3rd day of September, 2014.

1.4 Notices from the Office of the Secretary

1.4.1 Keith Macdonald Summers et al.

FOR IMMEDIATE RELEASE
September 3, 2014

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, as amended

AND

IN THE MATTER OF
KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC, AND
TRICOASTAL CAPITAL MANAGEMENT LTD.

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC, AND
TRICOASTAL CAPITAL MANAGEMENT LTD.

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Keith MacDonald Summers, Tricoastal Capital Partners LLC, and Tricoastal Capital Management Ltd.

The hearing will be held on September 4, 2014 at 2:00 p.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated September 2, 2014 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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1.4.2 Newer Technologies Limited et al.

FOR IMMEDIATE RELEASE
September 3, 2014

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

AND

IN THE MATTER OF
NEWER TECHNOLOGIES LIMITED,
RYAN PICKERING AND RODGER FREY

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND RODGER FREY

TORONTO – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Rodger Frey.

A copy of the Order dated September 3, 2014 and the Settlement Agreement dated September 2, 2014 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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1.4.3 Newer Technologies Limited et al.

FOR IMMEDIATE RELEASE
September 3, 2014

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

AND

IN THE MATTER OF
NEWER TECHNOLOGIES LIMITED,
RYAN PICKERING AND RODGER FREY

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND NEWER TECHNOLOGIES LIMITED, AND
RYAN PICKERING

TORONTO – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Newer Technologies Limited and Ryan Pickering.

A copy of the Order dated September 3, 2014 and the Settlement Agreement dated September 2, 2014 are available at www.osc.gov.on.ca.

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JOSÉE TURCOTTE
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1.4.4 Newer Technologies Limited et al.

FOR IMMEDIATE RELEASE
September 3, 2014

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

AND

IN THE MATTER OF
NEWER TECHNOLOGIES LIMITED,
RYAN PICKERING AND RODGER FREY

TORONTO – The Commission issued an Order in the above named matter which provides that the dates of September 8, 10, 11, 12, and 15, 2014 scheduled for the hearing on the merits are vacated.

A copy of the Order dated September 3, 2014 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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ACTING SECRETARY

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1.4.5 Crown Hill Capital Corporation and Wayne Lawrence Pushka

FOR IMMEDIATE RELEASE
September 4, 2014

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, C. S.5, AS AMENDED

AND

IN THE MATTER OF
CROWN HILL CAPITAL CORPORATION AND
WAYNE LAWRENCE PUSHKA

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

A copy of the Oral Reasons and Decision dated September 3, 2014 is available at www.osc.gov.on.ca.

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1.4.6 Sterling Grace & Co. Ltd. and Graziana Casale

FOR IMMEDIATE RELEASE
September 4, 2014

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

AND

IN THE MATTER OF
AN APPLICATION FOR A HEARING AND REVIEW OF THE DECISION OF DIRECTOR BRIDGE OF THE ONTARIO SECURITIES COMMISSION, PURSUANT TO SUBSECTION 8(2) OF THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
STERLING GRACE & CO. LTD. AND GRAZIANA CASALE

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

A copy of the Reasons and Decision dated September 3, 2014 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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ACTING SECRETARY

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1.4.7 Keith MacDonald Summers et al.

FOR IMMEDIATE RELEASE
September 5, 2014

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

AND

IN THE MATTER OF
KEITH MACDONALD SUMMERS, TRICOASTAL CAPITAL PARTNERS LLC, AND TRICOASTAL CAPITAL MANAGEMENT LTD.

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF THE ONTARIO SECURITIES COMMISSION AND KEITH MACDONALD SUMMERS, TRICOASTAL CAPITAL PARTNERS LLC, AND TRICOASTAL CAPITAL MANAGEMENT LTD.

TORONTO – The Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Keith MacDonald Summers, Tricoastal Capital Partners LLC, and Tricoastal Capital Management Ltd.

A copy of the Order dated September 4, 2014 and the Settlement Agreement dated August 20, 2014 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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ACTING SECRETARY

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1.4.8 Keith MacDonald Summers et al.

FOR IMMEDIATE RELEASE
September 5, 2014

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, as amended

AND

IN THE MATTER OF
KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC, AND
TRICOASTAL CAPITAL MANAGEMENT LTD.

TORONTO – The Commission issued an Order in the above named matter which provides that the September 9, 2014 hearing date for the continuation of the Temporary Order is vacated.

A copy of the Order dated September 4, 2014 is available at www.osc.gov.on.ca.

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1.4.9 Garth H. Drabinsky et al.

FOR IMMEDIATE RELEASE
September 5, 2014

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

AND

IN THE MATTER OF
GARTH H. DRABINSKY,
MYRON I. GOTTLIEB AND GORDON ECKSTEIN

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND MYRON I. GOTTLIEB

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Myron I. Gottlieb.

The hearing will be held on September 9, 2014 at 3:30 p.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated September 5, 2014 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
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1.4.10 The Gatekeepers of Wealth Inc. and Joseph Bochner

FOR IMMEDIATE RELEASE
September 8, 2014

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

AND

IN THE MATTER OF
THE GATEKEEPERS OF WEALTH INC. AND
JOSEPH BOCHNER

TORONTO – The Office of the Secretary issued a Notice of Hearing on September 3, 2014 setting the matter down to be heard on October 8, 2014 at 10:00 a.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 September 3, 2014 and Statement of Allegations of Staff of the Ontario Securities Commission dated September 3, 2014 are available at www.osc.gov.on.ca.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Aston Hill Asset Management Inc. et al.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from sections 2.3(f), 2.3(h), 2.5(2)(a) and 2.5(2)(c) of National Instrument 81-102 – Mutual Funds to permit mutual fund to invest in a) silver, and b) up to 10% of net asset value in leveraged ETFs, inverse ETFs, gold ETFs, silver ETFs, leveraged gold ETFs and leveraged silver ETFs traded on Canadian or US stock exchanges, subject to a maximum of 10% of the Fund's net asset value exposed to gold and silver.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.3(f), 2.3(h), 2.5(2)(a), 2.5(2)(c) and 19.1.

August 29, 2014

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
ASTON HILL ASSET MANAGEMENT INC.
(the Filer)

AND

ASTON HILL CANADIAN TOTAL RETURN FUND,
ASTON HILL CAPITAL GROWTH CLASS,
ASTON HILL CAPITAL GROWTH FUND,
ASTON HILL ENERGY GROWTH CLASS,
ASTON HILL GLOBAL GROWTH & INCOME CLASS,
ASTON HILL GLOBAL GROWTH & INCOME FUND,
ASTON HILL GLOBAL RESOURCE & INFRASTRUCTURE CLASS,
ASTON HILL GLOBAL RESOURCE & INFRASTRUCTURE FUND,
ASTON HILL GROWTH & INCOME CLASS,
ASTON HILL GROWTH & INCOME FUND,
ASTON HILL STRATEGIC YIELD II CLASS,
ASTON HILL STRATEGIC YIELD II FUND
(the Current Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption, pursuant to section 19.1 of National Instrument 81-102 Mutual Funds (**NI 81-102**), from:

(a) paragraph 2.3(f) of NI 81-102 (the **Silver Exemption**) to permit each Fund (as defined below) to:

(i) purchase and hold silver; and

(ii) purchase and hold a certificate representing silver that is:

(A) available for delivery in Canada, free of charge, to or to the order of the holder of such silver certificate;

(B) of a minimum fineness of 999 parts per 1,000;

(C) held in Canada;

(D) in the form of either bars or wafers; and

(E) if not purchased from a bank listed in Schedule I, II or III of the *Bank Act* (Canada), fully insured against loss and bankruptcy by an insurance company licensed under the laws of Canada or a jurisdiction,

(Permitted Silver Certificates);

(b) paragraph 2.3(h) of NI 81-102 (the **Silver Derivatives Exemption**) to permit each Fund to purchase, sell or use a specified derivative the underlying interest of which is:

(i) silver; or

(ii) a specified derivative of which the underlying interest is silver on an unlevered basis

(Silver Derivatives and, together with silver and Permitted Silver Certificates, **Silver**); and

(c) paragraphs 2.3(h), 2.5(2)(a) and 2.5(2)(c) of NI 81-102 (the **ETF Exemption**) to permit each Fund to purchase and hold securities of:

(i) exchange-traded funds (**ETFs**) that seek to provide daily results that replicate the daily performance of a specified widely-quoted market index (the ETF's **Underlying Index**) by:

(A) a multiple of up to 200% (**Leveraged Bull ETFs**); or

(B) an inverse multiple of up to 200% (**Leveraged Bear ETFs** and, together with Leveraged Bull ETFs, **Leveraged ETFs**);

(ii) ETFs that seek to provide daily results that replicate the daily performance of their Underlying Index by an inverse multiple of 100% (**Inverse ETFs**);

(iii) ETFs that seek to replicate the performance of:

(A) gold or silver; or

(B) the value of a specified derivative the underlying interest of which is gold or silver on an unlevered basis (**Gold ETFs** and **Silver ETFs**, as the case may be, and collectively, **Commodity ETFs**); and

(iv) ETFs that seek to provide daily results that replicate the daily performance of:

(A) gold or silver; or

(B) the value of a specified derivative the underlying interest of which is gold or silver, (the ETF's **Underlying Gold Interest** or the ETF's **Underlying Silver Interest**),

by a multiple of up to 200% (**Leveraged Gold ETFs** and **Leveraged Silver ETFs**, respectively, and collectively, Leveraged **Commodity ETFs**),

(the Leveraged ETFs, Inverse ETFs, Commodity ETFs and Leveraged Commodity ETFs are referred to collectively herein as **Permitted ETFs**),

(the Silver Exemption, the Silver Derivatives Exemption and the ETF Exemption are collectively referred to as the **Requested Relief**).

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

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

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

Interpretation

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

Funds means the Current Funds and all mutual funds (the **Future Funds**) managed by the Filer in the future that are subject to NI 81-102, other than a Fund that is a "money market fund" as defined in NI 81-102, and any one of them may be referred to as a Fund.

Gold and Silver Products means gold, permitted gold certificates, Silver, investments in Gold ETFs, Silver ETFs, Leveraged Gold ETFs, Leveraged Silver ETFs, and investments in specified derivatives the underlying interest of which is gold.

Representations

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

1. The Filer is a corporation incorporated under the laws of the Province of Ontario with its head office located in Toronto, Ontario. The Filer is registered under the securities legislation of Ontario as an investment fund manager and portfolio manager. The Filer is not in default of securities legislation in any jurisdiction.

2. The Filer is the manager of each Fund.

3. Each Fund is a "mutual fund" (as such term is defined under the Securities Act (Ontario)), and to which National Instrument 81-101 Mutual Fund Prospectus Disclosure and NI 81-102 applies.

4. None of the Funds are in default of securities legislation in any jurisdiction.

Investments in gold and silver

5. The Filer proposes that each Fund have the ability to invest in Silver as investing in Silver will provide each Fund with an opportunity to further diversify its investments. In accordance with its investment objectives and investment strategies, each Fund is permitted generally to invest in gold and Silver.

6. Permitting each Fund to invest in Silver will provide the Funds additional flexibility to increase gains for the Funds in certain market conditions, which may otherwise cause the Funds to have significant cash positions.

7. The Filer believes that the markets in gold and silver are highly liquid, and there are no liquidity concerns with permitting each Fund to invest directly, or indirectly through derivatives or Commodity ETFs, up to 10% of its net asset value in gold and Silver, in the aggregate.

8. To obtain exposure to gold or silver indirectly, the Filer intends to use Gold and Silver Products.

9. Any investment by a Fund in Silver will be made in compliance with the custodian requirements in Part 6 of NI 81-102.

10. If commencing to invest in Gold and Silver Products represents a material change for a Current Fund, the Current Fund will comply with the material change reporting obligations in respect of such change.

11. The Filer believes that the potential volatility or speculative nature of Silver is no greater than that of gold, or of equity securities.

12. An investment by a Fund in Silver will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

13. But for the Silver Exemption, paragraph 2.3(f) of NI 81-102 would prohibit an investment by a Fund in Silver because each Fund is prohibited from purchasing a physical commodity other than gold or permitted gold certificates.

14. But for the Silver Exemption, paragraph 2.3(h) of NI 81-102 would prohibit an investment by a Fund in Silver because each Fund is prohibited from purchasing, selling or using a specified derivative the underlying interest of which is a physical commodity other than gold or a specified derivative of which the underlying interest is a physical commodity other than gold.

Investments in Permitted ETFs

15. The Filer believes that it would be in the best interests of each Fund to have the flexibility to obtain exposure to, from time to time, to Underlying Indices, gold and silver by investing a portion of its assets in Permitted ETFs.

16. Each Permitted ETF will be a "mutual fund" (as such term is defined under the *Securities Act* (Ontario)) and will be listed and traded on a stock exchange in Canada or the United States.

17. The amount of loss that can result from an investment by a Fund in a Permitted ETF will be limited to the amount invested by the Fund in securities of the Permitted ETF.

18. Each Leveraged ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Index will not exceed +/-200% of the corresponding daily performance of its Underlying Index.

19. Each Inverse ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Index will not exceed -100% of the corresponding daily performance of its Underlying Index.

20. Each Leveraged Commodity ETF will be rebalanced daily to ensure that its performance and exposure to its Underlying Gold Interest or Underlying Silver Interest will not exceed +200% of the corresponding daily performance of its Underlying Gold Interest or Underlying Silver Interest.

21. The Filer believes that there are no liquidity concerns with permitting each Fund to invest in Commodity ETFs since the securities of Commodity ETFs trade on exchanges and are highly liquid.

22. In accordance with its investment objectives and investment strategies, each Fund is permitted generally to invest in ETFs.

23. But for the ETF Exemption, paragraph 2.5(2)(a) of NI 81-102 would prohibit a Fund from purchasing or holding a security of a Permitted ETF, because the Permitted ETFs are not subject to both NI 81-102 and National Instrument 81-101.

24. But for the ETF Exemption, paragraph 2.5(2)(c) of NI 81-102 would prohibit a Fund from purchasing or holding securities of some Permitted ETFs, because some Permitted ETFs are not qualified for distribution in the local jurisdiction.

25. The Filer is not currently, and does not currently expect to become in the near future, the manager of, nor affiliated with the manager of, any Permitted ETF.

26. An investment by a Fund in securities of a Permitted ETF will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

Decision

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

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

(a) each investment by the Fund in securities of a Permitted ETF and/or Silver is permitted by the fundamental investment objective of the Fund;

(b) the Fund does not short sell securities of any Permitted ETF;

(c) the securities of the Permitted ETFs are traded on a stock exchange in Canada or the United States;

(d) the Fund does not purchase securities of a Permitted ETF if, immediately after the purchase, more than 10% of the Fund's net asset value would consist of securities of Permitted ETFs;

(e) if the Fund engages in short selling, the Fund does not purchase securities of an Inverse ETF or Leveraged Bear ETF (collectively, **Bear ETFs**) or sell any securities short if, immediately after the transaction, the aggregate market value of:

(i) all securities sold short by the Fund; and

(ii) all securities of Bear ETFs held by the Fund, would exceed 20% of the Fund's net asset value;

(f) the Fund does not purchase Gold and Silver Products if, immediately after the transaction, more than 10% of the Fund's net asset value would consist of Gold and Silver Products;

(g) the Fund does not purchase Gold and Silver Products if, immediately after the transaction, the market value exposure to gold or silver through the Gold and Silver Products would be more than 10% of the Fund's net asset value; and

(h) the prospectus of the Fund discloses, or will disclose the next time it is renewed:

(i) in the Investment Strategy section of the prospectus, the fact that the Fund has obtained relief to invest in Permitted ETFs and Silver, as appropriate; and

(ii) to the extent applicable, the risks associated with such an investment.

"Darren McKall"
Manager, Investment Funds
Ontario Securities Commission

2.1.2 Nordion Canada Inc.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Issuer deemed to no longer be a reporting issuer under securities legislation.

Applicable Legislative Provisions

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

September 3, 2014

Nordion (Canada) Inc.

447 March Road
Ottawa, Ontario
K2K 1X8

Dear Sirs/Mesdames:

Re: Nordion (Canada) Inc. (the Applicant) – application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, the Northwest Territories, and Nunavut (the Jurisdictions) that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions for a decision under the securities legislation (the Legislation) of the Jurisdictions that the Applicant is not a reporting issuer.

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

The Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

(b) no securities of the Applicant, 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;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions of Canada in which it is currently a reporting issuer; and

(d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer.

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

"Sonny Randhawa"
Manager, Corporate Finance
Ontario Securities Commission

2.1.3 Royal Host Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer deemed to have ceased to be a reporting issuer under securities legislation- Issuer has fewer than 15 beneficial securityholders in each of the jurisdictions in Canada and fewer than 51 beneficial securityholders in total worldwide-decision granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 1(10)(a)(ii).
CSA Staff Notice 12-307 Applications for a Decision that an Issuer is not a Reporting Issuer.

August 29, 2014

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
NOVA SCOTIA, BRITISH COLUMBIA, ALBERTA,
SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC,
NEW BRUNSWICK, PRINCE EDWARD ISLAND AND
NEWFOUNDLAND AND LABRADOR
(The Jurisdictions)

AND

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

AND

IN THE MATTER OF ROYAL HOST INC.
(The Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer is not a reporting issuer in the Jurisdictions (the Exemptive Relief Sought).

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

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

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act* (CBCA) with its head office located at 1809 Barrington Street, Suite 1108, Halifax, Nova Scotia B3J 3K8.

2. The Filer is a reporting issuer in each of the Jurisdictions and is thus subject to continuous disclosure requirements under the Legislation.

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

4. On May 5, 2014, the Filer entered into an arrangement agreement with Holloway Lodging Corporation (Holloway) to complete a transaction (the Arrangement) by way of statutory plan of arrangement under section 192 of the CBCA pursuant to which Holloway would acquire all of the issued and outstanding Common Shares.

5. Holloway is the successor to Holloway Lodging Real Estate Investment Trust by virtue of a plan of arrangement completed on December 31, 2012, under the CBCA. Holloway has its head office in Halifax, Nova Scotia, and its common shares trade on the Toronto Stock Exchange (the TSX) under the symbol "HLC".

6. The Arrangement was completed on July 1, 2014, pursuant to which Holloway acquired and became the beneficial owner of all the issued and outstanding Common Shares and the Filer became a wholly-owned subsidiary of Holloway. Pursuant to the terms of the Arrangement, holders of the Common Shares received a combination of $1.00 in cash and 0.1 of a Holloway common share for each Common Share. The Common Shares were delisted from the TSX on July 7, 2014.

7. As of July 1, 2014, Computershare Trust Company of Canada (the Trustee) confirmed that the Filer had $23,600,000 Series B 6.25% convertible unsecured debentures due October 31, 2020 (the Series B Debentures), $40,661,000 Series C 7.50% convertible unsecured debentures due September 30, 2018 (the Series C Debentures) and $29,052,000 Series D 6.25% convertible unsecured debentures due June 30, 2019 (the Series D Debentures and collectively with the Series B Debentures and the Series C Debentures, the Debentures) outstanding and listed on the TSX. The Debentures remained outstanding obligations of the Filer following the completion of the Arrangement.

8. On July 2, 2014, the Filer announced that it would seek the approval of holders of the Debentures (the Debentureholders) to amend the terms of the Debentures at meetings of the Debentureholders to be held on July 29, 2014. The principal amendments proposed, as set out in the joint management information circular of the Filer dated July 2, 2014, included the assumption of the Debentures by Holloway and the release of the Filer from all of its obligations under the Debentures.

9. On July 29, 2014, the Debentureholders approved the assumption of the Debentures by Holloway and the release of the Filer from all of its obligations under the Debentures.

10. On July 31, 2014, the Debentures were assumed by Holloway pursuant to a second amended and restated indenture dated July 31, 2014, between Holloway, the Filer and the Trustee and an assignment and assumption agreement dated July 31, 2014, between Holloway and the Filer. At this time, the Debentures ceased to be liabilities of the Filer and became liabilities of Holloway. The only issued and outstanding securities of the Filer are the Common Shares held by Holloway.

11. On August 7, 2014, the Debentures were delisted under the Filer's name and began trading on the TSX under Holloway's name under the new stock symbols HLC.DB, HLC.DB.A and HLC.DB.B.

12. 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.

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

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

15. The Filer is not in default of any of its obligations as a reporting issuer under the Legislation other than its obligation to file, on or before August 14, 2014, an interim financial report and management's discussion and analysis for the interim period ended June 30, 2014, as required under National Instrument 51-102 Continuous Disclosure Obligations and the related certificates as required under National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings.

16. The Filer did not voluntarily surrender its status as a reporting issuer in British Columbia pursuant to British Columbia Instrument 11-502 Voluntary Surrender of Reporting Issuer Status because it wanted to avoid the 10-day waiting period under that instrument.

17. The Filer is not eligible to use the simplified procedure under CSA Staff Notice 12-307 Applications for a Decision that an Issuer is not a Reporting Issuer because it is in default as noted in paragraph 15 and it is a reporting issuer in British Columbia.

18. The Filer is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer and upon the granting of the Exemptive Relief Sought, the Filer will not be a reporting issuer in any jurisdiction in Canada.

Decision

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

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

"Sarah Bradley"
Chair
Nova Scotia Securities Commission

"Paul Radford"
Vice-chair
Nova Scotia Securities Commission

2.1.4 Baillie Gifford & Co Limited and Baillie Gifford Overseas Limited

Headnote

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

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1 and 15.1.

September 4, 2014

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
BAILLIE GIFFORD & CO LIMITED
(BG&Co Ltd)

AND

BAILLIE GIFFORD OVERSEAS LIMITED
(BGO and, together with BG&Co Ltd, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief, pursuant to section 15.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), from the requirement in paragraph 4.1(1)(b) of NI 31-103 to permit the current advising representatives and associate advising representatives of a Filer and any future advising representatives and associate advising representatives of a Filer (the **Representatives**) to also be advising representatives or associate advising representatives (as applicable) of the other Filer (the **Dual Registration**) in order to provide portfolio management services to clients of both Filers (the **Exemption Sought**).

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

1. the Ontario Securities Commission is the principal regulator for this Application, and

2. the Filers have provided notice that section 4.7 of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Manitoba, Alberta, Quebec and Newfoundland and Labrador (together with the Jurisdiction, the **Filing Jurisdictions**).

Interpretation

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

Representations

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

1. BG&Co Ltd has applied for registration as a portfolio manager in Ontario. The head office of BG&Co Ltd is in Edinburgh, Scotland.

2. BGO is registered as a portfolio manager in the Filing Jurisdictions and, in the Jurisdiction, relies on the exemption from the investment fund manager registration requirement set out in section 4 of Multilateral Instrument 32-102 – *Registration Exemptions for Non-Resident Investment Fund Managers* (**MI 32-102**). The head office of BGO is in Edinburgh, Scotland.

3. The Filers are not in default of any requirements of securities legislation in any of the Filing Jurisdictions.

4. The Filers are wholly owned subsidiaries of the same parent entity, Baillie Gifford & Co, a Scottish partnership, and are therefore affiliates.

5. BGO currently acts as the adviser and investment manager for a number of segregated and pooled funds under the Baillie Gifford name domiciled outside of the United Kingdom, including Baillie Gifford investment funds based in Ontario (**BG Funds Canada**), which consist of international portfolios of equities and fixed income securities, the units of which are sold to institutional investors. BGO also manages segregated international portfolios for institutional investors.

6. It is proposed that BG&Co Ltd assume the role of adviser and investment manager for BG Funds Canada. Under the Alternative Investment Fund Managers Directive (**AIFMD**) of the European Union, an investment fund manager based in the European Economic Area (**EEA**) that manages a non-EEA pooled fund that is not within the Undertakings for Collective Investment of Transferable Securities (**UCITS**) of the European Union, governing investment funds marketed to the public across the EAA, will be required to be authorised as an Alternative Investment Fund Manager (**AIFM**). BGO, as it is based in the United Kingdom, and as manager of BG Funds Canada, would be required to be authorised as an AIFM under the AIFMD. It is proposed that BG&Co Ltd will act as AIFM for all Baillie Gifford collective funds within the scope of the AIFMD in order to provide synergies in governance while providing the necessary expertise in managing collective investment and pooled vehicles. Consequently, it is proposed that BG&Co Ltd be appointed to act as adviser and investment fund manager of BG Funds Canada. BGO would continue to manage segregated portfolios for institutional investors and advise BG Funds Canada to the extent portfolio management is delegated by BG&Co Ltd.

7. Each of the current Representatives of BGO is, and each of the future Representatives of BGO will be, registered in the Filing Jurisdictions as an advising representative, and it is proposed that they also act as advising representatives of BG&Co Ltd.

8. The Representatives advise and provide portfolio management services to BG Funds Canada on behalf of BGO and to institutional clients of BGO. It is proposed that the Representatives provide portfolio management services to:

   (a) BG Funds Canada on behalf of BG&Co Ltd and on behalf of BGO to the extent portfolio management is delegated by BG&Co Ltd to BGO, and

   (b) institutional clients of BGO.

9. The Filers propose to register Representatives with both BGO and BG&Co Ltd as needed to provide the portfolio management services to the clients of the Filers, as outlined herein.

10. There are valid business reasons for the Representatives to be registered with both Filers, as Baillie Gifford investment management will be restructured so that BG&Co Ltd, which will be subject to the AIFMD, will be the manager of BG Funds Canada, and BGO, which will not be subject to the AIFMD, will manage segregated client accounts. In addition, having the same individuals act as Representatives for BG&Co Ltd in connection with its management of BG Funds Canada and also act as Representatives for BGO in connection with its management of segregated client accounts would maximize efficiency and consistency across the mandates carried out under the Baillie Gifford name.

11. The Representatives will be subject to the applicable compliance requirements and policies and procedures of both Filers.

12. The Filers' management will ensure that the Representatives will have sufficient time and resources to adequately serve both firms and will limit the number of client relationships of such Representatives, as required.

13. In order to minimize client confusion, the relationship between the Filers, and the Dual Registration, will be fully disclosed in writing to clients of each of the Filers prior to the respective Representative providing investment management services to the applicable client.

14. The Filers have policies and procedures addressing any conflicts of interest that may arise as a result of the Dual Registration and the Filers believe that they will be able to appropriately deal with these conflicts, should they arise.

15. There is adequate supervision of any identified conflicts of interest to ensure that Representatives, and each of the Filers, can deal appropriately with any conflict of interest that may arise. The Representatives are currently, and will continue to be, under the supervision of both Filers and are subject to all policies and procedures addressing conflicts of interest that may arise as a result of the Dual Registration.

16. The Representatives shall act in the best interests of all clients of the Filers and will deal fairly, honestly and in good faith with those clients.

17. The Filers are affiliates and their interests are aligned.
18. In the absence of the Exemption Sought, each Filer would be prohibited under the Dual Registration restriction in paragraph 4.1(1)(b) of NI 31-103 from permitting a Representative to act as an advising or associate advising representative of the other Filer even though the Filers are affiliates.

Decision

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

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

i) the circumstances described above in paragraphs 11 to 16 (inclusive) remain in place; and

ii) BG&Co Ltd is registered as an adviser in the category of portfolio manager in the Filing Jurisdictions and, in the Jurisdiction, relies on the exemption from the investment fund manager registration requirement set out in section 4 of MI 32-102.

“Elizabeth King”
Deputy Director, Compliance and Registrant Regulation
Ontario Securities Commission

2.1.5 Jov Leon Frazer Enhanced Opportunities Fund Inc.

Headnote

Approval of a reorganization of a labour sponsored investment fund pursuant to which the proceeds of the liquidation of the fund's assets will be distributed to shareholders of the fund by way of investing the proceeds in units of a money market fund in the name of each shareholder – approval required because the reorganization does not meet all of the pre-approval requirements in subsection 5.6(1) of National Instrument 81-102 Mutual Funds.

Statutes Cited

National Instrument 81-102 Mutual Funds, paragraph 5.5(1)(b) and section 19.1.

August 26, 2014

IN THE MATTER OF
THE SECURITIES LEGISLATION OF ONTARIO

AND

IN THE MATTER OF
JOV LEON FRAZER ENHANCED OPPORTUNITIES FUND INC.
(the Fund)

DECISION

Background

The securities regulatory authority or regulator in Ontario (the **Decision Maker**) has received an application (the **Application**) from the Fund for approval of a proposed restructuring wherein the Fund has sold substantially all of its assets in an orderly liquidation, has commenced the formal dissolution and liquidation process and anticipates distributing all of its assets to its shareholders by way of units in the IA Clarington Money Market Fund in the name of the shareholders in the near future (the **Reorganization**), as described further below, pursuant to paragraph 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**).

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

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

The Fund

1. The Fund was amalgamated under the *Canada Business Corporations Act* (the **CBCA**) on December 12, 2006 under the name Horizons Advantaged Equity Fund Inc., amended the provisions of its articles by Articles of Amendment dated December 31, 2011 and changed its name to the current name of the Fund by Articles of Amendment dated March 4, 2013.

2. The Fund's registered office is in Ontario.

3. The Fund is a registered labour sponsored investment fund corporation (**LSIF**) under the *Community Small Business Investment Funds Act* (Ontario) (the **CSBIF Act**). The Fund is registered as a labour-sponsored venture capital corporation (**LSVCC**) under the *Income Tax Act* (Canada) (the **Tax Act**). The Fund's investing activities are governed by both the CSBIF Act and the Tax Act.

4. The Fund has historically invested in small and medium sized businesses with the objective of obtaining long term capital appreciation in accordance with the CSBIF Act.

5. The labour sponsor of the Fund is the Canadian Federal Pilots Association (the **Sponsor**).

6. The authorized capital of the Fund is as follows:

   (a) an unlimited number of Class A shares in three series of which the following were issued and outstanding as at July 31, 2014:

      (i) 98,546.037 Class A, Series I

      (ii) 11,919.983 Class A, Series II

      (iii) 563,122.370 Class A, Series III;

   (b) an unlimited number of Class B shares of which 1,100 is issued and outstanding and held by the Sponsor; and

   (c) an unlimited number of Class C shares, of which there are none issued or outstanding.

7. Leon Frazer & Associates Inc. (**Leon Frazer**) is the investment advisor of the Fund under an agreement dated December 12, 2006, assigned September 27, 2010 and further assigned October 18, 2011. Leon Frazer is indirectly wholly-owned by Industrial Alliance Insurance and Financial Services Inc.

8. The Fund's shares are not listed on any stock exchange.

9. The Fund ceased offering its Class A shares on May 10, 2013. Prior to that date, the Fund was offering its Class A shares for sale only in Ontario. The Fund suspended redemptions of its Class A shares on May 28, 2014 when it announced that it intended to liquidate its assets and complete the wind-up.

10. As of July 31, 2014, the Fund had approximately $3.3 million in net assets under management.

11. The Fund has complied with Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure* in connection with the liquidation of its assets and the proposed Wind-Up by filing press releases and material change reports.

12. Neither the Fund nor JovFinancial Solutions Inc. (the **Manager**), the manager of the Fund, is in default of securities legislation.

Background to the Wind-Up

13. The Ontario Ministry of Finance (**MOF Ontario**) announced amendments to the CSBIF Act (the **Amendments**) which received Royal Assent and were implemented on May 18, 2006. Two of the Amendments introduced related to: (i) the termination of the Ontario tax credits available to purchasers of Class A shares after the 2010 tax season; and (ii) the addition of certain wind-up provisions which allow LSIFs to enter into a formal wind-up phase prior to dissolving. One of the wind-up related provisions introduced by the Amendments permits any LSIF that winds up to return its Class A share investment capital to shareholders without them incurring a tax credit penalty even if they have not held their Class A shares for more than the eight year hold period required by the CSBIF Act.

14. Subsequent to the enactment of the Ontario Amendments, the Fund registered federally under the Tax Act. The Federal Department of Finance (**Federal DOF**) announced amendments to the Tax Act (the **Federal Amendments**) on March 21, 2013 and November 27, 2013. The federal budget on March 21, 2013 announced plans to phase out the federal LSVCC tax credit by 2017. The November 27, 2013 amendments related to the addition of certain wind-up provisions which allow LSIFs to enter into a formal wind-up phase prior to dissolving. One of the wind-up related provisions introduced by the Federal Amendments permits any LSIF that winds up to return its Class A share investment capital to shareholders without them incurring a tax credit penalty even if they have not held their Class A shares for more than the eight year hold period required by the Tax Act.

15. The Board of Directors of the Fund announced publicly on May 28, 2014 that the Fund would, subject to obtaining shareholder approval to do so as required under the CBCA, wind-up its affairs and distribute its assets to shareholders.

16. The Fund has submitted a formal wind-up proposal for the Fund (the **Wind-Up Proposal**) to the MOF Ontario and the Federal DOF.

17. The Fund's objectives when considering the Wind-Up Proposal were to: (a) attain the highest possible valuation of the Class A shares for shareholders; and (b) wind-up the Fund on an orderly basis.

18. The Wind-Up Proposal was implemented by the liquidation of each of the Fund's assets separately (the **Orderly Liquidation**) in order to meet the stated objectives.

19. Approximately 95% of the shareholders of the Fund hold their Class A shares in a registered account, and approximately 27% of shareholders hold their Class A shares in a non-self-directed client registered retirement savings plan (**RRSP**) account for which there is no mechanism permitting those accounts to hold cash. The Fund has been advised that cash distributions to those accounts would result in Canada Revenue Agency deeming there to have been a withdrawal from the RRSP account, which withdrawal could not be reversed.

20. The Board of Directors decided that, provided the necessary consents and approvals could be obtained, the Fund would use the proceeds from the liquidation of the Fund to purchase units of IA Clarington Money Market Fund. The Fund would then distribute units of IA Clarington Money Market Fund directly into the accounts of shareholders. Shareholder approval was obtained for such a distribution.

21. IA Clarington Money Market Fund was chosen as a result of IA Clarington Investments Inc.'s relationship as an affiliate of the Fund's manager and because units of that fund could be readily converted to cash and are suitable for most shareholders.

Shareholders Meeting and Completion of Orderly Liquidation

22. A material change report was filed via SEDAR on May 29, 2014 announcing the proposed Orderly Liquidation and Wind-Up Proposal.

23. An information circular (the **Circular**) which contained details of the Orderly Liquidation, amendment of the Fund's articles and dissolution of the Fund including the income tax considerations associated with these events and a description of the units of IA Clarington Money Market Fund was mailed to the shareholders of the Fund in advance of a special meeting of shareholders held on July 25, 2014 (the **Shareholders' Meeting**).

24. The Circular advised shareholders that the proceeds to be distributed from the liquidation of the Fund would not be deposited to their accounts in cash and, subject to any consents and approvals necessary, shareholders would receive the equivalent value of the proceeds of the Fund in the form of Series A units of IA Clarington Money Market Fund.

25. A copy of the fund facts documents for the IA Clarington Money Market Fund was included in the package of materials sent to shareholders with respect to the Shareholders' Meeting.

26. The shareholders of the Fund approved a special resolution authorizing the Orderly Liquidation, redemption of investors, the *in specie* distribution and the wind-up of the Fund at the Shareholders' Meeting.

27. The Manager bore the costs of the Shareholders' Meeting.

28. The independent review committee (**IRC**) of the Fund met on June 24, 2014. The IRC reviewed the proposed transaction and determined that the purchase by the Fund and the distribution of units of IA Clarington Money Market Fund into shareholders' accounts as proceeds of the redemption of Class A shares of the Fund would achieve a fair and reasonable result for the Fund.

29. The Orderly Liquidation was completed on Tuesday, August 19, 2014.

Procedure for the Liquidation and Dissolution of the Fund

30. With the completion of the Orderly Liquidation, the Fund's assets now consist exclusively of cash, near cash and receivables.

31. The Fund intends, in accordance with the special resolution of the shareholders, to purchase units of IA Clarington Money Market Fund and commence the formal dissolution and liquidation process as it is set out in the CBCA.

Distribution of Proceeds to Shareholders

32. The Board of Directors of the Fund anticipates that there will only be one redemption of securities as part of the liquidation and dissolution process of the Fund.

33. The timing of the distribution will be at the discretion of the Board of Directors of the Fund; however, it is currently anticipated that the distribution will occur August 29, 2014. It is anticipated that all of the assets will be distributed at

that time. The distribution will be made after all liabilities (including contingent liabilities, if any) of the Fund are satisfied or otherwise dealt with, including the payment of all expenses of liquidation and any applicable taxes.

34. The proportionate value of the proceeds of distribution belonging to each individual shareholder will be deposited into each of his or her respective investment account regardless of whether his or her account is held at a brokerage firm or is an RRSP account held as a client account.

35. The Fund has confirmed with the Manager that shareholders of the Fund will receive units of IA Clarington Money Market Fund without paying a selling commission and that shareholders will be able to redeem their units without paying a redemption fee as soon as they wish to do so.

36. All shareholders of the Fund will hold the units of IA Clarington Money Market Fund within their existing investment account which account will remain at their existing dealer.

37. Each shareholder of the Fund will receive a single trade confirmation that shows both transactions (the redemption of the Class A shares of the Fund and corresponding purchase of units of the IA Clarington Money Market Fund) and a copy of the fund facts documents of the IA Clarington Money Market Fund.

38. The Fund will issue a press release indicating the distribution has been completed as soon as that occurs and prior to shareholders receiving their trade confirmation.

39. IA Clarington Money Market Fund, according to its interim management report of fund performance for the period ended June 30, 2013, seeks to provide some interest income with a focus on preservation of capital while maintaining liquidity.

40. IA Clarington Money Market Fund invests in high quality debt securities and selects money market instruments that offer good relative value.

41. IA Clarington Money Market Fund is suitable for investors who are seeking interest income and preservation of capital, are investing for the short-term and can tolerate low risk.

Reasons for the Relief Being Required

42. The Fund is in the process of effecting the Reorganzation in the manner described above. A distribution of cash, instead of securities of IA Clarington Money Market Fund, would not require securities regulatory approval pursuant to NI 81-102.

43. Furthermore, due to the structure of the wind-up, a cash transaction would not constitute a reorganization pursuant to paragraph 5.5(1)(b) of NI 81-102.

44. The Reorganization will result in shareholders of the Fund becoming shareholders of IA Clarington Money Market Fund. Therefore the approval of the securities regulatory authority is required pursuant to subsection 5.5(1) of NI 81-102, as the Reorganization does not meet the following pre-approval requirements set out in subsection 5.6(1) of NI 81-102:

    (a) the fundamental investment objectives and the fee structure of the Fund may not be considered substantially similar to that of IA Clarington Money Market Fund, as would be required under subparagraph 5.6(1)(a)(ii) of NI 81-102;

    (b) the Reorganization will be completed on a taxable basis and not as a “qualifying exchange” or as a tax deferred transaction, as would be required under paragraph 5.6(1)(b) of NI 81-102; and

    (c) as the Fund has suspended redemptions of its securities, shareholders of the Fund do not have the right to redeem securities of the Fund prior to the effective date of the Reorganization, as would be required by paragraph 5.6(1)(i) of NI 81-102.

45. Declining the requested approval would leave the Fund with no choice but to distribute cash, and would result in an adverse tax consequence for a significant number of shareholders whose RRSP accounts cannot hold cash.

Decision

The Decision Maker is satisfied that the test contained in NI 81-102 that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Maker under NI 81-102 is that approval of the Reorganization is granted.

"Vera Nunes"
Manager, Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.6 Alphapro Management Inc. and Horizons Active Yield Matched Duration ETF

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to mutual fund for extension of lapse date of prospectus for 40 days – additional time needed for renewal of prospectus due to ongoing review. Relief from the requirement to obtain the approval of securityholders before changing the fundamental investment objectives of a mutual fund as a result of changes to federal budget eliminating certain tax benefits associated with character conversion transactions.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.1(c), 19.1.
Securities Act, R.S.O. 1990, c. S. 5 as am., s 62(5).

September 2, 2014

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
ALPHAPRO MANAGEMENT INC.
(the Filer)

AND

HORIZONS ACTIVE YIELD MATCHED DURATION ETF
(the ETF)

DECISION

Background

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

(a) pursuant to section 19.1 of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) from the requirement in section 5.1(c) of NI 81-102 to obtain the approval of securityholders before changing the fundamental investment objective of the ETF (the **Investment Objective Relief**); and

(b) pursuant to section 17.2(7) of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) and section 62(5) of the of the *Securities Act* (Ontario) (the Act) from the requirement in the Legislation in section 62(2) of the Act and section 17.2(4) of NI 41-101 that the time limits pertaining to filing the renewal long form prospectus of the ETF be extended as if the lapse date of the current long form prospectus of the ETF dated August 23, 2013 is October 2, 2014 (the **Lapse Date Relief**);

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

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 each of the other provinces and territories of Canada (together with Ontario, the Jurisdictions).

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation incorporated under the federal laws of Canada with its head office located in Toronto, Ontario. The Filer is registered under the securities legislation of Ontario as an investment fund manager in Ontario.

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

3. The Filer is the manager of the ETF.

The ETF

4. The ETF is a "mutual fund", as such term is defined under the *Securities Act* (Ontario), and to which NI 81-102 applies. The ETF is also an exchange-traded fund whose securities are primarily traded on the Toronto Stock Exchange and a reporting issuer under the Legislation.

5. Horizons ETFs Management (Canada) Inc. (the **Portfolio Manager**) is the portfolio manager of the ETF.

6. Fiera Capital Corporation (the **Sub-Advisor**) is the sub-advisor of the ETF.

7. The ETF is not in default of the securities legislation in any Jurisdiction.

8. Securities of the ETF are qualified for distribution in each Jurisdiction pursuant to a long form prospectus of the ETF dated August 23, 2013 (the **Current Prospectus**).

