



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

-AND-

IN THE MATTER OF PRO-FINANCIAL ASSET MANAGEMENT INC.

ORDER

(Subsections 127(1), (2) and (8))

WHEREAS it appears to the Ontario Securities Commission (the “Commission”) that:

PFAM’s Business

1. Pro-Financial Asset Management Inc. (“PFAM”), formerly Pro-Hedge Funds Inc., is a company incorporated under the laws of Ontario with its registered office located in Oakville Ontario. PFAM has been registered under the Securities Act, R.S.O. 1990, c. S.5, as amended (the “Act”) as a limited market dealer and an investment counsel and portfolio manager from 2004 to 2009, and has been registered as a dealer in the category of exempt market dealer and as an adviser in the category of portfolio manager since 2009.
2. PFAM has also been operating as an investment fund manager under the grandfathering provision found in subsection 16.4(1) of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI 31-103”).
3. PFAM is the portfolio manager and the investment fund manager (“IFM”) for prospectus-qualified mutual funds known as the Pro-Index Funds.
5. PFAM also acts as the portfolio manager (“PM”) for managed accounts (the “Managed Accounts”).
6. PFAM, operating under its former name Pro-Hedge Funds Inc., performed various roles in connection with the distribution of exempt products known as principal protected notes (“PPNs”) in or between 2003 and 2007.

PFAM’s Working Capital Deficiency

7. On October 31, 2012, PFAM advised Staff of the Commission (“Staff”) that PFAM had a working capital deficiency of at least \$183,367. On February 22, 2013, PFAM advised Staff that PFAM had a continuing working capital deficiency and filed a Form 31-103F1 – *Calculation of Excess Working Capital* (“Form 31-103F1”) with the Commission which showed that PFAM in

fact had a working capital deficiency of \$726,746 as at October 31, 2012 based on its audited annual financial statements.

8. Subsection 12.1(1) of NI 31-103 states that if, at any time, the excess working capital of a registered firm, as calculated in accordance with Form 31-103F1, is less than zero, the registered firm must notify the regulator as soon as possible. Subsection 12.1(2) of NI 31-103 states that the excess working capital of a registered firm as calculated in accordance with Form 31-103F1 must not be less than zero for two consecutive days.

9. PFAM has not rectified its working capital deficiency to this date.

Principal Protected Notes (“PPNs”)

10. PFAM has participated in various roles in the distribution of nine series of PPNs issued by BNP Paribas Canada and Société Générale Canada (collectively, the “Banks”) from mid-2003 to early 2007. The PPNs have maturity dates ranging from December 2010 to October 31, 2016.

11. In December 2012, Staff became aware of a discrepancy in the number of outstanding PPNs reported in the records of the record-keeper for the PPNs and the trustee for the PPNs.

12. Over the period from February 2013 to the present, Staff and PFAM have been discussing the PPN discrepancy.

13. On April 17, 2013, PFAM and its chief executive and chief financial officer provided an undertaking to Staff that: (i) all early redemptions for the nine series of PPNs and all redemptions at maturity of these PPNs cease immediately while PFAM completes its reconciliations of both the PPNs and PFAM’s trust accounts; (ii) no payments be made in respect of any early redemptions or maturation of PPNs; and (iii) the undertaking remains in effect until the signatories to it are advised by Staff that they are released from the undertaking.

14. PFAM’s undertaking to Staff remains in effect.

15. On April 23, 2013, PFAM’s counsel provided Staff with a preliminary reconciliation report (the “Preliminary Report”). The Preliminary Report stated that the discrepancy between the records of the record-keeper and those of the trustee was \$1,222,549.45, meaning that the total cash obligations to PPN noteholders disclosed in the record-keeper’s records exceeded the amount in the trustee’s records by \$1,222,549.45. The Preliminary Report stated that PFAM expected to finalize its reconciliation by the end of May 2013.

16. From April 23, 2013 to September 30, 2013, Staff and PFAM exchanged correspondence with respect to the initial findings in the Preliminary Report including asking for answers to various follow-up questions.

17. On September 30, 2013, PFAM delivered to Staff its final PPN reconciliation report (the “Final Report”). The Final Report indicated that: (i) the quantum of the discrepancies identified in the Preliminary Report has not changed; and (ii) PFAM was unable to explain the discrepancy in any more detail than as set out in the Preliminary Report.