9. In accordance with applicable securities legislation, and in order to continue the distribution of securities of the ETF following the lapse date of the Current Prospectus, a pro forma renewal prospectus for the ETF, which also serves as a preliminary prospectus for Horizons Active Floating Rate Senior Loan ETF (**Horizons HSL**), was filed on behalf of the ETF on July 23, 2014 (the **Preliminary and Pro Forma Prospectus**).

Investment Objective Change

10. The current fundamental investment objective (the **Current Objective**) of the ETF is as follows:

"to seek to provide the holders of Units with: (i) a stable stream of tax-efficient monthly distributions; and (ii) the opportunity for capital appreciation through a tactical asset allocation strategy that includes managing the duration and yield of its exposure to fixed income and fixed income-like securities according to the prevailing interest rate environment."

11. In order to seek to achieve the Current Objective, the ETF was a party to a forward purchase and sale agreement (the **Forward Agreement**) with a Canadian chartered bank. The Forward Agreement provided the ETF with exposure to the returns of the securities of another investment fund, the Tactical Global Bond ETF Fund (the **Reference Fund**). The fundamental investment objective of the Reference Fund was as follows:

"to maximize total returns for its unitholders, consisting of both distributions and capital appreciation, while reducing risk."

12. As a result of the Forward Rules (as defined below), it was anticipated that the Forward Agreement would no longer be able to, over the long term, provide material tax efficiency to unitholders of the ETF. As a result, the Filer determined that, prior to the expiry of the Forward Agreement on July 21, 2014 (the **Termination Date**), the Forward Agreement

would not be extended and the ETF would acquire in the market the same, or substantially the same, assets as those held by the Reference Fund. Such proposed course of action is disclosed in the Current Prospectus of the ETF.

13. The Forward Agreement was terminated on June 27, 2014.

14. The *Income Tax Act* (Canada) was amended in December 2013 to implement proposals that were first announced in the March 21, 2013 federal budget regarding the income tax treatment of certain types of forward transactions (the **Forward Rules**). Under the Forward Rules, after a prescribed date (the **Changeover Date**), gains (and losses) realized by a fund under certain forward purchase and sale agreement will be treated as ordinary income (or loss) rather than a capital gain (or capital loss). The Changeover Date for the ETF was the Termination Date (being the date on which the Forward Agreement was terminated in accordance with its terms).

15. A press release and material change report were issued and filed in respect of the impact of the Forward Rules on the ETF on April 4, 2013 and April 9, 2013, respectively. Such press release and material change report: (i) specified the Termination Date of the Forward Agreement; and (ii) disclosed that, following the Termination Date, the ETF would no longer be able to deliver, in its entirety, tax-efficient distributions to unitholders.

16. As noted above, the Filer determined that, as a result of the Forward Rules, it would be more efficient and less costly for the ETF to seek to achieve its fundamental investment objective after the Changeover Date by investing its assets in the same, or substantially the same, assets as those held by the Reference Fund. The Filer, the Portfolio Manager and the Sub-Advisor also continued to manage the portfolio of the ETF in as tax-efficient a manner as possible.

17. To clarify the foregoing approach, the Filer proposes to change the fundamental investment objective of the ETF to the following:

"to seek to provide Unitholders with: (i) a stable stream of monthly distributions; and (ii) the opportunity for capital appreciation through a tactical asset allocation strategy that includes managing the duration and yield of its exposure to fixed income and fixed income-like securities according to the prevailing interest rate environment."

18. The proposed change of investment objective will be disclosed in the new, final, prospectus of the ETF under which securities of the ETF will be qualified for distribution (the **Final Prospectus**) following the Current Lapse Date (as defined below), as the Current Lapse Date may be extended by way of the Lapse Date Relief.

19. Direct investment by the ETF in securities previously held by the Reference Fund following the Termination Date represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of the ETF.

20. The Filer has determined that it would be in the best interests of the ETF and not prejudicial to the public interest to receive the Investment Objective Relief.

The Lapse Date

21. Pursuant to the Legislation, the lapse date for the Current Prospectus is August 23, 2014 (the **Current Lapse Date**). Accordingly, pursuant to the Legislation, the distribution of units of the ETF would have to cease on the Current Lapse Date unless (i) a final prospectus is filed no later than 10 days after the Current Lapse Date (i.e. by September 2, 2014); and (ii) a receipt for such final prospectus is obtained within 20 days of the Current Lapse Date.

22. It would be unduly costly for the Filer to separate the Final Prospectus, such that Horizons HSL and the ETF would be offered pursuant to separate final long form prospectuses, in order to ensure that the Final Prospectus of the ETF is filed in accordance with the requirements of the Current Lapse Date. Given the ongoing review of the Preliminary and Pro Forma Prospectus and ongoing comments from, and discussions with, the OSC, the Filer is therefore requesting additional time by means of an extension of the Current Lapse Date to October 2, 2014 to permit the Filer to respond to anticipated further comment letters and to file the Final Prospectus which satisfactorily addresses all of the comments without resulting in the ETF being forced to cease distribution of units because the Current Prospectus has lapsed and which would allow Horizons HSL and the ETF to be offered pursuant to the same final long form prospectus.

23. Since the date of the Current Prospectus, there has been no undisclosed material changes to the ETF. Accordingly, the Current Prospectus continues to provide accurate information regarding the ETF.

24. Given the disclosure obligations of the Filer and the ETF, should any material changes be proposed to the ETF, the Current Prospectus will be amended accordingly. Therefore, the extension requested will not affect the currency or accuracy of the information contained in the Current Prospectus and accordingly, will not be prejudicial to the public interest.

25. The Filer has determined that it would be in the best interests of the ETF and not prejudicial to the public interest to receive the Lapse Date Relief.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that, with respect to the Investment Objective Relief, securityholders of the ETF will be sent a written notice (the **"Notice"**) that sets out the change to the investment objective, the reasons for such change and a statement that the ETF will no longer distribute gains under forward contracts that are treated as capital gains for tax purposes and the Notice will be sent to securityholders of the ETF within 10 days of the date of this decision document.

"Vera Nunes"
Manager
Investment Funds and Structured Products
Ontario Securities Commission

2.2 Orders

2.2.1 Newer Technologies Limited et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
NEWER TECHNOLOGIES LIMITED,
RYAN PICKERING AND RODGER FREY

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
RODGER FREY

ORDER
(Sections 127 and 127.1 of the Securities Act)

WHEREAS on December 4, 2012, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") to consider whether it is in the public interest to make orders, as specified therein, against and in respect of Newer Technologies Limited ("**NTL**"), Ryan Pickering ("**Pickering**") and Rodger Frey ("**Frey**"). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission (**"Staff**") dated December 4, 2012;

AND WHEREAS Frey has entered into a Settlement Agreement with Staff of the Commission dated September 2, 2014 (the "**Settlement Agreement**") in which Frey agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated December 4, 2012, subject to the approval of the Commission;

AND WHEREAS on August 29, 2014, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a Settlement Agreement entered into between Staff and Frey;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Frey, and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

(a) The Settlement Agreement is approved;

(b) pursuant to paragraph 6 of subsection 127(1) of the Act, Frey is reprimanded;

(c) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Frey shall cease permanently;

(d) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Frey is prohibited permanently;

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

(f) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Frey shall immediately resign all positions that he holds as a director or officer of any issuer (except as set out in subparagraph (h) of this Order, below), registrant or investment fund manager;

(g) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Frey is permanently prohibited from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager;

(h) pursuant to paragraph 8 of subsection 127(1) of the Act, Frey is permanently prohibited from becoming or acting as a director or officer of any issuer, with the exception that Frey is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 6 holders of the securities of the company;

(i) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Frey is permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(j) pursuant to section 127.1 of the Act, Frey shall pay to the Commission the amount of $5,000.00, representing a portion of Staff's costs in this matter, within two years of the approval by the Commission of this Settlement Agreement. Frey shall pay at least $1250.00 by cheque six months after the Commission approves this Settlement Agreement and to pay at least $1250.00 by cheque every six months thereafter until the entire amount of the $5,000 penalty is paid in full;

(k) After the payment of $5,000.00 set out in paragraph (j) above is made in full, as an exception to the provisions of paragraphs (c), (d) and (e) of this Order above, Frey is permitted to:

i. trade on his own behalf in his own accounts; and

ii. acquire securities on his own behalf in his own accounts.

(l) Until the entire amount of $5,000.00 set out in paragraph (j) above is paid in full, the prohibitions set out in subparagraphs (c), (d) and (e) above shall continue in force without any limitation as to time.

DATED at Toronto this 3rd day of September, 2014.

"Christopher Portner"

2.2.2 Newer Technologies Limited et al. – ss. 127 and 127.1

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

AND

IN THE MATTER OF
NEWER TECHNOLOGIES LIMITED,
RYAN PICKERING AND RODGER FREY

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
NEWER TECHNOLOGIES LIMITED, AND RYAN PICKERING

ORDER
(Sections 127 and 127.1 of the Securities Act)

WHEREAS on December 4, 2012, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") to consider whether it is in the public interest to make orders, as specified therein, against and in respect of Newer Technologies Limited ("**NTL**"), Ryan Pickering ("**Pickering**") and Rodger Frey ("**Frey**"). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff") dated December 4, 2012;

AND WHEREAS NTL and Pickering (collectively, the "**Pickering Respondents**") have entered into a Settlement Agreement with Staff of the Commission dated September 2 , 2014 (the "**Settlement Agreement**") in which the Pickering Respondents agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated December 4, 2012, subject to the approval of the Commission;

AND WHEREAS pursuant to the Settlement Agreement, the Pickering Respondents have given a joint and several undertaking to the Commission, in the form attached as Schedule "B" to the Settlement Agreement (the "**Undertaking**"):

1. to repay all moneys loaned to NTL by forty nine (49) existing lenders in the aggregate amount of $2,261,000, which lenders do not qualify as accredited investors or meet applicable exemptions from the prospectus requirement (the "Non-Exempt Lenders"), within twelve (12) months of the date of the Commission's order approving the Settlement Agreement. All payments made to Non-Exempt Lenders pursuant to this Undertaking will be made on a pro-rata basis, but nothing shall prevent NTL from repaying an outstanding NTL Promissory Note in full or in part if a lender makes demand under the terms of its NTL Promissory Note; and

2. to file with the Commission, on behalf of NTL, no later than ten (10) days after the date of approval of the Settlement Agreement, Form 45-106F1 in respect of the twelve (12) existing lenders who made loans in the aggregate amount of $2,815,000 and who qualify as accredited investors or meet applicable exemptions from the prospectus requirement ("Exempt Lenders") that are remaining lenders to NTL, and to pay the applicable activity fee of $500.00 concurrently with the filing. The Pickering Respondents acknowledge that if they fail to file Form 45-106F1 within ten (10) days of the date of approval of the Settlement Agreement, late fees in accordance with OSC Rule 13-502 will accrue from the tenth day following the date of approval of the Settlement Agreement;

AND WHEREAS on August 29, 2014, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a Settlement Agreement entered into between Staff and the Pickering Respondents;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for the Pickering Respondents, and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

(a) The Settlement Agreement is approved;

(b) pursuant to paragraph 6 of subsection 127(1) of the Act, the Pickering Respondents are reprimanded;

(c) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by or of NTL shall cease for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, except that this prohibition does not apply with respect to trades in any securities by or of NTL through an appropriately registered dealer with (a) an "accredited investor" (as that term is defined in section 1.1 of National Instrument 45-106 – Prospectus and Registration Exemptions) that is not an individual, or (b) an individual who is a "permitted client" (as that term is defined in section 1.1 of National Instrument 31-103 – Registration Requirements, Exemptions and Ongoing Registrant Obligations);

(d) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by NTL is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, except that this prohibition does not apply with respect to the acquisition of any securities as a result of the incorporation of a corporation that is a wholly owned subsidiary of NTL;

(e) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to NTL for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, except that this prohibition does not apply with respect to trades in any securities by or of NTL through an appropriately registered dealer with (a) an "accredited investor" (as that term is defined in section 1.1 of National Instrument 45-106 – Prospectus and Registration Exemptions) that is not an individual or (b) an individual who is a "permitted client" (as that term is defined in section 1.1 of National Instrument 31-103 – Registration Requirements, Exemptions and Ongoing Registrant Obligations);

(f) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Pickering shall cease for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, except that Pickering may trade in the account of any registered retirement savings plan, registered pension plan, tax free savings accounts, self-directed retirement savings plans as defined in the Income Tax Act, R.S.C. 1985, c.1, as amended, and/or for any registered education savings plan ("RESP") accounts for which Pickering and/or his spouse have sole legal and beneficial ownership or are a sponsor, and such trading shall be carried out solely through an appropriately registered dealer in Canada (which dealer must be given a copy of this Order);

(g) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Pickering is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement;

(h) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Pickering for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement;

(i) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Pickering shall immediately resign all positions that he holds as a director or officer of any reporting issuer, registrant or investment fund manager;

(j) pursuant to paragraph 7 of subsection 127(1) of the Act, Pickering shall immediately resign any position that he holds as a director or officer of any issuer other than NTL, with the exception that Pickering is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation;

(k) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Pickering is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager;

(l) pursuant to paragraph 8 of subsection 127(1) of the Act, Pickering is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement from becoming or acting as a director or officer of any issuer other than NTL or a wholly owned subsidiary of NTL, with the exception that Pickering is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation;

(m) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Pickering is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(n) in the event that the Pickering Respondents do not fully comply with the Undertaking, then pursuant to paragraph 10 of subsection 127(1) of the Act, the Pickering Respondents shall disgorge to the Commission the unpaid balance arising from the Undertaking, up to the amount of $2,261,000 obtained as a result of non-compliance with Ontario securities law. The amount of $2,261,000 to be disgorged to the Commission pursuant to this paragraph (n) shall be reduced by the same amount as any funds paid back to the Non-Exempt Lenders in accordance with the Undertaking, provided that satisfactory supporting evidence of such payments is provided by the Pickering Respondents to Staff. This disgorgement amount shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

(o) pursuant to section 127.1 of the Act, the Pickering Respondents, jointly and severally, shall within one year commencing on the date of the Commission's order approving this Settlement Agreement, pay to the Commission the amount of $25,000.00, representing a portion of Staff's costs in this matter;

(p) After the payments set out in paragraphs (n) and (o) are made in full, as an exception to the provisions of paragraphs (f), (g), (h), (k) and (l), of this Order above, Pickering is permitted to acquire for the account of any registered retirement savings plan, registered pension plan, tax free savings accounts, self-directed retirement savings plans as defined in the Income Tax Act, R.S.C. 1985, c.1, as amended, and/or for any RESP accounts for which Pickering and/or his spouse have sole legal and beneficial ownership or are a sponsor, and such trading shall be carried out solely through an appropriately registered dealer in Canada (which dealer must be given a copy of this Order):

i. any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101- Marketplace Operation provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities, or

ii. any security issued by a mutual fund that is a reporting issuer;

and exemptions are permitted for the purpose of trades described in this subparagraph;

(q) Until the entire amount of the payments set out in subparagraphs (n) and (o) of this Order above, are paid in full, the prohibitions set out in subparagraphs (c), (d), (e), (f), (g), (h), (k) and (l), shall continue in force without any limitation as to time period;

(r) The Pickering Respondents shall file with the Commission, on behalf of NTL, no later than ten (10) days after the date of approval of this Settlement Agreement, Form 45-106F1 in respect of the Exempt Lenders, and to pay the applicable activity fee of $500.00 concurrently with the filing. The Pickering Respondents acknowledge that if they fail to file Form 45-106F1 within ten (10) days of the date of approval of this Settlement Agreement, late fees in accordance with OSC Rule 13-502 will accrue from the tenth day following the date of approval of this Settlement Agreement; and

(s) Nothing in this Order shall prevent NTL from repaying, in full or in part, an NTL Promissory Note outstanding as at the date of this Settlement Agreement.

DATED at Toronto this 3rd day of September, 2014.

"Christopher Portner"

2.2.3 Newer Technologies Limited et al. – s. 127(1)

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

AND

IN THE MATTER OF
NEWER TECHNOLOGIES LIMITED,
RYAN PICKERING AND RODGER FREY

ORDER
(Subsection 127(1) of the Securities Act)

WHEREAS on December 4, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on December 4, 2012 in respect of Newer Technologies Limited, Ryan Pickering and Rodger Frey (collectively, the "Respondents");

AND WHEREAS on September 3, 2014, the Commission issued an Order approving a Settlement Agreement reached between Staff and Newer Technologies Limited and Ryan Pickering dated September 2, 2014 and an Order approving a Settlement Agreement reached between Staff and Rodger Frey dated September 2, 2014;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS ORDERED that the dates of September 8, 10, 11, 12, and 15, 2014 scheduled for the hearing on the merits are vacated.

DATED at Toronto this 3rd day of September, 2014.

"Christopher Portner"

2.2.4 Tricoastal Capital Partners LLC et al. – s. 127(1)

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

AND

IN THE MATTER OF
TRICOASTAL CAPITAL PARTNERS LLC,
TRICOASTAL CAPITAL MANAGEMENT LTD. AND
KEITH MACDONALD SUMMERS

ORDER
(Subsections 127(1))

WHEREAS on July 25, 2013, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order (the "Temporary Order") pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering the following:

1. pursuant to clause 2 of subsection 127(1) and subsection 127(5) of the Act that all trading in any securities by Keith MacDonald Summers ("Summers"), Tricoastal Capital Partners LLC ("Tricoastal Partners") and Tricoastal Capital Management Ltd. ("Tricoastal Capital") (collectively, the "Respondents") or their agents shall cease; and

2. pursuant to clause 3 of subsection 127(1) and subsection 127(5) of the Act that the exemptions contained in Ontario securities law do not apply to the Respondents or their agents;

AND WHEREAS on August 6, 2013, the Commission ordered pursuant to subsection 127(8) of the Act, that the Temporary Order is extended until February 5, 2014, or until further order of the Commission;

AND WHEREAS Staff of the Commission ("Staff") appeared on February 3, 2014 and advised that counsel for the Respondents consented to a further six month extension of the Temporary Order;

AND WHEREAS the Commission ordered that the Temporary Order be extended until August 8, 2014 and that the hearing of the matter be adjourned to August 6, 2014;

AND WHEREAS Staff and counsel for the Respondents appeared at a status update on June 2, 2014 at 11:00 a.m.;

AND WHEREAS on June 3, 2014, the Commission ordered that the August 6, 2014 date for the continuation of the Temporary Order be vacated;

AND WHEREAS on June 2, 2014 the Commission ordered that the Temporary Order be extended until September 11, 2014 and that the hearing of this matter be adjourned to September 9, 2014 at 3:00 p.m.;

AND WHEREAS the Respondents entered into a Settlement Agreement dated August 20, 2014 (the "Settlement Agreement") in relation to the matters set out in a Statement of Allegations dated February 27, 2014;

AND WHEREAS the Commission issued a Notice of Hearing dated September 2, 2014 setting out that it proposed to consider the Settlement Agreement on September 4, 2014;

AND WHEREAS on September 4, 2014, the Commission considered submissions from Staff and counsel for the Respondents;

AND WHEREAS on September 4, 2014, the Commission ordered that the Settlement Agreement be approved and issued an order imposing sanctions on the Respondents;

IT IS HEREBY ORDERED that the September 9, 2014 hearing date for the continuation of the Temporary Order is vacated.

DATED at Toronto this 4th day of September, 2014.

"James E. A. Turner"

2.2.5 Keith MacDonald Summers et al. – s. 127(1)

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, as amended

AND

IN THE MATTER OF
KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC, AND
TRICOASTAL CAPITAL MANAGEMENT LTD.

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC, AND
TRICOASTAL CAPITAL MANAGEMENT LTD.

ORDER
(Section 127(1))

WHEREAS on February 27, 2014, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the "Act") in respect of Keith MacDonald Summers ("Summers"), Tricoastal Capital Partners LLC ("Tricoastal Partners") and Tricoastal Capital Management Ltd. ("Tricoastal Management") (collectively, the "Respondents");

AND WHEREAS on February 27, 2014, Staff of the Commission filed a Statement of Allegations;

AND WHEREAS on June 4, 2014, Summers pled guilty to one count of fraud over $5,000 contrary to section 380 of the *Criminal Code*, R.S.C. 1985, C-46 (the "*Criminal Code*") and one count of uttering a forged document contrary to section 368 of the *Criminal Code* (the "Parallel Criminal Proceeding"), based on the same facts that underlie the allegations in this matter;

AND WHEREAS the Respondents entered into a Settlement Agreement dated August 20, 2014 (the "Settlement Agreement") in relation to the matters set out in the Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing dated September 2, 2014 setting out that it proposed to consider the Settlement Agreement;

UPON reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from the Respondents through their counsel and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED:

1. the Settlement Agreement is approved;

2. pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by the Respondents shall cease permanently, with the exception that Summers is permitted to trade in securities for the account of a registered retirement savings plan (as defined in the *Income Tax Act*, R.S.C., 1985, c. 1, as amended) ("RRSP") and/or a tax-free savings account ("TFSA") in which he and/or his spouse have sole legal and beneficial ownership only after complying with any disgorgement or restitution order made in connection with the Parallel Criminal Proceeding, provided that:

   (i) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer;

(ii) Summers does not own legally or beneficially (in the aggregate, together with his respective spouse) more than one percent of the outstanding securities of the class or series of the class in question; and

(iii) Summers carries out any permitted trading through a registered dealer and through trading accounts opened in his name or the name of his spouse only (and he must close any trading accounts that are not in his name or the name of his spouse only);

3. pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by the Respondents is permanently prohibited, except to allow trading in securities permitted by and in accordance with paragraph 2 of this Order;

4. pursuant to clause 3 of subsection 127(1) of the Act, any or all exemptions contained in Ontario securities law do not apply to the Respondents permanently, except to allow trading in securities permitted by and in accordance with paragraph 2 of this Order;

5. pursuant to clause 6 of subsection 127(1) of the Act, Summers is reprimanded;

6. pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the Act, Summers shall resign all positions he holds as an officer or director of any issuer, of any registrant, or of any investment fund manager, except that Summers may retain any position he holds as a director or officer of a private issuer in which he or his spouse are the only shareholders; and

7. pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act, Summers is permanently prohibited from becoming or acting as an officer or director of any issuer, of any registrant, or of any investment fund manager, except that Summers may act as an officer or director of a private issuer in which he or his spouse are the only shareholders.

DATED at Toronto this 4th day of September, 2014.

“James E. A. Turner”

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Newer Technologies Limited et al.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, C. S.5, AS AMENDED

AND

IN THE MATTER OF
NEWER TECHNOLOGIES LIMITED,
RYAN PICKERING AND RODGER FREY

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
RODGER FREY

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Ontario Securities Commission (the "**Commission**") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "**Act**"), it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Rodger Frey ("**Frey**" or the "Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("**Staff**") agree to recommend settlement of the proceeding commenced against Frey by Notice of Hearing dated December 4, 2012 (the "**Proceeding**") according to the terms and conditions set out in Part V of this Settlement Agreement (this "**Settlement Agreement**"). Frey agrees to the making of an order in the form attached as Schedule "A", based on the facts set out below.

3. For the purposes of this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Frey agrees with the facts as set out in Part III and the conclusion in Part IV of this Settlement Agreement.

PART III – AGREED FACTS

A. OVERVIEW

4. Between 2006 and 2010 (the "**Material Time**"), Newer Technologies Limited ("**NTL**") and Ryan Pickering ("**Pickering**") (collectively, the "**Pickering Respondents**"), borrowed approximately $11,921,895 from approximately 140 lenders, at interest rates ranging from 8% to 15%, and provided demand promissory notes (the "**NTL Promissory Notes**") to the lenders as evidence of its indebtedness. Some of the loans were sourced by the respondent, Frey, who was paid a fee based on the aggregate amount of the loans he referred to NTL. The sale of NTL Promissory Notes were trades in securities not previously issued and were therefore distributions. NTL has never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of these securities. None of Frey or the Pickering Respondents has ever been registered with the Commission, and exemptions from registration were, for most of these trades, not available to them under the Act when they traded these securities. Frey breached sections 25 and 53 of the Act, and acted in a manner contrary to Ontario securities law and the public interest.

B. THE RESPONDENTS

5. NTL is an automated teller machine ("**ATM**") management company that was incorporated in Ontario in 2003. NTL owns, sells, operates and services ATMs in Ontario. NTL currently processes transactions for approximately 900 ATMs, of which it owns approximately 250.

6. Pickering is a resident of Conestogo, Ontario. He is the president, director and the only signing officer of NTL.

7. Rodger Frey ("**Frey**") is a resident of Elmira, Ontario.

8. NTL, Pickering and Frey have never been registered to trade in securities in Ontario and were not registered with the Commission in any capacity during the Material Time or at any other time.

C. CONDUCT AT ISSUE

9. During the Material Time, NTL borrowed a total of approximately $11,921,895 from approximately one hundred and forty (140) lenders at interest rates ranging from 8% to 15%. Each lender received an NTL Promissory Note in respect of its loan.

10. Many of NTL's lenders have since requested the repayment of their loans and NTL has repaid $6,845,895 in principal, plus interest, to those lenders. As of July 10, 2014, NTL had $5,076,000 in outstanding loans owing to sixty-one (61) separate lenders. The Pickering Respondents have represented to Staff that at all times NTL has been current on all of its loans and has never defaulted on a loan.

11. Some of NTL's loans were sourced by the respondent, Frey, who was paid a fee based on the aggregate amount of the loans he referred to NTL.

D. THE RESPONDENT'S POSITION

12. Before becoming involved with NTL, Frey received his high school diploma and was subsequently employed as a mill worker and driver at a feed and supply company servicing local farms covering the Southern Ontario region.

13. Frey had never worked in the securities industry and was not aware that his conduct was contrary to securities law.

14. Of the monies received by Frey, Frey has represented that he has paid out approximately $183,000 to persons who referred clients to him, whom he then referred to NTL. Further, Frey has represented that between 2007 and 2011, he and his spouse donated more than $101,000 to various charities and to their local church. Frey also claims to have incurred approximately $120,000 in costs, including mileage expenses, arising from his involvement with NTL's business.

15. Since ceasing his involvement with NTL, Frey has returned to working for the feed and supply company and has experienced significant financial hardship.

16. Frey has represented that none of the clients he referred to NTL have suffered any losses.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

17. Each NTL Promissory Note evidenced indebtedness and the NTL Promissory Notes were therefore securities under the Act.

18. The sale of NTL Promissory Notes were trades in securities not previously issued and were therefore distributions. NTL has never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of these securities.

19. Not all of the 140 investors qualified as accredited investors or met applicable exemptions from the prospectus requirement. Further, NTL, Pickering and Frey failed to make any appropriate inquiries relating to investors' financial condition.

20. Frey traded in NTL Promissory Notes when he was not registered with the Commission and when no exemptions from the registration and prospectus requirements were available to him under the Act.

21. By engaging in the conduct described above, Frey admits and acknowledges that he has breached Ontario securities law and engaged in conduct contrary to the public interest. In particular:

a. Frey traded and engaged in, or held himself out as engaging in, the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the Act as that section existed at the time the conduct at issue commenced in 2006, and, after September 28, 2009, contrary to subsection 25(1) of the Act; and

b. Frey distributed securities where no preliminary prospectus and prospectus were issued nor receipted by the Director under the Act, and where no exemptions were available, contrary to section 53 of the Act.

PART V – TERMS OF SETTLEMENT

22. Frey agrees to the following terms of settlement listed below and to the Order attached hereto, made by the Commission pursuant to section 127(1) and section 127.1 of the Act:

a. This Settlement Agreement is approved;

b. Frey be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

c. trading in any securities by Frey shall cease permanently, commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 2 of subsection 127(1) of the Act;

d. acquisition of any securities by Frey is prohibited permanently, commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

e. any exemptions contained in Ontario securities law do not apply to Frey permanently, commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 3 of subsection 127(1) of the Act;

f. Frey shall immediately resign all positions that he holds as a director or officer of any issuer (except as set out in subparagraph 22(h) below), registrant or investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;

g. Frey is prohibited from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager, permanently, commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act;

h. Frey is prohibited from becoming or acting as a director or officer of any issuer permanently, commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraph 8 of subsection 127(1) of the Act, with the exception that Frey is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 6 holders of the securities of the company;

i. Frey is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter, permanently, commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.5 of section 127(1) of the Act;

j. Frey shall pay costs in the amount of $5,000, payable within two years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to section 127.1 of the Act. Frey agrees to pay at least $1250.00 by cheque six months after the Commission approves this Settlement Agreement and to pay at least $1250.00 by cheque every six months thereafter until the entire amount of the $5,000 penalty is paid in full;

k. after the payment of $5,000 set out in paragraph 22 (j) above is made in full, as an exception to the provisions of paragraphs 22 (c), (d), and (e) above, Frey is permitted to: (1) trade on his own behalf in his own accounts, and (2) acquire securities on his own behalf in his own accounts. Until the entire amount of $5,000 set out in paragraph 22 (j) above is paid in full, the provisions of paragraphs 22 (c), (d), and (e) above shall continue in force without any limitation as to time.

23. Frey hereby consents to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in sub-paragraphs 22 (b) to (i) above. These prohibitions and orders may be modified to reflect the provisions of the relevant provincial or territorial securities law.

PART VI – STAFF COMMITMENT

24. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against Frey under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 25 below.

25. If the Commission approves this Settlement Agreement and Frey fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against Frey. These proceedings may be based on, but will not be limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement. In addition, if this Settlement Agreement is approved by the Commission, and Frey fails to comply with its terms, the Commission is entitled to bring any proceedings necessary to recover the amounts set out in sub-paragraph 22 (j) above.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

26. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for September 3, 2014, or on another date agreed to by Staff and Frey, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.

27. This Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on Frey's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

28. If the Commission approves this Settlement Agreement, Frey irrevocably waives all right to a full hearing, judicial review or appeal of this matter under the Act.

29. If the Commission approves this Settlement Agreement, neither Staff nor Frey will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

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

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

31. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

    a. This Settlement Agreement and all discussions and negotiations between Staff and Frey before the settlement hearing takes place will be without prejudice to Staff and Frey; and

    b. Staff and Frey will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations of Staff dated December 4, 2012. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

32. Both Staff and Frey will keep the terms of this Settlement Agreement confidential until the Commission approves this Settlement Agreement. Any obligations of confidentiality shall terminate upon the commencement of the public settlement hearing. If, for whatever reason, the Commission does not approve this Settlement Agreement, the terms of this Settlement Agreement remain confidential indefinitely, unless Staff and the Respondent otherwise agree or if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

33. This agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

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

Dated this 2nd day of September, 2014.

“Tom Atkinson”
Director, Enforcement Branch

Dated this 29th day of August, 2014.

"Rodger Frey"

"Karla Frey"
[Name]
Witness

SCHEDULE "A"

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

AND

IN THE MATTER OF
NEWER TECHNOLOGIES LIMITED,
RYAN PICKERING AND RODGER FREY

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
RODGER FREY

ORDER
(Sections 127 and 127.1 of the Securities Act)

WHEREAS on December 4, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") to consider whether it is in the public interest to make orders, as specified therein, against and in respect of Newer Technologies Limited ("NTL"), Ryan Pickering ("Pickering") and Rodger Frey ("Frey"). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff") dated December 4, 2012;

AND WHEREAS Frey has entered into a Settlement Agreement with Staff of the Commission dated , 2014 (the "Settlement Agreement") in which Frey agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated December 4, 2012, subject to the approval of the Commission;

AND WHEREAS on August 29, 2014, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a Settlement Agreement entered into between Staff and Frey;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Frey, and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

(a) The Settlement Agreement is approved;

(b) pursuant to paragraph 6 of subsection 127(1) of the Act, Frey is reprimanded;

(c) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Frey shall cease permanently;

(d) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Frey is prohibited permanently;

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

(f) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Frey shall immediately resign all positions that he holds as a director or officer of any issuer (except as set out in subparagraph (h) of this Order, below), registrant or investment fund manager;

(g) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Frey is permanently prohibited from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager;

(h) pursuant to paragraph 8 of subsection 127(1) of the Act, Frey is permanently prohibited from becoming or acting as a director or officer of any issuer, with the exception that Frey is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 6 holders of the securities of the company;

(i) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Frey is permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(j) pursuant to section 127.1 of the Act, Frey shall pay to the Commission the amount of $5,000.00, representing a portion of Staff's costs in this matter, within two years of the approval by the Commission of this Settlement Agreement. Frey shall pay at least $1250.00 by cheque six months after the Commission approves this Settlement Agreement and to pay at least $1250.00 by cheque every six months thereafter until the entire amount of the $5,000 penalty is paid in full;

(k) After the payment of $5,000.00 set out in paragraph (j) above is made in full, as an exception to the provisions of paragraphs (c), (d) and (e) of this Order above, Frey is permitted to:

i. trade on his own behalf in his own accounts; and

ii. acquire securities on his own behalf in his own accounts.

(l) Until the entire amount of $5,000.00 set out in paragraph (j) above is paid in full, the prohibitions set out in subparagraphs (c), (d) and (e) above shall continue in force without any limitation as to time.

DATED at Toronto this 3rd day of September, 2014.

3.1.2 Newer Technologies Limited et al.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, C. S.5, AS AMENDED

AND

IN THE MATTER OF
NEWER TECHNOLOGIES LIMITED,
RYAN PICKERING AND RODGER FREY

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
NEWER TECHNOLOGIES LIMITED, AND RYAN PICKERING

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Ontario Securities Commission (the "**Commission**") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "**Act**"), it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Newer Technologies Limited ("**NTL**") and Ryan Pickering ("**Pickering**") (collectively, the "**Pickering Respondents**").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("**Staff**") agree to recommend settlement of the proceeding commenced against the Pickering Respondents by Notice of Hearing dated December 4, 2012 (the "**Proceeding**") according to the terms and conditions set out in Part V of this Settlement Agreement (this "**Settlement Agreement**"). The Pickering Respondents agree to the making of an order in the form attached as Schedule "A", based on the facts set out below.

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

PART III - AGREED FACTS

A. OVERVIEW

4. Between 2006 and 2010 (the "**Material Time**"), NTL borrowed $11,921,895 from approximately 140 lenders, at interest rates ranging from 8% to 15%. NTL provided demand promissory notes (each an "**NTL Promissory Note**") to each lender as evidence of its indebtedness. The sale of NTL Promissory Notes were trades in securities not previously issued and were therefore distributions. NTL has never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of these securities. The Pickering Respondents have never been registered with the Commission, and exemptions from registration were, for most of these trades, not available to them under the Act when they traded these securities.

5. The Pickering Respondents have repaid $6,845,895 in principal, plus interest, to its lenders, and have agreed to repay all lenders who do not qualify for any registration/prospectus exemptions.

B. THE RESPONDENTS

6. NTL is an automated teller machine ("**ATM**") management company that was incorporated in Ontario in 2003. NTL owns, sells, operates and services ATMs in Ontario. NTL currently processes transactions for approximately 900 ATMs, of which it owns approximately 250. NTL earns fees in differing amounts in respect of all of the transactions that it processes, as well as certain fees for services provided.

7. Pickering is a resident of Conestogo, Ontario. He is the president, director and the only signing officer of NTL.

8. Rodger Frey ("**Frey**") is a resident of Elmira, Ontario.

9. NTL, Pickering and Frey have never been registered to trade in securities in Ontario and were not registered with the Commission in any capacity during the Material Time or at any other time.

C. CONDUCT AT ISSUE

10. During the Material Time, NTL borrowed $11,921,895 from approximately one hundred and forty (140) lenders at interest rates ranging from 8% to 15%. Each lender received an NTL Promissory Note in respect of its loan. The NTL Promissory Notes state that the lenders are loaning cash to NTL to use as vault cash in its ATM network in Canada, or for the operation of its ATM network in Canada. The NTL Promissory Notes are payable on demand, generally stating that NTL is required to repay the loan within one to three months of notice given by the lender. No disclosure about the risks associated with the loans was made at the time of the loans.

11. The Pickering Respondents have represented to Staff that NTL never marketed or advertised for lenders, but rather found lenders through family, friends and business associates. Some of the loans were sourced by the respondent, Frey, who was paid a fee based on the amount of the loans he referred to NTL.

12. As the number of ATMs owned, operated and/or serviced by NTL grew over the years, NTL's cash flow requirements increased. The funds provided pursuant to the NTL Promissory Notes, along with cash generated by its operations, were needed as NTL is required to have a large amount of cash on hand and cash in ATMs. Cash represents NTL's most significant liquid asset. The Pickering Respondents have represented to Staff (and provided to Staff NTL's (unaudited) 2010, 2011 and 2013 financial statements in support) that the money borrowed from lenders was used as cash to supply the ATMs, for NTL's day to day operating expenses, to fund NTL's own ATM purchases and to purchase armoured vehicles for the business.

D. REPAYMENT BY NEWER AND PICKERING OF INVESTMENTS

13. Over time, many of NTL's lenders have requested the repayment of their loans and NTL has repaid $6,845,895 in principal, plus interest, to those lenders.

14. As of July 10, 2014, NTL had $5,076,000 in outstanding loans owing to sixty-one (61) separate lenders.

15. Throughout, the Pickering Respondents have been making interest payments and repaying loans on request. The Pickering Respondents have represented to Staff that at all times NTL has been current on all of its loans and has never defaulted on a loan, and that repayments have been made from revenue earned from NTL's operations and by reducing the amount of cash on hand.

E. COOPERATION WITH STAFF AND OTHER MITIGATING FACTORS

16. The Pickering Respondents had no experience in the securities industry and were not aware that their conduct was contrary to securities law or even that securities laws could apply to loans. Upon being put on notice of Staff's investigation, at all times, the Pickering Respondents cooperated fully with Staff.

17. NTL has represented to Staff that since approximately January 2011, upon being put on notice of Staff's investigation, it has not borrowed any money and it has undertaken a review of its outstanding loans. Notwithstanding that NTL has not raised any money during this period, NTL has continued to pay its lenders interest and principal on demand.

18. As set out more fully below, the Pickering Respondents have agreed to repay all lenders who do not qualify for any registration/prospectus exemptions. To assist with this process, NTL has retained an Exempt Market Dealer ("**EMD**") registered with the Commission to determine whether certain lenders are eligible for exemptions, and if so, if the investment would pass a suitability analysis.

19. The Pickering Respondents agree that forty nine (49) existing lenders with loans in the aggregate amount of $2,261,000 would not qualify as accredited investors or meet applicable exemptions from the prospectus requirement ("Non-Exempt Lenders"). The Pickering Respondents expect to repay the Non-Exempt Lenders using cash on hand, capital raised through the limited circumstances permitted in this Settlement Agreement, cash generated from the sale of some of NTL's capital assets and/or the liquidation of some of NTL's location agreements. The Pickering Respondents have represented to Staff that NTL's current assets could cover the payment owed to the Non-Exempt Lenders, and that NTL has operated profitably for at least the last 18 months, presenting a recent Balance Sheet and Profit and Loss statements in support.

20. The EMD has confirmed to Staff that twelve (12) of the existing lenders with loans in the aggregate amount of $2,815,000 would qualify as accredited investors or meet applicable exemptions from the prospectus requirement ("**Exempt Lenders**"), but has advised that the loans are not suitable for ten (10) of those lenders with loans in the aggregate amount of $2,675,000 ("**Unsuitable Lenders**"). The EMD has advised that the securities are suitable for the remaining two (2) lenders with loans in the aggregate amount of $140,000.

21. Despite being advised by the EMD that the NTL Promissory Notes are not suitable, all of the Unsuitable Lenders with loans in the aggregate amount of $2,675,000 have signed acknowledgements indicating that they have had a meaningful discussion with the EMD about the unsuitability of the investment, and that they have been specifically advised of the investment's concentration risk, the speculative nature of the NTL Promissory Notes, and the reporting and liquidity risks associated with the investment. All of the Unsuitable Lenders have been offered the opportunity to be repaid, but they have nevertheless instructed the EMD, in accordance with subsection 13.3(2) of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* that they wish to remain invested. The two (2) lenders with loans in the aggregate amount of $140,000 have also signed acknowledgements that they wish to remain invested.

22. In these circumstances in which each of the Exempt Lenders has specifically considered whether to maintain their investment with NTL regardless of the suitability of the investment, and has advised the Pickering Respondents not to return the moneys previously loaned to NTL, Staff have agreed that in the unique circumstances presented by this matter, the date of approval of this Settlement Agreement will be deemed to be the date of distribution of securities to the Exempt Lenders under a prospectus exemption. In accordance with National Instrument 45-106- *Prospectus and Registration Exemptions*, NTL is required, as an issuer of securities to the Exempt Lenders under a prospectus exemption, to file a report of exempt distribution with the OSC no later than 10 days after the date of distribution.

23. The Pickering Respondents have given a joint and several undertaking to the Commission, in the form attached as Schedule "**B**" to this Settlement Agreement (the "**Undertaking**"), that if this Settlement Agreement is approved, they will repay all moneys loaned to NTL by Non-Exempt Lenders ($2,261,000) within twelve (12) months of the date of the order approving this Settlement Agreement. All payments made to Non-Exempt Lenders pursuant to this Undertaking will be made on a pro-rata basis, but nothing shall prevent NTL from repaying an outstanding NTL Promissory Note in full or in part if a lender makes demand under the terms of its NTL Promissory Note. Further, the Pickering Respondents undertake to file with the Commission on behalf of NTL, no later than ten (10) days after the date of approval of this Settlement Agreement, Form 45-106F1 in respect of the Exempt Lenders, and to pay the applicable activity fee of $500.00 concurrently with the filing. The Pickering Respondents acknowledge that if they fail to file Form 45-106F1 within ten (10) days of the date of approval of this Settlement Agreement, late fees in accordance with OSC Rule 13-502 will accrue from the tenth day following the date of approval of this Settlement Agreement.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

24. Each NTL Promissory Note evidenced indebtedness and the NTL Promissory Notes were therefore securities under the Act.

25. The sale of NTL Promissory Notes were trades in securities not previously issued and were therefore distributions. NTL has never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of these securities.

26. Not all of the 140 investors qualified as accredited investors or met applicable exemptions from the prospectus requirement. Further, NTL, Pickering and Frey failed to make any appropriate inquiries relating to the investors' financial condition.

27. The Pickering Respondents traded in NTL Promissory Notes when they were not registered with the Commission and when no exemptions from the registration and prospectus requirements were available to them under the Act.

28. By engaging in the conduct described above, the Pickering Respondents admit and acknowledge that they have breached Ontario securities law and engaged in conduct contrary to the public interest. In particular:

    a. The Pickering Respondents traded and engaged in, or held themselves out as engaging in, the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the Act as that section existed at the time the conduct at issue commenced in 2006, and, after September 28, 2009, contrary to subsection 25(1) of the Act;

    b. The Pickering Respondents distributed securities where no preliminary prospectus and prospectus were issued nor receipted by the Director under the Act, and where no exemptions were available, contrary to section 53 of the Act; and

c. Pickering, as a director and officer of NTL, authorized, permitted or acquiesced in the commission of the violations of sections 25 and 53 of the Act, as set out above, contrary to section 129.2 of the Act.

PART V – TERMS OF SETTLEMENT

29. Subject to paragraph 30, the Pickering Respondents agree to the following terms of settlement listed below and to the Order attached hereto, made by the Commission pursuant to section 127(1) and section 127.1 of the Act:

a. this Settlement Agreement is approved;

b. the Pickering Respondents be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

c. trading in any securities by or of NTL shall cease for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraph 2 of subsection 127(1) of the Act except that this prohibition does not apply with respect to trades in any securities by or of NTL through an appropriately registered dealer with (a) an "accredited investor" (as that term is defined in section 1.1 of National Instrument 45-106 – *Prospectus and Registration Exemptions*) that is not an individual, or (b) an individual who is a "permitted client" (as that term is defined in section 1.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*);

d. acquisition of any securities by NTL is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraph 2.1 of subsection 127(1) of the Act except that this prohibition does not apply with respect to the acquisition of any securities as a result of the incorporation of a corporation that is a wholly owned subsidiary of NTL;

e. any exemptions contained in Ontario securities law do not apply to NTL for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraph 3 of subsection 127(1) of the Act, except that this prohibition does not apply with respect to trades in any securities by or of NTL through an appropriately registered dealer with (a) an "accredited investor" (as that term is defined in section 1.1 of National Instrument 45-106 – Prospectus and Registration Exemptions) that is not an individual or (b) an individual who is a "permitted client" (as that term is defined in section 1.1 of National Instrument 31-103 – Registration Requirements, Exemptions and Ongoing Registrant Obligations);

f. trading in any securities by Pickering shall cease for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraph 2 of subsection 127(1) of the Act, except that Pickering may trade in the account of any registered retirement savings plan, registered pension plan, tax free savings accounts, self-directed retirement savings plans as defined in the *Income Tax Act*, R.S.C. 1985, c.1, as amended, and/or for any registered education savings plan ("**RESP**") accounts for which Pickering and/or his spouse have sole legal and beneficial ownership or are a sponsor, and such trading shall be carried out solely through an appropriately registered dealer in Canada (which dealer must be given a copy of this Order);

g. acquisition of any securities by Pickering is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraph 2.1 of subsection 127(1) of the Act;

h. any exemptions contained in Ontario securities law do not apply to Pickering for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraph 3 of subsection 127(1) of the Act;

i. Pickering shall immediately resign all positions that he holds as a director or officer of any reporting issuer, registrant or investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;

j. Pickering shall immediately resign any position he holds as a director or officer of any issuer other than NTL pursuant to paragraph 7 of subsection 127(1) of the Act, with the exception that Pickering is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation;

k. Pickering is prohibited from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager, for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act;

l. Pickering is prohibited from becoming or acting as a director or officer of any issuer other than NTL or a wholly owned subsidiary of NTL, for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraph 8 of subsection 127(1) of the Act, with the exception that Pickering is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation;

m. the Pickering Respondents are prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter, for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

n. the Pickering Respondents shall have delivered to the Commission the Undertaking, in the form attached as Schedule "**B**" to this Settlement Agreement, whereby the Pickering Respondents jointly and severally undertake to repay all moneys loaned to NTL by Non-Exempt Lenders ($2,261,000) within twelve (12) months of the date of the Commission's order approving this Settlement Agreement. All payments made to Non-Exempt Lenders pursuant to this Undertaking will be made on a pro-rata basis, but nothing shall prevent NTL from repaying an outstanding NTL Promissory Note in full or in part if a lender makes demand under the terms of its NTL Promissory Note. The Pickering Respondents also undertake to file with the Commission, on behalf of NTL, no later than ten (10) days after the date of approval of this Settlement Agreement, Form 45-106F1 in respect of the Exempt Lenders, and to pay the applicable activity fee of $500.00 concurrently with the filing. The Pickering Respondents acknowledge that if they fail to file Form 45-106F1 within ten (10) days of the date of approval of this Settlement Agreement, late fees in accordance with OSC Rule 13-502 will accrue from the tenth day following the date of approval of this Settlement Agreement;

o. in the event that the Pickering Respondents do not fully comply with the Undertaking, then pursuant to paragraph 10 of subsection 127(1) of the Act, the Pickering Respondents shall disgorge to the Commission the unpaid balance arising from the Undertaking, up to the amount of $2,261,000 obtained as a result of non-compliance with Ontario securities law. The amount of $2,261,000 to be disgorged to the Commission pursuant to this paragraph 29(o) shall be reduced by the same amount as any funds paid back to the Non-Exempt Lenders in accordance with the Undertaking, provided that satisfactory supporting evidence of such payments is provided by the Pickering Respondents to Staff. This disgorgement amount shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

p. the Pickering Respondents, jointly and severally, shall pay costs in the amount of $25,000 payable within one year commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to section 127.1 of the Act;

q. after the payments set out in paragraphs 29 (n), (o), and (p) are made in full, as an exception to the provisions of paragraphs 29 (f), (g), (h), (k) and (l), Pickering is permitted to acquire for the account of any registered retirement savings plan, registered pension plan, tax free savings accounts, self-directed retirement savings plans as defined in the Income Tax Act, R.S.C. 1985, c.1, as amended, and/or for any RESP accounts for which Pickering and/or his spouse have sole legal and beneficial ownership or are a sponsor, and such trading shall be carried out solely through an appropriately registered dealer in Canada (which dealer must be given a copy of this Order):

   i. any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101- *Marketplace Operation* provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities, or

   ii. any security issued by a mutual fund that is a reporting issuer;

   and exemptions are permitted for the purpose of trades described in this subparagraph;

r. until the entire amount of the payments set out in subparagraphs 29 (n), (o), and (p) are paid in full, the provisions of paragraphs 29 (c), (d), (e), (f), (g), (h), (k) and (l), shall continue in force without any limitation as to time period.

30. Nothing in paragraph 29 shall prevent NTL from repaying an NTL Promissory Note outstanding as at the date of this Settlement Agreement.

31. Pickering, on his own behalf and on behalf of NTL, hereby consents to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in sub-paragraphs 29

(b) to (m) above. These prohibitions and orders may be modified to reflect the provisions of the relevant provincial or territorial securities law.

PART VI – STAFF COMMITMENT

32. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against the Pickering Respondents under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 33 below.

33. If the Commission approves this Settlement Agreement and the Pickering Respondents fail to comply with any of the terms of this Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Pickering Respondents. These proceedings may be based on, but will not be limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement. In addition, if this Settlement Agreement is approved by the Commission, and the Pickering Respondents fail to comply with its terms, the Commission is entitled to bring any proceedings necessary to recover the amounts set out in sub-paragraphs 29 (n), (o), and (p) above.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

34. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for September 3, 2014, or on another date agreed to by Staff and the Pickering Respondents, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.

35. This Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Pickering Respondents' conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

36. If the Commission approves this Settlement Agreement, the Pickering Respondents irrevocably waive all right to a full hearing, judicial review or appeal of this matter under the Act.

37. If the Commission approves this Settlement Agreement, neither Staff nor the Pickering Respondents will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

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

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

39. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

    a. This Settlement Agreement and all discussions and negotiations between Staff and the Pickering Respondents before the settlement hearing takes place will be without prejudice to Staff and the Pickering Respondents; and

    b. Staff and the Pickering Respondents will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations of Staff dated December 4, 2012. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

40. Both Staff and the Pickering Respondents will keep the terms of this Settlement Agreement confidential until the Commission approves this Settlement Agreement. Any obligations of confidentiality shall terminate upon the commencement of the public settlement hearing. If, for whatever reason, the Commission does not approve this Settlement Agreement, the terms of this Settlement Agreement shall remain confidential indefinitely, unless Staff and the Respondent otherwise agree or if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

41. This agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

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

Dated this 2nd day of September, 2014.

Dated this 2nd day of September, 2014.

"Tom Atkinson"
Director, Enforcement Branch

Dated this 29th day of August, 2014

"Ryan Pickering" "Michele Pickering"
[Name]
Witness

Dated this 29th day of August, 2014
Newer Technologies Limited

"Ryan Pickering" "Michele Pickering"
President [Name]
Witness

SCHEDULE "A"

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

AND

IN THE MATTER OF
NEWER TECHNOLOGIES LIMITED,
RYAN PICKERING AND RODGER FREY

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
NEWER TECHNOLOGIES LIMITED, AND RYAN PICKERING

ORDER
(Sections 127 and 127.1 of the Securities Act)

WHEREAS on December 4, 2012, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") to consider whether it is in the public interest to make orders, as specified therein, against and in respect of Newer Technologies Limited ("**NTL**"), Ryan Pickering ("**Pickering**") and Rodger Frey ("**Frey**"). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("**Staff**") dated December 4, 2012;

AND WHEREAS NTL and Pickering (collectively, the "**Pickering Respondents**") have entered into a Settlement Agreement with Staff of the Commission dated September 2 , 2014 (the "**Settlement Agreement**") in which the Pickering Respondents agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated December 4, 2012, subject to the approval of the Commission;

AND WHEREAS pursuant to the Settlement Agreement, the Pickering Respondents have given a joint and several undertaking to the Commission, in the form attached as Schedule "B" to the Settlement Agreement (the "**Undertaking**"):

1. to repay all moneys loaned to NTL by forty nine (49) existing lenders in the aggregate amount of $2,261,000, which lenders do not qualify as accredited investors or meet applicable exemptions from the prospectus requirement (the "Non-Exempt Lenders"), within twelve (12) months of the date of the Commission's order approving the Settlement Agreement. All payments made to Non-Exempt Lenders pursuant to this Undertaking will be made on a pro-rata basis, but nothing shall prevent NTL from repaying an outstanding NTL Promissory Note in full or in part if a lender makes demand under the terms of its NTL Promissory Note; and

2. to file with the Commission, on behalf of NTL, no later than ten (10) days after the date of approval of the Settlement Agreement, Form 45-106F1 in respect of the twelve (12) existing lenders who made loans in the aggregate amount of $2,815,000 and who qualify as accredited investors or meet applicable exemptions from the prospectus requirement ("Exempt Lenders") that are remaining lenders to NTL, and to pay the applicable activity fee of $500.00 concurrently with the filing. The Pickering Respondents acknowledge that if they fail to file Form 45-106F1 within ten (10) days of the date of approval of the Settlement Agreement, late fees in accordance with OSC Rule 13-502 will accrue from the tenth day following the date of approval of the Settlement Agreement;

AND WHEREAS on August 29, 2014, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a Settlement Agreement entered into between Staff and the Pickering Respondents;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for the Pickering Respondents, and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

(a) The Settlement Agreement is approved;

(b) pursuant to paragraph 6 of subsection 127(1) of the Act, the Pickering Respondents are reprimanded;

(c) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by or of NTL shall cease for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, except that this prohibition does not apply with respect to trades in any securities by or of NTL through an appropriately registered dealer with (a) an "accredited investor" (as that term is defined in section 1.1 of National Instrument 45-106 – Prospectus and Registration Exemptions) that is not an individual, or (b) an individual who is a "permitted client" (as that term is defined in section 1.1 of National Instrument 31-103 – Registration Requirements, Exemptions and Ongoing Registrant Obligations);

(d) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by NTL is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, except that this prohibition does not apply with respect to the acquisition of any securities as a result of the incorporation of a corporation that is a wholly owned subsidiary of NTL;

(e) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to NTL for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, except that this prohibition does not apply with respect to trades in any securities by or of NTL through an appropriately registered dealer with (a) an "accredited investor" (as that term is defined in section 1.1 of National Instrument 45-106 – Prospectus and Registration Exemptions) that is not an individual or (b) an individual who is a "permitted client" (as that term is defined in section 1.1 of National Instrument 31-103 – Registration Requirements, Exemptions and Ongoing Registrant Obligations);

(f) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Pickering shall cease for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, except that Pickering may trade in the account of any registered retirement savings plan, registered pension plan, tax free savings accounts, self-directed retirement savings plans as defined in the Income Tax Act, R.S.C. 1985, c.1, as amended, and/or for any registered education savings plan ("RESP") accounts for which Pickering and/or his spouse have sole legal and beneficial ownership or are a sponsor, and such trading shall be carried out solely through an appropriately registered dealer in Canada (which dealer must be given a copy of this Order);

(g) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Pickering is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement;

(h) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Pickering for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement;

(i) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Pickering shall immediately resign all positions that he holds as a director or officer of any reporting issuer, registrant or investment fund manager;

(j) pursuant to paragraph 7 of subsection 127(1) of the Act, Pickering shall immediately resign any position that he holds as a director or officer of any issuer other than NTL, with the exception that Pickering is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation;

(k) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Pickering is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager;

(l) pursuant to paragraph 8 of subsection 127(1) of the Act, Pickering is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement from becoming or acting as a director or officer of any issuer other than NTL or a wholly owned subsidiary of NTL, with the exception that Pickering is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation;

(m) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Pickering is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(n) in the event that the Pickering Respondents do not fully comply with the Undertaking, then pursuant to paragraph 10 of subsection 127(1) of the Act, the Pickering Respondents shall disgorge to the Commission the unpaid balance arising from the Undertaking, up to the amount of $2,261,000 obtained as a result of non-compliance with Ontario securities law. The amount of $2,261,000 to be disgorged to the Commission pursuant to this paragraph (n) shall be reduced by the same amount as any funds paid back to the Non-Exempt Lenders in accordance with the Undertaking, provided that satisfactory supporting evidence of such payments is provided by the Pickering Respondents to Staff. This disgorgement amount shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

(o) pursuant to section 127.1 of the Act, the Pickering Respondents, jointly and severally, shall within one year commencing on the date of the Commission's order approving this Settlement Agreement, pay to the Commission the amount of $25,000.00, representing a portion of Staff's costs in this matter;

(p) After the payments set out in paragraphs (n) and (o) are made in full, as an exception to the provisions of paragraphs (f), (g), (h), (k) and (l), of this Order above, Pickering is permitted to acquire for the account of any registered retirement savings plan, registered pension plan, tax free savings accounts, self-directed retirement savings plans as defined in the Income Tax Act, R.S.C. 1985, c.1, as amended, and/or for any RESP accounts for which Pickering and/or his spouse have sole legal and beneficial ownership or are a sponsor, and such trading shall be carried out solely through an appropriately registered dealer in Canada (which dealer must be given a copy of this Order):

i. any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101- Marketplace Operation provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities, or

ii. any security issued by a mutual fund that is a reporting issuer;

and exemptions are permitted for the purpose of trades described in this subparagraph;

(q) Until the entire amount of the payments set out in subparagraphs (n) and (o) of this Order above, are paid in full, the prohibitions set out in subparagraphs (c), (d), (e), (f), (g), (h), (k) and (l), shall continue in force without any limitation as to time period;

(r) The Pickering Respondents shall file with the Commission, on behalf of NTL, no later than ten (10) days after the date of approval of this Settlement Agreement, Form 45-106F1 in respect of the Exempt Lenders, and to pay the applicable activity fee of $500.00 concurrently with the filing. The Pickering Respondents acknowledge that if they fail to file Form 45-106F1 within ten (10) days of the date of approval of this Settlement Agreement, late fees in accordance with OSC Rule 13-502 will accrue from the tenth day following the date of approval of this Settlement Agreement; and

(s) Nothing in this Order shall prevent NTL from repaying, in full or in part, an NTL Promissory Note outstanding as at the date of this Settlement Agreement.

DATED at Toronto this 3rd day of September, 2014.

"Christopher Portner"

SCHEDULE "B"

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, C. S.5, AS AMENDED

AND

IN THE MATTER OF
NEWER TECHNOLOGIES LIMITED,
RYAN PICKERING AND RODGER FREY

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
NEWER TECHNOLOGIES LIMITED, AND RYAN PICKERING

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

This Undertaking is given in connection with a settlement agreement dated , 2014 (the "**Settlement Agreement**") between the Respondents Newer Technologies Limited ("**NTL**") and Ryan Pickering ("**Pickering**") (collectively, the "**Pickering Respondents**") and Staff of the Commission ("**Staff**"), and all terms shall have the same meaning herein as therein unless otherwise defined herein.

Pickering and NTL hereby jointly and severally undertake to the Commission:

1. to repay all moneys loaned to NTL by forty nine (49) Non-Exempt Lenders in the aggregate amount of $2,261,000, within twelve (12) months of the date of the Commission's order approving the Settlement Agreement. All payments made to Non-Exempt Lenders pursuant to this Undertaking will be made on a pro-rata basis, but nothing shall prevent NTL from repaying an outstanding NTL Promissory Note in full or in part if a lender makes demand under the terms of its NTL Promissory Note; and

2. to file with the Commission, on behalf of NTL, no later than ten (10) days after the date of approval of the Settlement Agreement, Form 45-106F1 in respect of the twelve (12) Exempt Lenders who made loans in the aggregate amount of $2,815,000, and to pay the applicable activity fee of $500.00 concurrently with the filing. The Pickering Respondents acknowledge that if they fail to file Form 45-106F1 within ten (10) days of the date of approval of the Settlement Agreement, late fees in accordance with OSC Rule 13-502 will accrue from the tenth day following the date of approval of the Settlement Agreement.

DATED this 29th day of August, 2014.

"Michele Pickering"

DATED this 29th day of August, 2014.

"Michele Pickering"
Witness

"Ryan Pickering"
RYAN PICKERING

DATED this 29th day of August, 2014.

"Michele Pickering"
Witness

"Ryan Pickering"
NEWER TECHNOLOGIES LIMITED
Per: **RYAN PICKERING**
Authorized Signatory

3.1.3 Crown Hill Capital Corporation and Wayne Lawrence Pushka

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

AND

IN THE MATTER OF
CROWN HILL CAPITAL CORPORATION AND
WAYNE LAWRENCE PUSHKA

ORAL REASONS AND DECISION

Hearing:	September 2, 2014		
Decision:	September 3, 2014		
Panel:	Alan J. Lenczner	–	Commissioner and Chair of the Panel
Appearances:	Anna Perschy Albert Pelletier	–	For Staff of the Commission
	Alistair Crawley Clarke Tedesco	–	For Crown Hill Capital Corporation and Wayne Lawrence Pushka

ORAL REASONS AND DECISION

The following text has been prepared for the purposes of publication in the Ontario Securities Commission Bulletin and is based on excerpts from the transcript of the hearing. The excerpts have been edited and the text has been approved by the Panel for the purpose of providing a public record of the decision.

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") on September 2, 2014 (the "**Motion Hearing**"). Wayne Lawrence Pushka and Crown Hill Capital Corporation (together, the "**Respondents**") bring a motion under section 144 of the *Securities Act* (the "**Act**") to revoke or vary the order of the Commission dated January 6, 2014 pursuant to section 11 of the Act authorizing an investigation (the "**Order**").

[2] The Order was supplemented by a second investigative order dated May 20, 2014 adding Peter Cho as an additional investigator. In all other respects, the order dated May 20, 2014 is substantially similar to the Order. I accept the submission of the Respondents that the latter order dated May 20, 2014 was effectively an administrative adjunct.

[3] On August 23, 2013, the Commission composed of a panel of three commissioners, rendered a Merits Decision involving the Respondents. The findings and order made against the Respondents is found at paragraph 639 of the Merits Decision. The findings and order involve a number of breaches of the Act, as well as findings that the Respondents acted contrary to the public interest. This is the context underlying these proceedings.

[4] On February 24 and 28, 2014, a hearing was held to consider submissions from Staff of the Commission (**"Staff"**) and counsel of the Respondents regarding sanctions and costs. On August 8, 2014, the Commission issued its decision on sanctions and costs against the Respondents ("**Sanctions and Costs Order**").

[5] The Panel made a number of orders against the Respondents pursuant to sections 127(1) and 127.1 of the Act. The Panel ordered that the Respondents jointly and severally disgorge to the Commission amounts obtained by them as a result of their non-compliance with Ontario securities law of $18,237,047. The Commission further ordered these amounts to be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b)(i) and (ii) of the Act. In addition, the Panel ordered the Respondents jointly and severally pay to the Commission an administrative penalty of $1,875,000, and jointly and severally pay costs in the amount of $300,000.

[6] In or about early January, 2014, prior to the hearing on sanctions and costs, Staff sought and obtained an investigative order pursuant to section 11 of the Act. This Order provided, *inter alia*, the following:

> Staff intend to seek sanctions against the Respondents including disgorgement of all amounts obtained as a result of their non-compliance with Ontario securities law and significant administrative penalties (paragraph 5 of the Order).

> The Respondents may have transferred or disposed of assets they had at the time the Notice of Hearing was issued on July 7, 2011, or since then, or may seek to do so (paragraph 6 of the Order).

[7] The memorandum that was provided to the Chair, Mr. Howard Wetston, to obtain the Order has not been produced. However, no issue is taken that there was a proper basis, in fact, to make the Order.

[8] Staff has provided an affidavit of Yvonne Lo, Staff investigator, in which she details a number of instances where assets are transferred, both domestically and internationally, out of the ownership of the Respondents and into the ownership of a spouse, child or perhaps other entities owned or controlled by the Respondents.

[9] Staff is content that the affidavit of Yvonne Lo sworn on August 21, 2014 be marked as an Exhibit. Respondents' counsel opposes and objects thereto, indicating that traditionally, any information obtained by reason of section 11 investigative order is not to be disclosed except on certain terms.

[10] I would have marked the affidavit of Yvonne Lo as an Exhibit because the information contained therein has been provided to the Respondents on at least one or two occasions, and the Respondents are fully aware of the information. In addition, the hearings before the Commission (both merits, and sanctions and costs) have been completed and the alleged transfer of assets would be within the knowledge of the Respondents. However, out of an abundance of caution, I am not going to mark the affidavit of Yvonne Lo as an Exhibit, but I am satisfied that there is a strong *prima facie* case, until a response has been received, that the Respondents have transferred Pushka's half interest in his matrimonial home and significant other assets to other members of his family, or to accounts internationally, and out of Canada. Therefore, I am satisfied that there was a factual basis to make the investigative order.

[11] The issue raised by the Respondents' counsel is that there was no legal jurisdiction to make the Order under section 11 because the object of that Order is not consistent with the due administration of Ontario securities law. Respondents' counsel indicates very clearly and very strongly that the object of the investigative order was for the enforcement of sanctions orders, and that, he submits, is not part of due administration of securities law.

[12] As a second argument, Respondents' counsel indicates that once the Commission rendered its order on sanctions and costs, it became functus, and there is no other current proceeding before the Commission initiated or to be initiated. Further, counsel for the Respondents submits that there is no proceeding that Staff can bring before this Commission. Accordingly, he submits that the origination and continuation of the investigative order is not connected to, or in respect of, or relevant to, the due administration of Ontario securities law.

[13] Staff takes the opposite view.

[14] To resolve this issue, I turn to the interpretation of section 11 of the Act. Section 11 reads:

> (1) The Commission may, by order, appoint one or more persons to make such investigation with respect to a matter as it considers expedient,
>
> (a) for the due administration of Ontario securities law or the regulation of the capital markets in Ontario; or
>
> (b) to assist in the due administration of the securities or derivatives laws or the regulation of the capital markets in another jurisdiction.
>
> (2) An order under this section shall describe the matter to be investigated.

Subsection (3) also reads with respect to the scope of investigation:

> (3) For the purposes of an investigation under this section, a person appointed to make the investigation may investigate and inquire into,
>
> (a) the affairs of the person or company in respect of which the investigation is being made, including any trades, communications, negotiations, transactions, investigations, loans, borrowings or payments to, by, on behalf of, or in relation to or connected with the person or company and any property, assets or things owned, acquired or alienated in whole or in part by the person or company or by any other person or company acting on behalf of or as agent for the person or company; and
>
> (b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person or company, and any relationship that may at any time exist or have existed between the person or company and any other person or company by reason of investments, commissions promised, secured or paid, interests

> held or acquired, the loaning or borrowing of money, stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

[15] In interpreting section 11, I am guided by the Supreme Court of Canada decision in *Sound v Motion Picture Theatre Associations of Canada*, [2012] SCC 38. The court in that case held that "the object of statutory interpretation is to establish Parliament's intent by reading the words of the provisions in question in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament" (paragraph 32). The Court indicates that the interpretation is to be a purposive interpretation.

[16] In determining the scope of the Act, I need to look no further than the Act itself. I begin the analysis with what is encompassed by 'Ontario securities law'. The definition 'Ontario securities law' is found in section 1(1) of the Act and includes "in respect of a person or company, a decision of the Commission or a Director to which the person or company is subject". I find that the investigative order that was made falls within the ambit of 'a decision of the Commission or Director' provided for in the definition.

[17] The purpose of the Act is defined in section 1.1 which reads:

> (a) to provide protection to investors from unfair, improper or fraudulent practices; and
>
> (b) to foster fair and efficient capital markets and confidence in capital markets.

The principles to be considered are also defined in the Act in section 2.1, and include "effective and responsive securities regulation requires timely, open and efficient administration and enforcement of this Act by the Commission".

[18] The next point in the analysis is the object of the Act. I refer to the case of *Deloitte v Touche LLP v Ontario (Securities Commission)*, (2005) OJ No 1510. In this case, the Divisional Court held that "the Supreme Court has recognized the effective enforcement of securities regulation is essential to achieving the purposes of the Act". The Court also referred to *Pezim* in so far as "it was the legislatures' intention to give securities commissions broad powers with respect to investigations, audits, hearings and orders – the very tools of enforcement – and a broad discretion to determine what is in the public interest in the course of exercising those powers" (paragraph 55).

[19] The same sentiment about the object of the Act is expressed in *Rowan v Ontario* (Securities Commission) 2012 ONCA 208 where the Ontario Court of Appeal indicates that "penalties of up to $1 million per infraction are, in my view, entirely in keeping with the Commission's mandate to regulate the capital markets where enormous sums of money are involved and where substantial penalties are necessary to remove economic incentives for non-compliance with market rules" (paragraph 49). The Court cites *Cartaway Resources Corp. (Re)*, [2004] 1 SCR 672 that "in carrying out their regulatory and preventative mandate provincial securities commissions may legitimately consider deterrence when imposing a monetary penalty…It is perhaps necessary, consideration in making orders that are both protective and preventative" (paragraph 51).

[20] Having determined the scope and object of the Act, I now turn to the intention of Parliament. I note that the Act itself provides a number of sections where Staff can seek orders such as freeze orders under section 126 for interim preservation of property, applications to the Superior Court of Justice under section 128 that a person is not compliant with Ontario securities law, and applications under section 129 for the appointment of receiver.

[21] Finally, the language found in section 11 is very broad. It contains words such as "with respect to", "in respect of", "in relation to", and "in connection with". There have been a number of decisions that have held that those words, when used in the Statute of an administrative tribunal, import a broad meaning and are to be given significant latitude.

[22] Taking into consideration the language of section 11, the object of the Act, the scheme of the Act, and other provisions in the Act, it is my view that the investigative order made in this case was proper, and appropriate.

[23] Staff of the Commission has an obligation to enforce any sanctions order that has been made. While it is true that Staff has to seek that remedy in the Superior Court of Justice, in my view, Staff can nevertheless use the tools of an investigative order where it believes that there may be a transfer of assets so as to negate any sanctions order that is to be made, or has been made.

[24] Enforcement is an essential and fundamental object of the Act, and Staff is the appropriate party to seek timely enforcement of any order that the Commission may make. Staff does not have to wait until the assets have been transferred but may move to gather information. In essence, what is being sought here is the gathering of information for use, perhaps, in another forum.

[25] I want to thank counsel for excellent submissions, and in result the motion to vary or revoke the Order is dismissed.

DATED at Toronto this 3rd day of September, 2014.

"Alan Lenczner"

3.1.4 Sterling Grace & Co. Ltd. and Graziana Casale – s. 8

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

AND

IN THE MATTER OF
AN APPLICATION FOR A HEARING AND REVIEW OF
THE DECISION OF DIRECTOR BRIDGE OF
THE ONTARIO SECURITIES COMMISSION,
PURSUANT TO SUBSECTION 8(2) OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
STERLING GRACE & CO. LTD. AND
GRAZIANA CASALE

REASONS AND DECISION
(Section 8 of the Securities Act)

Hearing:	February 19, 20 and March 28, 2014	
Decision:	September 3, 2014	
Panel:	Mary G. Condon	– Vice-Chair and Chair of the Panel
	Judith N. Robertson	– Commissioner
	Deborah Leckman	– Commissioner
Appearances:	Melissa MacKewn Natalia Vandervoort	– For Sterling Grace & Co. and Graziana Casale
	Michelle Vaillancourt Mark Skuce	– For Staff of the Commission

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REASONS AND DECISION

I. OVERVIEW

A. Introduction

[1] This is an application (the "**Application**") by Sterling Grace & Co. ("**Sterling**") and Graziana (Grace) Casale ("**Casale**") (together, the "**Applicants**"), pursuant to subsection 8(2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), for the Ontario Securities Commission (the "**Commission**") to review a decision of a Director of the Commission issued November 18, 2013 ((2013), 36 O.S.C.B. 11243 (the "**Director's Decision**")).

[2] The Director's Decision suspended Sterling's registration as an exempt market dealer ("**EMD**") and Casale's registration as dealing market representative, ultimate designated person ("**UDP**") and chief compliance officer ("**CCO**"). Deputy Director, Marrianne Bridge (the "**Director**"), found that the Applicants lacked the requisite integrity and proficiency to remain registrants.

[3] A hearing before a Panel of the Commission to consider the Application commenced on February 19, 2014 (the "**Hearing and Review**"). The Applicants were represented by counsel and Casale appeared in person. Staff of the Commission ("**Staff**") appeared to oppose the Application. The Application was heard as a hearing *de novo*, at which two investor witnesses, one for the Applicants and the other for Staff, testified on February 19 and 20, 2014, respectively. The parties made further submissions on March 28, 2014.

B. The Applicants

[4] Sterling was registered with the Commission as a limited market dealer ("**LMD**") on December 7, 2006 and its registration was recategorized as an EMD on September 28, 2009. Sterling was also registered as an EMD with securities regulators in Alberta and British Columbia on February 2, 2012. Sterling has offered for sale securities of several issuers, including Genwealth Venture Limited Partnership ("**Genwealth**"), which is an investment fund, Redstone Investment Corporation ("**Redstone"**), a finance company that holds itself out as providing loans to small and medium sized businesses, and Gingko Mortgage Investment Corporation ("**Gingko**").

[5] Casale is registered with the Commission as UDP, CCO and dealing representative of Sterling. She is also a permitted individual, as defined is paragraph [288] below, and has been an officer, director and shareholder of Sterling since the firm's inception. Casale is also registered in Alberta and British Columbia as Sterling's UDP, CCO, dealing representative and a permitted individual as of February 13, 2012.

C. History of the Matter

[6] Between November 2012 and July 2013, Staff of the Compliance and Registrant Regulation Branch of the Commission ("**CRR**") conducted a compliance review of Sterling, pursuant to section 20 of the Act, for the review period of December 1, 2011 to November 30, 2012 (the "**Compliance Review**"). As part of that review, Casale provided an interview under oath on April 16, 2013 (the "**Casale Interview**"). On July 3, 2013, Staff noted at least eleven deficiencies in a compliance report (the "**Compliance Report**") sent to the Applicants. On the same day, in light of certain classified "significant deficiencies", Staff advised the Applicants via letter that they had recommended that the registration of Sterling and its registered individuals be suspended and that certain conditions be placed upon reinstatement.

[7] The Applicants gave notice to the Commission that they wished to exercise their right for an Opportunity to be Heard, pursuant to section 31 of the Act ("**OTBH**"). On October 28, 2013, an OTBH was held for the Director to consider Staff's recommendations. On that day, the Director heard submissions on behalf of Staff and the Applicants.

[8] The Director issued a written decision and reasons accepting Staff's recommendations on November 18, 2013.

D. The Director's Decision

[9] As referenced above, the Director made the following decision:

(a) the registration of Sterling is suspended permanently;

(b) the registration of Casale as UDP and CCO is suspended permanently;

(c) the registration of Casale as a dealing representative be suspended, and that she not be permitted to apply for reinstatement for a period of two years;

(d) Casale successfully complete the *Conduct and Practices Handbook Course* before applying for reinstatement of registration;

(e) Casale be subject to one year of strict supervision in the event her registration is reinstated; and

(f) Casale shall not be a permitted individual of a registered firm for a period of five years.

(Director's Decision, *supra* at para. 1)

[10] The Director found that Staff proved its allegations with respect to issues of integrity. These allegations included the existence of conflicts of interest, unreported capital deficiency, misrepresentations to Staff and trading without registration. The Director concluded that both of the Applicants lack the requisite integrity to remain registrants (Director's Decision, *supra* at para. 42). The Director was not persuaded by the Applicants' submissions that certain issues should be considered as issues of proficiency, rather than integrity (Director's Decision, *supra* at para. 40).

[11] The Director also found that Staff proved its allegations with respect to issues of proficiency. These allegations included improper reliance on prospectus exemptions, failure to discharge the Know Your Product ("**KYP**") obligation, failure to discharge the Know Your Client ("**KYC**") and suitability obligations. She concluded that both of the Applicants lack the requisite proficiency to remain registrants (Director's Decision, *supra* at para. 48). The Director noted that because each of the proficiency issues she found related directly to the proficiency of a dealing representative, they support the suspension of Casale's registration as a dealing representative (*Ibid.*).

E. Application to Stay the Director's Decision

[12] On November 27, 2013, pursuant to subsection 8(4) of the Act, the Commission granted an application to stay the Director's Decision pending the hearing and review of that decision, but ordered that the stay apply until no later than February 20, 2014, subject to certain conditions ((2013), 36 O.S.C.B. 11637 (the "**Stay Order**") at para. 34). The Stay Order required the Applicants to post a link to the Director's Decision on the Sterling website and to provide a copy of the Director's Decision to all new and existing clients. The Stay Order also specified that Sterling:

> may state on its website and when providing the Director's Decision to clients that "The decision to suspend the registration of Sterling Grace and Casale was stayed pursuant to the decision of the Commission dated November 27, 2013. An application for a hearing and review of the Director's Decision under section 8 of the Act has been requested and will be scheduled to be heard by a panel of the Commission in early 2014".
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> (Stay Order, *supra* at para. 35)

[13] Further, the Commission directed that an investor alert posted on the Commission's website on November 19, 2013, following the issuance of the Director's Decision, be removed as requested by the Applicants (Stay Order, *supra* at para. 36). The Commission did not, however, find there were grounds to issue a retraction of the investor alert, as requested by the Applicants (Stay Order, *supra* at para. 33).

F. Application for Hearing and Review pursuant to Subsection 8(2) of the Act

[14] By letter dated November 20, 2014, the Applicants filed a formal request for the stay of the Director's Decision, discussed above, and a hearing and review of the Director's Decision, pursuant to subsection 8(2) of the Act (the "**Application**"). We note that the Application was not perfected in accordance with Rule 14 of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "***Rules of Procedure***"). Following the Stay Order, the Commission issued a Notice of Hearing and, due to the exceptional circumstances of this case, we hereby waive the requirements in Rule 14, pursuant to Rule 1.4(3) of the *Rules of Procedure*.

[15] The Applicants argue that the Director erred by failing to consider or give sufficient weight to the evidence presented by the Applicants and made findings based on a mischaracterization of issues of "proficiency and "integrity". Therefore, the Applicants submit that the Director imposed sanctions that are unwarranted and unnecessary to fulfill the regulatory objective that the Applicants operate in compliance with Ontario securities laws and in the best interests of clients.

[16] In the Application, the Applicants further submit that the Director's Decision fails to deliver adequate reasons for requiring suspensions that, in effect, put the Applicants out of business. It is the Applicants' position that the Director erred in finding that the Applicants lack the requisite integrity for a registrant or that it would be inappropriate for Casale to remain registered as a dealing representative. Further, the Applicants argue that the Director erred in failing to apply relevant prior decisions, failed to give due consideration to the level of cooperation demonstrated by the Applicants in the Compliance Review and failed to give due consideration to Casale's willingness to step down as CCO and UDP of Sterling. Lastly, the Applicants

submit that Staff did not seek the imposition of terms and conditions on the registration of the Applicants for more than eleven months between the commencement of the Compliance Review and the date of the Director's Decision.

[17] Staff takes the position that the Applicants lack the requisite integrity and proficiency to maintain their registration, they have failed to comply with Ontario securities law and that their continued registration is otherwise "objectionable". Staff's submissions are set out in more detail below.

[18] On February 19, 2014, the Applicants requested an adjournment of the Hearing and Review to enable the Applicants to pursue an application, pursuant to section 11 of National Instrument 31-103 – Registration Requirements, Exemptions and Ongoing Registrant Obligations ("**NI 31-103**"), for Staff to review a transaction that proposes the sale of Sterling to third parties (the "**Proposed Transaction**"). Upon considering the submissions of the parties, the Panel was not persuaded that an adjournment would be in the public interest and denied the adjournment request for oral reasons given that day. However, the Panel did find that it would be appropriate to consider the outcome of the Proposed Transaction when deliberating on the issues and determined that, if Casale wished to pursue the transaction and file it with Staff, she should do so by the deadline she proposed of February 28, 2014. Further, the Panel required Staff to respond by March 24, 2014 and provided the parties with an opportunity to make supplemental oral submissions on March 28, 2014.

[19] On March 28, 2014, the parties made oral submissions on the Proposed Transaction. Staff advised that on March 27, 2014 Staff notified the Applicants that the Director objected to the Proposed Transaction, pursuant to subsection 11.10(6) of NI 31-103, because insufficient information had been provided by Sterling to allow the Director to evaluate the Proposed Transaction in accordance with criteria set out in subsection 11.10(2)(c) of NI 31-103. Counsel for the Applicants submitted that they would like Staff to make a decision based on complete information and requested more time for Staff to consider the Proposed Transaction. Staff submitted that there were still uncertainties surrounding the Proposed Transaction. As of March 21, 2014, the Proposed Transaction was in its third revised structure, naming different purchasers and new consideration.

[20] On April 1, 2014, the Panel instructed the Secretary to advise the parties that it intended to proceed with its deliberations of the Hearing and Review. The Panel reviewed the material provided by the parties on February 19, 20 and March 28, 2014 with respect to various versions of the Proposed Transaction. It took the view that there were still considerable uncertainties and contingencies related to the Proposed Transaction. For instance, in a letter dated March 21, 2014, Casale advised Staff that "a personal suspension of Casale may result in the Amended Proposed Acquisition not proceeding" (Exhibit 29 of the Hearing and Review- Affidavit of Hui sworn on March 27, 2014, Tab J at p. 3). The Panel determined, in light of the uncertainty regarding the suspension of Casale's registration, a decision with respect to her registration may be necessary to provide clarity. In addition, the Panel was persuaded by the submission of Staff that a number of issues related to the Proposed Transaction still require careful consideration, including: (i) a plan for addressing compliance deficiencies; (ii) appropriate terms and conditions on Sterling's registration related to potential conflicts of interest arising from the proposed appointment of a lawyer as its ultimate designated person; and (iii) the status of a subordinated loan from Casale as it relates to Sterling's working capital.

[21] The Panel instructed the Secretary to remind the parties that the Director's Decision to suspend the registration of Sterling and Casale has been stayed since November 27, 2013 (Stay Order, *supra* at para. 34). The Panel did not consider it to be in the public interest to delay deliberation of this matter any further as the Proposed Transaction is only one of many considerations the Panel must take into account with regard to the Hearing and Review. On April 2, 2014, by email copied to counsel for the Applicants, Staff advised the Panel that it received notice from Casale that the application pursuant to section 11.10 of NI 31-103 for the Proposed Transaction would not be moving forward.

II. HEARING AND REVIEW PURSUANT TO SECTION 8 OF THE ACT

[22] Subsections 8(2) and 8(3) of the Act govern a hearing and review of a decision of the Director and provide that:

> **[8.] (2) Review of Director's decisions** – Any person or company directly affected by a decision of the Director may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review thereof by the Commission.
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> **(3) Power on review** – Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.