Proposed Sale of PFAM's Assets

18. On September 30, 2013, PFAM agreed to sell to another portfolio manager PFAM's interest in all of the investment management contracts for the Pro-Index Funds and the Managed Accounts. The transaction is subject to regulatory review by the Commission.

19. The proposed transaction must be the subject of an application under section 11.9 of NI 31-103. Once made, the application will be reviewed by Staff and the Director must advise if he or she objects to the acquisitions based on the criteria set out in subsection 11.9(2) of NI 31-103.

AND WHEREAS on May 17, 2013, the Commission issued a temporary order (the "Temporary Order") with respect to PFAM pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering that:

- (i) pursuant to paragraph 1 of subsection 127(1) of the Act, the registration of PFAM as a dealer in the category of exempt market dealer is suspended and the following terms and conditions apply to the registration of PFAM as an adviser in the category of portfolio manager and to its operation as an investment fund manager:
 - a. PFAM's activities as a PM and IFM shall be applied exclusively to the Managed Accounts and to the Pro-Hedge Funds and Pro-Index Funds; and
 - b. PFAM shall not accept any new clients or open any new client accounts of any kind in respect of the Managed Accounts;
- (ii) pursuant to subsection 127(6) of the Act, the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on May 28, 2013, the Commission ordered: (i) the Temporary Order extended to June 27, 2013; (ii) the hearing to consider whether to further extend the terms of the Temporary Order and/or to make any further order as to PFAM's registration, would proceed on June 26, 2013 at 10:00 a.m.;

AND WHEREAS on June 26, 2013, the Commission ordered that: (i) the Temporary Order be extended to July 15, 2013; and (ii) the affidavit of Michael Denyszyn sworn May 24, 2013 not be marked as an exhibit until the next appearance in the absence of a Commission order to the contrary; and the hearing to consider this matter would proceed on July 12, 2012;

AND WHEREAS on July 11, 2013, the Commission ordered that: (i) the Temporary Order be extended to July 22, 2013; (ii) the hearing be adjourned to July 18, 2013 at 11:00 a.m.; and (iii) the hearing date of July 12, 2013 at 10:00 a.m. be vacated;

AND WHEREAS on July 18, 2013, PFAM brought a motion (the "First PFAM Motion") that the hearing be held *in camera* and that the affidavits of Michael Denyszyn sworn May 24 and June 24, 2013 and the affidavit of Michael Ho sworn July 17, 2013 (collectively the

“Staff Affidavits”) either not be admitted as evidence or else be treated as confidential documents and the parties agreed that the motion should be heard *in camera*;

AND WHEREAS on July 18, 2013, PFAM’s counsel filed supporting documents (the “PFAM Materials”) in support of the First PFAM Motion and counsel for PFAM and Staff made oral submissions and filed written submissions;

AND WHEREAS on July 22, 2013, the Commission ordered:

- (i) the Temporary Order be extended to August 26, 2013;
- (ii) leave be granted to the parties to file written submissions in respect of the First PFAM Motion;
- (iii) the Staff Affidavits, the transcript of the PFAM motion, the PFAM Materials, written submissions filed by Staff and PFAM and other documents presented during the course of the First PFAM Motion shall be treated as confidential documents until further direction or order of the Commission; and
- (iv) the hearing be adjourned to August 23, 2013 at 10:00 a.m.;

AND WHEREAS on August 23, 2013, Staff filed with the Commission the affidavit of Michael Ho sworn August 22, 2013 and PFAM’s counsel filed the affidavit of Stuart McKinnon dated August 23, 2013 but the parties did not seek to mark these affidavits as exhibits;

AND WHEREAS on August 23, 2013, Staff and counsel for PFAM advised the Commission that the parties had agreed on the terms of a draft order;

AND WHEREAS on August 23, 2013, PFAM requested that the hearing be held *in camera* so PFAM’s submissions on certain confidentiality issues could be heard and Staff did not oppose PFAM’s request;

AND WHEREAS on August 27, 2013, the Commission ordered:

- (i) the Temporary Order be extended to October 11, 2013;
- (ii) the affidavit of Michael Ho sworn August 22, 2013 and the affidavit of Stuart McKinnon sworn August 23, 2013 be treated as confidential documents until further order of the Commission;
- (iii) PFAM will deliver to Staff the final PPN reconciliation report by 4:30 p.m. on September 30, 2013; and
- (iv) the hearing to consider whether to: (i) make any further order as to PFAM’s registration as an adviser in the category of PM or in respect of its operation as an IFM, as a result of PFAM’s ongoing capital deficiency; and/or (ii) otherwise vary or

extend the terms of the Temporary Order, will proceed on October 9, 2013 at 11:00 a.m.;