[23] The case law interpreting subsection 8(3) of the Act has established that, in a hearing and review of a Director's decision, a panel of the Commission may substitute its own decision for that of the Director (*Re Sawh* (2012), 35 O.S.C.B. 7434 ("***Sawh***") at paras. 16 and 17, citing *Re Triax Growth Fund Inc.* (2005), 28 O.S.C.B. 10139 at para. 25 and *Re Istanbul* (2008), 31 O.S.C.B. 3799 ("***Istanbul***") at para. 14)).

[24] Further, it is well established that a review of a Director's decision pursuant to section 8 of the Act is a hearing *de novo* and, therefore, a fresh consideration of the matter (*Istanbul*, *supra* at paras. 14-15). As such, new evidence is permitted to be tendered at the hearing and review of the matter (Rule 14.5 of the *Rules of Procedure*).

[25] Staff has the onus of establishing that the Applicants are not suitable for registration or that registration is otherwise objectionable (*Sawh*, *supra* at paras.148 and 149; (*Re Pyasetsky* (2013), 36 O.S.C.B. 3897 ("***Pyasetsky Review***") at para. 89). Staff also bears the onus, under section 28 of the Act, of establishing that the Applicants failed to comply with Ontario securities law.

III. ISSUE

[26] The issue is whether the Applicants are suitable to maintain their registrations, whether they have failed to comply with Ontario securities law or whether their continued registration is otherwise objectionable. The legal framework for consideration of the issue is outlined below.

IV. POSITIONS OF THE PARTIES

[27] Both counsel for the Applicants and counsel for Staff made oral and written submissions.

A. The Applicants

[28] The Applicants are seeking to maintain their registrations, for Sterling in the category of EMD and for Casale as an EMD dealing representative. The Applicants propose to address proficiency issues and take the position that there are no integrity concerns. The Applicants emphasize that any future operation of Sterling would include properly qualified UDP and CCO personnel. The Applicants were actively working on a transaction to sell Sterling, in which Casale would relinquish the roles of UDP and CCO and majority ownership in the firm.

[29] The Applicants submit that the compliance function of the Commission is a gatekeeping one to ensure that purposes and principles of the Act are upheld (Act, *supra*, s. 1.1 and 2.1(2)(ii)). This can be distinguished, the Applicants submit, from the enforcement function of the Commission. The appropriate regulatory response should be prophylactic in nature – to provide protection to investors and capital markets from potential future misconduct (*Istanbul*, *supra* at para. 77, citing *Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 ("***Mithras***") at 1610 and 1611).

[30] The Applicants submit that Staff's recommendations and the Director's Decision have impermissibly crossed the line into the realm of punishment. They submit that the "punishments" sought are enforcement-like in every respect and should be remedies of last resort. Instead, the Applicants submit, they should be afforded the opportunity to work with Staff to remedy the compliance concerns.

[31] The Applicants argue that the matter should be considered in the relevant context. In June 2012, Staff conducted a sweep of 45 EMDs to assess compliance with KYC, KYP and suitability obligations under NI 31-103. In their report, Staff observed that "Over 75% of the EMDs reviewed were deficient in collecting, documenting or maintaining adequate KYC information" Where Staff was satisfied that non-compliance with the Accredited Investor ("**AI(s)**") exemption was not intentional, the EMD had taken steps to resolve the matter and had revised the KYC collection process, Staff did not recommend enforcement action (OSC Staff Notice 33-740 (2013), 36 O.S.C.B. 5647 ("**OSC Staff Notice 33-740**") at pages 3 and 5). The Applicants argue they ought to be held to the same standard as their peers.

[32] The Applicants submit that matters of proficiency are addressed through education, supervision and, if necessary, monitoring and/or consulting retainers. By comparison, the Applicants take the position that significant matters of integrity merit periods of suspension to serve purposes of general and specific deterrence (*Istanbul*, *supra* at paras. 72-73 and 79-80; *Re Obasi* (2011), 34 O.S.C.B. 3012 **("*Obasi*")** at paras. 1, 30-32; *DiPronio* (2011), 34 O.S.C.B. 6345 **("*DiPronio*")**).

[33] In relation to the general application of section 28 of the Act, counsel for the Applicants submits that the parties agree that an assessment of suitability for continued registration engages considerations of proficiency, solvency and integrity. Further, counsel for the Applicants acknowledges that the language of section 28 of the Act involves discretionary decision-making by a director or a panel and that a suspension or revocation of a registration or the imposition of terms and conditions could be ordered if the registrant was suitable but did not comply with Ontario securities law.

[34] However, the Applicants submit that there is no concern that their integrity is at issue in this matter. They submit that honesty is an essential component of integrity (Companion Policy 31-103 "*Registration Requirements and Exemptions*" ("**31-103CP**")). They note that the Commission has explained the integrity requirement as requiring a consideration of "the honesty and character of the applicant" (*Istanbul*, *supra* at para. 66, citing *Re Wall* (2007), 30 O.S.C.B. 7521 ("***Wall***") at para. 23). The Applicants also rely on case law relating to the prospectus receipt process, which states, pursuant to subsection 61(2)(e) of the Act, that the Director shall not issue a receipt if it appears that "the business of the issuer may not be conducted with integrity".

The Applicants submit that the Director must have "reasonable grounds" for invoking subsection 61(2)(e) of the Act because "[t]he integrity of a person and the possible continued existence of a business [could be] at stake" and, therefore, a higher degree of certainty is appropriate (*Re Cycomm International Inc.* (1994), 17 O.S.C.B. 21 at p. 13). In further submissions, counsel for the Applicants acknowledged that Staff has the onus to prove on a balance of probabilities on clear and cogent evidence that the Applicants are not suitable for continued registration and confirmed that reliance on the above case is not a suggestion that the standard should change.

[35] The Applicants take the position that their conduct does not demonstrate a lack of integrity and that the seven deficiencies identified by Staff are all matters of proficiency. In their submission, the Director conflated integrity and proficiency by finding that many of the issues are both integrity and proficiency matters (Director's Decision, supra at para. 4). In response to the alleged integrity issues, the Applicants made the following submissions:

(a) Conflict of Interest – Casale did not appreciate that a conflict existed in respect of the issuer Genwealth and M.L., Sterling's dealing representative, who sold the product to his family and friends, each of whom were aware of his relationship to the issuer. Further, Casale understood that the offering memorandum of the issuer Redstone would be amended to disclose a loan provided by Redstone to the Applicants.

(b) Unreported Capital Deficiency – The Applicants reported Sterling's capital deficiency to Staff when it was discovered. The issue is, by definition, an issue of solvency and not integrity and, in any event, the issue no longer exists.

(c) Misrepresentation – Acknowledging that this is a matter of credibility, Casale's evidence is that she was truthful when asked by Staff about her involvement with the Gingko product and when she was retained by Gingko.

(d) Trading Without Registration – At the time that certain sales took place on behalf of Sterling M.L., was registered with another dealer, however through an administrative oversight his registration had not yet been transferred to Sterling.

[36] The Applicants put forward the Commission's decision in *Kingsmont* as a factually similar case (*Re Kingsmont Investment Management Inc.* (2013), 36 O.S.C.B. 9577 ("***Kingsmont***")). In Kingsmont, Staff identified compliance deficiencies from their review of the EMD, including: insufficient collection of KYC information, insufficient KYP due diligence, unsuitable investments and trading without registration (*Kingsmont*, *supra* at para. 14). The Applicants argue that the director found Staff's recommendations for resolution of the matter to be too harsh and instead ordered a six-month suspension of Warner as a dealing representative. Further, they submit that it appears the director's reasoning primarily resulted from her finding that the matters deemed by Staff to relate to integrity were, in fact, matters of proficiency (*Kingsmont*, *supra* at para. 30).

[37] The Applicants argue that cases relied upon by Staff at the OTBH are distinguishable on their facts and that decisions based on joint recommendations are of little assistance because of the lack of transparency associated with negotiated resolutions.

[38] At the time of the Hearing and Review, the Applicants expressed concern that the positive changes undertaken by them were not considered by Staff or the Director and reiterated that Casale is willing to give up her positions at CCO and UDP. In conclusion, they submit that a proficiency case requires a balanced approach.

B. Staff

[39] Staff takes the position that the Applicants are unsuitable for registration as they lack the requisite integrity and proficiency to remain registrants.

[40] As factors for assessing ongoing registration, Staff requests that the Panel consider the requirement for dealer registration, pursuant to subsection 25(1) of the Act, the director's power to revoke or suspend registration, pursuant to section 28 of the Act, and criteria of suitability for registration found in section 27 of the Act.

1. Integrity

[41] Staff submits that, although not defined, assessment of integrity should be guided by the need to maintain high standards of fitness and business conduct that ensures honest and responsible conduct by market participants (*Sawh*, *supra* at para. 257, citing *Istanbul*, *supra* at para. 68). Further, Staff relies upon Wall, cited in Sawh and Istanbul, where the director explains that Staff look at the honesty and character of an applicant when analyzing integrity and, in particular, dealings with clients, compliance with Ontario securities laws and the use of prudent business practices (*Wall*, *supra* at para. 23; *Sawh*, *supra* at para. 257; *Istanbul*, *supra* at para. 66). Staff argues that an individual's honesty and candour in their dealings with Staff is also

relevant (*Re Pyasetsky* (2012), 35 O.S.C.B. 2092 ("***Pyasetsky Director's Decision***") at paras 13-17; affirmed *Pyasetsky Review*, *supra*).

[42] Staff submits that Casale impugned her integrity for registration by the following acts and omissions:

(a) undisclosed material conflicts of interest;

(b) failure to report to Staff Sterling's capital deficiencies in April and May 2012;

(c) making misrepresentations to Staff about her role in Gingko distributions; and

(d) allowing M.L. to trade on Sterling's behalf without appropriately registering him, and trading in securities in other provinces without registration.

[43] Staff further submits that section 13.4 of NI 31-103 requires registered firms to identify existing and potential material conflicts of interest, respond and, if a reasonable investor would expect to be informed, then disclose that conflict of interest. Further, Staff relies upon section 2.1 of OSC Rule 31-505 – Conditions of Registration ("**OSC Rule 31-505**"), which articulates that a registered dealer and its representatives shall deal fairly, honestly and in good faith with their clients. Staff argues that in *White Capital*, circumstances similar to this case led to suspension of an EMD's registration (*Re White Capital Corporation* (2013), 36 O.S.C.B. 819 ("***White Capital***") at paras. 9, 11 and 13, additional reasons at (2013), 36 O.S.C.B. 5313).

[44] Staff submits that M.L.'s concurrent roles as manager of Genwealth and a dealing representative of Sterling constituted a material conflict of interest that ought to have been identified by Casale. Staff further submits that a reasonable investor would have expected to be informed of the material conflict of interest arising from Redstone's loans to Sterling. Staff submits that the Applicants' position that the $73,000 was not disclosed to investors because So suggested that the loan relative to the fund size would not be considered material, ignores the fact that the $73,000 was essential to Sterling's solvency and continued registration and, therefore, highly material to Sterling.

[45] Staff notes that despite the submission that the Applicants were willing to disclose the conflict in a Redstone offering memorandum ("**OM**") expected in November/December 2013, the most recent Redstone OM, dated March 1, 2013, contains no reference to any loans to the Applicants. Staff argues that the Applicants continued to sell the Redstone securities in the apparent absence of a revised OM.

[46] Staff refers the Panel to section 12.1 of NI 31-103, which requires a registered firm to notify the regulator as soon as possible if, at any time, its excess working capital, as calculated in the prescribed form, is less than zero. Staff submits that the provision is predicated on the good faith and conduct of registrants and plays an important role in Staff's ability to oversee the financial condition of registered firms. Staff submits that Casale did not report Sterling's capital position in April and May 2012, despite being aware of the deficiencies at the time and of her obligation to report them. Staff argues that this conduct is particularly troubling in light of Staff's earlier recommendation to the Director in October 2011 that Sterling's registration be suspended due to its capital deficiency and Casale's failure to report it to Staff.

[47] With respect to dealings with Staff, Staff argues that misrepresentations to Staff may impugn a registrant's integrity and result in a suspension (*Re Kaplan* et al. (2012), 35 O.S.C.B. 9457 ("***Kaplan***") at para. 30 and Appendix). Staff submits that on two occasions Casale omitted to disclose to Staff her involvement in the Gingko distribution to 22 investors, despite being involved and receiving a compensation of $10,000 for her work.

[48] Staff submits that subsection 25(2) of the Act expressly requires that a registered representative act on behalf of the dealer with which he or she is registered, while in this case M.L. acted on behalf of Sterling and not Harris Brown, the firm for which he was registered at the time. Staff also submits that Casale traded in securities in Alberta and British Columbia before she was registered in those jurisdictions. In this regard, Staff relies upon the facts in *Blueport*, including unregistered trading, which led to suspension after a compliance review (*Re Blueport Capital Corp. and Hare* (2012), 35 O.S.C.B. 681 ("***Blueport***") at paras. 15).

2. Proficiency

[49] Staff submits that proficiency requirements are established to ensure that the public deals with qualified registrants and that the requirements support, promote and enhance the purposes of the Act (*Sawh*, *supra* at para. 158). Staff relies upon subsection 3.4(1) of NI 31-103, which provides that an individual must not perform registerable activity unless he or she has the education, training, and experience that a reasonable person would consider necessary to perform the activity competently.

[50] Staff submits that Casale impugned her proficiency for registration by the following acts and omissions:

(a) failure to assess client qualifications to rely on the AI exemption;

(b) failure to discharge her KYP obligations with respect to Redstone and Genwealth;

(c) failure to discharge her KYC obligations; and

(d) failure to discharge her suitability obligations.

[51] Staff takes the position that as an EMD, Sterling's activities are limited to trading in securities that are exempt from prospectus requirements set out in National Instrument 45-106 – Prospectus and Registration Exemptions ("**NI 45-106**") (subsection 7.1(2)(d) of NI 31-103). In this case, Staff submits that the Applicants primarily relied upon the accredited investor ("**AI(s)**") exemption, pursuant to section 2.3 of NI 45-106 and in particular the tests of "net financial assets" and "annual income" to qualify as an AI ("accredited investor" definition at subsections 1.1(j) and (k) of NI 45-106). Staff submits that an EMD has an obligation to ensure that an investor meets the criteria and that AI status cannot be established on the basis of a statement from the investor certifying that he or she meets the criteria (*Sawh*, *supra* at para. 175-176 and 183).

[52] Staff argues that in the past the director has suspended a registration where evidence has shown, among other things, that the registrants sold securities pursuant to the AI exemption in circumstances where that AI exemption did not apply (*Re FCPF Corporation* (2013), 36 O.S.C.B. 9855 ("***FCPF***"); *White Capital*, *supra*; *Blueport*, supra; *Re Waterview Capital Corp*. (2011), 34 O.S.C.B. 5059 ("***Waterview***")). Staff submits that in this case Sterling sold securities of Redstone or Gingko to at least 22 investors in circumstances where the investor either did not qualify as an AI or there was insufficient evidence to support reliance on the AI exemption.

[53] In addition, Staff submits that an EMD must assess the suitability of a trade for their client (subsection 13.3(1) of NI 31-103). Staff relies upon the Commission's decision in *North American*, which set out a process for registrants to assess suitability including, using due diligence to know the product, applying professional judgment in establishing the suitability of the product for the client and disclosing both positive and negative aspects of the proposed investment (*Re North American Financial Group Inc.* (2013), 36 O.S.C.B. 12095 ("***North American***") at para. 274).

[54] In Sawh, Staff argues, the Commission found that the manner in which a registrant discharges their KYP obligation has a direct bearing on the registrant's proficiency. This obligation is particularly important in the context of products sold in the exempt market because of risks associated with certain products (*Sawh*, *supra* at paras. 178 and 238). The CSA Staff Notice 33-315 – Suitability Obligation and Know Your Product ("**CSA Staff Notice 33-315**"), lists factors registrants should consider when assessing investment products for their clients, including the issuer's financial position and the qualifications, reputation and track record of the parties involved in key aspects of the product. Staff submits that the Applicants failed to discharge KYP obligations by failing to appreciate that many of the loans in Redstone's portfolio were in distress and that there was a disconnect between the actual business of Genwealth and the business described in its OM.

[55] Staff relies on subsection 13.2(2) of NI 31-103 for its submission on the KYC obligations of a registrant to identify the client and obtain sufficient information to meet suitability obligations under section 13.3 of NI 31-103. Staff cites the Companion Policy to NI 31-103 (**"31-103CP**"), for its position that registrants act as gatekeepers of the integrity of the capital markets and are required to establish the identity of, and conduct due diligence on, their clients.

[56] Staff submits that Casale admitted during an interview with Staff that she allowed Redstone to distribute Sterling's KYC forms directly to investors and that she accepted KYC forms that were already completed without her involvement. Staff argues that such conduct purports to delegate her KYC obligation, which cannot be delegated to third parties.

[57] Staff takes the position that the Applicants also sold Redstone or Gingko securities to at least 45 investors in circumstances where the investment may not have been suitable for the investor, or there was insufficient information to demonstrate its suitability. Staff refers the Panel to subsection 13.3(1) of NI 31-103, which requires a registrant to ensure, before it makes a recommendation or accepts an instruction to buy or sell a security, that the purchase or sale is suitable for the client. Staff notes that subsection 13.3(1) of 31-103CP specifically states that registrants cannot delegate their suitability obligations or satisfy them by simply disclosing risks of the trade. Staff submits that Casale could not confirm that she met or spoke with all investors who had invested in Redstone through Sterling, which is consistent with information gathered by Staff from investors J.W., P.W., M.P., B.P. and A.G., all of whom stated that they did not speak to anyone from Sterling prior to investing. Further, Casale admitted to acting as a "dealer after the fact", which Staff submits is inconsistent with subsection 13.3(1) of NI 31-103.

[58] Staff also argues that the Applicants' conduct since the Director's Decision raises concerns because of the approach taken to compliance with the terms of the Stay Decision, as well as their failure to remove references to So and Redstone from Sterling's website. Staff relies upon the Commission's decision in Sawh, which states that the applicants' lack of care in removing from their website references to ensure that they did not represent themselves as being able to conduct registerable activity added to the panel's discomfort, in that case, "about their ability to conduct themselves in accordance with requirements of regulated activity" (Sawh, supra at para. 296).

3. Failure to Comply with Securities Law and Registration is Otherwise Objectionable

[59] Staff takes the position that in addition to its submission that the Applicants are not suitable for continued registration, the Applicants' registrations should be suspended because they have failed to comply with Ontario securities law and their registration would be "objectionable".

[60] Staff submits that, by virtue of their conduct in relation to the seven compliance deficiencies identified by Staff, the Applicants have failed to comply with the Act and NI 31-103, which became a Rule under the Act by Ministerial Approval dated September 18, 2009 (Notice of Ministerial Approval of National Instrument 31-103 – Registration requirements and Exemptions (2009), 32 O.S.C.B. 7325 ("**Approval of NI 31-103**"); subsection 1(1) of the Act). Further, Staff submit that the Applicants have demonstrated a pattern of non-compliance that is not appropriate for registrants (*Waterview*, *supra* at para. 22).

[61] Staff also argues that in light of the seven compliance deficiencies, continued registration of the Applicants runs counter to the Commission's mandate to protect investors and foster fair and efficient capital markets (section 1.1 of the Act) and, therefore, their continued registration would be otherwise objectionable pursuant to subsection 28(b) of the Act (*Sawh*, *supra* at para. 289).

4. Remedies Sought By Staff

[62] Staff recommends the same remedies it recommended to the Director, including that:

(a) the registration of Sterling be permanently suspended;

(b) the registration of Casale as UDP and CCO be permanently suspended;

(c) the registration of Casale as dealing representative be suspended and she not be permitted to apply for reinstatement for a period of two years;

(d) Casale successfully complete the *Conduct and Practices Handbook Course* before applying for reinstatement of registration;

(e) in the event that Casale's registration is reinstated, her registration be subject to terms and conditions requiring her strict supervision for a period of one year; and

(f) Casale shall not be a permitted individual of a registered firm for a period of five years.

[63] Staff submits that the remedies recommended above are consistent with those agreed to in *White Capital*, a case involving similar compliance deficiencies by an EMD (*White Capital*, *supra*). Staff requests the Panel to consider the designation and obligations of a UDP and obligations of a CCO, pursuant to sections 5.1, 5.2 and 11.2 of NI 31-103 and 31-103CP. Staff further highlights the definition of the term "permitted individual" at section 1.1 of National Instrument 33-109 – *Registration Information* ("**NI-33-109**").

[64] Staff takes the position that the package of proposed remedies is designed to meet a number of objectives. First, the UDP and CCO suspensions would prohibit Casale from occupying positions of responsibility for the compliance of a registered firm with securities law requirements. Second, the two year dealing representative suspension and the requirement to take the *Conduct and Practices Handbook Course* would allow Casale to resume a career as a dealing representative after an appropriate period of reflection and industry-related education. Third, the remedies requested allow Casale the opportunity to assume an executive-level position within a registered firm, and to acquire a significant equity stake, after an appropriate period away from those roles, subject to the requirement that she not be UDP or CCO.

V. EVIDENCE

A. Overview

[65] Casale's Affidavits, sworn on February 4 and 12, 2014 were tendered at the Hearing and Review and the Applicants called one investor witness (M.B.). Staff also called one investor witness (D.H.) and relied upon a number of affidavits described below. The names of the witnesses who are not the Applicants are anonymized to protect the privacy of those witnesses.

[66] The entire record of the OTBH was filed with the Commission for the purpose of the Hearing and Review and additional exhibits from the examination of the two witnesses were also tendered into evidence, as were supplementary documents.

[67] Both the Applicants and Staff referred to hearsay evidence, which is admissible in Commission proceedings pursuant to subsection 15(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended.

B. Staff's Evidence of Alleged Compliance Deficiencies

[68] To provide a framework for our analysis, we find it helpful to set out the evidence of the seven compliance deficiencies alleged by Staff and supported by six affidavits of Chris Zolis ("**Zolis**"), a forensic accountant in CRR, sworn on August 20, 2013, and four affidavits of Karin Hui ("**Hui**"), also an accountant in CRR, sworn on August 21 and 22, 2013 and February 11 and 14, 2014. Staff characterizes the first four deficiencies as integrity issues and the latter three as proficiency issues.

1. Conflicts of Interest

[69] On July 3, 2013, Staff raised two conflicts of interest with the Applicants in the Compliance Report, as discussed below.

(a) Redstone

[70] On April 18, 2011, Casale received a $25,000 loan from 1710814 Ontario Inc., a company controlled by So who was the principal of Redstone, with an interest rate of 12% per annum (the "**First Loan**").

[71] On October 11, 2011, Staff informed the Applicants that Sterling was capital deficient by $97,512, based on the firm's audited financial statements as at December 31, 2010. On October 21, 2011, Staff notified the Applicants that it had recommended that Sterling's registration be suspended due to its capital deficiencies as of December 31, 2010 and September 31, 2011 and its failure to report those deficiencies to Staff as required by law. On October 24, 2011, Staff and Casale agreed that if she injected the requisite funds into Sterling, Staff would withdraw its recommendation. On November 1, 2011, Casale advised Staff that a bank transfer of $73,000 was made to the Sterling bank account (the "**Second Loan**").

[72] On April 16, 2013, at the Casale Interview, Casale confirmed that the source of the $73,000 used to rectify the capital deficiency in November 2011 was an undocumented loan from Redstone, with no interest payable or other terms of repayment. When asked by Staff if she perceived either the First Loan or the Second Loan (together, the **"Loans"**) to be a conflict of interest, Casale responded that she did not.

[73] In 2012, following receipt of the Loans, Sterling earned $195,083 in commissions for sales of Redstone securities. Sterling earned at least a further $66,806.25 in commissions from sales of Redstone securities after it was notified by Staff on July 3, 2013 of the compliance deficiency relating to its conflict of interest with Redstone.

(b) Genwealth

[74] During the Compliance Review, Staff became aware that M.L., as a dealing representative of Sterling, sold securities of Genwealth, a venture capital fund that was managed by him. In 2012, Sterling earned $13,145 in commissions for sales of Genwealth securities.

[75] On December 5, 2012, Casale informed Staff that she did not perceive a conflict of interest with respect to the firm's distribution of Genwealth securities.

2. Failure to Report Capital Deficiencies

[76] On November 18, 2011, after Sterling rectified its capital deficiency, Casale consented to the imposition of terms and conditions on Sterling's registration for a period of six months, including a requirement of specified monthly financial reporting to the Commission from October 2011 to March 2012.

[77] On March 30, 2012, Sterling filed audited financial statements and a Form 31-103, required within 90 days of its fiscal year end, which shows Sterling had a working capital deficiency of $7,403 as at December 31, 2011. On July 31, 2012, Staff informed Casale of Sterling's December 31, 2011 capital deficiency. Casale responded that Sterling had met working capital requirements from January through March 2012. On August 1, 2012, Staff requested, and Casale provided, Sterling's unaudited financial statements as at June 30, 2012, which shows Sterling had excess working capital of $9,327. The Affidavit of Hui indicates that, as a result of Casale's demonstration that Sterling met working capital requirements in January, February, March and June 2012, Staff refrained from recommending that additional terms and conditions be imposed on Sterling for the December 31, 2011 capital deficiency (Ex. 11 – 2nd Affidavit of Hui at para. 15).

[78] During the Compliance Review, on February 6, 2013, Casale informed Staff that Sterling had been capital deficient in April (-$12,687) and May (-$20,040) 2012, the two months between the financial reports delivered to Staff. At the Casale Interview, Casale confirmed that she knew about the capital deficiencies in April and May 2012 and did not notify the Commission, despite acknowledging that she understood her obligation to notify the Commission as soon as it occurred. At the Casale Interview, Casale also gave evidence that in 2012 her accountant was preparing the Forms 31-103 on a monthly basis.

3. Misrepresentations to Staff

[79] Staff reviewed an application for EMD registration submitted by Capital Hill in the spring of 2012 (the "**Capital Hill Review**"). The principals of Capital Hill were also the principals of Gingko, an issuer whose securities were sold by Sterling. During the Capital Hill Review, Staff became aware of a Gingko distribution to 19 investors, for which Sterling had filed a Form 45-106F1 *Report of Exempt Distribution*.

[80] Through correspondence, representatives of Capital Hill and Gingko informed Staff that the distributions to those 19 Gingko investors (the "**19 Investors**"), were effected through Sterling Grace, but were not required to be made through an EMD as the investors were close personal friends or business associates pursuant to the private issuer exemption. Therefore the Form 45-106F1 had been filed in error. In the Casale Interview, Casale told Staff that she received $4,000 for acting as a "dealer after the fact" for the sales of Gingko shares to the 19 Investors.

[81] On June 19, 2012, counsel for Gingko advised Staff that an additional 22 investors (the "**22 Investors**") subscribed for shares of Gingko, but that Sterling was not involved in these transactions. Appended to the letter sent by Gingko's counsel on June 19, 2012 was a letter addressed to Staff and signed by Casale confirming the accuracy of the counsel's letter, therefore affirming that Sterling was not involved in the distribution to the 22 Investors.

[82] On July 17, 2012, Staff sent an email to counsel for Gingko, Capital Hill and Casale summarizing the contents of a telephone call amongst them of the previous day. The substance of the phone call included that "Sterling was not involved in the private placement that took place during March 2012 to May 2012 to an additional 22 investors and has not performed KYC or suitability reviews for these investors or received any fees…for these investments". The email asked the recipients to explain if they believed the summary of the call to be inaccurate or incomplete. Subsequently, Casale called Staff on July 17, 2012 to request a clarification of another point in the email, and stated that everything else in the email "seemed pretty straightforward" (Exhibit 21 of the Hearing and Review – Supplementary Brief of documents at Tab 10).

[83] During the Compliance Review, Staff obtained 20 client files pertaining to the 22 Investors. Six of these included Sterling KYC forms signed by clients and dated prior to June 19, 2012. The Affidavit of Zolis states that four of the six Sterling KYC forms also were also signed by Casale on the same day as the client (Exhibit 16 of the Hearing and Review – 3rd Affidavit of Zolis sworn on August 20, 2013 at para. 18; Tabs H, J-K and L). At the Casale Interview, Casale testified that she provided the same type of services for the 22 Investors as she had provided for the 19 Investors and received approximately $10,000 in compensation for her work.

[84] On November 21, 2013, after the OTBH and the issuance of the Director's Decision, the Commission received a complaint from investor D.L. and her husband, D.H., regarding investments they made in LTP Financing Inc. ("**LTP**") through the Applicants. Investor D.H. testified at the Hearing and Review and his evidence is found below. Despite a request for complete information on books and records, Casale did not disclose her involvement in the LTP distribution to Staff during the Compliance Review, even though the LTP transactions with investors D.H and D.L. occurred in the review period of December 1, 2011 to November 30, 2012.

4. Trading Without Registration

(a) M.L. in Ontario

[85] From August 18, 2011 to December 30, 2011, M.L. was registered as a dealing representative with Harris Brown & Partners Ltd. ("**Harris Brown**"). M.L. told Staff that he notified Harris Brown on or about October 27, 2011 that he would be leaving within weeks. Shortly after this notice he reached an agreement to have Sterling sponsor his registration. M.L. was not registered with Sterling until February 14, 2012.

[86] At least six clients purchased securities of Redstone from M.L., acting on behalf of Sterling, prior to his being registered with Sterling. One of those sales was signed by the investor and M.L. on February 1, 2012, while M.L. was not registered with either Harris Brown or Sterling.

(b) Sterling in Alberta & British Columbia

[87] Sterling and Redstone entered into an "Engagement Agreement" on January 1, 2011 whereby Sterling would act as an EMD for Redstone. On February 2, 2012, Sterling became registered as an EMD in Alberta and British Columbia. Between January 1, 2011 and February 2, 2012, at least eleven residents of Alberta and British Columbia completed a Sterling KYC form and their names appeared on Sterling's trade blotter as having invested in Redstone.

5. Failure to Discharge KYP Obligations

[88] On July 3, 2013, Staff identified certain KYP compliance deficiencies in the Compliance Report, two of which are discussed below.

(a) Redstone

[89] Redstone is a finance company that holds itself out as providing loans to small and medium sized businesses.

[90] During the Casale Interview, Casale admitted that in December 2012 she told Staff that Redstone had not experienced any defaults, although some companies had missed interest payments, and that no loans were past due more than one year. Casale further testified that by April 2013 her understanding was that there were two Redstone loan defaults since she spoke with Staff in 2012.

[91] The Redstone OM states that, at October 5, 2012, the total principal amount advanced in its loan portfolio is $10,361,564 and that as of October 10, 2012, Redstone had loans in aggregate of $1,290,700 that were in default. So provided Staff with Redstone's loan portfolio summary as at November 9, 2012, which reports 18 outstanding loans, ten of which are overdue past their maturity date but only one of which was overdue for more than one year. Of the ten overdue loans, default judgement had been obtained in three cases, a receiver had been appointed in another and five others were identified as becoming the subject of remedial action by Redstone.

(b) Genwealth

[92] Genwealth is a venture capital investment fund managed by M.L.

[93] The Genwealth OM, dated November 4, 2011, states that the fund will: (a) "create a diversified portfolio"; (b) focus on businesses that "have experienced and capable senior management"; (c) include "public and private companies"; (d) "largely remain a passive investor"; and (e) maintain "a significant bias toward long-term equity positions".

[94] During the Compliance Review, Staff determined that (a) Genwealth's portfolio consists of at least three start-up companies; (b) Genwealth is not a passive investor because M.L. is involved in active management and consulting with the three start-up companies; and (c) M.L.'s working experience prior to joining Sterling is limited to a part-time job in his father's construction company and his five-month employment with Harris Brown.

6. Improper Reliance on Accredited Investor Exemption

[95] The Compliance Report indicates that Sterling sold securities of Redstone or Gingko to at least 22 investors in reliance on the AI exemption to the prospectus requirement, in circumstances where the investor did not qualify or there was insufficient evidence to support the client's reliance on the exemption.

[96] For example, investors J.W. and P.W. were not AIs on the face of their Sterling KYC form and did not speak to anyone at Sterling prior to investing. There are two notations on J.W. and P.W.'s KYC form referring to: (a) the private issuer exemption; and (b) referral by So. Further, investors M.P. and B.P. were identified on their KYC form as being AIs, but upon being interviewed by Staff they stated that they did not speak to anyone from Sterling prior to investing and it became apparent that their real estate had erroneously been included in their financial assets. Lastly, investor A.G. did not have relevant information on his KYC form to support reliance on the AI exemption, and when interviewed by Staff he confirmed that he was not an AI and had not spoken to anyone from Sterling prior to investing.

7. Failure to Discharge KYC and Suitability Obligations

[97] The Compliance Report indicates that Sterling sold securities of Redstone or Gingko to at least 45 investors in circumstances where the investment may not have been suitable or there was insufficient information to demonstrate suitability.

[98] For example, investor P.C. made three investments of $150,000 in Redstone, but his Sterling KYC form initially stated that he had poor or no investment knowledge, low risk tolerance, low income and no specified net worth. After his last investment, a second KYC form was signed indicating good investment knowledge and high risk tolerance. Further, investor J.C. made three investments of $75,000 in Redstone, prior to completing a Sterling KYC form. Upon completion of the KYC form, and after J.C. had made the investments, it became apparent that she had limited investment knowledge and a low risk tolerance. Lastly, investor M.D. invested in a four year Redstone "promissory note", despite the fact that her Sterling KYC form indicated she had a liquidity need of less than one year.

[99] During the Casale Interview, Casale told Staff that Sterling's mandate with Redstone involved qualifying investors after they had already made their investment. Further, she admitted that initially Redstone distributed Sterling's KYC forms directly to

investors and she would be provided with those forms already completed by the investor. Casale could not confirm that she met and spoke with all investors who had invested in Redstone through Sterling. Investors J.W., P.W., M.P., B.P. and A.G. all told Staff that they did not speak to anyone from Sterling prior to investing.

[100] In relation to the 19 Investors, Casale admitted she acted as a "dealer after the fact" for Gingko. When asked about the 22 Investors, Casale stated that she took the job of calling as many as she could for Gingko, but some were "after the fact".

C. Staff's Witness – Investor D.H.

[101] In May 2012, D.H. and his wife, D.L., invested in LTP. D.H. gave evidence that he invested $107,000 and D.L. invested $127,000 in LTP from money in Locked-in Retirement Accounts ("**LIRA**") that had originated from their Ontario Municipal Employees Retirement System ("**OMERS**") pensions. D.H. testified that, at the time, they had five properties, consisting of one primary residence and four rental properties, and their net equity in properties was approximately $250,000 to $300,000.

[102] D.H. testified that in 2012, when he invested in LTP, he and his wife had no income, except perhaps $1,000 to $1,500 in rental income per month after paying debt. D.H.'s evidence was that their yoga business was either breaking even or had slightly negative cash flows, so they were not drawing income from it. He testified that neither his nor his wife's income has ever been $200,000 per year and they have never had a combined income of $300,000 per year.

[103] D.H. testified that he learned about LTP from one of its principals, Paul Van Benthem ("**Van Benthem**"). D.H. stated that Van Benthem provided D.H. and D.L. with financing ideas. D.H. testified that Van Benthem knew about their OMERS pension plans and suggested that if they invested in his company that he could invest the money back into their yoga studios in the form of a loan. D.H. did not recall receiving an offering memorandum for LTP.

[104] D.H. was put in contact with Sterling by Van Benthem. He recalled meeting with Casale once at a coffee shop in May 2012. He thought that the meeting occurred after his and his wife's funds were transferred to LTP. D.H. testified that, to his knowledge, his wife never spoke to Casale in person. It was D.H.'s evidence that Van Benthem had counseled D.H. to tell Casale about their properties and to give her an estimate of the real estate value. D.H. testified that Van Benthem advised D.H. to invest in LTP for a five year term so that he and his wife would have more time to pay back the loan, when LTP provided the funds back to them. D.H. testified that they never did get the loans promised by Van Benthem. As a result, their yoga business became insolvent and they were forced to close it down.

[105] D.H. identified his wife's Sterling KYC form, which indicated she had good investment knowledge and a high risk tolerance. D.H. testified that he filled in his wife's form, apart from the notes section. He further testified that it was likely in fact his form because D.L. does not have good investment knowledge and has a low risk tolerance.

[106] D.H. testified that Casale never asked him why he was investing in LTP, nor did she discuss the risks of investing in LTP or disclose that Sterling would receive a commission for the sale of LTP securities to them. D.H. also testified that when he met with Casale in May 2012 they did not discuss Van Benthem having had regulatory issues.

[107] Staff put a decision of the Investment Industry Regulatory Organization of Canada ("**IIROC**"), dated April 13, 2010, to D.H. (*Re Van Benthem & Petroccione*, [2010] I.I.R.O.C. No 18). D.H. testified that, in the fall of 2012, his wife discovered via an internet search that Van Benthem had been the subject of IIROC sanctions. It was their understanding at that time that the decision banned Van Benthem from acting as a stock broker.

[108] Under cross-examination, D.H. admitted that he was aware that he could not use his retirement savings to directly invest in his yoga business and confirmed that he was unable to get any other financing of that magnitude for the business. D.H. also admitted that he never told Casale that he had a "side deal" with Van Benthem for money to flow back to him.

D. Casale's Evidence Relating to the Alleged Compliance Deficiencies

[109] As set out above, Casale is Sterling's UDP, CCO and dealing representative. She is also the sole shareholder of the company. Casale acknowledges that between 2008 and 2011 Sterling was largely inactive.

[110] Casale acknowledged that Sterling, like many other EMDs, had compliance imperfections from the outset of the period under review by Staff. Casale confirms that she is prepared to step down as CCO and UDP and is working towards selling Sterling, subject to Staff's approval or non-objection, such that the best interests of clients may be met by having other qualified registrants take on those roles. The issue for the Panel to determine, from Casale's perspective, is her ability to retain her registration as dealing representative of Sterling. , Casale states that the new UDP and CCO would provide additional supervision over her activities for a period of time and she is willing to fulfill additional requirements that the Panel considers necessary.

[111] It is Casale's evidence that the Compliance Review, commencing on or about December 4, 2012, was unannounced and that Staff spent several days in her office "peppering" her with questions and "photocopying what appeared to be the full contents of [her] filing cabinets" (Exhibit 4 of the Hearing and Review – Affidavit of Casale sworn on February 4, 2014 at para. 11). Casale gave evidence that she was professional and cooperative with Staff throughout the process and responded willingly and promptly to requests. Casale takes issue with the fact that seven months later Staff released the Compliance Report and made the registration suspension recommendations without providing her with an opportunity to address or explain any of the deficiencies. Casale notes that Staff also did not seek to impose any terms and conditions on the Applicants' registrations in the seven month period prior to Staff recommendations.

[112] Casale reiterates that Staff's concerns may be addressed through her willingness to step down as UDP and CCO, additional education for her role as dealing representative and a period of supervision over her activities in that role. Casale states that she has made an effort to remain educated and informed on matters relating to EMD registration and requests the Panel to consider that there have been no client complaints regarding the Applicants of which she was aware at the date of swearing her first affidavit.

[113] Casale gave evidence that Sterling does not take custody of client funds and stresses that the Applicants have implemented positive changes to Sterling's processes since the Compliance Review. Positive changes include revision of the Sterling KYC form, ensuring referral agreements are documented in writing, with terms clearly set out, and obtaining acknowledgement and agreement from clients that (a) the referring party did not provide investment advice regarding products offered through Sterling and (b) a referral fee would be payable by Sterling to the referring party. Further, Casale states that she is no longer accepting "historic clients" and that as of January 2013 Sterling's financial activity is recorded on an accrual basis. Casale is aware of the firm's monthly capital position and reporting of income and expenses occurs on a monthly basis.

[114] As of the fall of 2013, Casale confirms that the Applicants are no longer dealing representatives of Gingko or Genwealth products. Casale also confirms that, since learning of disconcerting news about So in December 2013, she has sought assurances from the new president of Redstone that investments made through Sterling remain in good standing and that investors will not suffer losses. Casale gave evidence that she was not currently distributing Redstone's products and was uncertain of her future relationship with that issuer.

1. Conflicts of Interest

[115] In relation to the alleged Genwealth conflict of interest, Casale gave evidence that Sterling no longer works with Genwealth and M.L. is no longer a Sterling dealing representative. However, Casale notes that M.L. sold Genwealth securities primarily to his family and friends, who were fully aware of his involvement with Genwealth. With respect to the alleged Redstone conflict of interest, Casale states that the operational loan of $73,000 was not disclosed to investors because So had informed her that he discussed it with his legal counsel, who suggested that the loan relative to the fund size would not be considered material and disclosure was not required. Subsequently, Casale states, she asked So to confirm that the matter would be addressed in Redstone's revised OM and was assured that he was working with counsel to address the issue in a compliant manner. Despite this, Casale states that in future she will exercise due diligence and seek professional advice directly to ensure any potential conflicts of interest are identified and addressed.

2. Failure to Report Capital Deficiencies

[116] On the matter of capital deficiency, Casale gave evidence that the issue was rectified in June 2012 and that Sterling has been in full compliance with its capital obligations since then. She provided Forms 31-103F1 "Calculation of Excess Working Capital" dated January 2013 to September 2013. Casale states that she had no intention of hiding the April and May 2012 deficiencies from Staff, that she is aware of her obligation to report capital deficiencies and that she did so when she became aware of them. She assures the Panel that the accounting measures she has implemented will ensure that she is aware of Sterling's capital position and indicates that, in any event, a new CCO would be responsible for ensuring the firm's capital position is maintained.

3. Misrepresentations to Staff

(a) Gingko

[117] Although the Director accepted that Casale made misrepresentations to Staff, it is Casale's evidence that in July 2012 Casale confirmed to Staff that Sterling was not involved in the private placement of Gingko securities to the 22 Investors, or performance of KYC and suitability reviews with regard to their investments, because it was not at that time. Casale gave evidence that subsequent to Staff's inquiry she was retained by Gingko to act in a purely administrative manner and, as a result, she reviewed the subscription agreements of the 22 Investors after they had already invested. Casale states that in April 2013, at the Casale Interview, she candidly responded in the affirmative to Staff's question concerning her receipt of compensation in respect of the 22 Investors. It is Casale's evidence that the six investors, whom Staff identified as having Sterling KYC forms, were exempt under the private issuer exemption and she did not effect the sale of securities to any of them or qualify them.

Casale recognizes that filings made by Gingko may have confused matters, but states that the experience has informed her decision not to take on "historic clients" or provide such administrative services.

(b) LTP

[118] Casale gave evidence that she believed D.H. and D.L. were AIs at the time they made their investment with LTP. Casale recalled meeting with D.H. in May 2012 and that during that meeting D.H. informed her that he had over $1 million in financial assets, including, but not limited to, Registered Retirement Savings Plans ("**RRSPs**") and cash. Casale stated that she completed a KYC form and D.H. executed it confirming he was an AI. Casale has been unable to locate her copy of D.H.'s KYC form, but produced a copy of D.L.'s KYC form, which Casale states was completed and executed by D.L. and mailed to Casale after her meeting with D.H.

[119] Casale also gave evidence that in October 2012 she was asked by Van Benthem of LTP to handle an investment for P.J. and S.J., which would involve transferring approximately $500,000 from their RRSP accounts to LTP. Casale states that she had immediate concerns about suitability given that it was a large sum of savings going towards a risky investment and expressed that concern to them over the telephone. Casale attempted to schedule various meetings with P.J. and S.J., all of which were cancelled by them, and she subsequently refused to handle the proposed investment.

[120] Casale has not acted as a dealing representative for LTP since she dealt with D.H. and D.L.

4. Trading Without Registration

(a) M.L. in Ontario

[121] In respect of the allegation that the Applicants traded without registration, Casale's evidence is that the six sales at issue were made when M.L. was a registrant in good standing and while Sterling was in the process of transferring his registration. Casale acknowledges that the trades should have been made through Harris Brown, but states that at no time were the investors dealing with an unregistered dealing representative.

(b) Sterling in Alberta & British Columbia

[122] Casale's evidence is that her role, in relation to trades in Alberta and British Columbia, was only administrative and that most of those trades were made in reliance on the private issuer exemption. Casale recognizes that Sterling's KYC forms were sometimes used by iBrokerpower and So and/or Redstone to sell Redstone securities to residents of Alberta and British Columbia, but states that she no longer accepts administrative mandates.

5. Failure to Discharge KYP Obligations

[123] On the matter of KYP obligations, Casale gave evidence that she knows the material attributes of all issuers for which Sterling acts. It is Casale's evidence that she required each issuer that Sterling deals with to disclose copies of, as applicable: (a) the last three years of audited and unaudited financial statements; (b) a business plan and/or executive summary; (c) the OM; (d) revenue projections; and (e) general security agreements. Casale provided a copy of Sterling's "Issuer Investment Due Diligence Preliminary Report" checklist. Casale also states that she maintains regular contact with the principals of each issuer, makes inquiries as to whether there have been material developments and maintains updated due diligence binders.

(a) Redstone

[124] Casale states that she spoke and met regularly with So and asked him how the loans were performing, including whether any were in default. Casale states that So repeatedly assured her that there would be no losses on the fund and Casale is not aware of investors losing money on a Redstone investment. Casale gave evidence that she had not seen the chart purportedly prepared by So in respect of the Redstone portfolio showing loans in default. After being shown Redstone's loan portfolio summary by Staff, Casale contacted So and he informed her the list was old, all the items had been dealt with and many involved simply a default in an interest payment. Casale takes the position that if the information was material to the product the issuer is responsible for disclosing it, however, she does not believe that the information in the chart would have changed an investor's decision to invest in the product.

(b) Genwealth

[125] Casale's response to Staff's evidence in respect of Genwealth is that she knew the product at the level expected of an EMD and that any complaint that information in the OM may have been misleading ought to be made against Genwealth directly.

6. Improper Reliance on Accredited Investor Exemption

[126] In response to Staff allegations that the Applicants improperly used prospectus exemptions, Casale's evidence is that she believes all investors who invested in reliance upon the AI exemption met the necessary requirements. Casale reviewed Staff's list of 22 investors and provided brief reasons for the Applicants' reliance on the AI exemption or otherwise provided an explanation for the investment or investments. Casale also collected letters from 18 investors confirming they were AIs at the time they made their investments through Sterling, at least nine of whom were also investors listed in Staff's chart. For example, Casale's evidence is that investor H.W.L. confirmed to Staff that his net worth is $1 million, Casale provided a Sterling KYC form with information she gathered from H.W.L. in support of that position and H.W.L. subsequently provided a letter confirming his AI qualification. In summary, Casale's evidence is that while paperwork may not have been perfect, the substantive issues were addressed.

[127] Casale also requests that the Panel recognize that in some instances she has refused to accept investment renewals, as investors did not meet the AI requirements. Casale also states that some investors provided Staff with somewhat different information than that identified in the Sterling KYC form. Casale's explanation of this is that Staff approached the investors, through cold calls, which may have resulted in reluctance to disclose personal financial information. It is Casale's evidence that she has told, and continues to tell, every investor that the investments for which Sterling acts as dealing representative are high risk. Casale suggests that the Panel consider a newly implemented and more detailed Sterling KYC form that will ensure that information obtained from each investor she qualifies is clear.

7. Failure to Discharge KYC and Suitability Obligations

[128] Finally, with respect to KYC and suitability obligations, Casale gave evidence that many of the investors Staff refer to were "inherited" by the Applicants and had invested pursuant to the private issuer exemption. Casale reviewed Staff's list of 45 investors and provided responses to Staff's concerns. Casale states that the revised Sterling KYC form will remove potential ambiguity as it clearly identifies terms relating to income, net financial assets and risk tolerance. Casale began drafting the new form prior to the Compliance Review.

8. Conduct After the OTBH

(a) Investor Alert

[129] Casale gave evidence that her cover letter for the OTBH notified the Commission that she would be seeking a stay if the Director accepted Staff's recommendations. Nevertheless, Casale states, on November 19, 2013, the Commission issued an investor alert on the front page of its website which alerted investors not to purchase securities from the Applicants (the "**Investor Alert**"). This remained on the Commission's web page for nine days until the Stay Decision ordered its removal. Casale notes that only 5 other investor alerts were posted on the Commission's website in 2013 and the others appear to involve boiler rooms and fraud, which can be distinguished from her situation. Further, Casale's review of the Commission's investor alerts indicates that the Commission issued a total of 5 to 6 alerts each year in 2010, 2011 and 2012. Casale states that the Commission's posting of the Investor Alert has harmed the Applicants' business and reputation and, coupled with the Compliance Review, has caused Casale tremendous stress. Casale notes that she was recently turned away for a personal mortgage from a lender who declined based on the Director's Decision.

(b) Proposed Transaction – Sale of Sterling

[130] The Applicants tendered into evidence a letter of intent dated February 13, 2014, which recorded the intended sale of 90 percent of issued and outstanding common shares of Sterling to a Mr. Woods and Mr. Gentile for a consideration of $35,000 and indicated that Mr. Woods would act as CCO and UDP. The Applicants then provided notice to Staff, pursuant to section 11.10 of NI 31-103, of the Proposed Transaction.

[131] On February 28, 2014, counsel for Sterling gave notice to Staff of a proposed sale in which Mr. Woods was no longer a party and was replaced by Mr. Jackson as CCO and UDP. In the second proposed sale, Sterling was to be acquired by Mr. Gentile and Mr. Jackson for consideration of $20.

[132] On March 21, 2014, Casale wrote to Staff with a revised structure for the Proposed Transaction. In this third proposed sale, Mr. Gentile and Mr. Jackson were no longer parties and 90 percent of common shares of Sterling would be purchased by Business Owners Support Services Network Inc. owned by Ms. Nixon for consideration of $40,000. In this third proposed sale, Mr. Jackson would continue to act as CCO and Ms. Nixon's husband, a lawyer in British Columbia would act as UDP. On March 25, 2014, counsel for the Applicants advised Staff that Mr. Huras, would replace Mr. Jackson as CCO of Sterling under the most recent proposed sale.

[133] As noted above at paragraph [21], we have been advised that the Applicants are no longer pursuing an application, pursuant to section 11.10 of NI 31-103, in furtherance of the Proposed Transaction.

E. Applicants' Witness – Investor M.B.

[134] M.B. testified that she met Casale in 2006 or 2007 through business contacts and invested in a medical company that Casale was representing at that time. M.B. confirmed in cross-examination that although they did not start out as friends, she became a long-standing friend and investor with Casale.

[135] M.B. made three investments with Sterling and testified that she had a generally positive experience. M.B. further testified that Casale understood the products she was selling, could answer M.B.'s questions and if she could not answer the question Casale would write it down and get back to M.B. She also testified that Casale did due diligence on products, knew a lot about them, would "arrange meetings with CEOs or other representatives of the investee company, and […] she really went out of her way to make sure that we were very comfortable with the investment." (Hearing Transcript dated February 19, 2014 at p. 78).

[136] M.B. first invested in Redstone on March 25, 2011, in the name of her company, directly through So. So put M.B. in contact with Casale to complete her second investment in Redstone. M.B. testified that she and Casale met and completed a Sterling KYC form together and M.B. signed the form on July 2, 2012. M.B. explained that her Sterling KYC form indicated her investment objective was "capital security" and that she had a risk tolerance of "moderate" because it reflected her overall profile, which was something she discussed with Casale.

[137] In respect of Redstone, Casale reiterated what So had told M.B. about Redstone's loan portfolio and stated that Redstone was a high risk investment. M.B. recalled discussing the AI requirements in the context of her second Redstone investment and confirmed that she checked the option indicating that she had net financial assets exceeding $1,000,000 because it was true at the time. M.B. confirmed that she signed a Risk Acknowledgement Form, which she had discussed with Casale, and understood it to mean that she could lose all her money in this investment. M.B. testified that she got all her principal and interest back on her Redstone investment.

[138] M.B. signed a letter tendered at the Hearing and Review, which confirmed that she qualified as an AI and had been made aware of the high risk associated with her Redstone Investment. M.B. explained:

> I've always known Ms. Casale to be a person of great integrity, and she's always, you know, gone out of her way to do the utmost to provide me with a level of information with all the investments that I have gotten into with her…[and by comparison to other financial advisors, she is] far superior.
>
> (Hearing Transcript dated February 19, 2014 at pp. 81-82).

[139] M.B. testified that Staff did not call her or review her Sterling KYC form with her.

VI. ANALYSIS

A. Legal Framework for Registration

1. Public Interest Jurisdiction

[140] In exercising its discretion to review the decision of a Director, the Commission must act in the public interest with regard to its mandate and purpose as articulated under section 1.1 of the Act:

> **1.1 Purposes** – The purposes of this Act are,
>
> (a) to provide protection to investors from unfair, improper or fraudulent practices; and
>
> (b) to foster fair and efficient capital markets and confidence in capital markets.
>
> (See *Re Michalik* (2007), 30 O.S.C.B. 6717 ("***Michalik***") at para. 44; *Sawh*, *supra* paras. 150-151)

[141] Section 2.1 of the Act provides fundamental principles for the Commission to consider in pursuing the purposes of the Act, including the primary means for achieving those purposes. These include "requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants" (subsection 2.1(2)(iii) of the Act). One of these requirements is to be found in section 2.1 of the OSC Rule 31-505, which provides that a registered dealer and its representatives "shall deal fairly, honestly and in good faith with its clients". It is in the public interest for the Commission to ensure that these overarching principles of registrant conduct are adhered to, given the important role of registrants in the capital markets.

[142] In *Mithras*, the Commission acknowledged that its discretion in the public interest is to be exercised prospectively to protect the public and the integrity of the capital markets. The Commission stated that:

> … the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts…We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.
>
> (*Mithras*, *supra* at pp. 1610-1611)

[143] These principles are relevant to our consideration of the Applicants' requests for continued registration under the Act.

2. Registration under the Act

[144] The registration requirement for an individual or firm seeking to act as a dealer or dealing representative is set out in subsection 25(1) of the Act:

> **25. Registration – (1)** Dealers – Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in or hold himself, herself or itself out as engaging in the business of trading in securities unless the person or company,
>
> (a) is registered in accordance with Ontario securities law as a dealer; or
>
> (b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer and is acting on behalf of the registered dealer.

[145] It is well established that registration is a privilege, not a right, that is granted to individuals and entities that have demonstrated their suitability for registration (see *Re Trend Capital Services Inc.* (1992), 15 O.S.C.B. 1711 at p. 1765 ("***Trend***"); *Istanbul*, *supra* at para. 60; *Sawh*, *supra* at para. 142).

[146] Section 28 of the Act permits the Director to revoke or suspend, or to impose terms and conditions upon, a registration under the Act, if certain considerations are met. Specifically, section 28 of the Act provides:

> **28. Revocation or suspension of registration or imposition of terms and conditions –** The Director may revoke or suspend the registration of a person or company or impose terms or conditions of registration at any time during the period of registration of the person or company if it appears to the Director,
>
> (a) that the person or company is not suitable for registration or has failed to comply with Ontario securities law; or
>
> (b) that the registration is otherwise objectionable. [emphasis added]

[147] On its face, section 28 of the Act provides three bases for determining whether revocation or suspension of registration or imposition of terms and conditions are appropriate. The first basis is a determination that the person or company is not suitable for registration. The second is a determination that the person or company failed to comply with Ontario securities law. The third and last ground is a determination that the registration is otherwise objectionable. These three tests, if met, are separate bases for a remedy. Thus, a finding that one of these bases has been met is sufficient grounds for revocation or suspension of registration or imposition of terms and conditions, though the decision is ultimately a discretionary one.

(a) Suitability for Continued Registration

[148] Section 28 of the Act does not define how a registrant could be determined to be "not suitable". Therefore, in determining whether an individual or company is unsuitable for registration pursuant to subsection 28(a) of the Act, we are guided by the terms of section 27 of the Act, which addresses the test to be applied to an application for registration. Section 27 of the Act states:

> **27. (1) Registration, etc.** – On receipt of an application by a person or company and all information, material and fees required by the Director and the regulations, the Director shall register the person or company, reinstate the registration of the person or company or amend the registration of the person or company, unless it appears to the Director,

(a) that, in the case of a person or company applying for registration, reinstatement of registration or an amendment to a registration, the person or company is not suitable for registration under this Act; or

(b) that the proposed registration, reinstatement of registration or amendment to registration is otherwise objectionable.

(2) Matters to be considered – In considering for the purposes of subsection (1) whether a person or company is not suitable for registration, the Director shall consider,

(a) whether the person or company has satisfied,

(i) the requirements prescribed in the regulations relating to proficiency, solvency and integrity, and

(ii) such other requirements for registration, reinstatement of registration or an amendment to a registration, as the case may be, as may be prescribed by the regulations; and

(b) such other factors as the Director considers relevant. […]

[149] We accept that the three criteria of proficiency, solvency and integrity for determining whether a person or company is "not suitable" for registration, which have been codified in subsection 27(2) of the Act, have been applied by the Director in other cases when assessing suitability for continued registration under section 28 of the Act and are appropriately considered in this case to determine whether a registrant is not suitable for the purposes of revocation, suspension or the imposition of terms and conditions upon a registration (*Waterview*, *supra* at paras. 18-20).

[150] Requirements of proficiency are prescribed in Part 3 of NI 31-103. Section 2.1 of the OSC Rule 31-505 provides that a registered dealer and its representatives "shall deal fairly, honestly and in good faith with its clients" and section 1.3 of 31-103CP provides further guidance with respect to integrity and solvency.

[151] Our analysis of the Applicants' suitability for registration begins at paragraph [157].

(b) Failure to Comply with Ontario Securities Law

[152] As noted above, section 28 of the Act permits the Director to revoke or suspend, or to impose terms and conditions upon a registration under the Act, if it appears to the Director that the registrant has failed to comply with Ontario securities law. Accordingly, if the Director finds non-compliance, a registration may be revoked or suspended or terms and conditions may be placed upon it. Whether the Applicants have failed to comply with Ontario securities law is determined by analysis of whether on a balance of probabilities, the conduct of the registrants was not in compliance with the provisions or orders falling within the scope of Ontario securities law.

[153] The definition of "Ontario securities law" in subsection 1(1) of the Act includes: (a) the Act, (b) regulations made under the Act, and (c) a decision of the Commission or a Director to which a person or company is subject. We note that this definition on its face is not confined to the provisions of the Act governing registration. However, compliance with those provisions would be expected as an aspect of the obligations of registration.

[154] Our analysis of whether the Applicants failed to comply with Ontario securities law begins at paragraph [262].

(c) Whether Continued Registration is Otherwise Objectionable

[155] Section 28 of the Act does not define the concept of "otherwise objectionable". We adopt the view from Sawh that a purposive approach should be taken to the analysis of whether registration would be "otherwise objectionable" in light of the Commission's mandate, as expressed in section 1.1 of the Act to: (a) provide protection to investors from unfair, improper or fraudulent practices; and (b) foster fair and efficient capital markets and confidence in capital markets (Sawh, supra at para. 289).

[156] We address whether the continued registration of the Applicants is otherwise objectionable at paragraph [277].

B. Are the Applicants Suitable for Continued Registration?

[157] The three criteria for determining suitability for registration for the purpose of section 28 of the Act are codified in subsection 27(2) of the Act. These are whether the person or company has satisfied the requirements prescribed in NI 31-103 and OSC Rule 31-505 relating to proficiency, solvency and integrity (Subsection 27(2)(a)(i) of the Act).

[158] Staff's submissions did not focus on whether the Applicants currently lack financial solvency. The analysis of whether the Applicants are suitable to continue being registered will therefore focus on the application of both the proficiency and integrity criteria, established by subsection 27(2) of the Act and interpreted by previous case law (see for example, *Istanbul*, *supra* at para. 65), to the Applicants.

[159] In determining whether the Applicants are suitable for continued registration, their past conduct is relevant because it assists in determining whether the Applicants are likely to meet the standards of suitability imposed by Ontario securities law now and in the future (*Mithras*, *supra* at pp. 1610-1611; *Sawh*, *supra* at para. 157). Accordingly, the past conduct of the Applicants will be assessed against the statutory requirements existing at the time of the conduct. This analysis of past conduct will form one of the bases for determining whether the Applicants are suitable for registration under the current regulatory regime. In addition, the Applicants' evidence tendered at the Hearing and Review provides us with additional grounds for making the determination as to the Applicants' continued suitability for registration.

1. Characterizing Issues of Proficiency and/or Integrity

[160] The Applicants urge the panel to consider this to be a case of proficiency only. Specifically, the Applicants submit that four of the seven alleged compliance deficiencies, those relating to conflicts of interest, failure to report capital deficiencies, misrepresentation and trading without registration, are matters of proficiency rather than integrity. Staff disagrees with the Applicants characterization of these four issues. Both sides agree that the remaining three of the alleged compliance deficiencies relate to proficiency.

[161] Based on our review of the conduct at issue, we disagree with the Applicants' view that matters of integrity are not implicated in this case. We also do not agree that Staff has incorrectly identified matters of proficiency as matters of integrity.

[162] Many of the compliance deficiencies raised by Staff in this case may be accurately characterized as matters involving both proficiency and integrity. The two criteria for determining suitability need not be mutually exclusive or considered strictly in watertight compartments.

[163] Certain fact situations engage considerations of both proficiency and integrity. For instance, the inability to identify a conflict of interest may be a proficiency issue because proper identification requires the application of judgment in relation to the potentially competing interests of dealers and clients. The ultimate handling of a conflict may reflect on both proficiency in the application of the registered firm's compliance policies and the integrity of the registrant in their dealings with clients and appropriately responding to conflicts. The choice not to disclose a conflict of interest, particularly once it has been brought to a registrant's attention, may raise questions about a registrant's integrity.

[164] Whether an issue is characterized as a matter of proficiency, of integrity or both, the Commission may consider the circumstances and issue an appropriate remedy. The Applicants take the position that only matters of integrity merit periods of suspension to serve purposes of general and specific deterrence (citing *Istanbul*, *supra* at paras. 72-73 and 79-80; *Obasi*, *supra* at paras. 1, 30-32; *DiPronio*, *supra*). The Applicants' submissions seem to imply that issues of proficiency can always be addressed with education and supervision and, therefore, should not trigger suspension of a registration. We do not agree with the submission that only matters of integrity merit periods of suspension. In appropriate circumstances, a lack of proficiency may require regulatory responses beyond that of education and supervision.

[165] We find that the Director accurately noted that in this case "many of the issues were both integrity and proficiency issues" (Director's decision, supra at para. 4). We will address the alleged compliance deficiencies in turn and, if necessary, expand further on the appropriate characterization of each in our analysis below.

2. Legal Frameworks relating to Integrity and Proficiency

(a) Integrity

[166] The term integrity is not defined under the Act. It is not disputed that the Commission has adopted the view that analysis of the integrity requirement involves consideration of "the honesty and character of the applicant" (*Istanbul*, *supra* at para. 66, citing *Wall*, *supra* at para. 23). The Commission in *Istanbul* stated that an assessment of integrity should be "guided by the criteria set out in paragraph 2.1(1)(iii) [now 2.1(2)(iii)] of the Act" (*Istanbul*, *supra* at para. 68). Subsection 2.1(2)(iii) of the Act states that the Commission shall have regard to fundamental principles, including "the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants".

[167] OSC Rule 31-505 imposes a standard of integrity on registered dealers. Specifically, section 2.1 of OSC Rule 31-505 provides that:

> **2.1 General Duties** – (1) A registered dealer or adviser shall deal fairly, honestly and in good faith with its clients.

> (2) A representative of a registered dealer or registered adviser shall deal fairly, honestly and in good faith with his or her clients.

[168] We agree with the Applicants that section 1.3 of 31-103CP provides guidance on the matter of integrity requirements for registrants. It states that:

> ***(b) Integrity***
>
> Registered individuals must conduct themselves with integrity and have an honest character. The regulator will assess the integrity of individuals through the information they are required to provide on registration application forms and as registrants, and through compliance reviews. For example, applicants are required to disclose information about conflicts of interest, such as other employment or partnerships, service as a member of a board of directors, or relationships with affiliates, and about any regulatory or legal actions against them.

[169] In our view, the regulatory framework contemplates an assessment of whether or not a firm has acted with integrity (*Waterview*, *supra* at para. 22, citing *Re Carter Securities Inc*. (2010), 33 O.S.C.B. 8691 at para. 87 **("*Carter*")**). Although a firm may show its integrity in different ways, it has the capacity to demonstrate its integrity through, among other things, its compliance with Ontario securities law, its internal policies, and the attributes of persons carrying out specific roles within the firm. Thus, it is appropriate to consider in this case whether Sterling has demonstrated an appropriate level of integrity to remain registered. For the purposes of this analysis, the actions of Casale are attributable to Sterling. Given Casale's positions as UDP, CCO, dealing representative, sole shareholder and directing mind of Sterling, we were unable to distinguish between the Applicants.

[170] In assessing the integrity of applicants for registration, the Commission has considered factors including, the person or company's dealings with clients, compliance with Ontario securities laws and the use of prudent business practices (*Wall*, *supra* at para. 23; cited in *Istanbul*, *supra* at para. 66 and *Sawh*, *supra* at para. 257). In our view, those considerations are equally applicable in matters of whether a registration should be suspended or revoked or whether it is appropriate to impose terms and conditions upon it. We agree that an individual's honesty and candour in their dealings with the Commission is also a relevant consideration with respect to integrity (*Pyasetsky Director's Decision*, *supra* at paras. 17-18).

[171] We agree with the finding of a director of the Alberta Securities Commission in John Doe that the concept of integrity invoked in the registration regime is broader than dishonesty. Rather, it encompasses a duty of care and while a registrant may not be dishonest, he or she may "be reckless or lackadaisical over whether one complies with the rules or requirements of one's industry" (*Re John Doe* (2010), 33 O.S.C.B. 1371 at para. 37, citing *Re Doe* (2007), ABASC 296).

(b) Proficiency

[172] Registrants have an important function in the capital markets and proficiency requirements are established to ensure that the public deals with qualified persons or companies (*Michalik*, *supra* at para. 48). Proficiency requirements also support, promote and enhance the purposes of the Act, which include protecting the investing public by maintaining high standards of fitness and business conduct (*Sawh*, *supra* at para. 158).

[173] Subsection 3.4(1) of NI 31-103 sets out the proficiency requirement that: "[a]n individual must not perform an activity that requires registration unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently". In *Michalik*, the Commission noted in reference to section 1.5 of OSC Rule 31-505, the precursor to subsection 13.2(2) of NI 31-103, that registrants are required to apply the "know your client" and "suitability" standards in carrying out their functions and, therefore, that they must meet the proficiency requirements to apply these standards (*Michalik*, *supra* at para. 23).

[174] In their submissions, Staff does not contest that the Applicants have enough education or experience to be considered suitable for registration. However, the evidence presented at the Hearing and Review raises the issue of whether Staff has satisfied us that the Applicants are lacking proficiency in fulfilling the know-your-client, suitability or know-your-product obligations required of an EMD as well as appropriate reliance on permissible exemptions from prospectus requirements.

[175] Consistent with our analysis above at paragraph [169], for the purposes of our assessment of proficiency the actions of Casale are attributable to Sterling, as she is and was the directing mind of the firm. Our conclusions on proficiency below are applicable to Sterling as a registered firm and Casale as a dealing representative.

3. Analysis of the Continued Suitability of the Applicants

[176] We now consider the alleged compliance deficiencies relevant to the determination of the Applicants' suitability for continued registration, including: (a) conflicts of interest, (b) failure to report capital deficiencies, (c) misrepresentations to Staff,

(d) unregistered trading, (e) know-your-client and suitability obligations, (f) reliance on the accredited investor exemption and (g) know-your-product obligations.

[177] We acknowledge that Casale is not seeking to maintain her registration as UDP and CCO. In light of our ultimate order however, we make findings in respect of Casale's suitability to be UDP and CCO separately below.

(a) Conflicts of Interest

[178] We find that there are two relevant conflicts of interest that exist or existed at the time that the Applicants sold securities of Redstone and Genwealth. On the basis of our review of the facts surrounding these sales in light of section 13.4 of NI 31-103 below, we find that both were conflicts that ought to have been identified, managed and disclosed by the Applicants.

[179] Section 13.4 of NI 31-103 requires registrants to identify existing and potential material conflicts of interest and respond to them accordingly. The section provides:

> **13.4 Identifying and responding to conflicts of interest** - (1) A registered firm must take reasonable steps to identify existing material conflicts of interest, and material conflicts of interest that the registered firm in its reasonable opinion would expect to arise, between the firm, including each individual acting on the firm's behalf, and a client.
> **(2)** A registered firm must respond to an existing or potential conflict of interest identified under subsection (1).
> **(3)** If a reasonable investor would expect to be informed of a conflict of interest identified under subsection (1), the registered firm must disclose, in a timely manner, the nature and extent of the conflict of interest to the client whose interest conflicts with the interest identified.

[180] The companion policy at section 13.4 of 31-103CP describes conflicts of interest "to be any circumstance where the interests of different parties, such as the interests of a client and those of a registrant, are inconsistent or divergent." In *Istanbul*, the Commission found that "registrants should be able to identify and avoid conflicts of interest that result from a non-arm's length relationship" (*Istanbul*, *supra* at para. 73).

[181] The Sterling "Policies and Procedures Manual" (also referred to as "**Compliance Manual**") expressly cites section 13.4 of NI 31-103 and identifies examples of conflicts as follows:

Examples of conflict of interest situations include:

- Connected or related issuers, where the Firm might be tempted to recommend the issuer to a client to bolster the trading or price rather than because it is a good investment for the client;

- Director positions of an issuer held by an employee of the Firm, where the individual may receive confidential or market sensitive information […]

(Exhibit 16 to the OTBH – Sterling "Policies and Procedures Manual" at p. 11)

[182] We find it telling that the Sterling Compliance Manual expressly cites section 13.4 of NI 31-103 and has clear provisions relating to the management of conflicts of interest, including:

> **4.3 Conflicts of Interest**
>
> The Firm expects that all employees will avoid any activity, interest or association which might interfere or appear to interfere with the independent exercise of their judgement in the best interests of the Firm, its clients and the public. Employees must avoid any situation in which their personal interests conflict with their duties at Sterling.
>
> (Exhibit 16 to the OTBH – Sterling "Policies and Procedures Manual" at p. 11)

[183] The Sterling Compliance Manual goes on to state that once identified, the CCO must manage the conflict or perceived conflict in one of three ways: (a) disclose the conflict to the client; (b) supervise to ensure the party with the conflict acts only in the client's best interests; or (c) refrain from conducting business that results in the conflict (Exhibit 16 to the OTBH - Sterling "Policies and Procedures Manual" at p. 13). In practice, given that Casale acted as UDP, CCO and a dealing representative, she could not have relied upon supervision to manage a conflict of interest pertaining to herself. Therefore, in accordance with Sterling's own protocol, the Applicants should have either disclosed the conflicts or refrained from engaging in the conduct that gives rise to the conflict.

[184] The Applicants were indebted to Redstone, and a company controlled by Redstone's principal, in the aggregate amount of $98,000 (the **"Redstone Loans"**). In our view, the existence of the Redstone Loans created a situation in which the Applicants' interests potentially conflicted with their clients' interests in circumstances where the clients bought Redstone

securities from the Applicants. The conflict arises from the EMD's dependence on the issuer for loans that acted as a lifeline to Sterling to rectify its working capital deficiency and thereby maintain its registration while selling the issuer's securities to its clients.

[185] We also find that sales of Genwealth securities by M.L., as a dealing representative of Sterling, at a time when M.L. managed the venture capital fund, is a conflict of interest (the "**Genwealth Conflict**"). Even if we accept that M.L. sold securities only to family and friends who knew of his involvement with Genwealth, we are concerned that Casale did not initially perceive a conflict of interest with respect to the firm's distribution of Genwealth securities.

[186] In our view, a reasonable investor would consider the Redstone Loans to be a motivation for Casale to sell Redstone securities. Further, in our view, a reasonable investor would also consider M.L.'s role in Genwealth's management to be a motivation for M.L. to sell Genwealth securities. Therefore, a reasonable investor would expect the Redstone Loans and the Genwealth Conflict to be disclosed as identified conflicts of interest resulting from the relationships of these issuers to the EMD.

[187] In *Sawh*, the Commission found that continued denial of the need to disclose or otherwise manage conflicts of interest prevented the panel from concluding that the applicants would comply with the integrity requirements of registration in the future (*Sawh*, *supra* at para. 284). In *White Capital*, an EMD received four financial payments from an issuer whose securities it sold to investors (*White Capital*, *supra* at paras. 8-11). The applicant's failure to disclose those payments was considered to be a conflict of interest and one of the primary reasons for the Director's suspension of its registration (*White Capital*, *supra* at para. 13).

[188] Casale does not appear to appreciate her obligations to disclose conflicts of interest to investors. First, Casale's reliance on So's counsel for the explanation that the Second Loan of $73,000 was not material because of its size relative to the size of the Redstone fund shows a continued misunderstanding of how a conflict of interest could arise between the Applicants and the Applicants' clients. Second, Casale's Affidavit demonstrates that her position continues to be that an amendment to the Redstone OM is an adequate response. Even when Staff brought the conflict to her attention, Casale determined that it was for So to manage. This response by Casale of delegating the management of the conflict to So does not meet her obligation as a registrant to deal fairly and in good faith with Sterling's clients (section 2.1 of the OSC Rule 31-505). Casale's Affidavit demonstrates an ongoing failure to appreciate her obligations in this regard.

[189] Despite her evidence that So was going to amend the Redstone OM, we were not referred to evidence confirming that the Applicants took steps to address the conflict of interest, such as evidence that disclosure was made to clients. In the absence of evidence that Casale disclosed and discloses the Redstone conflict of interest to investors, we infer that she did not. In the circumstances, we are not persuaded that the Applicants conducted themselves in a manner that a reasonable investor would expect.

[190] The fact that the Applicants did not identify, respond or disclose the conflicts of interest as required by section 13.4 of NI 31-103 raises, in our view, both proficiency and integrity concerns in circumstances where it appears that the registrants do not appreciate their responsibilities to their clients. Moreover, despite clear examples of conflicts of interest provided in Sterling's Compliance Manual, the Applicants failed to respond in an appropriate manner, which raises concerns of integrity and reflects lack of judgment and good faith in considering the interests of clients. Further, the Applicants' failure to provide evidence that they disclosed the Redstone conflict of interest independently to clients and that they continued to sell the product after being notified by the Commission of the existence of that conflict reinforces that this is an integrity concern.

[191] Despite recognition by Casale that she may need independent legal advice, we find the Applicants' submission that in future they would seek legal advice with regard to conflicts of interest is insufficient to satisfy our concerns. It is not clear to us how Casale could seek legal counsel effectively when she has failed to demonstrate an ability to identify relevant conflicts in the first place. The identification and management of conflicts is an integral obligation of registration in a context where Casale is a dealing representative, who communicates directly with clients. Furthermore, given that we have found that the Applicants lack the requisite integrity, we are not satisfied that independent legal advice could ensure that the Applicants would respond to a conflict in the manner required by section 13.4 of NI 31-103.

(b) Failure to Report Capital Deficiencies

[192] We find that the Applicants' failure to be forthright with Staff concerning Sterling's capital deficiencies does not meet the high standards of fitness and business conduct expected of honest and responsible market participants.

[193] Subsection 12.1(1) of NI 31-103 expressly requires a registered firm to report excess working capital less than zero. Specifically, subsection 12.1(1) of NI 31-103 states that "[i]f, at any time, the excess working capital of a registered firm, as calculated in accordance with Form 31-103F1 *Calculation of Excess Working Capital*, is less than zero, the registered firm must notify the regulator[…] as soon as possible". Subsection 12.1(3)(b) of NI 31-103 indicates that for the purpose of completing Form 31-103F1 the minimum capital is $50,000, for a registered dealer that is not also a registered investment fund manager. By implication, the registered firm must maintain its excess working capital at the standard set by the legislation.

[194] On November 18, 2011, after Sterling had rectified a previous capital deficiency, Casale consented to the imposition of terms and conditions on Sterling's registration for a period of six months, including a requirement for specified monthly financial reporting to the Commission from October 2011 to March 2012. Immediately after the monthly reporting ceased, Sterling's excess working capital became deficient for two months and Staff was not notified.

[195] In her affidavit, Casale assures us that the capital deficiency issue was rectified in June 2012 and that Sterling has been in full compliance with its capital obligations since then. Further, Casale states that she had no intention of hiding the April and May 2012 deficiencies from Staff and that she knows her obligation to report capital deficiencies.

[196] Section 11.5 of NI 31-103 contains general requirements with respect to records. We note that section 11.5 of 31-103CP provides guidance that certain required records must be maintained to help registered firms determine their capital position, including excess working capital, and to demonstrate compliance with capital requirements. An EMD must exercise caution to maintain its working capital and it appears that Casale either did not fully understand her obligations to report deficiencies promptly or simply chose not to do so.

[197] We have difficulty accepting as credible Casale's evidence as presented in her affidavit prepared for the Hearing and Review. After months of managing Sterling's working capital for the purpose of meeting Staff's terms and conditions in the course of the Compliance Review, she should have known of the capital deficiencies of April and May 2012 at that time. This is supported by the fact that Casale was able to immediately provide Staff with monthly Form 31-103F1 *Calculation of Excess Working Capital* reports for June and July 2012. Further, Casale admitted she was aware of the requirement to notify Staff of any capital deficiencies and she gave evidence that in 2012 her accountant was preparing the Forms 31-103 on a monthly basis. Finally, there is a discrepancy between what Casale says in the Casale Interview and Casale's Affidavit tendered for the Hearing and Review. At the Casale Interview in April 2013 the following questions were posed and answers given:

> MS. HUI: Did you notify the OSC about the capital deficiency?
>
> THE DEPONENT: I did not. We rectified it before anything. So I did not.
>
> BY MR. SKUCE:
>
> Q. But the obligation is to notify the OSC as soon as it happens. It doesn't say --
>
> A. I understand.
>
> Q. -- within -- okay. So you understand the obligation?
>
> A. Yes, I do.
>
> (Exhibit 20 of the Hearing and Review - Transcript of Interview with Grace Casale dated April 16, 2013 at pp. 180-181)

Casale's Affidavit for the Hearing and Review states that she "had no intention of hiding the April and May 2012 deficiency from Staff" and "did so when [she] became aware of the issue" (Exhibit 4 of the Hearing and Review - Affidavit of Casale sworn on February 4, 2014 at para. 51). Either Casale did not tell Staff because she rectified the issue or she only became aware of the issue in early February 2013 when she advised Staff about it during the course of the Compliance Review. In considering the evidence before us, we find that Casale not only failed to report Sterling's capital deficiency, but also chose not to be forthright with the regulator. Casale's assurance that a new CCO would be responsible for maintenance of the firm's capital position if we overturn the Director's Decision does not provide us with sufficient comfort in light of our assessment of her personal suitability for continued registration.

[198] There were at least two occasions before the suspension of registration when Staff notified Casale of concerns about failure to maintain working capital and the parties worked towards rectifying the matter. Casale also acknowledged knowing her obligation to report the capital deficiency. We agree with Staff that the manner in which Casale dealt with the April and May 2012 capital deficiencies raises concerns. Her omission speaks to Casale's honesty and candour in her dealings with the Commission and therefore her integrity and suitability for continued registration.

[199] Finally, we note that maintaining adequate working capital at all times is a basic obligation of continuing registration. Failure to maintain a minimum working capital amount raises concerns about lack of proficiency.

(c) Misrepresentations to Staff

[200] We find that Casale made misrepresentations to Staff concerning her involvement in sales of Gingko securities to the 22 Investors.

[201] As stated above, we agree that an individual's honesty and candour in their dealings with the Commission is a relevant consideration of integrity (*Pyasetsky Director's Decision*, *supra* at paras. 17 and 18).

[202] On June 19, 2012, Casale confirmed the accuracy of a letter which affirmed that Sterling was not involved in the distribution of Gingko securities to the 22 Investors. Further, on July 17, 2012, Staff sent an email to Casale, among others, summarizing the contents of a telephone call of the previous day, which included the statement that "Sterling was not involved in the private placement that took place during March 2012 to May 2012 to an additional 22 investors and has not performed KYC or suitability reviews for these investors or received any fees…for these investments" (Exhibit 21 of the Hearing and Review - Supplementary Brief of documents at Tab 10). The email offered its recipients an opportunity to explain if the summary was inaccurate or incomplete. It is not disputed that Casale did not contact Staff for that purpose.

[203] During the Compliance Review, Staff obtained 20 client files pertaining to the 22 Investors. Six of these included Sterling KYC forms signed by clients and dated prior to June 19, 2012. We accept that two of the six Sterling KYC forms appear also to have been signed by Casale on the same day as the client. In our analysis, the signatures on two other Sterling KYC forms relied upon by Staff are either too faint to be reliable or do not include Casale's signature (Exhibit 16 of the Hearing and Review – 3rd Affidavit of Zolis sworn on August 20, 2013 at para. 18; Tabs K and L).

[204] Casale's evidence is that subsequent to Staff's inquiry she was retained by Gingko to act in a purely administrative manner and, as a result, she reviewed the subscription agreements of the 22 Investors after they had already invested (Exhibit 4 of the Hearing and Review - Affidavit of Casale sworn on February 4, 2014 at para. 56). Casale states that in April 2013, at the Casale Interview, she candidly responded in the affirmative to Staff's question concerning her receipt of compensation in respect of the 22 Investors. She further responded that the six investors, whom Staff identified as having Sterling KYC forms dated prior to June 19, 2012, were exempt under the private issuer exemption and she did not effect the sale of securities to any of them or determine if they were qualified to purchase under the exemption.

[205] Casale's correspondence with Staff of July 17, 2012 explicitly states that "Sterling will review its procedures in relation to issuer and dealing filing obligations in relation to private placements to ensure future filings are made in accordance with the requirements of securities law" (Exhibit 21 of the Hearing and Review - Supplementary Brief of documents at Tab 10). Accordingly, we find that the Applicants knew Staff was concerned about their role in the Gingko distributions and at the very least her responses to Staff in the summer of 2012 were not complete. Casale herself signed Sterling KYC forms for investors that were dated before her communications with Staff in June and July of 2012.

[206] Casale offered no explanation for the signatures and dates on the Sterling KYC forms that predated her June 19, 2012 communications with Staff. We could not find an alternative explanation that would be acceptable. It is fundamentally inconsistent for Casale to say that she had no involvement with the 22 Investors before June 2012 and for forms to be signed and dated by her on March 14, 2012 and March 28, 2012. It concerns the Panel that accepting Casale's submission would imply that she backdated documents, which is itself an issue related to her integrity.

[207] As stated above, honesty and candour in dealings with the Commission are a relevant consideration with respect to a registrant's integrity. We find that Casale made misrepresentations to Staff, which impugns her integrity.

(d) Unregistered Trading

[208] In our view, a failure of oversight over trading activities, considered in the totality of the circumstances of this case, bolsters our concerns about the extent to which the Applicants engaged in the responsible conduct expected of registrants.