AND WHEREAS on October 9, 2013, PFAM brought a second motion (the “Second PFAM Motion”) for an order that the hearing be held *in camera* and for a confidentiality order treating as confidential documents: (i) the Staff and PFAM affidavits; (ii) all facts and correspondence exchanged by Staff and PFAM; and (iii) any transcript of this and prior *in camera* proceedings;

AND WHEREAS on October 9, 2013, PFAM’s counsel filed written submissions dated October 8, 2013, the affidavit of Stuart McKinnon sworn October 7, 2013 and the affidavit of Kenneth White sworn October 7, 2013 in support of the Second PFAM Motion and Staff filed written submissions dated October 9, 2013 and the affidavit of Michael Ho sworn October 8, 2013 and opposed the request for an *in camera* hearing and for the confidentiality order;

AND WHEREAS on October 9, 2013, the Commission heard submissions from counsel on the Second PFAM Motion *in camera* and the Commission requested the parties to prepare a draft order that, among other matters, addressed the confidentiality of documents filed with the Commission and permitted the Banks to review certain documents attached to Staff affidavits dealing substantively with the PPN reconciliation process, provided the Banks treated such documents as confidential;

AND WHEREAS on October 11, 2013, the Commission ordered that:

(i) the Temporary Order be extended to December 15, 2013;

(ii) the affidavit of Michael Ho sworn October 8, 2013, the affidavit of Stuart McKinnon sworn October 7, 2013, the affidavit of Kenneth White sworn October 7, 2013 and the written submissions of the parties dated October 8 and 9, 2013 shall be treated as confidential documents until further order of the Commission; and

(iii) the hearing to consider whether to: (i) make any further order as to PFAM’s registration as an adviser in the category of PM or in respect of its operation as an IFM, as a result of PFAM’s ongoing capital deficiency; and/or (ii) otherwise vary or extend the terms of the Temporary Order, shall proceed on December 12, 2013 at 10:00 a.m.;

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

IT IS HEREBY ORDERED that:

1. the affidavit of Michael Ho sworn October 8, 2013, the affidavit of Stuart McKinnon sworn October 7, 2013, the affidavit of Kenneth White sworn October 7, 2013 and the written submissions of the parties dated October 8 and 9, 2013 shall be treated as confidential documents until further order of the Commission;

2. the previous orders as to confidentiality made by the Commission's orders on July 22, 2013 and August 27, 2013 shall remain in force until further order or direction of the Commission, subject to the order referred to in paragraph 3 below;
3. Staff shall be entitled to provide copies of the documents relating to the PPN reconciliation process listed on Schedule "A" to this order to counsel for the Banks on condition that the Banks treat those documents as confidential documents and not provide copies to any third party without further direction or order of the Commission.

DATED at Toronto this 17th day of October, 2013.

"James E. A. Turner"

James E. A. Turner

Schedule "A"

1. Copy of PFAM undertaking provided to Staff dated April 17, 2013 (Tab 30 of M. Denyszyn affidavit sworn May 24, 2013 and Tab K of M. Ho affidavit sworn October 8, 2013)
2. Letter from M. Jog to D. Ferris dated April 23, 2013 (Tab 31 of M. Denyszyn affidavit sworn May 24, 2013)
3. Letter to from D. Ferris to R. Sorell dated May 6, 2013 (Tab 1 of M. Denyszyn affidavit sworn June 24, 2013)
4. Letter from S. Pinto to D. Ferris dated June 21, 2013 in response to Staff's May 6th letter and attachments (Tab 4 of M. Denyszyn affidavit sworn June 24, 2013)
5. Letter from M. Ho to S. Pinto dated July 4, 2013 (Tab A of M. Ho affidavit sworn August 22, 2013)
6. Letter from S. Pinto to D. Ferris dated July 31, 2013 (Tab B of M. Ho affidavit sworn August 22, 2013)
7. Letter from S. Pinto to M. Ho dated August 22, 2013 (Tab K of M. Ho affidavit sworn August 22, 2013)
8. Letter from S. Pinto to D. Ferris dated September 30, 2013 (Tab H of M. Ho affidavit sworn October 8, 2013)