[209] As stated above, unless exempt, a person or company in Ontario cannot engage in or hold themselves out as engaging in the business of trading in securities unless the person or company is registered and is acting on behalf of a registered dealer (subsection 25(1)(b) of the Act). We note that in Blueport, the director suspended an EMD for conduct that was discovered through a compliance review, including trading in securities before being registered (*Blueport* at paras. 15 and 18-19).

[210] At least six clients purchased securities of Redstone from M.L., acting on behalf of Sterling, prior to his being registered with Sterling. At least one of those sales is evidenced by a subscription agreement signed by the investor and M.L. on February 1, 2012, at a time where it appears M.L. was not registered at all (Exhibit 17 of the Hearing and Review - 4th Affidavit of Zolis sworn on August 20, 2013 at para. 7; Tab D).

[211] Between January 1, 2011 and February 2, 2012, at least 11 residents of Alberta and British Columbia completed a Sterling KYC form and their names appeared on Sterling's trade blotter as having invested in Redstone (Exhibit 17 of the Hearing and Review - 4th Affidavit of Zolis sworn on August 20, 2013 at paras. 18 and 19(a); Tabs G and M-W). Sterling was not registered in Alberta or British Columbia until February 2, 2012.

[212] In relation to the trades in Alberta and British Columbia, Casale's evidence is that her role was only administrative, implying that registration was not required, and that she no longer accepts administrative mandates. Casale does not deny that

the trades appear on her trade blotter. By her own admission, she allowed others to use Sterling's KYC forms (Exhibit 20 of the Hearing and Review - Transcript of Interview with Grace Casale dated April 16, 2013 at pp.72-73).

[213] We agree with the Director's Decision that both M.L. and Sterling traded in securities without being registered to do so and that some, if not all, of the activities that the Applicants described as administrative, were in fact registerable (Director's Decision, *supra* at paras. 46 and 47). We acknowledge that, as the Applicants remind us, this particular example of non-compliance with Ontario securities law may be distinguishable, in terms of investor harm, from a fraudulent investment scheme. Nonetheless, dealing representatives must be connected to an appropriate compliance structure to ensure that a responsible party has appropriate oversight of the trades conducted. Despite Casale's recognition that ipowerBroker and So sometimes used Sterling's KYC forms, her dismissive approach towards the need to abide by regulatory requirements for oversight of dealers' trading activity with investors is concerning.

[214] In our view, Casale's acceptance of a "dealer after the fact" role shows disregard for regulation and a lack of judgment and responsibility, which impugns her integrity. It is not acceptable to simply hand out Sterling's KYC forms and essentially delegate the suitability assessment obligations of a registrant.

(e) Know-Your-Client and Suitability Obligations

[215] The Commission has repeatedly recognized that the know-your-client and suitability requirements are essential to the investor protection purpose of the Act and "a basic obligation of a registrant" (*Re Daubney* (2008), 31 O.S.C.B. 4817 ("***Daubney***") at para. 15, citing *Re E.A. Manning Ltd*. (1995), 18 O.S.C.B. 5317 at p. 5339). We note that in this section of our decision the term "suitability" refers to a registrant's assessment of whether an investment is suitable for a client and ought not be confused with the overall analysis of the Applicants' suitability for continued registration.

[216] In *Daubney*, the Commission recognized that "KYC" and "suitability" obligations are conceptually distinct, but so closely connected and interwoven that the terms are at times used interchangeably (*Daubney*, *supra* at para. 16 citing *Re Lamoureux* (2001), ABSECCOM 813127 at p. 10). In that matter, the Commission accepted the Alberta Securities Commission finding in *Lamoureux* that:

> The "know your client" obligation is the obligation to learn about the client, their personal financial situation, financial sophistication and investment experience, investment objectives and risk tolerance.
>
> The "suitability" obligation is the obligation of a registrant to determine whether an investment is appropriate for a particular client. Assessment of suitability requires both that the registrant understands the investment product and knows enough about the client to assess whether the product and client are a match.
>
> (*Ibid*.)

[217] The know-your-client requirements are found in subsection 13.2(2) of NI 31-103, which provides:

> **13.2 Know your client** – […] **(2)** A registrant must take reasonable steps to
>
> (a) establish the identity of a client and, if the registrant has cause for concern, make reasonable inquiries as to the reputation of the client,
>
> (b) establish whether the client is an insider of a reporting issuer or any other issuer whose securities are publicly traded,
>
> (c) ensure that it has sufficient information regarding all of the following to enable it to meet its obligations under section 13.3 or, if applicable, the suitability requirement imposed by an SRO:
>
> (i) the client's investment needs and objectives;
>
> (ii) the client's financial circumstances;
>
> (iii) the client's risk tolerance, and
>
> (d) establish the creditworthiness of the client if the registered firm is financing the client's acquisition of a security.

[218] The Companion Policy, 31-103CP, indicates that registrants act as gatekeepers of the integrity of the capital markets and are required to establish the identity of, and conduct due diligence on, their clients.

[219] Subsection 13.3(1) of NI 31-103 describes the suitability obligation as follows:

> **13.3 Suitability** – (1) A registrant must take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a client to buy or sell a security, or makes a purchase or sale of a security for a client's managed account, the purchase or sale is suitable for the client.

[220] It is well established that the Commission has adopted a three-stage analysis of suitability, according to which a registrant is obliged to:

> a) use due diligence to know the product and know the client;
>
> b) apply sound professional judgement in establishing the suitability of the product for the client; and
>
> c) disclose the negative as well as the positive aspects of the proposed investment.
>
> (*Re Foresight Capital Corp*., 2007 BCSECCOM 101 at para. 52; cited in *Daubney*, *supra* at para. 17, *Sawh*, *supra* at para. 165 and *North American*, *supra* at para. 274)

[221] It is worth noting that guidance in section 13.3 of 31-103CP expressly states that registrants may not "delegate their suitability obligations" or "satisfy the suitability obligation by simply disclosing the risks involved with a trade."

[222] The consequence of the requirements in subsection 13.3(1) of NI 31-103 is that a registrant cannot fulfill these obligations by conducting an assessment of suitability after the trade has occurred. Not only does section 13.3 of NI 31-103 expressly say this, but to assess suitability after the securities are sold would undermine the goal of the suitability analysis because the registrant would not actually be matching the product to the client's circumstances, objectives and risk tolerance at the appropriate time. The obligation on the registrant is to make a suitability assessment. The approach employed by the Applicants prevents the application of appropriate judgment in matching a product to a client's circumstances when the investment decision is made.

[223] The Compliance Report indicates at Appendix E that Sterling sold securities of Redstone or Gingko to at least 45 investors in circumstances where the investment may not have been suitable or there was insufficient information to demonstrate suitability. We consider issues raised by the Compliance Report in the following paragraphs.

[224] In her responses to Appendix E of Staff's Compliance Report, which lists 45 investors to whom Sterling sold securities of Redstone or Gingko in circumstances where the investment may not have been suitable or there was insufficient information to demonstrate suitability, Casale repeatedly described how the investors qualified for an exemption as opposed to why the investment was suitable (Exhibit 4 of the Hearing and Review - Affidavit of Casale sworn on February 4, 2014 at para. 89; Tab U). Appendix E is entitled "Failure to meet investment suitability obligations". We note that the use of the private issuer exemption, for example, does not absolve the registrant of the requirement to conduct a suitability assessment with regard to the investment. For example, in the case of investor P.C., Casale responded to Staff's concerns as follows: "Private Issuer Exemption. Good friend of Edmond So. He has cashed out" (Exhibit 4 of the Hearing and Review - Affidavit of Casale sworn on February 4, 2014 at Tab U). For investor M.R., Casale stated "He owns a gold mine in Africa (Guyana). He owns gold stocks, securities and cash totalling over $1 million and is most definitely accredited" (Exhibit 4 of the Hearing and Review - Affidavit of Casale sworn on February 4, 2014 at Tab U). We agree with the Director's Decision that Casale does not seem to appreciate the importance of determining the suitability of an investment for an investor as a separate process from determining that the investor qualifies for an exemption (Director's Decision, *supra* at para. 46).

[225] We accept that there was at least one instance in which Casale turned away potential LTP investors because she felt that the investment would not be suitable for them. We also accept that Casale has taken steps to update her KYC form and has submitted that she no longer allows others to use the Sterling form, so as to improve her compliance with the KYC requirements.

[226] However, Casale acted as a dealing representative for a number of trades in circumstances where the investors either did not speak to her until after they had made the investment or never spoke to her at all. Such conduct shows a repeated disregard for the purpose of the KYC and suitability obligations of a registrant, and a breach of the duty imposed by section 2.1 of the OSC Rule 31-505 to deal fairly, honestly and in good faith with clients. Clients have a reasonable expectation that registrants are abiding by requirements of registration when they deal with those registrants.

[227] By her own admission Casale misunderstands KYC and suitability obligations. Casale states repeatedly that she acted in a "purely administrative manner" and acted as a "dealer after the fact" (Exhibit 4 of the Hearing and Review - Affidavit of Casale sworn on February 4, 2014 at para. 58; Exhibit 20 of the Hearing and Review - Transcript of Interview with Grace Casale dated April 16, 2013 at pp. 199-200 and 216). What Casale refers to as "taking on historic clients" or "dealer after the fact" is, at best, documenting completed trades of securities without completing a suitability analysis and without regard to the substance of the exercise that the KYC form is intended to accomplish. By her own admission, Casale fulfilled this role of acting as a dealer

after the fact in distributions to the 22 Investors and the 19 Investors of Gingko and to the distributions of Redstone securities in Alberta and British Columbia.

[228] Generally, we find Casale's evidence purporting to demonstrate her understanding of how to assess the suitability of an investment to be inadequate. Although the Applicants appear to have cooperated with Staff and made attempts to rectify some deficiencies, such as their undertaking to avoid the practice of acting as "dealer after the fact", we find that their actions demonstrate an insufficient understanding of the regulatory requirements, which is necessary to enable the Applicants to meet them. Filling in a form after the fact does not fulfill the purpose of the legislation, as demonstrated by the Applicants' focus on form over substance with regard to the KYC and suitability requirements. The letters from investors provided to us by Casale acknowledge that those investors were aware that the product sold to them was high risk, but the letters do not speak to her ability to assess the suitability of an investment. As a result, the Applicants lack the requisite proficiency to continue to be registered. We are not confident that the Applicants can meet the KYC and suitability obligations of a registrant at this time.

(f) Reliance on the Accredited Investor Exemption

[229] The Applicants are registered in the category of EMD. Subsection 7.1(2)(d) of NI 31-103 outlines the permissible conduct of an EMD and provides:

> **7.1 Dealer categories** – […] **(2)** A person or company registered in the category of […] (d) exempt market dealer may
>
> (i) act as a dealer by trading a security that is distributed under an exemption from the prospectus requirement, whether or not a prospectus was filed in respect of the distribution,
> (ii) act as a dealer by trading a security that, if the trade were a distribution, would be exempt from the prospectus requirement,
> (iii) receive an order from a client to sell a security that was acquired by the client in a circumstance described in subparagraph (i) or (ii), and may act or solicit in furtherance of receiving such an order, and
> (iv) act as an underwriter in respect of a distribution of securities that is made under an exemption from the prospectus requirement;

[230] In this case, the evidence shows that the Applicants relied heavily on the application of the AI exemption in NI 45-106. Therefore, the legal framework for selling securities pursuant to that exemption is also relevant to our consideration of the Applicants' proficiency for registration. Section 2.3 of NI 45-106 articulates the AI exemption as follows:

> **2.3 Accredited Investor** – (1) The prospectus requirement does not apply to a distribution of a security if the purchaser purchases the security as principal and is an accredited investor.

[231] An "accredited investor" is defined in section 1.1 of NI 45-106 to include, among others:

> (j) an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds $1 000 000,
>
> (k) an individual whose net income before taxes exceeded $200 000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded $300 000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year, […]

[232] Importantly, for the purposes of the AI exemption, "financial assets" is considered net of liabilities and does not include real estate holdings. The term "financial assets" is defined in section 1.1 of NI 45-106 to mean:

> (a) cash,
> (b) securities, or
> (c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation;

[233] Section 1.9 of 45-106CP provides guidance to a person trading in securities as to the availability of the accredited investor exemption:

> In determining whether an exemption is available, a person may rely on factual representations by a purchaser, provided that the person has no reasonable grounds to believe that those representations are false. However, the person distributing or trading securities is responsible for determining whether, given the facts available, the exemption is available. Generally, a person distributing or trading securities under an exemption should retain all necessary documents that show the person properly relied upon the exemption.

> […]
>
> Likewise, under the accredited investor exemptions, the seller must have a reasonable belief that the purchaser understands the meaning of the definition of "accredited investor". Prior to discussing the particulars of the investment with the purchaser, the seller should discuss with the purchaser the various criteria for qualifying as an accredited investor and whether the purchaser meets any of the criteria.
>
> It is not appropriate for a person to assume an exemption is available. For instance a seller should not accept a form of subscription agreement that only states that the purchaser is an accredited investor. Rather the seller should request that the purchaser provide the details on how they fit within the accredited investor definition.

[234] Staff referred us to prior decisions in which the director suspended a registration where evidence had shown, among other things, that registrants sold securities pursuant to the AI exemption in circumstances where it did not apply *(FCPF*, *supra* at para. 20; *White Capital*, *supra* at paras. 20 and 34; *Blueport*, *supra* at paras. 14 and 18-19).

[235] As outlined in *Sawh*, an exempt market dealer "should conduct appropriate due diligence on the financial circumstances of a prospective investor prior to making a determination of whether a product can be sold pursuant to the accredited investor exemption" (*Sawh*, *supra* at para. 176).

[236] The Compliance Report states at Appendix D that Sterling sold securities to at least 22 investors on the basis of improper reliance on the AI exemption to the prospectus requirement. For example, investor A.G. did not have relevant information on his KYC form to support reliance on the AI exemption, and when interviewed by Staff he confirmed that he was not an AI and had not spoken to anyone from Sterling prior to investing. Casale's evidence is that investor A.G. cashed out of his investment upon her recommendation as his mental faculties are declining, he has difficulty recalling his financial situation and he now lives in a seniors home, but that nevertheless he is "very much an accredited investor with assets over 1 million dollars" (Exhibit 4 of the Hearing and Review - Affidavit of Casale sworn on February 4, 2014 at Tab P). Casale requests that the Panel recognize that in some instances she has refused to accept investment renewals, because investors did not meet the AI requirements.

[237] Having reviewed Staff's list of 22 investors, who Staff allege either do not qualify for the AI exemption or for whom there is insufficient information to assess qualification, it appears to us that in some cases Casale attempted to ascertain if investors qualified for the exemption, but she fell short. The Sterling KYC form in use at the time of the Compliance Review was not conducive to capturing appropriate AI information because it included real estate as a relevant asset category. We acknowledge that the revised Sterling KYC form may allow for improved information collection as to whether a client is an AI. Nevertheless, the information provided by Casale herself shows repeated examples of Casale confusing the concepts of "net financial assets" required for the application of the AI exemption with an individual's "net worth" as well as the inclusion of real estate as a relevant category for calculation of the financial asset threshold.

[238] We find that Staff's witness at the Hearing and Review, investor D.H., was not forthcoming with Casale. D.H. also admitted that he never told Casale that he had a "side deal" with Van Benthem for his LTP investment funds to flow back to him by way of a loan to his yoga business. We find that D.H. was coached by Van Benthem as to what to say to Casale concerning his assets. Nevertheless, we accept that D.H. did tell Casale about his real estate holdings, which she appears to have counted towards his net financial assets calculation for reliance on the AI exemption. Further, D.H.'s and D.L.'s lack of income should have raised red flags for Casale and she should have followed up on D.L.'s Sterling KYC form, which was incorrectly completed by the investors. Casale's conduct suggests a careless approach to qualifying investors for exemptions. We find that the investors D.H. and D.L. did not qualify for the AI exemption and that Casale did not fulfill her obligation to obtain the necessary detail to support the investors' qualification for the exemption.

[239] The Applicants submitted at the Hearing and Review that, for example, investor P.C. qualified for the AI exemption. They submit that the evidence, which suggests that he qualifies on the basis of owning a company, supports Casale's assessment of his qualification. Casale also collected letters from 18 investors confirming that they were AIs at the time they made their investments through Sterling, at least nine of whom Casale notes were also investors listed in Staff's chart of 22 with respect to improper AI exemption reliance. Although it appears that the investors who provided Casale with letters qualify for the AI exemption, those letters do not address whether the Applicants had sufficient information to assess the investors' qualification for the exemption at the time of the investment.

[240] We find that the Applicants' routine misapplication of the criteria for the AI exemption falls far short of the standards expected of EMDs. While the updated KYC form may mitigate proficiency concerns in some respects, it does not remedy a lack of understanding about which exemptions apply or provide comfort about the ability to correctly apply any new exemptions that may become available. In our view, the evidence shows that Casale is either unable to fully comprehend the AI exemption requirements or unable to apply them consistently with appropriate judgment. Either of these possibilities demonstrates a lack of proficiency.

(g) Know-Your-Product Obligations

[241] We are not satisfied on the evidence that the Applicants fell below the standard required of an EMD with respect to their KYP obligations.

[242] Section 3.4 of NI 31-103 requires registrants to understand the structure, features and risks of each security the registrant recommends. Section 3.4 of 31-103CP describes the know-your-product obligations as follows:

> The requirement to understand the structure, features and risks of each security recommended to a client is a proficiency requirement. This requirement is in addition to the suitability obligation in section 13.3 and applies even where there is an exemption from the suitability obligation such as, for example, the exemption in subsection 13.3(4) in respect of permitted clients.

[243] CSA Staff Notice 33-315 provides additional guidance to registrants on how to meet their suitability and know-your-product obligations. Among other factors registrants should consider when assessing investment products, CSA Staff Notice 33-315 lists consideration of the issuer's financial position and the qualifications, reputation and track record of the fund manager or portfolio manager.

[244] The ability to fulfill the KYP obligation is directly relevant to a registrant's proficiency. In the exempt market, product due diligence is particularly important because securities sold under an exemption "do not benefit from the same transparency and liquidity characteristics or regulatory oversight as other products" (*Sawh*, *supra* at para. 238).

[245] The Applicants are the conduit through which investors get information about products such as Redstone and Genwealth. Therefore, EMDs such as the Applicants are required to do an independent analysis of the product.

[246] We accept Casale's evidence regarding her knowledge of the Redstone portfolio and the due diligence she exercised in relation to it. In December 2012, Casale was aware that some companies had missed interest payments on their loans from Redstone. By April 2013, Casale had inquired about the status of the loan portfolio and her understanding was that there were two Redstone loan defaults since she had spoken with Staff in 2012. We accept Casale's evidence that she spoke and met regularly with So and asked him how the loans were performing, including whether any were in default.

[247] We also find the evidence of investor M.B. to be credible that: Casale understood the products she was recommending to M.B., could generally answer M.B.'s questions and, if not, Casale would endeavor to obtain the information and inform M.B. (Hearing Transcript dated February 19, 2014 at p.73). M.B. reiterated that Casale did her due diligence on products, knew a lot about them, arranged meetings with Chief Executive Officers and went out of her way to make sure investors were comfortable with the investment (Hearing Transcript dated February 19, 2014 at p. 78). Further, Casale provided us with letters from a number of investors, which confirmed that they acknowledged the products sold by Casale to be high risk.

[248] We are also not persuaded by Staff's submission that Casale did not meet her KYP obligations in respect of Genwealth. Staff's position is based entirely on representations in Genwealth's OM. We received no evidence that supported the submission that Casale misunderstood the structure, features and risks of the product. We also do not have satisfactory evidence that Casale was not aware of the qualifications, reputation and track record of M.L., the fund manager.

[249] In sum, we are not satisfied that the Applicants fell below the required standard of understanding the structure, features and risks of the Redstone and Genwealth securities. In the circumstances, Staff has not satisfied their onus to demonstrate that the Applicants failed to meet their KYP obligations.

(h) UDP and CCO Suitability

[250] We acknowledge that Casale is not seeking to maintain her registration as UDP and CCO. In light of our ultimate order, we make findings in respect of Casale's suitability to be UDP and CCO here.

[251] A UDP is designated pursuant to section 11.2 of NI 31-103, which provides:

> **11.2 Designating an ultimate designated person**
>
> **(1)** A registered firm must designate an individual who is registered under securities legislation in the category of ultimate designated person to perform the functions described in section 5.1 [responsibilities of the ultimate designated person].
>
> **(2)** A registered firm must designate an individual under subsection (1) who is one of the following:

(a) the chief executive officer of the registered firm or, if the firm does not have a chief executive officer, an individual acting in a capacity similar to a chief executive officer;

(b) the sole proprietor of the registered firm;

(c) the officer in charge of a division of the registered firm, if the activity that requires the firm to register occurs only within the division and the firm has significant other business activities.

(3) If an individual who is registered as a registered firm's ultimate designated person ceases to meet any of the conditions listed in subsection (2), the registered firm must designate another individual to act as its ultimate designated person.

[252] It is explained at section 11.2 of 31-103CP that the intention of the designation requirements for a UDP is to ensure that responsibility for the firm's compliance system rests at the very top of the firm's organizational structure.

[253] The responsibilities of a UDP are found in section 5.1 of NI 31-103, which provides:

5.1 Responsibilities of the ultimate designated person – The ultimate designated person of a registered firm must do all of the following:

(a) supervise the activities of the firm that are directed towards ensuring compliance with securities legislation by the firm and each individual acting on the firm's behalf;

(b) promote compliance by the firm, and individuals acting on its behalf, with securities legislation.

[254] Subsection 11.3 of NI 31-103 similarly provides for designation requirements with regard to the CCO, including that the registered person so designated must be an officer or partner or the sole proprietor of the registered firm. The responsibilities of a CCO are listed in section 5.2 of NI 31-103 as follows:

5.2 Responsibilities of the chief compliance officer – The chief compliance officer of a registered firm must do all of the following:

(a) establish and maintain policies and procedures for assessing compliance by the firm, and individuals acting on its behalf, with securities legislation;

(b) monitor and assess compliance by the firm, and individuals acting on its behalf, with securities legislation;

(c) report to the ultimate designated person of the firm as soon as possible if the chief compliance officer becomes aware of any circumstances indicating that the firm, or any individual acting on its behalf, may be in non-compliance with securities legislation and any of the following apply:

(i) the non-compliance creates, in the opinion of a reasonable person, a risk of harm to a client;

(ii) the non-compliance creates, in the opinion of a reasonable person, a risk of harm to the capital markets;

(iii) the non-compliance is part of a pattern of non-compliance;

(d) submit an annual report to the firm's board of directors, or individuals acting in a similar capacity for the firm, for the purpose of assessing compliance by the firm, and individuals acting on its behalf, with securities legislation.

[255] Consequently, the UDP and CCO roles are critical to securities law compliance oversight. Subsection 3.4(1) of NI 31-103, which sets out the proficiency requirements to be registered, establishes that a registrant must not engage in registerable activity unless he or she has "education, training and experience that a reasonable person would consider necessary to perform the activity competently" [emphasis added]. As a result, a registrant should not assume the role of UDP and/or CCO unless he or she is able to exercise the diligence and judgment required to fulfill the specific requirements of these roles. While the legislation accommodates different sizes of firms and levels of resources, including instances where one person fulfills multiple roles, that should not be used as an excuse for non-compliance with the regulatory requirements.

[256] At the very least, the UDP and CCO of a registered firm should be familiar with the regulations and the compliance policies and procedures of his or her own firm in order to adequately monitor registerable activities. Despite the clear procedure for dealing with conflicts of interest outlined in the Sterling Compliance Manual, Casale, in her capacity as CCO and UDP, did not identify Sterling's indebtedness to Redstone or M.L.'s active participation in Genwealth's management as potential conflicts at a time when Sterling was selling both of those securities. Similarly, Casale also acquiesced in the firm's "dealer after the fact" role in documenting sales of securities after they had been completed and without regard to the necessary suitability assessment requirements which should have preceded the sales.

[257] As the UDP, CCO, sole dealing representative, sole shareholder and directing mind of Sterling, Casale failed to create and maintain an appropriate compliance regime that demonstrated she understood the substance of the regulatory requirements. Although Sterling did have a Compliance Manual, she either did not apply or implement the policies and procedures set out therein, or applied them in a cursory fashion, apparently without regard to the regulatory objectives sought to be achieved. In addition, the responsibility to maintain and report regulatory capital and to ensure appropriate registrations of the firm and its employees, the failures of which we have already addressed at paragraphs [192] to [198] and [208] to [214] above, falls squarely within the roles of UDP and CCO. This leads us to doubt Casale's ability to understand and comply with Ontario securities law requirements on an ongoing basis.

[258] In addition, the fact that Casale assumed the roles of UDP and CCO without appreciation for how to fulfill these roles is evidence of her lack of proficiency and, therefore, suitability for continued registration in these roles. Furthermore, having concluded in paragraphs [259] and [260] that Casale lacks integrity and proficiency as a dealing representative, we are unable to foresee a situation in which she would be sufficiently proficient to supervise the compliance of others.

4. Findings on the Continued Suitability of the Applicants

[259] We find that the Applicants' failure to appropriately identify and disclose the conflicts or potential conflicts of interest resulting from their relationships with issuers on whose behalf they sell or have sold securities does not meet the "high standards of fitness and business conduct to ensure honest and responsible conduct by market participants" (subsection 2.1(2)(iii) of the Act) and does not fulfill the requirement to deal fairly, honestly and in good faith with clients (section 2.1 of the OSC Rule 31-505). The Applicants' failure to report and be forthright with Staff about their working capital deficiencies demonstrates a lack of integrity. Furthermore, Casale impugned her integrity by making misrepresentations to Staff with respect to (i) Sterling's capital deficiencies in April and May 2012, as well as (ii) the Applicants' involvement in the Gingko distribution to the 22 Investors. Finally, the Applicants' lack of compliance with the requirement to be appropriately registered to engage in trading activities is a further example of a lack of responsible conduct, which contributes to our concerns about the Applicants' integrity. Taken as a whole, these issues cause us significant concern with regard to the Applicants' suitability for continued registration.

[260] The Applicants failed to demonstrate an adequate understanding of the proper fulfilment of KYC and suitability obligations or how to assess whether investors qualified for exemptions. As a result of the Applicants' failure to meet their know-your-client and suitability obligations and failure to properly apply the AI exemption, some of their clients invested in high risk exempt products that were either not suitable or for which the Applicants had insufficient information to determine suitability. We find that these failures were not isolated or purely administrative, but reflected a lack of comprehension about the purpose and objectives of the regulations and therefore a lack of proficiency. This concern is exacerbated by the willingness of Casale and Sterling to perform "dealer after the fact" roles, which amounts to an abdication of the investor protection objectives of Ontario securities law. We find that the Applicants do not have the proficiency to continue being registered.

[261] Viewed in its entirety, the evidence shows that the Applicants fell below the standards required of registrants. The testimony of M.B. and the investors' letters of risk acknowledgement reveal that Casale, on behalf of Sterling, had successfully developed professional relationships with a number of clients. Unfortunately, neither of the Applicants exercised the required level of judgment and responsibility to consistently uphold the regulatory requirements concerning the obligations of registrants to their clients. In sum, we find that the Applicants lack the integrity and proficiency to continue being registered.

C. Have the Applicants Failed to Comply with Ontario Securities Law?

1. The Law and Analysis on Compliance of Applicants with Ontario Securities Law

[262] As noted in paragraph [147], section 28 of the Act provides, as an independent basis for revoking or suspending or imposing terms and conditions upon registration, the fact that a registrant has failed to comply with Ontario securities law. This ground therefore focuses on an inquiry into compliance or non-compliance with the law, rather than into dimensions of the integrity or proficiency of the registrant. The regulatory objective is that compliance with Ontario securities law is to be expected of those who are suitable for continued registration.

[263] In particular, the legislature has directly turned its attention to the importance of compliance by registrants in section 32 of the Act, which articulates in detail a registrant's duty to comply with Ontario securities law. Section 32 of the Act provides:

> **32. (1) Duty to comply with Ontario securities law** – Every person and company registered under this Act shall comply at all times with Ontario securities law, including such regulations that apply to them as may be made relating to,
>
> (a) proficiency standards;
>
> (b) business conduct;

(c) in the case of a registrant that is a registered dealer, registered adviser or registered investment fund manager, submission of information respecting ownership, management, directors, officers and any other persons or companies exercising control of the registrant;

(d) opening accounts and reporting trades;

(e) record-keeping;

(f) custody of clients' assets;

(g) conflicts of interest;

(h) tied selling and referral arrangements;

(i) client complaints;

(j) appointment of auditors and preparation and filing of financial information;

(k) procedures to be followed when a relationship is terminated between a representative and a registered dealer or registered adviser or when the representative commences a new association with a different registered dealer or registered adviser; and

(l) reinstatement of registration.

[264] As stated above, "Ontario securities law" includes the Act, regulations made under the Act, which include rules, and a decision of the Commission or of a Director to which a person or company is subject (subsection 1(1) of the Act). On September 18, 2009, by Ministerial approval, NI 31-103 became a Rule under the Act and therefore forms part of Ontario securities law (Approval of NI 31-103, *supra*; subsection 1(1) of the Act).

[265] Registration is a privilege, not a right, that is granted to individuals and entities that have demonstrated their suitability for registration (see *Trend*, *supra*; *Istanbul*, *supra* at para. 60; *Sawh*, *supra* at para. 142). Upon being granted registration by the Commission, the registrant assumes the duty to comply articulated in section 32 of the Act and should conduct him or herself accordingly to ensure continual maintenance of the standards expected of a registrant.

[266] It should be noted that pursuant to section 31 of the Act, the Director shall not impose terms and conditions or suspend or revoke the registration of the person or company under section 28 of the Act without giving that person or company an OTBH. The standard of proof is the civil standard on a balance of probabilities. Section 28 of the Act itself contains the remedies that are available following a finding of non-compliance, i.e. revoking or suspending registration or imposing terms and conditions.

[267] The Compliance Report cited a number of instances of non-compliance with Ontario securities law. Staff did not make detailed submissions on the application of this aspect of section 28 of the Act. Nonetheless, counsel for the Applicants acknowledged that non-compliance was a ground for a remedy pursuant to section 28 of the Act and the Director's Decision makes findings of non-compliance concerning conduct relating to conflicts of interest and unreported capital deficiencies (Director's Decision, *supra* at paras. 43 and 44). We consider two examples of non-compliance with Ontario securities law below.

(a) Conflicts of Interest

[268] The Applicants were required to comply with section 13.4 of NI 31-103. This provision requires a registered firm to take reasonable steps to identify material conflicts of interest between the firm and a client, to respond to and to disclose such a conflict of interest to the client in a timely manner, if a reasonable investor would expect to be informed of the conflict. In our view the Redstone Loans and the Genwealth Conflict were material conflicts of interest between Sterling and its clients. Redstone provided loans to Sterling that enabled it to remedy a capital deficiency at the same time that Sterling was selling Redstone securities to its clients. Similarly, M.L.'s role in Genwealth created a potential for conflict of interest with respect to his sale of Genwealth securities to Sterling's clients. Both of these were conflicts that a reasonable investor would expect to be informed of when purchasing Redstone or Genwealth securities and ought to have been identified, responded to and disclosed by the Applicants. We find that the Applicants did not do so and, therefore, we agree with the Director's Decision that the Applicants failed to comply with section 13.4 of NI 31-103 and section 2.1 of OSC Rule 31-505 (Director's Decision, supra at para. 43).

(b) Failure to Report Capital Deficiencies

[269] As stated above, subsection 12.1(1) of NI 31-103 expressly requires a registered firm to report excess working capital less than zero. Subsection 12.1(2) of NI 31-103 requires that excess working capital, calculated in accordance with Form 31-

103F1 *Calculation of Excess Working Capital*, must not be less than zero for two consecutive days. The purpose of the reporting requirement is for a registrant to maintain the expected minimum capital prescribed by subsection 12.1(3) of NI 31-103, which in this case is $50,000.

[270] On October 11, 2011, Staff informed the Applicants that Sterling was capital deficient by $97,512, based on the firm's audited financial statements as at December 31, 2010. On October 21, 2011, Staff notified the Applicants that it had recommended that Sterling's registration be suspended due to its capital deficiencies as of December 31, 2010 and September 30, 2011 and its failure to report those deficiencies to Staff as required by law. On October 24, 2011, Staff and Casale agreed that if she injected the requisite funds into Sterling, Staff would withdraw its recommendation and Casale did so.

[271] On November 18, 2011, after Sterling rectified the above mentioned capital deficiency, Casale consented to the imposition of terms and conditions on Sterling's registration for a period of six months, including a requirement of specified monthly financial reporting to the Commission from October 2011 to March 2012.

[272] On March 30, 2012, Sterling filed audited financial statements and a Form 31-103, required within 90 days of its fiscal year end. These show that Sterling had a working capital deficiency of $7,403 as at December 31, 2011. On July 31, 2012, Staff informed Casale of Sterling's December 31, 2011 capital deficiency. Casale responded that Sterling had met working capital requirements from January through March 2012.

[273] Immediately after the terms and conditions requiring monthly reporting ceased in March 2012, Sterling's excess working capital became deficient for two months and Staff was not notified. During the Compliance Review, on February 6, 2013, Casale informed Staff that Sterling had been capital deficient in April (-$12,687) and May (-$20,040) 2012. In our view, given the previous terms and conditions imposed on Sterling by Staff in November 2011, Casale had been given ample opportunity to build a process at Sterling for reporting capital deficiencies as required by NI 31-103.

[274] We find that she failed to disclose Sterling's capital deficiencies as required. Therefore, we agree with the Director's Decision that the Applicants failed to comply with 12.1 of NI 31-103 (Director's Decision, supra at para. 44). We find that the Applicants' repeated failures to disclose capital deficiencies demonstrate a troubling pattern of non-compliance with Ontario securities law.

2. Findings on the Applicants' Failure to Comply

[275] We find that the Applicants' failure to appropriately identify, respond to and disclose conflicts or potential conflicts of interest and their repeated failure to report capital deficiencies demonstrate a pattern of non-compliance with Ontario securities law, which is not appropriate for registrants (*Waterview*, *supra* at para. 22, citing *Carter*, *supra*).

[276] In light of our findings on the unsuitability of the Applicants for continued registration and our analysis of non-compliance by the Applicants in relation to conflicts of interest and failure to report capital deficiencies, we do not find it necessary to embark upon further analysis of other potential examples of failure to comply with Ontario securities law.

D. Is Continued Registration of the Applicants Otherwise Objectionable?

[277] Staff submits, in addition to its argument that the Applicants are not suitable for continued registration and did not comply with Ontario securities law, that the Applicants' registrations should be suspended because their registrations would be "objectionable". Staff argues that in light of the compliance deficiencies, continued registration of the Applicants runs counter to the Commission's mandate to protect investors and foster fair and efficient capital markets (section 1.1 of the Act). Therefore, continued registration of the Applicants is otherwise objectionable pursuant to subsection 28(b) of the Act (*Sawh*, *supra* at para. 289). The Applicants did not make detailed submissions on this issue.

[278] In light of our findings with respect to the Applicants' lack of suitability to be registered and their failure to comply with Ontario securities law, it is not necessary, in our view, to deal with the issue of whether the continued registration of the Applicants is otherwise objectionable.

E. What is the Appropriate Remedy?

[279] In coming to our decision, we considered the previous Commission decisions referred to us by the Applicants and Staff, which, they argue, involve conduct similar to the circumstances of this case. We are mindful that our discretion in the public interest is to be exercised prospectively to protect the public and the integrity of the capital markets and not to punish (*Mithras*, *supra* at pp. 1610-1611). In our view, our findings above provide a firm basis to take steps to protect the public interest.

[280] Our findings that the Applicants are not suitable for continued registration are premised upon a lack of integrity demonstrated by: (a) lack of judgment and good faith in considering the interests of clients in identifying and disclosing conflicts of interest; (b) the Applicants' failure to be forthright with Staff about their capital position; (c) Casale's misrepresentations to

Staff concerning her involvement in sales of Gingko securities to the 22 Investors; and (d) the Applicants' disregard for regulation by accepting a "dealer after the fact" role that essentially delegated their investment suitability obligations to others. Furthermore, we found that the Applicants failed to meet their KYC and investment suitability obligations, and routinely misapplied the AI exemption. Also, the evidence supports a pattern of non-compliance by the Applicants with Ontario securities law. All this contributes to our conclusion that the Applicants are not suitable for continued registration and are factors for consideration in determining appropriate remedies.

[281] The Applicants put forward the Commission's decision in *Kingsmont* as a factually similar matter. In *Kingsmont*, Staff identified compliance deficiencies from their review of the EMD, including: insufficient collection of KYC information, insufficient KYP due diligence, unsuitable investments and trading without registration (*Kingsmont*, *supra* at para. 14). *Kingsmont* was also a one-person firm with the dealing representative, Mr. Warner, serving as CCO and UDP; both positions he proposed to surrender (*Kingsmont*, *supra* at paras. 10 and 16-17). The director reduced Staff's recommended advising representative suspension period to six months because, in her opinion, the majority of the integrity deficiencies raised by Staff were related to proficiency of the UDP and CCO, which was outside the scope of the Opportunity to Be Heard (*Kingsmont*, *supra* at paras. 8, 30 and 42). Therefore, in *Kingsmont* the director imposed a suspension of registration solely on integrity grounds.

[282] We find that the present case may be distinguished from *Kingsmont* because the scope of the ultimate decision in *Kingsmont* was considerably narrower than the one here. In our view, the issues and findings in the present matter are more numerous and significant that in *Kingsmont*. In this matter we made findings which addressed both the proficiency and integrity of the Applicants, as well as examples of non-compliance with Ontario securities law, and determined that they were not suitable for continued registration on several grounds. In *Kingsmont*, the director considered only two issues relating to the registrant's integrity; a failure to disclose a complaint during the compliance review and an inappropriate disclaimer of liability. Neither of those issues assist us in this matter. The *Kingsmont* decision also did not consider continued registration of the firm or of the principal's status as a dealing representative.

[283] *White Capital* was also a matter in which the owner, Mr. White, acted as UDP, CCO and a dealing representative of the registered firm (*White Capital*, *supra* at para. 5). Staff submits that the remedies recommended in this case are consistent with those agreed to in White Capital, in circumstances where there were similar compliance deficiencies by an EMD. These include findings in relation to conflicts of interest and failure to meet KYC and suitability obligations (*White Capital*, *supra* at paras. 13, 19 and 21). In White Capital, the director prohibited the individual registrant from becoming a dealing representative for a period of 18 months based on the joint recommendation of Staff and the registrant (*White Capital*, *supra* in Addendum). However, the present case involves multiple serious examples of unsuitability for registration and failure to comply with Ontario securities law. In our view, our findings support a longer ban for Casale as compared to the principal in *White Capital*.

[284] We acknowledge that no losses sustained by investors were brought to our attention and a considerable number of supportive statements were provided to us from the Applicants' clients. In considering the Applicants' position that previously acknowledged failures have been or will be rectified in the future, including revisions to the Sterling KYC form and Casale's willingness to relinquish the UDP and CCO roles, we find that the Applicants had ample opportunity over the course of several years to properly remedy concerns raised by Staff and they did not. Staff provided the Applicants with opportunities to address non-compliance on at least two occasions. First, on November 18, 2011, after Sterling rectified a previous capital deficiency, Casale consented to the imposition of terms and conditions on Sterling's registration for a period of six months. Second, Staff refrained from recommending that additional terms and conditions be imposed on Sterling for the December 31, 2011 capital deficiency because Casale demonstrated that Sterling met working capital requirements in January, February, March and June 2012. The repeated failure to address certain significant deficiencies undermines the Applicants' submissions that they will change their behavior to conform to requirements of Ontario securities law.

[285] We recognize that the Applicants also made submissions on the impact of the Investor Alert in assessing appropriate regulatory responses and we have taken her submissions about the impact of the Investor Alert into account in considering the appropriate response in this case. We note that five of the investor alerts pointed to by Casale are similar in content to the Investor Alert and notify the public that the Commission has suspended the registration of one or more persons or entities, notwithstanding Casale's position that the other investor alerts focus on boiler rooms and fraud (Exhibit 4 of the Hearing and Review - Affidavit of Casale sworn on February 4, 2014 at para. 26, Tab I).

[286] Mindful of the prospective nature of our public interest discretion and upon considering the factors and cases above, we find that Sterling's registration and Casale's registration as UDP and CCO should be permanently suspended. We have serious concerns about the firm's integrity, proficiency and pattern of non-compliance with Ontario securities law. Likewise, we agree with Staff that Casale is not suitable to act as UDP or CCO of a registrant.

[287] Further, in light of our concerns surrounding Casale's integrity and proficiency to act as a registrant and her failure to comply with Ontario securities law, we agree with the outcome of the Director's Decision. We find that Casale' registration as a dealing representative should be suspended and she should not be permitted to apply for reinstatement for a period of two years. Before applying for reinstatement of her registration, Casale must successfully complete the Conduct and Practices Handbook Course. In the event that Casale's registration is reinstated, her registration ought to be subject to terms and

conditions requiring her strict supervision for a period of one year. Lastly, Casale shall not be a permitted individual of a registered firm for a period of five years.

[288] A “permitted individual” is defined at section 1.1 of NI-33-109 as:

> "permitted individual" means an individual who is
>
> (a) a director, chief executive officer, chief financial officer, or chief operating officer of a firm, or who performs the functional equivalent of any of those positions, or
>
> (b) an individual who has beneficial ownership of, or direct or indirect control or direction over, 10 percent or more of the voting securities of a firm;

[289] In our view, the remedies identified above are protective and preventive in nature, appropriate in the circumstances and are in the public interest.

VII. CONCLUSION

[290] Pursuant to section 28 of the Act, the Director may revoke, suspend or impose terms and conditions on a registration if it appears that the person or company is not suitable or has failed to comply with Ontario securities law or that the registration is otherwise objectionable. Staff has satisfied the Panel on a balance of probabilities that the Applicants are not suitable for registration. We were also satisfied that the Applicants failed to comply with Ontario securities law. Therefore, the Director appropriately exercised her discretion pursuant to subsection 28(a) of the Act.

[291] In coming to our decision, we considered the Commission decisions referred to us and find that the evidence presented to us at the Hearing and Review warrants the exercise of the Commission’s jurisdiction to suspend the Applicants’ registrations and impose terms and conditions upon them.

[292] Accordingly, we dismiss the Application and order the following:

(a) the registration of Sterling is permanently suspended;

(b) the registration of Casale as UDP and CCO is permanently suspended;

(c) the registration of Casale as dealing representative is suspended and she is not permitted to apply for reinstatement for a period of two years;

(d) Casale shall successfully complete the Conduct and Practices Handbook Course before applying for reinstatement of registration;

(e) in the event that Casale’s registration is reinstated, her registration is subject to terms and conditions requiring her strict supervision for a period of one year; and

(f) Casale shall not be a permitted individual of a registered firm for a period of five years.

DATED at Toronto this 3rd day of September, 2014.

“Mary G. Condon”

“Judith N. Robertson” “Deborah Leckman”

3.1.5 Keith MacDonald Summers et al.

**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED**

AND

**IN THE MATTER OF
KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC, AND
TRICOASTAL CAPITAL MANAGEMENT LTD.**

AND

**IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC, AND
TRICOASTAL CAPITAL MANAGEMENT LTD.**

PART I – INTRODUCTION

1. By Notice of Hearing dated February 27, 2014, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified herein, against Keith MacDonald Summers ("Summers"), Tricoastal Capital Partners LLC ("Tricoastal Partners") and Tricoastal Capital Management Ltd. ("Tricoastal Management") (collectively, the "Respondents"). The Notice of Hearing was issued in connection with a Statement of Allegations of Staff of the Commission ("Staff") dated February 27, 2014.

2. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of the Respondents.

PART II – JOINT SETTLEMENT RECOMMENDATIONS

3. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated February 27, 2014 against the Respondents (the "Proceeding") in accordance with the terms and conditions set out below, the Respondents consent to the making of an order in the form attached as Schedule A, based on the Agreed Facts, as defined in this Settlement Agreement.

PART III – BACKGROUND TO THE SETTLEMENT

4. On June 4, 2014, Summers pled guilty to one count of fraud over $5,000 contrary to section 380 of the *Criminal Code*, R.S.C. 1985, C-46 (the "*Criminal Code*") and one count of uttering a forged document contrary to section 368 of the *Criminal Code* (the "Parallel Criminal Proceeding"), based on the same facts that underlie the allegations in this matter. The sentencing hearing is scheduled for September 22, 2014.

PART IV – AGREED FACTS

5. Schedule B to this Settlement Agreement is a document entitled, "Summary of Facts for Guilty Plea" that was filed as an exhibit in the Ontario Court of Justice on Summers's guilty plea.[1] Through counsel, Summers confirmed that the facts set out in Schedule B are accurate and the "Summary of Facts for Guilty Plea" were accepted by Ray J. of the Ontario Court of Justice as the basis for a finding of guilt on the charges of fraud and uttering a forged document. Schedule B forms part of this Settlement Agreement and it is intended that the Commission should rely on the whole of the Agreed Facts, as defined below and including Schedule B, in considering this matter.

6. For this Proceeding, and any other regulatory proceeding commenced by securities regulatory authorities in Canada, the Respondents agree with the facts as set out in Part IV of this Settlement Agreement, and as set out in Schedule B to this

[1] The names of the investors have been removed from the copy of the Summary of Facts for Guilty Plea attached as Schedule B and replaced by numbers.

Settlement Agreement (collectively, the "Agreed Facts"). To the extent that the Respondents do not have direct personal knowledge of the Agreed Facts, the Respondents believe that the Agreed Facts are true and accurate.

The Respondents

7. Tricoastal Partners is an investment fund incorporated on April 24, 2004 as a limited liability company in the State of Delaware. Tricoastal Partners has a registered office located in Wilmington, Delaware and a mailing address located in Buffalo, New York. During the Relevant Period, Tricoastal Partners was not registered with the Commission in any capacity.

8. Tricoastal Management is a company incorporated on October 4, 2007 pursuant to the laws of Ontario. It has a registered address in Burlington, Ontario. During the Relevant Period, Tricoastal Management was not registered with the Commission in any capacity.

9. Summers was awarded a Masters of Business Administration ("MBA") from McMaster University and subsequently earned his Certified Financial Analyst ("CFA") designation in 2000. Previously, Summers was a registrant with the Commission with his most recent registration having been terminated on September 8, 2008.

10. During the Relevant Period, Summers was a resident of Burlington, Ontario. Summers is the sole officer and director of both Tricoastal Partners and Tricoastal Management. During the Relevant Period, Summers managed the Tricoastal Partners investment funds from his personal residence in Burlington, Ontario. Summers was not registered with the Commission in any capacity during the Relevant Period.

11. Summers never filed a prospectus or preliminary prospectus for either Tricoastal Partners or Tricoastal Management in relation to the Tricoastal securities, nor did he receive receipts.

Overview of the Agreed Facts

12. As set out more particularly in Schedule B to this Settlement Agreement, between July 2009 and July 2013 (the "Relevant Period"), Summers sold membership interests in Tricoastal Partners (the "Investment Fund"). The minimum investment required was $150,000. Investors owned the assets and liabilities of the Investment on a pro-rata basis according to their respective membership interest. Summers managed the Investment Fund and associated client services through Tricoastal Management.

13. Summers marketed the Investment Fund on the basis of a specific trading strategy (the "ETF Strategy"). He claimed to have developed a quantitative model for evaluating index-linked ETFs. His process was iterative. At the start of each month, Summers used his model to choose approximately seven ETFs in which to invest. He invested the assets of the Investment Fund equally between those ETFs. He did not buy or sell during the month. He sold all the ETFs at the end of the month. He then repeated the process.

14. Agreements signed with investors authorized a monthly management fee and, under certain circumstances, a performance fee (the "Permitted Withdrawals"). Investors received monthly statements reflecting the value of their investment.

15. During the Relevant Period, the Respondents raised a total of approximately US$4,690,000 from nine investors, eight resident in the United States and one resident in Canada, through the sale of membership units in the Investment Fund.

16. Beginning in July 2009, in order to attract new clients Summers significantly overstated the Assets Under Management (the "AUM") of the Investment Fund and held himself out as a successful fund manager. Summers continued to significantly overstate the Investment Fund's AUM to investors and potential investors throughout the Relevant Period.

17. In 2011, the Investment Fund began experiencing significant losses. Commencing in August 2011, Summers began underreporting the extent of the losses incurred by the Investment Fund to existing investors and in marketing materials.

18. In May 2012, Summers began losing faith in the ETF Strategy as the Investment Fund experienced a significant loss. In June 2012, some investors began to express their displeasure with the ETF Strategy. Summers recognized that although he had promised the investors the ETF Strategy, under the terms of the Offering Memorandum he had discretion to invest in other types of securities. Consequently, Summers began investing client monies in higher risk investments in derivatives, including futures and options on market volatility indices. A significant portion of the Investment Fund at this time was held in cash. Summers knew that this was a significant departure from the ETF Strategy and that he should not proceed without specifically consulting all of the investors.

19. The new trading strategy was unsuccessful and the Investment Fund continued to incur trading losses. To conceal these losses, beginning in July 2012 Summers began fabricating the monthly returns reported to investors based on what the

results would have been had he continued with the ETF Strategy. During this period, Summers reported positive returns when the Investment Fund was actually experiencing significant losses.

20. In March 2013, the largest of the nine investors requested that the Investment Fund provide audited financial statements. To continue to conceal the substantial trading losses, Summers created a set of false audited financial statements for the year ended December 31, 2012 using the letterhead of a fictitious auditing firm. The forged audited financial statements contained an inflated AUM, false returns, and fabricated numbers in the statement of financial condition. Summers provided the false audited financial statements to the investor.

21. During the Relevant Period, the investor funds were dissipated as follows:

1. approximately US$572,000 was paid back to investors as a partial or total redemption of their investment;

2. approximately US$234,000 was withdrawn by Summers in the form of Permitted Withdrawals;

3. approximately US$918,000 was fraudulently withdrawn by Summers in excess of the Permitted Withdrawals and used to pay Summer's business and personal living expenses during the Relevant Period;

4. approximately US$1.6-million was lost in trading for the Investment Fund, of which approximately US$1.2-million was lost after the change in trading strategy;

5. approximately US$1.4-million remained in the fund at the time Summers self-reported, and is currently being held in an account in the US and the United States Securities and Exchange Commission (the "SEC") has placed a "soft freeze" on those funds.

22. On July 12, 2013, Summers self-reported the activities to the Commission after being confronted by the investor to whom he provided the false audited financial statements. The Commission's Joint Serious Offences Team ("JSOT") commenced a joint investigation with the Royal Canadian Mounted Police ("RCMP"). Summers cooperated with that investigation and consented to information sharing between Canadian authorities and the SEC.

23. The Respondents' acts, solicitations, conduct or negotiations directly or indirectly in furtherance of the sale or disposition of previously unissued securities were for a business purpose and were undertaken without the benefit of an exemption from either the prospectus or dealer registration requirements under the Act.

24. The Respondents engaged in a course of conduct relating to securities that they knew would result in a fraud on investors, and made representations and provided information to investors that was false, inaccurate and misleading as follows:

1. misstating the AUM and historical performance of the Investment Fund, which induced individuals to invest and remain invested in the Investment Fund;

2. abandoning the ETF Strategy in favour of holding mostly cash and some high-risk investments without expressly notifying investors;

3. misrepresenting the performance of the Investment Fund to conceal trading losses through the creation of false investor statements and a fictitious auditor report; and

4. misappropriating investor funds through the withdrawals of fund in excess of the Permitted Withdrawals Summers was entitled to.

PART V – CONDUCT CONTRARY TO THE ACT AND CONTRARY TO THE PUBLIC INTEREST

25. By virtue of the conduct described in the Agreed Facts, the Respondents admit that:

1. During the Relevant Period, the Respondents engaged or participated in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to subsection 126.1(b) of the Act;

2. During the Relevant Period, the Respondents engaged or held themselves as engaging in the business of trading in securities in Ontario without being registered to do so, in circumstances in which no exemption was properly relied upon, contrary to subsection 25(1)(a) of the Act for the period before September 28, 2009 and contrary to subsection 25(a) of the Act for the period on and after September 28, 2009; and

3. During the Relevant Period, the Respondents traded in Ontario in previously unissued securities without a preliminary prospectus and prospectus having been filed and receipts issued for them by the Director, and without an exemption from the prospectus requirements, contrary to subsection 53(1) of the Act; and

4. During the Relevant Period, Summers authorized, permitted or acquiesced in the breaches of Ontario securities law by Tricoastal Partners and Tricoastal Management, contrary to section 129.2 of the Act.

26. The Respondents admit and acknowledge that they acted contrary to the public interest by contravening Ontario securities law as set out in this Settlement Agreement.

PART VI – RESPONDENTS' POSITION

27. The Respondents request that the settlement hearing panel consider the following mitigating circumstances:

1. The Respondents self-reported to the Commission that they breached Ontario securities law;

2. The Respondents fully cooperated in the investigation conducted by Staff;

3. The Respondents openly discouraged and refused investment from Ontario residents due to the lack of registration;

4. While having the qualifications for registration, the Respondents lacked the required working capital to register the fund in Ontario; as a result, the Respondents did not solicit funds from Ontario residents, and only solicited funds from US investors in reliance on an exemption to the registration requirement available in the US;

5. Summers lost his job in 2008, in the wake of the financial crisis. Attempts to find alternative employment were unsuccessful. As a result, in July 2009, Summers commenced his investment activity with the Investment Fund to earn an income; and

6. Consistent with his remorse, Summers has pled guilty to the criminal offences of fraud and uttering a forged document in connection with his conduct in this matter.

PART VII – TERMS OF SETTLEMENT

28. The Respondents agree to the terms of settlement below.

29. The Commission will make an order, pursuant to subsection 127(1) of the Act, that:

1. the Settlement Agreement is approved;

2. pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by the Respondents shall cease permanently, with the exception that Summers is permitted to trade in securities for the account of a registered retirement savings plan (as defined in the *Income Tax Act*, R.S.C., 1985, c. 1, as amended) ("RRSP") and/or a tax-free savings account ("TFSA") in which he and/or his spouse have sole legal and beneficial ownership only after complying with any disgorgement or restitution order made in connection with the Parallel Criminal Proceeding, provided that:

   (i) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer;

   (ii) Summers does not own legally or beneficially (in the aggregate, together with his respective spouse) more than one percent of the outstanding securities of the class or series of the class in question; and

   (iii) Summers carries out any permitted trading through a registered dealer and through trading accounts opened in his name or the name of his spouse only (and he must close any trading accounts that are not in his name or the name of his spouse only);

3. pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by the Respondents is permanently prohibited, except to allow trading in securities permitted by and in accordance with paragraph 2 of this Order;

4. pursuant to clause 3 of subsection 127(1) of the Act, any or all exemptions contained in Ontario securities law do not apply to the Respondents permanently, except to allow trading in securities permitted by and in accordance with paragraph 2 of this Order;

5. pursuant to clause 6 of subsection 127(1) of the Act, Summers is reprimanded;

6. pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the Act, Summers shall resign all positions he holds as an officer or director of any issuer, of any registrant, or of any investment fund manager, except that Summers may retain any position he holds as a director or officer of a private issuer in which he or his spouse are the only shareholders; and

7. pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act, Summers is permanently prohibited from becoming or acting as an officer or director of any issuer, of any registrant, or of any investment fund manager, except that Summers may act as an officer or director of a private issuer in which he or his spouse are the only shareholders; and

8. pursuant to clause 8.5 of subsection 127(1) of the Act, Summers is permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter.

30. The Respondents undertake to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in paragraph 29 above.

PART VIII – STAFF COMMITMENT

31. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against the Respondents in relation to the Agreed Facts, as defined herein, subject to the provisions of paragraphs 32 and 33, below.

32. If this Settlement Agreement is approved by the Commission, and at any subsequent time the Respondents fail to comply with any of the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against the Respondents based on, but not limited to, the facts set out in the Agreed Facts, as well as the breach of the Settlement Agreements.

33. If, at any time following the approval of this Settlement Agreement, Summers initiates an appeal of his conviction or sentence in the Parallel Criminal Proceeding, this Settlement Agreement is null and void and Staff reserve the right to bring proceedings under Ontario securities law against Summers based on, but not limited to, the facts set out in the Agreed Facts, as well as the breach of the Settlement Agreement.

34. If, for any reason, Summers is convicted, but a restitution order is not made in the Parallel Criminal Proceeding, as set out above, at paragraph 4, Staff may apply to the Commission for a variance of the order arising from this Settlement Agreement and adding such terms as are necessary to require the Respondents to disgorge the amounts obtained as a result of their non-compliance with Ontario securities law, which amounts shall be determined by the Commission based on the facts as set out in the Agreed Facts. The Commission remains entitled to bring any proceedings necessary to recover any amounts that the Respondents are ordered to pay as a result of any order imposed pursuant to this Settlement Agreement.

35. The Respondents hereby undertake to consent to an application to vary the order arising from this Settlement Agreement to add a disgorgement order, as set out in paragraph 34, above.

PART IX – PROCEDURE FOR APPROVAL OF SETTLEMENT

36. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and the Respondents for the scheduling of the hearing to consider the Settlement Agreement.

37. Staff and the Respondents agree that the Agreed Facts, as defined in this Settlement Agreement, will constitute the entirety of the facts to be submitted at the settlement hearing regarding the Respondents' conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

38. If this Settlement Agreement is approved by the Commission, the Respondents agree to waive all rights to a full hearing, judicial review, or appeal of this matter under the Act.

39. If this Settlement Agreement is approved by the Commission, neither Staff nor the Respondents will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

40. Whether or not this Settlement Agreement is approved by the Commission, the Respondents agree that they will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise by available.

PART X – DISCLOSURE OF SETTLEMENT AGREEMENT

41. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule A is not made by the Commission:

1. this Settlement Agreement and its terms, including all settlement negotiations between Staff and the Respondents leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and the Respondents; and

2. Staff and the Respondents shall be entitled to all available proceedings, remedies, and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions and negotiations.

42. The terms of this Settlement Agreement will be treated as confidential by all parties hereto, but such obligations of confidentiality shall terminate upon commencement of this public hearing. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of the Respondents and Staff or as may be required by law.

PART XI – EXECUTION OF SETTLEMENT AGREEMENT

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

44. A facsimile copy of ay signature will be effective as an original signature.

Dated this 20th day of August, 2014.

STAFF OF THE ONTARIO SECURITIES COMMISSION

"Tom Atkinson"
Director, Enforcement Branch
Ontario Securities Commission

"Keith McDonald Summers"
Tricoastal Capital Partners LLC
Tricoastal Capital Management Ltd.

"Kenneth Summers"
Witness

SCHEDULE A

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

AND

IN THE MATTER OF
KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC, AND
TRICOASTAL CAPITAL MANAGEMENT LTD.

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
KEITH MACDONALD SUMMERS,
TRICOASTAL CAPITAL PARTNERS LLC, AND
TRICOASTAL CAPITAL MANAGEMENT LTD.

ORDER
(Section 127(1))

WHEREAS on February 27, 2014, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the "Act") in respect of Keith MacDonald Summers ("Summers"), Tricoastal Capital Partners LLC ("Tricoastal Partners") and Tricoastal Capital Management Ltd. ("Tricoastal Management") (collectively, the "Respondents").

AND WHEREAS on February 27, 2014, Staff of the Commission filed a Statement of Allegations;

AND WHEREAS the Respondents entered into a Settlement Agreement dated August •, 2014 (the "Settlement Agreement") in relation to the matters set out in the Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing dated August •, 2014 setting out that it proposed to consider the Settlement Agreement;

UPON reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from the Respondents through their counsel and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED:

1. the Settlement Agreement is approved;

2. pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by the Respondents shall cease permanently, with the exception that Summers is permitted to trade in securities for the account of a registered retirement savings plan (as defined in the *Income Tax Act*, R.S.C., 1985, c. 1, as amended) ("RRSP") and/or a tax-free savings account ("TFSA") in which he and/or his spouse have sole legal and beneficial ownership only after complying with any disgorgement or restitution order made in connection with the Parallel Criminal Proceeding, provided that:

   (i) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer;

   (ii) Summers does not own legally or beneficially (in the aggregate, together with his respective spouse) more than one percent of the outstanding securities of the class or series of the class in question; and

(iii) Summers carries out any permitted trading through a registered dealer and through trading accounts opened in his name or the name of his spouse only (and he must close any trading accounts that are not in his name or the name of his spouse only);

3. pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by the Respondents is permanently prohibited, except to allow trading in securities permitted by and in accordance with paragraph 2 of this Order;

4. pursuant to clause 3 of subsection 127(1) of the Act, any or all exemptions contained in Ontario securities law do not apply to the Respondents permanently, except to allow trading in securities permitted by and in accordance with paragraph 2 of this Order;

5. pursuant to clause 6 of subsection 127(1) of the Act, Summers is reprimanded;

6. pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the Act, Summers shall resign all positions he holds as an officer or director of any issuer, of any registrant, or of any investment fund manager, except that Summers may retain any position he holds as a director or officer of a private issuer in which he or his spouse are the only shareholders; and

7. pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act, Summers is permanently prohibited from becoming or acting as an officer or director of any issuer, of any registrant, or of any investment fund manager, except that Summers may act as an officer or director of a private issuer in which he or his spouse are the only shareholders.

DATED at Toronto this • day of August, 2014

SCHEDULE B

ONTARIO COURT OF JUSTICE (Toronto Region)

BETWEEN:

HER MAJESTY THE QUEEN

AND

KEITH MACDONALD SUMMERS

SUMMARY OF FACTS FOR GUILTY PLEA

I. OVERVIEW

1. The Crown presents the following facts on the plea of guilty by Keith MacDonald Summers ("Summers") to a count of fraud over $5,000 and a count of uttering a forged document in relation to an investment fund that he operated through his company, Tricoastal Capital Partners LLC (the "TCP Fund") in Ontario, New York, and elsewhere, between July 1, 2009 and July 31, 2013.

2. In July 2009, Summers began investing his clients' money in index-linked Exchange Traded Funds ("ETFs"). He over-stated his assets under management ("AUM") to attract new clients. He presented himself as a successful fund manager who followed a quantitative model-driven investment strategy that generated consistent long-term profits. By May 2012, Summers lost faith in this strategy and abandoned it. Commencing in August 2011, Summers concealed the associated losses by falsifying monthly statements and tax forms, and ultimately, in April 2013, by forging an audited financial statement. While operating the fund, Summers fraudulently withdrew a portion of the investors' money to pay his personal and business expenses in amounts exceeding the authorized management fees, performance fees and allowable expenses ("the permitted withdrawals"). The money was transferred from the fund to one of his other companies. Summers recorded these excess withdrawals in the Accrued Expenses account in the books and records of the TCP Fund. The account was a liability account with a negative balance; effectively, the withdrawals were recorded as an asset/loan receivable.

3. On July 12, 2013, Summers self-reported his illegal activities to the Ontario Securities Commission ("OSC"), who contacted the Securities and Exchange Commission ("SEC"). The Joint Serious Offences Team ("JSOT") of the OSC commenced a joint investigation with the Royal Canadian Mounted Police ("RCMP"). Summers cooperated with that investigation. He consented to information-sharing between Canadian authorities and the SEC. Summers submitted to two interviews with JSOT.

4. The investigation disclosed that Summers fraudulently obtained funds from three institutional victims and eight individuals, domiciled in the United States and Canada.

5. Summers raised a total of US$4,690,000 from the investors in the TCP Fund. He lost US$1,568,215 in trading, of which US$1,202,441 was lost after his change in strategy. He fraudulently withdrew US$918,995. He withdrew US$234,489 in permitted withdrawals, and repaid US$572,341.85 in redemptions. The fund had a balance of US$1,395,959 when the fraud was discovered.

6. Two of the investors engaged Summers to manage their online trading account. They contributed a total of US$570,130.15. Summers lost US$212,328.61 trading that account.

II. THE CHARGES

7. Summers is charged with one count of fraud over $5,000 on the following victims:

- [Investor 1 and an LLP;
- Investors 2 and 3 and a Family Trust;
- Investor 4 and an LLC;
- Investor 5;
- Investor 6;

- Investor 7 and a Family Trust;
- Investor 8 and Investor 9;
- Investor 10 and an Investment Fund; and
- Investor 11.]

8. Summers is also charged with uttering a forged document by knowingly attempting to cause [an Investment Fund] to act upon the document titled, "Tricoastal Capital Partners LLC Financial Statements for the year ended December 31, 2012 including Independent Auditors' Report", as if it were genuine.

9. All but two victims resided in the United States. Summers had a nominal office presence in Buffalo, NY and, until January 2010, maintained a mailing address in St. Paul, MN. He occasionally met with his victims in the US. However, Summers operated the TCP Fund, implemented the fraudulent trades, created and published the false documentation, and made the deceitful communications from his home office at 2164 Headon Forest Drive in Burlington, ON.

III. KEITH MACDONALD SUMMERS

10. Summers was born on May 29, 1965. He is married but currently separated with divorce pending. He has an adult son and two daughters currently in school; one daughter is attending university, the other is entering university next year. He has an undergraduate degree in political science and an MBA from McMaster University.

11. From 1993 to 2000, Summers was the Chief Investment Officer at Agricorp, an Ontario Crown corporation that delivered risk management services to the agricultural industry. He was awarded the Chartered Financial Analyst ("CFA") designation in 2000. He was registered as an Investment Counsel / Portfolio Manager with the OSC.

12. In 2000, Summers left Agricorp and joined the Workers' Compensation Reinsurance Association ("WCRA") in Minnesota. Summers managed their $1.4 billion investment portfolio. He grew comfortable conducting research across varied market sectors. He developed and employed a "sector-rotation model" that would become the prototype for his future operations.

13. On October 30, 2002, Summers' work visa expired. He returned to Canada. In September 2003, Summers joined CI Investments in Winnipeg as their Investment Counsel / Portfolio Manager and Chief Compliance Officer. He began at United Financial Corporation, a subsidiary with $10 billion under management. In 2005, he moved to Stonegate Private Counsel LLP, a subsidiary with more than $900 million under management. Summers lost his job in September 2008, in the wake of the financial crisis. Attempts to find alternative employment were unsuccessful. As a result, in July 2009, Summers commenced his investment activity with the TCP Fund to earn an income.

14. Summers was an active volunteer at the CFA Institute. He attended and spoke at hedge fund conferences. Around October 2008, Summers began providing market commentary on a Business News Network television broadcast ("BNN") about once a month.

IV. THE TRICOASTAL COMPANIES

15. Summers is the principal of the following corporate entities:

- Tricoastal Capital Partners LLC;
- Tricoastal Capital Management Ltd.;
- Tricoastal Capital American Partners LP; and
- Tricoastal Capital LLC.

16. Tricoastal Capital Partners LLC (the "TCP Fund") was incorporated in Delaware on April 24, 2004. Summers is the sole officer and director. The TCP Fund has a registered office in Wilmington, DE and a mailing address in Buffalo, NY. It had a UBS Financial Services brokerage account that allowed Summers to borrow on margin. In 2012, Summers opened a UBS futures account. Under US law, the TCP Fund was limited to 99 investors.

17. Tricoastal Capital Management Ltd. ("Tricoastal Management") was incorporated in Ontario on October 4, 2007. Its registered office is 2164 Headon Forest Drive in Burlington, ON. Summers owns 89% of the shares. The remaining shares are owned by his friend [Investor B] (10%), his son (0.5%), and his parents (0.5%).

18. Tricoastal Capital American Partners LP was incorporated in Delaware. Summers is the sole director and officer. He intended this entity to be a larger version of the TCP Fund. Under US law, it could accommodate up to 499 investors.

19. Tricoastal Capital LLC was incorporated in Delaware on March 1, 2013. It is a US subsidiary of Tricoastal Management. Summers is the sole director and officer. He intended this entity to be a global, off-shore version of the TCP Fund and Tricoastal Capital American Partners LP.

20. Summers and his companies were not registered with the OSC during the material time. In June 2009, Summers contacted the OSC about registering as an Investment Counsel/Portfolio Manager but was informed that he did not have the required minimum capital ($100,000) to establish an investment fund. Until 2012, Tricoastal Management was registered with the SEC as an Investment Adviser Firm in New York.

V. OVERVIEW OF THE FRAUD

21. Summers held himself out as a successful fund manager. He offered securities in the form of membership interests in the TCP Fund. Investors owned the fund's assets and liabilities on a basis directly proportionate to their membership interest. The minimum investment was $150,000. The TCP Fund Operating Agreement authorized a monthly management fee (one-twelfth of 2% of the AUM) and, under certain conditions, a performance fee (20% of the AUM). The Operating Agreement limited business expenditures to 1.5% of the AUM.

22. Summers marketed the TCP Fund on the basis of a specific trading strategy (the "ETF strategy"). He claimed to have developed a quantitative model for evaluating index-linked ETFs. His process was iterative. At the start of each month, Summers used his model to choose approximately seven ETFs in which to invest. He invested the assets of the TCP Fund equally between those ETFs. He did not buy or sell during the month. He sold all the ETFs at the end of the month. He then repeated the process.

23. Summers made a variety of documents available to prospective investors, including:

- an Investor Application Package, which included the Offering Memorandum ("OM") and the Operating Agreement;
- a Due Diligence Questionnaire;
- an Executive Summary or "tear sheet";
- marketing materials, including Powerpoint presentations and a "pitchbook";
- online postings, including a monthly "Investor Update", on investment websites such as Morningstar, Hedge Fund Net, CSFB, Hedge Connection, Mercer and Altura.

Generally speaking, these documents described the ETF strategy, the historical performance of the fund, and the fee-structure of the fund. They indicated that the fund was audited by an independent accounting firm, and administered by a third party.

24. Summers also provided documentation to his current investors. He generated annual US income tax forms ("K-1"s). He sent electronic monthly statements that set out the percentage gain/loss in the past month, and the value of the investment. Starting in May 2010, the statements were accompanied by Summers' monthly commentary on the state of the financial markets. As a marketing initiative, Summers sent those monthly commentaries to an e-mail distribution list of almost 3000 registered investment advisors in Canada and the US.

25. In summary, Summers employed the following fraudulent means to obtain and retain funds from his victims:

i. Misrepresenting the historical performance of the TCP Fund to prospective investors;

ii. Over-stating his Assets Under Management, both through personal representations and in the TCP Fund documentation;

iii. Misrepresenting in the TCP Fund documentation that the fund was audited, specifically by "[a]n accounting firm of national repute", Deloitte & Touche, LLP, when only 2009 was audited;

iv. Misrepresenting the performance of the TCP Fund to current investors to conceal trading losses;

v. Withdrawing monies in excess of the permitted withdrawals and recording them as a negative liability;

vi. Producing and sending monthly statements to his investors that inaccurately reported their gains, losses and balances;

vii. Producing and sending a fake audited financial statement to [an Investment Fund];

viii. Producing and sending income tax forms to his investors that inaccurately reported their unrealized gains, losses and balances for 2011 and 2012, and the overall size of the TCP Fund for all years. The Crown is not aware that these actions had any implications for the investors' tax liability that caused additional financial losses.

VI. SUMMERS' ADMISSION OF GUILT

26. On July 12, 2013, Summers disclosed his fraudulent activity to the OSC. He attended for interviews with JSOT on July 31, 2013 and November 12, 2013. The SEC monitored both interviews. Summers provided JSOT with documents relating to his dealings with his companies. He claims to have fully disclosed the extent of his personal assets. JSOT compared his disclosures against the information from the victims. They concluded that Summers' representations were substantially accurate.

27. Summers advised that he intended the TCP Fund to be a successful business but admits that he lied to secure investors for the TCP Fund and fraudulently withdrew funds from the TCP Fund that he was not entitled to under the terms of the OM.

(a) The early years of the TCP Fund: 2004 – 2008

28. Summers was unhappy working at CI Investments as he felt under-utilized. In 2004, he ruminated on the success he had at WCRA with his sector-rotation model. He began to do research. He developed the ETF strategy. To implement that strategy, he incorporated the TCP Fund in April 2004. However, Summers had insufficient assets to provide his own start-up capital. He reached out to his second cousin, [Investor A], and his best friend, [Investor B]. Between them, Summers received about $20,000.

29. Summers knew that a "typical fund size" was between $10 million and $20 million. He recognized that he needed $10 million in AUM for him to break even and for the TCP Fund to be viable.

30. Summers soon exhausted the $20,000 that he received from [Investor A] and [Investor B]. He was no longer able to purchase ETFs. Around 2007, he received an e-mail from R Capital Advisors ("R Capital"). For a $60,000 retainer, R Capital promised to find Summers enough investors to generate between $10 million to $15 million in AUM. Summers was interested, but did not have the money to retain them. He asked [Investor B] for help. [Investor B] agreed. On October 4, 2007, Summers incorporated Tricoastal Management and sold 10% of the shares to [Investor B] for $100,000. Summers "immediately" sent $60,000 to R Capital.

31. The TCP Fund was limited to 99 investors under the Investment Company Act of 1940. R Capital recommended that Summers incorporate a larger investment vehicle. He took their advice. He incorporated Tricoastal Capital American Partners LP, which could have up to 499 investors. It cost him $25,000 in legal fees.

(b) The R Capital incident: 2008 – 2009

32. Over the next year, R Capital and Summers worked on his marketing materials. Summers lost his job in September 2008. He received about $60,000 in severance pay. He did not find new employment. He trusted R Capital to find the promised investors. His faith was misplaced. No investors materialized. Without notice, R Capital went out of business in 2010. Summers was subsequently informed that the principal of R Capital was indicted for mail fraud in the United States and that the TCP Fund was one of the victims of that fraud.

33. The TCP Fund and the ETF strategy were generating online interest from potential investors. Their interest quickly fell away when Summers advised that he only had $20,000 in AUM. The true state of affairs was worse: he had no AUM at all. By June 2009, Summers was in dire financial straits. He had spent his severance pay. In July 2009, Summers generated $10,000 by selling 1% of the Tricoastal Management shares to his son (0.5%) and his parents (0.5%).

(c) The fraud begins: July 2009 – December 2009

34. Summers began significantly overstating his AUM in July 2009, when he received a phone call "out of the blue" from [Investor 1]. [Investor 1] expressed interest and asked about his AUM. Summers explained,"[A]fter getting shut down every time I had been honest, I said $2 million". [Investor 1] decided to invest. Over the next couple of months, Summers received calls from [Investors 2 and 3], [Investor 4], and [Investor 5]. Summers told them the "same two-million-dollar story". By November

2009, this simple lie had brought his AUM from zero to just under $1 million. In November 2009, apart from managing the TCP Fund, Summers agreed to manage a US resident trust account holding US$1 million for [Investor C]. From July 2009 to August 2011, Summers sometimes "smoothed" the reported monthly performance by over-reporting or under-reporting as necessary.

35. From the outset, Summers withdrew money from the fund for "general living expenses". He made monthly withdrawals that reflected "what I thought we needed to live on". He also withdrew money to reimburse himself for business expenses in excess of the amount permitted by the Operating Agreement. All of the withdrawals were recorded in the Accrued Expenses account in the books and records of the TCP Fund. The Accrued Expenses account was a liability account. It had a negative balance, effectively converting it into an asset/loan receivable account that reflected the amount owed by Summers to the fund. Summers borrowed on margin against the ETFs held in the TCP Fund UBS brokerage account; the interest owing on these withdrawals was added to the margin balance. Summers asserted that he intended to repay this debt when his income, which was tied to his AUM, permitted him to do so.

36. By December 2009, Summers had about $2 million in AUM but understood that to be successful he would need $10 million in AUM. He knew he would have to lie to investors to attract that amount.

(d) The fraudulent withdrawals begin: January 2010 – December 2010

37. The ETF strategy worked well over 2009 and into 2010. Investors were infusing capital into the TCP Fund. By the third quarter of 2010, Summers had between $3.5 - $4.5 million in AUM, including [Investor C's] managed account. The $10 million goal seemed attainable.

38. Summers sought to legitimize the TCP Fund's operations. He retained Deloitte & Touche in Philadelphia to audit the TCP Fund. Although the Due Diligence Questionnaire identified an independent administrator of the fund, none was ever retained because the administrator's fees were higher than permitted under the Operating Agreement. The Deloitte audit was completed on October 4, 2010. This was the first and only time the TCP Fund was audited. A clean audit opinion was issued by Deloitte and the financial statements were distributed to investors. The actual amount of the AUM was reported in the financial statements distributed to investors.

39. The Deloitte audit cost $60,000. The Operating Agreement authorized a maximum expense of $15,000. Summers had no income apart from his monthly management fee. He could not pay the outstanding amount. He decided to "borrow [$45,000] from the fund to pay the auditor".

40. As of July 2010 Summers had $3.1 million in AUM, including [Investor C's] managed account. However, as many prospective investors were declining to invest in such a small fund, leading into 2011, Summers began telling prospective investors that he had $10 million in AUM.

(e) The market downturn: January 2011 – December 2011

41. In Spring 2011, the TCP Fund started to experience significant losses. By Summer 2011, [Investor C] – who represented half of Summers' AUM – had discharged Summers and redeemed his investment.

42. The markets did not improve. The US debt-ceiling crisis came to a head in the third quarter of 2011. Commencing in August 2011, Summers significantly under-reported his losses. The TCP Fund had a "terrible" month in September 2011. After [Investor C's] departure, Summers could not afford any further depletion of his AUM. Summers deliberately under-reported the loss suffered by the TCP Fund.

43. Summers started to recognize the severity of his conduct, but hoped that the TCP Fund would perform well over the fourth quarter and into 2012. His hopes were not realized.

(f) The change in strategy: January 2012 – December 2012

44. Around January 2012, Summers obtained a pay-as-you-go cell phone with a 716 area code in order to conduct business in New York. Around this time, [Investor 10] from [an Investment Fund] called Summers and expressed interest. [Investor 10] asked Summers about his AUM. Summers said he had about $15 million in AUM.

45. Around April 2012, [Investor 10] invested about $2.5 million. Summers was optimistic. Other parties, cumulatively representing a further $30 million to $40 million, had inquired about investing in the TCP Fund. Summers believed that he could use that new money to repair the "hole" that he had created.

46. However, in May 2012, the TCP Fund experienced a significant loss. JSOT calculates a 13% loss; Summers asserts that the 10.46% loss he reported to investors is accurate. In either event, Summers lost faith in the ETF strategy.

47. In June 2012, some of the victims had e-mail exchanges with Summers in which they expressed their displeasure with the TCP Fund's performance and their inclination to withdraw their funds. Summers interpreted those e-mails as an invitation to change his strategy. He recognized that although he had promised the investors a certain ETF-investment strategy, under the OM he had discretion to invest in other types of securities. The diversified ETF strategy was much lower risk but Summers opted to abandon this model in favour of higher risk investments in derivatives, including futures and options on market volatility indices. These investments were essentially a "be[t] on a market selloff". During this period, a significant portion of the fund's assets were held in cash. Although this change in strategy was not prohibited by the OM, Summers knew that it was a significant departure from the basis upon which the victims decided to invest, and that he should not proceed without consulting them.

48. Contrary to his "bet", in July 2012, the market rebounded. The TCP Fund took further losses. Summers decided that he could not report the negative returns. He continued to hope that the market would crash and everything would "get back on track". These hopes were also not realized.

49. From July 2012 onwards, Summers began fabricating the monthly returns, based on what the results would have been if he had maintained the original ETF strategy. He described this as a "double hit": he reported positive returns, but the TCP Fund was actually experiencing significant losses. The real balance and the reported balance diverged dramatically. Summers advised that if he had "stuck to the stupid program", the TCP Fund would have retained 80% of its capital.

50. Summers continued to hope for "new money" that would permit him to "[r]ide out the storm". He fielded expressions of interest from prospective clients and attempted to locate new investors, paying third-party marketers and recruiters to assist in his search.

(g) The fraud is discovered: January 2013 – July 2013

51. In January 2013, Summers sold e-mini futures contracts on the belief that the market was overpriced. He thought the market would correct itself and that prices would fall. He was wrong.

52. In March 2013, [Investor 10] from [an Investment Fund] asked Summers for audited financial statements. Summers decided, "I've got to make up an audited financial statement to show not only assets that aren't there, but returns that aren't there." Using the Deloitte audit as a template, Summers forged an Independent Auditors' Report under the fabricated name of "D. Fisher & Company, Certified Public Accountants". The document was dated April 5, 2013. On the letterhead, Summers used an address of a virtual office in Buffalo, NY. He intended to use the number of his pay-as-you-go cell phone, but accidentally transposed the last two digits.

53. The forged audited financial statements contained an inflated AUM, the false 2012 returns, and "made up" numbers in the statement of financial condition. Summers provided the audited financial statements to [the Investment Fund].

54. Rothstein & Kass was [the Investment Fund's auditor]. Around June 2013, they followed up with "D. Fisher" and quickly discovered irregularities. They contacted Summers and advised that they could not contact his auditor. Summers was surprised because his cell phone had not rung. He checked the forged audit and realized his mistake. A week later, [Investor 10] called Summers and advised that D. Fisher was not registered with the American Institute of CPAs ("AICPA"). Summers realized that "this is over". Summers asserts that he contemplated suicide but chose instead to self-report to the authorities, put an end to any further losses and accept the consequences of his illegal conduct.

55. On July 12, 2013, Summers sent [Investor 10] an e-mail advising that he could no longer manage the TCP Fund, and that he had referred the matter to the OSC. On July 26, 2013, Summers sent essentially the same e-mail to the remainder of his investors. Later that day, Summers sent a second e-mail setting out contact details for the OSC and the SEC.

56. Summers acknowledged that if this "audit thing hadn't blown up", he would have continued "trying to grow the fund and reverse this, dig a way out of this hole" until he was caught.

VII. WHERE THE MONEY CAME FROM

57. Summers had no capital of his own to invest in the TCP Fund. He sourced money from 14 individuals or legal entities, 11 of whom can be properly characterized as victims.

(a) The three other investors

58. [Investor A], [Investor B] and [Investor C] provided Summers with funds to invest on their behalf. Their interactions with Summers do not support classifying them as victims. However, their narratives are integral to understanding the manner in which Summers operated the TCP Fund, sourced monetary contributions and spent the money that he received.

- **Investor A**

59. [Investor A] lives in Bel-Air, California. He is an elderly gentleman. He is Summers' second cousin. He declined to provide a statement to JSOT. The following summary is taken from Summers' disclosures.

60. [Investor A] was the first investor. In 2004, he provided Summers with approximately $10,000. [Investor A] never asked about his investment. He assumed that the money was lost. He was correct. His capital had been depleted by the end of 2007.

61. Summers was very fond of [Investor A]. In 2010, when the TCP Fund was performing well, Summers sent [Investor A] a false statement purporting to reflect the value of his investment. Unbeknownst to Summers, [Investor A] needed money. He asked to redeem half the investment. Summers felt compelled to follow through with his misrepresentation. On November 2010, Summers paid [Investor A] $15,000. On January 10, 2013, [Investor A] "redeemed" the remainder of his purported investment and received a further $21,000.

- **Investor B**

62. [Investor B] lives in Toronto. He and Summers have been friends for more than 20 years. [Investor B] has a business degree. [Investor B] worked in the financial industry, including as a floor trader at the Toronto Stock Exchange, before his retirement. He provided a statement to JSOT.

63. [Investor B] was the second investor. Summers told him about the ETF strategy. In 2005, [Investor B] provided Summers with approximately $10,000 as seed capital with which to implement that strategy. [Investor B] never inquired after this money. He assumed it had been lost.

64. In October 2007, Summers asked [Investor B] to invest in Tricoastal Management. Summers wanted to set up an investment fund. On October 17, 2007, [Investor B] invested $100,000 for a 10% ownership interest. [Investor B] took no part in the business and had minimal knowledge about its operations. He merely wanted to give Summers, whom he regarded as intelligent and able, the opportunity to succeed. [Investor B] recognized the likelihood of failure and, indeed, expected to lose the entire amount.

65. The TCP Fund performed well in 2010. On December 10, 2010, Summers paid [Investor B] a dividend of $5,000.

66. In mid-July 2013, shortly after he reported himself to the authorities, Summers disclosed his fraudulent activities to [Investor B]. [Investor B] was shocked. He expected Summers to fail, but to "fail honourably". He "didn't expect a moral failure".

- **Investor C**

67. [Investor C] is a physician and CEO of a research organization. He lives in Mississauga. He invests his own money and considers himself a "fairly sophisticated" investor. He gave a statement to JSOT.

68. [Investor C] was browsing the Internet for investment ideas. He came across the TCP Fund on Morningstar. He was impressed by its historical performance. He contacted Summers for more information. On November 2, 2009, [Investor C] and Summers spoke on the phone. Summers explained the ETF strategy. He claimed to have $1 million - $2 million in AUM.

69. [Investor C] was intrigued. He was looking for a personal wealth advisor. They agreed that Summers would manage [Investor C's] trading account as proof of concept. Around November 26, 2009, [Investor C] deposited $1 million into his Interactive Brokers account and gave Summers trading access. Several months later, [Investor C] deposited a further $1 million. During this time, [Investor C] paid Summers a 2% management fee and a 20% incentive fee.

70. [Investor C] monitored the trading activity. Around Summer 2011, he lost faith in the ETF strategy. He discharged Summers and withdrew his funds.

(b) The victims

71. The following chart sets out the chronology, the source and the amount of money invested and redeemed by the victims for the TCP Fund, and by [Investors 2 and 3] for their managed account, during the period of the fraud:

		TCP FUND	INVESTORS 2 & 3 ACCOUNT
Date	**Investor**	**Amount**	**Amount**
07/27/2009	[LP (Investor 1)]	US$250,000	
09/28/2009	[LP (Investor 1)]	US$82,000	
10/01/2009	[Investor 7 and Family Trust]	US$250,000	
10/01/2009	[Investors 2 and 3]	US$150,000	
11/02/2009	[LLC (Investor 4)]	US$158,000	
01/21/2010	[Investor 6]	US$450,000	
02/26/2010	[LP (Investor 1)]	(US$80,000)	
04/14/2010	[Investor 5]	US$50,000	
05/28/2010	[LP (Investor 1)]	(US$60,000)	
08/16/2010	[Family Trust (Investors 2 and 3)]	US$100,000	
08/17/2010	[Investor 5]	US$50,000	
08/18/2010	[Investor 2 and Investor 3]	US$150,000	
11/26/2010	[Investor 8 and Investor 9]	US$150,000	
12/28/2010	[Family Trust (Investors 2 and 3)]	(US$255,000)	
01/03/2011	[Family Trust (Investors 2 and 3)]	(US$15,130.15)	
01/2011	[Family Trust (Investors 2 and 3)]		US$250,000
01/2011	[Family Trust (Investors 2 and 3)]		US$255,000
01/2011	[Family Trust (Investors 2 and 3)]		US$15,130.15
03/27/2011	[Family Trust (Investors 2 and 3)]		US$20,000
08/03/2011	[Family Trust (Investors 2 and 3)]		US$30,000
11/02/2011	[Investor 8 and Investor 9]	(US$112,211.70)	
03/29/2012	[Investor 10]	US$2,200,000	
04/11/2012	[Investor 11]	US$150,000	
04/27/2012	[Investor 10]	US$500,000	
09/2012	[Family Trust (Investors 2 and 3)]		(US$357,801.54)
06/28/2013	[LLC (Investor 4)]	(US$50,000)	
	TOTAL INVESTED:	**US$4,690,000**	**US$570,130.15**
	TOTAL REDEEMED:	**US$572,341.85**	**US$357,801.54**

72. The following is a brief summary of the victims' accounts.

- **Investor 1 and an LP**

73. [Investor 1] lives in Connecticut. He is the principal of [an "LP"]. He previously worked as a financial advisor, including at UBS. He has a decade of experience in fund management. He gave a statement to JSOT.

74. [Investor 1] wanted to minimize volatility by diversifying his fund across asset classes and management styles. He came across the TCP Fund in Spring 2009 and contacted Summers in July 2009. Summers explained the ETF strategy.

75. Summers sent [Investor 1] the investor application package. [Investor 1] reviewed the documents. He took particular note of the historical performance of the TCP Fund, which demonstrated the low-volatility nature of the ETF strategy. He also took comfort from the fact that UBS was the custodian of the funds. He asked Summers for his AUM. On July 17, 2009, Summers sent [Investor 1] an e-mail advising that he had received commitments of $15 million for the fund. This was untrue, although Summers hoped that those commitments would arise from his relationship with R Capital.

76. On July 27, 2009, [Investor 1] wired US$250,000 to Summers. He supplemented this investment with another US$82,000 on September 28, 2009. On February 26, 2010, [Investor 1] redeemed US$80,000. He was rebalancing his investment portfolio. He redeemed a further US$60,000 on May 28, 2010.

77. In Fall 2011, [Investor 1] requested copies of the 2009 and 2010 audits. Summers sent [Investor 1] a copy of the Deloitte audit. Since no audit had been performed in 2010, Summers typed up a financial statement for 2010 and sent it to [Investor 1] on September 6, 2011. He did not represent that the statement had been audited. [Investor 1] did not follow up.

78. On July 26, 2013, Summers sent [Investor 1] the e-mails advising that he could no longer manage the fund, and directing further inquiries to the OSC and the SEC.

79. [Investor 1] and Summers met twice when Summers was in New York City. Summers sent [Investor 1] monthly statements and K-1 tax forms. [Investor 1] acted on these documents as though they were accurate. [The LP] remitted taxes in accordance with the information on the K-1.

80. [Investor 1] did not know that Summers was borrowing money from the TCP Fund. He did not know that Summers had deviated from the ETF strategy in May 2012.

81. In summary, [the LP] invested US$332,000 in the TCP Fund, and redeemed $140,000 of that investment. The loss is US$192,000.

- **Investor 2, Investor 3 and a Family Trust**

82. [G.S.] lives in New York. He is a young man. His grandparents are [Investor 2 and Investor 3]. They are in failing health. G.S. has power of attorney over his grandparents' finances and is the trustee of [the "Family Trust"]. He earned an economics degree in 2008. Given his family responsibilities, he has limited work experience. He gave a statement to JSOT.

83. G.S. came across the TCP Fund in Fall 2009. He was browsing the Internet for alternative investment opportunities. Through Hedge Fund Net, G.S. received a copy of the Due Diligence Questionnaire for Tricoastal Capital American Partners Fund LP. He was impressed by the TCP Fund's historical performance. In October 2009, G.S. spoke with Summers on the phone, and met with him in person.

84. Summers explained the ETF strategy. He claimed that he had approximately $5 million in AUM. G.S. found both the ETF strategy and Summers himself to be impressive. He described Summers to be an "upstanding", "gregarious" and intelligent individual who was "incredibly well-versed in the financial markets". He contacted Deloitte and confirmed that they were auditing the fund.

85. G.S. decided to invest shortly after meeting Summers. On October 1, 2009, he invested US$150,000 of his grandparents' money. In April 2010, G.S. requested a copy of the Deloitte audit. On August 16, 2010, G.S. invested US$100,000 from [the Family Trust]. On August 18, 2010, G.S. invested a further US$150,000 for his grandparents. Summers sent the Deloitte audit to G.S. in October 2010.

86. As 2011 approached, G.S. asked Summers to manage a trading account using the ETF strategy. Summers required a minimum balance of US$500,000. On December 28, 2010, and January 3, 2011, G.S. redeemed US$255,000 and US$15,130.15 respectively, leaving the minimum investment of US$150,000 with the TCP fund.

87. G.S. deposited the redeemed funds and an additional $250,000 into an OptionsXpress brokerage account. He gave Summers the password. He paid Summers a 2% management fee and a 20% performance fee. On March 27, 2011 and August 3, 2011, G.S. deposited a further US$20,000 and US$30,000 respectively.

88. G.S. received statements for the managed account directly from OptionsXpress. In mid-2011, G.S. noticed that Summers was using the managed account to purchase products that did not conform to the ETF strategy. G.S. was particularly concerned by the purchase of VXX, which he understood to be a "legendary terrible investment". G.S. asked Summers for an explanation. Summers told G.S. that this was a short-term measure and that he anticipated volatility in the near future.

89. G.S. questioned this reasoning, but trusted Summers' judgment. He had spoken and met with Summers, in Buffalo and Toronto, numerous times to seek his advice on various financial matters. Summers was always helpful and kind. G.S. explained that he was "blinded by the fact that I had been having conversations and [was]…beginning to think of this guy as just a nice financial uncle always there for a talk."

90. In November 2011, G.S. noticed that the monthly statements from the TCP Fund were inconsistent with the statements for the online managed account. He discussed this discrepancy with Summers by phone and by e-mail. Summers told G.S. that there was a trading delay as between the TCP fund and the managed account; one day was sufficient for a surge of volatility to significantly affect the value of VXX. Again, G.S. set aside his misgivings and trusted that Summers' explanation was legitimate.

91. In January 2012, Summers told G.S. that he had acquired a large investor, increasing his AUM to approximately $25 million.

92. By April 2012, the managed account was at a 40% loss. 15% of the loss was attributable to VXX alone. The TCP Fund was showing a loss between 15% and 20%. G.S. closed the managed account in August 2012, but left the investment in the TCP Fund intact. He wanted to build a long-term rapport and relationship with Summers. They remained in close contact up until July 26, 2013, when Summers sent G.S. the e-mails advising that he could no longer manage the fund, and directing further inquiries to the OSC and the SEC.

93. G.S. phoned Summers numerous times. Summers did not answer. Finally, G.S. e-mailed Summers, entreating him for an explanation. Summers replied that he was instructed not to have contact with any investors, but advised that it was not a complete loss.

94. Summers sent G.S. monthly statements for the TCP Fund and K-1 tax forms. G.S. acted on these documents as though they were accurate. He remitted taxes in accordance with the information on the K-1.

95. G.S. did not know that Summers was borrowing money from the TCP Fund. He did not know that Summers had deviated from the ETF strategy in May 2012.

96. In summary, [Investor 2 and Investor 3] invested US$400,000 in the TCP Fund and redeemed US$270,130.15. The resulting loss is US$129,869.85. [Investor 2 and Investor 3] also placed US$570,130.15 into the managed account. There was US$357,801.54 remaining in the account when it was closed in August 2012, for an additional loss of US$212,328.61. Their total loss is $342,198.46.

- **Investor 4 and an LLC**

97. [Investor 4] lives near Park City, Utah. He is the owner of [an "LLC"]. He is a practicing attorney. He is also a Certified Public Accountant and an investment advisor. He provided a written statement to JSOT.

98. [Investor 4] was researching hedge funds on the Internet. He came across the TCP Fund on Morningstar around October 11, 2009. On October 13, 2009, Summers responded by e-mail. He claimed to have $2.9 million in AUM and attached the Due Diligence Questionnaire. [Investor 4] found the documentation to be very impressive. He asked for and received subscription documents and marketing materials that he could forward to his clients.

99. [Investor 4] and Summers spoke briefly on the phone. Summers explained the ETF strategy. Shortly after this discussion, [Investor 4] decided to invest. On October 26, 2009, [Investor 4] sent a cheque for US$158,000 to Summers at his St. Paul, MN address. The cheque was stuck in transit. On November 2, 2009, [Investor 4] wired the money to Summers. The cheque was eventually returned to [Investor 4].

100. [Investor 4's] largest client was his brother, […]. In April 2010, [his brother] was considering investing US$168,200 with Summers. He ultimately decided against it.

101. On June 4, 2013, [Investor 4] requested a redemption of $50,000 in order to take advantage of another opportunity. He intended to replenish the amount later. On June 28, 2013, Summers returned US$50,000 to [Investor 4]. On July 26, 2013, Summers sent [Investor 4] the e-mails advising that he could no longer manage the fund, and directing further inquiries to the OSC and the SEC.

102. [Investor 4] met Summers once, in 2011, while Summers was visiting Salt Lake City. [Investor 4] described the meeting as "casual with no marketing pressure from him at all". Summers sent [Investor 4] monthly statements and K-1 tax forms. [Investor 4] acted on these documents as though they were accurate. He remitted taxes in accordance with the information on the K-1.

103. [Investor 4] did not know that Summers was borrowing money from the TCP fund. He did not know that Summers had deviated from the ETF strategy in May 2012.

104. In summary, [Investor 4] invested US$158,000 and redeemed US$50,000 of that investment. The loss is US$108,000.

- **Investor 5, Investor 6, Investor 7 and a Family Trust**

105. [Investor 5] lives in San Francisco, CA. He has a degree in business administration and is a CFA. He works as an investment banker. He gave a statement to JSOT.

106. [Investor 6] lives in Santa Monica, CA. He is married to […]. He has a masters degree in physical oceanography. He works as a developer and property manager for commercial and industrial real estate. [Investor 6's] father, [Investor 7], passed away on July 6, 2010. [Investor 6] inherited the relevant interests.

107. Around 2008, [Investor 5] began managing [Investor 6's] and [Investor 7's] stock portfolio. [Investor 5] also advised [the "Family Trust"], which was controlled by [Investor 7]. In Fall 2009, [Investor 5] came across the TCP Fund on Morningstar. He requested and received more information. On September 4, 2009, Summers sent [Investor 5] the Private Offering Memorandum for Tricoastal Capital American Partners Fund LP. [Investor 5] forwarded this information to [Investor 6] and [Investor 7].

108. [Investor 5] was impressed by Summers' qualifications. He took particular note of Summers' CFA designation which, as a CFA himself, [Investor 5] associated with a "very high degree of ethics". He looked up Summers' LinkedIn profile, and discovered that they had mutual acquaintances. On September 15, 2009, [Investor 5] and [Investor 6] spoke with Summers on the phone. Summers explained the ETF strategy. He said the fund was audited by Deloitte, and that he had about $15 million in AUM.

109. [Investor 5] recommended to [Investor 6] and [Investor 7] that they invest in the TCP Fund. They agreed. [Investor 6] did minimal investigation into the TCP Fund. He trusted his son's judgment. On September 22, 2009, Summers sent [Investor 5] the Investor Application Package for the TCP Fund and 'suggested' that he invest in that vehicle instead. On October 1, 2009, [Investor 7] invested US$250,000 for [the Family Trust]. On January 21, 2010, [Investor 6] invested US$450,000.

110. On April 14, 2010, [Investor 5] invested US$50,000. He invested a further US$50,000 on August 3, 2010.

111. [Investor 6] met with Summers numerous times, in a social capacity, when Summers was vacationing in Southern California. Summers did not try to solicit further funds. [Investor 6] liked Summers, who presented as a "refined, well-educated individual". Summers reciprocated the sentiment, exclaiming: "The […], oh my God. I had lunch with [Investor 6] so many times and they liked me. I liked them, you know and it's just – anyway, it's just awful."

112. On July 26, 2013, Summers sent [Investor 6] the e-mail advising that he could no longer manage the fund. [Investor 6] was shocked. He was "near tears" and "felt a physical illness that I can't even describe, [partly] because I had met Keith several times on a social basis". He told his wife and apologized to her. He called [Investor 5]. [Investor 5] e-mailed Summers to ask for an explanation and copies of the audits. After Summers sent the second e-mail directing further inquiries to the OSC and the SEC, there was no further communication.

113. Summers sent [Investor 5], [Investor 6] and [Investor 7] monthly statements and K-1 tax forms. They acted on these documents as though they were accurate. They remitted taxes in accordance with the information on the K-1.

114. [Investor 5], [Investor 6] and [Investor 7] did not know that Summers was borrowing money from the TCP fund. They did not know that Summers had deviated from the ETF strategy in May 2012.

115. In summary, [Investor 6] invested US$450,000. [Investor 7] invested US$250,000, which [Investor 6] inherited upon [Investor 7's] passing. Neither [Investor 6] nor [Investor 7] redeemed any of part of their investments. The loss to [Investor 6] is US$700,000.

116. [Investor 5] invested US$100,000 and did not redeem any part of his investment. His loss is $100,000.

- **Investor 8 and Investor 9**

117. [Investor 8] lives in Vancouver. He is married to [Investor 9]. He has an MBA. He worked in the financial industry prior to his retirement. He invests his own money and has "fairly broad experience in the market". He gave a statement to JSOT.

118. [Investor 8] met Summers in Fall 2010 at a hedge fund conference in Niagara Falls. The meeting was brief. [Investor 8] was intrigued by the ETF strategy. Summers provided [Investor 8] with the TCP Fund documentation. [Investor 8] was particularly impressed by the due diligence questionnaire, which set out Summers' credentials and the historical performance of the TCP Fund. They exchanged e-mails and had several phone conversations, during which Summers explained the ETF strategy in greater detail. Around October 28, 2010, Summers told [Investor 8] that he had $4 million in AUM. He also told [Investor 8] that he had about ten clients, and his financial statements would be audited by Deloitte. [Investor 8] was concerned that the fund was "pretty small" but, on November 26, 2010, invested US$150,000.

119. In 2011, the TCP Fund experienced significant losses. [Investor 8] found Summers' explanations, contained in the covering e-mail and commentary attached to the monthly statements, to be reasonable. However, in November 2011, [Investor 8] decided to withdraw his money. On November 2, 2011, Summers returned US$112,211.70 to [Investor 8]. [Investor 8] and Summers stayed in e-mail contact. In May 2013, Summers e-mailed [Investor 8] with an update on the performance of the TCP Fund and an invitation to re-invest. On July 26, 2013, Summers sent [Investor 8] the e-mails advising that he could no longer manage the fund, and directing further inquiries to the OSC and the SEC.

120. Summers sent [Investor 8] monthly statements and K-1 tax forms. He acted on those documents as though they were accurate. He remitted taxes in accordance with the information on the K-1. [Investor 8] did not know that Summers was borrowing money from the TCP fund.

121. In summary, [Investors 8 and 9] invested US$150,000 and redeemed US$112,211.70 of [their] investment. The loss is US$37,788.30.

- **Investor 10 and an Investment Fund**

122. [Investor] 10 lives in Napa, CA. He is the principal of [an "LLC"], which operates a private investment fund [the "Investment Fund"]. He manages money for families in the area. He has a business degree. He worked in the financial industry for 31 years. He gave a statement to JSOT.

123. [Investor 10] wanted to start a fund of hedge funds. He wanted to diversify by reaching out to money managers of differing expertise. He was looking for low-volatility investments. In late 2011, [Investor 10] contacted Summers after seeing his monthly commentary, which Summers was sending out to a 3000-entry e-mail distribution list of registered investment advisory firms throughout the US and Canada as a marketing initiative.

124. [Investor 10] requested and received the application package, including the tear sheet and the Due Diligence Questionnaire. He was impressed with Summers' credentials and the historical performance of the TCP Fund. [Investor 10] felt that the ETF strategy was a good fit for [the Investment Fund's] focus on low volatility investments. [Investor 10] was also looking for funds with a well-known auditor and an independent custodian. The TCP Fund appeared to meet those criteria. [Investor 10] took the representations in the Due Diligence Questionnaire at face value.

125. [Investor 10] and his colleagues vetted Summers over the phone between late-2011 and early-2012. [Investor 10] asked Summers for his AUM. Summers told [Investor 10] that he was managing $15 million. They discussed the financial market. [Investor 10] "really liked" Summers, whom he took to be "a very smart guy". In late-March 2012, [the LLC] started their fund. The TCP Fund was one of five funds in which they invested, and received one of the larger apportionments. [Investor 10] believed Summers to be an "excellent manager" and "totally on the up-and-up". He told Summers that the money had been sourced from [the Investment Fund's] "top clients".

126. On March 29, 2012, [the Investment Fund] invested US$2.2 million and, on April 27, 2012, invested another US$500,000.

127. Around March 2013, [the Investment Fund] began requesting audited financial statements from the funds in which they had invested. Their auditor, Rothstein & Kass could not issue K-1s for [the Investment Fund] until the underlying funds had been audited. In April or May 2013, Summers provided the auditor with a forged audit, entitled "Financial Statements for year ended December 31, 2012 including Independent Auditors' Report". The covering letter was dated April 5, 2013. It purported to enclose financial statements audited by "D. Fisher & Company, Certified Public Accountants". The forged audit represented that [the Investment Fund] had a balance of $2.89 million as of December 31, 2012, representing 15% of the TCP fund (for about $19.3 million in AUM).

128. [The Investment Fund's] audit began in June 2013. Around June 25, 2013, the auditor discovered that "D. Fisher" was not a member of the American Institute of CPAs. The phone number on the letterhead went to a cellular phone belonging to an unrelated individual. The auditor notified [Investor 10]. The next day, [Investor 10] spoke to Summers on the phone. Summers acted surprised. He told [Investor 10] that he met "D. Fisher" through a Chamber of Commerce mixer and had known him for years. [Investor 10] asked if Summers would agree to be audited by Rothstein & Kass. Summers agreed. He seemed cooperative. He told [Investor 10] that his AUM had increased to $23 million. He advised that he was thinking of starting an offshore fund, using Ernst & Young as his auditor and Equinox as his administrator.

129. Rothstein & Kass followed up with a request for further information. On July 5, 2013, Summers purported to provide them with that information by e-mail attachment. The file was corrupted and would not open. On July 8 and 9, 2013, [Investor 10] sent Summers follow-up e-mails. On July 12, 2013, Summers sent [Investor 10] an e-mail advising that he could no longer manage the fund and that he had referred the matter to the OSC. [Investor 10] described this as "the toughest weekend of my professional career." He felt "stupid", "violated" and "angry".

130. [Investor] 10 often spoke to Summers on the phone to seek his advice about various financial matters. They spoke quarterly about the progress of the fund. [Investor 10] received monthly statements from Summers. He believed the contents to be truthful and accurate.

131. [Investor 10] did not know that Summers was borrowing money from the TCP Fund. He did not know that Summers had deviated from the ETF strategy in May 2012.

132. In summary, [the Investment Fund] invested US$2,700,000 and did not redeem any part of their investment. The loss is US$2,700,000.

- **Investor 11**

133. [Investor 11] lives in California. He has a commerce degree and an MBA. He worked in the financial industry for 20 years. He is a partner in a financial company that specializes in taxation issues relating to the film industry. He gave a statement to JSOT.

134. [Investor 11's] friend met Summers at a conference and brought the TCP Fund to his attention. [Investor 11] liked the ETF strategy. In February 2012, [Investor 11] requested and received the TCP Fund documentation. He took particular note of the Due Diligence Questionnaire. He "gained comfort" from the listed clearing agent (UBS) and auditor (Deloitte). He was impressed by the historical performance of the fund. Summers told [Investor 11] that he had between $15 million to $20 million in AUM.

135. [Investor 11] wanted to invest in the TCP Fund through his Individual Retirement Account, which was held at Morgan Stanley in New York. The logistics took a month to work out. On April 11, 2012, [Investor 11] invested US$150,000.

136. Summers met [Investor 11] for lunch in February 2013, in Los Angeles. Summers did not ask [Investor 11] for an additional investment. On July 26, 2013, Summers sent [Investor 11] the e-mails advising that he could no longer manage the fund, and directing further inquiries to the OSC and the SEC.

137. Summers sent [Investor 11] monthly statements. [Investor 11] acted on these documents as though they were accurate. Summers provided [Investor 11] with a K-1 tax form, but [Investor 11] did not have to remit taxes on his investment because he was investing through his IRA.

138. [Investor 11] did not know that Summers was borrowing money from the TCP fund. He did not know that Summers had deviated from the ETF strategy in May 2012.

139. In summary, [Investor 11] invested US$150,000. He did not redeem any part of his investment. His total loss is US$150,000.

VIII. WHERE THE MONEY WENT

140. The balance of the TCP fund was US$1,395,959 as of July 31, 2013. The SEC placed a "soft freeze" on this money. As of October 31, 2013, there was US$1,396,032 in the account.

141. Summers asserts that he has no assets apart from the proceeds of the sale of his marital home, amounting to C$77,953. He denies that he lived lavishly. The withdrawals were recorded as a negative balance in a liability account in the books of the TCP Fund. As well, his expenses were recorded in his personal accounts as well as in the company's books, although sometimes imprecisely or generically. All of his records were provided to JSOT. Between fees and other withdrawals,

Summers spent about $300,000 a year during the relevant period, although he declared no taxable income in 2012 and 2011, and only C$52,943 in 2010.

142. The evidence reveals that Summers:

i. received/traded US$5,260,130.15 of his victims' money;

ii. used at least US$930,143.39 of that money to pay out investors who redeemed their investments;

iii. lost US$1,568,215 in trading for the TCP Fund, of which US$1,202,441 was lost after his change in trading strategy;

iv. lost US$212,328.61 in trading the managed account of [Investors 2 and 3];

v. withdrew US$234,489 in permitted withdrawals;

vi. fraudulently withdrew US$918,995 in excess of the permitted withdrawals;

vii. has the ability to repay US$1,396,032.

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
Atikwa Resources Inc.	25 August 14	5 September 14	5 September 14	
Innovente Inc.	8 September 14	19 September 14		
Northaven Resources Corp.	8 September 14	19 September 14		

4.2.1 Temporary, Permanent & Rescinding Management 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

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
Penn West Petroleum Ltd.	8 August 14	20 August 14	20 August 14		

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Chapter 7

Insider Reporting

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

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

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

Chapter 8

Notice of Exempt Financings

REPORT OF TRADES ON FORM 45-106F1 AND 45-501F1

There are no Reports of Exempt Distribution on Forms 45-106F1 or 45-501F1 (Reports) in this Bulletin.

Reports filed on or after February 19, 2014 must be filed electronically.

As a result of the transition to mandated electronic filings, the OSC is considering the most effective manner to make data about filed Reports available to the public, including whether and how this information should be reflected in the Bulletin. In the meantime, Reports filed with the Commission continue to be available for public inspection during normal business hours.

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Atrium Mortgage Investment Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated September 8, 2014
NP 11-202 Receipt dated September 8, 2014
Offering Price and Description:
$35,000,000.00 - 5.50% Convertible Unsecured Subordinated Debentures due September 30, 2021
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
RAYMOND JAMES LTD.
INDUSTRIAL ALLIANCE SECURITIES INC.
DUNDEE SECURITIES LTD.
MACKIE RESEARCH CAPITAL CORPORATION
Promoter(s):
-
Project #2257145

Issuer Name:
Cardinal Energy Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 8, 2014
NP 11-202 Receipt dated September 8, 2014
Offering Price and Description:
$197,500,000.00 - 10,000,000 Common Shares
Price: $19.75 per Common Share
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
FIRSTENERGY CAPITAL CORP.
GMP SECURITIES L.P.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
BMO NESBITT BURNS INC.
DUNDEE SECURITIES LTD.
Promoter(s):
M. Scott Ratushny
Project #2257124

Issuer Name:
Crescent Point Energy Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 8, 2014
NP 11-202 Receipt dated September 8, 2014
Offering Price and Description:
$750,386,000.00 - 17,290,000 Common Shares
Price: $43.40 per Common Share
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
FIRSTENERGY CAPITAL CORP.
NATIONAL BANK FINANCIAL INC.
MERRILL LYNCH CANADA INC.
GMP SECURITIES L.P.
GOLDMAN SACHS CANADA INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
PETERS & CO. LIMITED
DESJARDINS SECURITIES INC.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #2257264

Issuer Name:
Energy Leaders Plus Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 3, 2014
NP 11-202 Receipt dated September 3, 2014
Offering Price and Description:
Maximum: $ * - * Class A and/or Class U Units
Price: $10.00 per Class A Unit and US$10.00 per Class U Unit
Minimum Purchase: 200 Class A Units or Class U Units
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Raymond James Ltd.
Desjardins Securities Inc.
Global Securities Corporation
Burgeonvest Bick Securities Limited
Dundee Securities Ltd.
Industrial Alliance Securities Inc.
Mackie Research Capital Corporation
Manulife Securities Incorporated
Promoter(s):
Harvest Portfolios Group Inc.
Project #2257391

Issuer Name:
Fortis Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated September 4, 2014
NP 11-202 Receipt dated September 5, 2014
Offering Price and Description:
$600,000,000.00 - 24,000,000 CUMULATIVE REDEEMABLE FIXED RATE RESET FIRST PREFERENCE SHARES, SERIES M
Price: $25.00 per Series M First Preference Share to initially yield 4.10% per annum
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
TD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
DESJARDINS SECURITIES INC.
HSBC SECURITIES (CANADA) INC.
Promoter(s):
-
Project #2257631

Issuer Name:
Marquest Canadian Fixed Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated August 28, 2014
NP 11-202 Receipt dated September 3, 2014
Offering Price and Description:
Class A and Class F Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Marquest Asset Management Inc.
Project #2257134

Issuer Name:
Pine Cliff Energy Ltd.
Principal Regulator – Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 8, 2014
NP 11-202 Receipt dated September 8, 2014
Offering Price and Description:
$60,065,000.00 - 29,300,000 COMMON SHARES
Price: $2.05 per Offered Share
Underwriter(s) or Distributor(s):
FIRSTENERGY CAPITAL CORP.
GMP SECURITIES L.P.
HAYWOOD SECURITIES INC.
CLARUS SECURITIES INC.
PARADIGM CAPITAL INC.
CANACCORD GENUITY CORP.
NATIONAL BANK FINANCIAL INC.
ALTACORP CAPITAL INC.
JENNINGS CAPITAL INC.
SCOTIA CAPITAL INC.
Promoter(s):
-
Project #2257058

Issuer Name:
Pro Real Estate Investment Trust
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated September 5, 2014
NP 11-202 Receipt dated September 8, 2014
Offering Price and Description:
$ * - * Offered Units
Price: $ * Per Offered Unit
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
GMP SECURITIES L.P.
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
DUNDEE SECURITIES LTD.
Promoter(s):
-
Project #2258220

Issuer Name:
Purpose High Interest Savings ETF
Purpose International Dividend Fund
Purpose International Tactical Hedged Equity Fund
Purpose Short Duration Emerging Markets Bond ETF
Purpose Short Duration Global Bond ETF
Purpose US Dividend Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated September 5, 2014
NP 11-202 Receipt dated September 8, 2014
Offering Price and Description:
ETF Units; ETF Non-Currency Hedged Units; ETF Shares; Class A, Class F, Class D and Class I Units; Class A, Class F, Class D and Class I Non-Currency Hedged Units; Series A, Series D, Series F, Series I, Series XA and Series XF Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
Purpose Investments Inc
Project #2258245

Issuer Name:
Stuart Olson Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 5, 2014
NP 11-202 Receipt dated September 5, 2014
Offering Price and Description:
$70,000,000.00 - 6.0% Convertible Unsecured Subordinated Debentures Due December 31, 2019
Price: $1,000.00 per Debenture
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
RAYMOND JAMES LTD.
CANACCORD GENUITY CORP.
DUNDEE SECURITIES LTD.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
HSBC SECURITIES (CANADA) INC.
PARADIGM CAPITAL INC.
Promoter(s):
-
Project #2257809

Issuer Name:
WesternZagros Resources Ltd.
Principal Regulator - Alberta (ASC)
Type and Date:
Preliminary Short Form Prospectus (NI 44-101) dated September 3, 2014
NP 11-202 Receipt dated September 3, 2014
Offering Price and Description:
$250,000,000.00 - Rights to Subscribe for up to * Common Shares at a Price of
$ * per Common Share
Underwriter(s) or Distributor(s):
FIRSTENERGY CAPITAL CORP.
Promoter(s):
-
Project #2257473

Issuer Name:
WSP Global Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated September 8, 2014
NP 11-202 Receipt dated September 8, 2014
Offering Price and Description:
$501,900,000.00 - 14,000,000 Subscription Receipts each representing the right to receive one Common Share
Price: $35.85 per Subscription Receipt
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
RAYMOND JAMES LTD.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
DUNDEE SECURITIES LTD.
HSBC SECURITIES (CANADA) INC.
DESJARDINS SECURITIES INC.
CANACCORD GENUITY CORP.
LAURENTIAN BANK SECURITIES INC.
Promoter(s):
-
Project #2257626

Issuer Name:
Brookfield Asset Management Inc.
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated August 28, 2014 to Final Shelf Prospectus dated June 26, 2013
NP 11-202 Receipt dated September 5, 2014
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2074953

Issuer Name:
Enbridge Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Base Shelf Prospectus dated September 2, 2014
NP 11-202 Receipt dated September 3, 2014
Offering Price and Description:
US$7,000,000,000.00
DEBT SECURITIES
COMMON SHARES
PREFERENCE SHARES
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2246772

Issuer Name:
Mackenzie Canadian Concentrated Equity Fund
Mackenzie Global Growth Class
Mackenzie Growth Fund
Mackenzie US Growth Class
Principal Regulator - Ontario
Type and Date:
Amendment #8 dated August 28, 2014 to the Annual Information Form dated September 27, 2013
NP 11-202 Receipt dated September 3, 2014
Offering Price and Description:
Series A, D, F, G, O, PW, PWF, PWF8, PWT8, PWX, PWX8 and T8 @ Net Asset Value
Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd.
LBC Financial Services Inc
LBC Financial Services Inc.
Promoter(s):
Mackenzie Financial Corporation
Project #2103259

Issuer Name:
Petrowest Corporation
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated September 5, 2014
NP 11-202 Receipt dated September 5, 2014
Offering Price and Description:
16,000,000 Class A Common Shares
$20,000,000.00
$1.25 per Offered Share
Underwriter(s) or Distributor(s):
Beacon Securities Limited
Canaccord Genuity Corp.
Dundee Securities Ltd.
Mackie Research Capital Corporation
GMP Securiites L.P.
PI Financial Corp.
Cormack Securities Inc.
Promoter(s):
-
Project #2252576

Issuer Name:
Axiom All Equity Portfolio
Axiom Balanced Growth Portfolio
Axiom Balanced Income Portfolio
Axiom Canadian Growth Portfolio
Axiom Diversified Monthly Income Portfolio
Axiom Foreign Growth Portfolio
Axiom Global Growth Portfolio
Axiom Long-Term Growth Portfolio
Renaissance Asian Fund
Renaissance Canadian All-Cap Equity Fund
Renaissance Canadian Balanced Fund
Renaissance Canadian Bond Fund
Renaissance Canadian Core Value Fund
Renaissance Canadian Dividend Fund
Renaissance Canadian Growth Fund
Renaissance Canadian Monthly Income Fund
Renaissance Canadian Small-Cap Fund
Renaissance Canadian T-Bill Fund
Renaissance China Plus Fund
Renaissance Corporate Bond Capital Yield Fund
Renaissance Corporate Bond Fund
Renaissance Diversified Income Fund
Renaissance Emerging Markets Fund
Renaissance European Fund
Renaissance Floating Rate Income Fund
Renaissance Global Bond Fund
Renaissance Global Focus Currency Neutral Fund
Renaissance Global Focus Fund
Renaissance Global Growth Currency Neutral Fund
Renaissance Global Growth Fund
Renaissance Global Health Care Fund
Renaissance Global Infrastructure Currency Neutral Fund
Renaissance Global Infrastructure Fund
Renaissance Global Markets Fund
Renaissance Global Real Estate Currency Neutral Fund
Renaissance Global Real Estate Fund
Renaissance Global Resource Fund
Renaissance Global Science & Technology Fund
Renaissance Global Small-Cap Fund
Renaissance Global Value Fund
Renaissance High-Yield Bond Fund
Renaissance International Dividend Fund
Renaissance International Equity Currency Neutral Fund
Renaissance International Equity Fund
Renaissance Millennium High Income Fund
Renaissance Money Market Fund
Renaissance Optimal Conservative Income Portfolio
Renaissance Optimal Global Equity Currency Neutral Portfolio
Renaissance Optimal Global Equity Portfolio
Renaissance Optimal Growth & Income Portfolio
Renaissance Optimal Income Portfolio
Renaissance Optimal Inflation Opportunities Portfolio
Renaissance Real Return Bond Fund
Renaissance Short-Term Income Fund
Renaissance U.S. Dollar Corporate Bond Fund
Renaissance U.S. Dollar Diversified Income Fund
Renaissance U.S. Equity Fund
Renaissance U.S. Equity Growth Currency Neutral Fund
Renaissance U.S. Equity Growth Fund
Renaissance U.S. Equity Income Fund
Renaissance U.S. Equity Value Fund

Renaissance U.S. Money Market Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated August 28, 2014
NP 11-202 Receipt dated September 3, 2014
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
CIBC Asset Management Inc.
Promoter(s):
CIBC Asset Management Inc.
Project #2235520

Issuer Name:
Invesco Emerging Markets Debt Fund
Invesco European Growth Class
Invesco Global Real Estate Fund
Invesco Indo-Pacific Fund
Invesco International Growth Class
Trimark Canadian Bond Fund
Trimark Canadian Opportunity Class
Trimark Canadian Plus Dividend Class
Trimark Canadian Small Companies Fund
Trimark Diversified Yield Class
Trimark Emerging Markets Class
Trimark Energy Class
Trimark Europlus Fund
Trimark Floating Rate Income Fund
Trimark Fund
Trimark Global Balanced Class
Trimark Global Dividend Class
Trimark Global Endeavour Class
Trimark Global High Yield Bond Fund
Trimark Global Small Companies Class
Trimark Resources Fund
Trimark U.S. Companies Class
Trimark U.S. Small Companies Class
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated August 25, 2014 to Final Simplified Prospectuses and Annual Information Form dated July 30, 2014
NP 11-202 Receipt dated September 8, 2014
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Invesco Canada Ltd.
Project #2214939

Issuer Name:
Western Forest Products Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated September 3, 2014
NP 11-202 Receipt dated September 3, 2014
Offering Price and Description:
$230,000,000.00
92,000,000 Common Shares
$2.50 per Offered Share
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
BROOKFIELD FINANCIAL CORP.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
Promoter(s):
-
Project #2247525

Issuer Name:
Whitecap Resources Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated September 4, 2014
NP 11-202 Receipt dated September 4, 2014
Offering Price and Description:
7,553,000 Subscription Receipts each representing the right to receive one Common Share
Price $16.55 per Subscription Receipt
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
GMP Securities L.P.
TD Securities Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
FirstEnergy Capital Corp.
Macquarie Capital Merkets Canada Ltd.
Peter & Co. Limited
BMO Nesbitt Burns Inc.
Cormark Securities Inc.
Dundee Securities Ltd.
Promoter(s):
-
Project #2247475

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	Strategic Fixed Income, L.L.C.	Commodity Trading Manager	August 29, 2014
New Registration	Kilgour Williams Capital Incorporated	Investment Fund Manager, Restricted Portfolio Manager and Exempt Market Dealer	September 3, 2014
Suspension (Pending Surrender)	Optimize Asset Management Incorporated	Investment Fund Manager, Restricted Portfolio Manager and Exempt Market Dealer	September 3, 2014
Name Change	From: AUM Corporate Finance Inc. To: BelCo Private Capital Inc	Exempt Market Dealer	August 15, 2014
Name Change	From: Montag Wealth Management Inc. / Gestion Privée Montag Inc. To: Montag Private Wealth Inc. / Montag Gestion Privée Inc.	Portfolio Manager	July 28, 2014

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Chapter 25

Other Information

25.1 Approvals

25.1.1 Bolton Capital Canada Inc.

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager for approval to act as trustee of pooled funds and future pooled funds to be established and managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L. 25, as am., s. 213(3)(b).

August 29, 2014

AUM Law Professional Corporation
175 Bloor St E., Suite 303, South Tower
Toronto, Ontario
M4W 3R8

Attention: Stacey Long

Dear Sirs/Mesdames:

Re: Bolton Capital Canada Inc. (the "Applicant")
Application under clause 213(3)(b) of the Loan and Trust Corporations Act (Ontario) for approval to act as trustee
Application #2014/0573

Further to your application dated July 9, 2014, as updated on August 20, 2014 (the "Application") filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that assets of Bolton Enhanced Yield Canadian Preferred Share Fund and any future mutual fund trusts established and managed by the Applicant from time to time, will be held in the custody of a trust company incorporated, and licensed or registered, under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II, or III of the *Bank Act* (Canada), or an affiliate of such bank or trust company, the Ontario Securities Commission (the "Commission") makes the following order:

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of Bolton Enhanced Yield Canadian Preferred Share Fund and any other future mutual fund trusts which may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to prospectus exemptions.

Yours truly,

"Vern Krishna"
Commissioner
Ontario Securities Commission

"Edward P. Kerwin"
Commissioner
Ontario Securities Commission

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