



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
CI INVESTMENTS INC.**

ORAL RULING AND REASONS

Hearing: February 10, 2016

Oral Ruling: February 10, 2016

Panel: Christopher Portner - Commissioner and Chair of the Panel
D. Grant Vingoe - Vice-Chair
AnneMarie Ryan - Commissioner

Appearances: Pamela Foy - For Staff of the Commission

Sheila A. Murray - For CI Investments Inc.
Jessica Kimmel
Matthew Scott

ORAL RULING AND REASONS

The following ruling and reasons have been prepared for the purpose of publication in the Ontario Securities Commission Bulletin and are based on portions of the transcript of the hearing. The excerpts from the transcript have been edited and supplemented and the text has been approved by the Chair of the Panel for the purpose of providing a public record of the oral ruling and reasons.

Chair of the Panel:

- [1] CI Investments Inc. (“**CII**”) is registered with the Ontario Securities Commission (the “**Commission**”) in a number of categories, including as an Investment Fund Manager and Portfolio Manager. In June 2015, CII self-reported to Staff of the Commission (“**Staff**”) the alleged understatement of the net asset value (“**NAV**”) of certain of its mutual funds for a period of over five years. The alleged understatement arose from unrecorded interest in the approximate aggregate amount of \$156.1 million (the “**Interest**”) that had accumulated between December 2009 and June 2015 in bank accounts set up by seven of CII’s mutual funds (the “**Forward Funds**”). Although the Interest was accrued, it was not recorded as an asset in the accounts of the respective Forward Funds and not included in the calculation of their respective NAVs. As a result, the NAV of each Forward Fund, and any fund that invested in the Forward Funds (the “**Affected Funds**”), was understated for several years and unitholders bought and redeemed units at an understated value.
- [2] In its Statement of Allegations dated February 5, 2016, Staff has alleged, among other things, that CII’s failure to ensure that the Interest was recorded and included in the NAV calculation of the Forward Funds resulted from inadequacies in CII’s system of controls and supervision (the “**Forward Fund Control and Supervision Inadequacy**”) and that such failure constituted a breach of section 11.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.
- [3] Staff and CII have agreed to enter into the settlement agreement dated February 5, 2016 (the “**Settlement Agreement**”) which is before us today pursuant to which CII neither admits nor denies the accuracy of the facts or conclusions of Staff which Staff has summarized in the Settlement Agreement.
- [4] The Panel must determine whether it would be in the public interest to approve the Settlement Agreement which is intended to resolve and dispose of the current proceeding. In doing so, the Panel must take into account the mandate of the Commission set out in section 1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”), which is to protect investors from unfair, improper or fraudulent practices and foster fair and efficient capital markets and confidence in those markets.
- [5] In determining whether it would be in the public interest to approve the Settlement Agreement, the Panel held a confidential settlement conference with Staff and CII for the purpose of better understanding CII’s system of controls and supervision in the context of Staff’s allegations and Staff’s assertion in the Settlement Agreement that CII has implemented changes to its systems of internal controls and supervision to address the

Forward Fund Control and Supervision Inadequacy. The Panel also considered the four settlement agreements in which the respondents did not make any admissions respecting facts or that they contravened Ontario securities law or acted contrary to the public interest which Staff has previously recommended to the Commission for approval pursuant to OSC Staff Notice 15-702 – *Revised Credit for Cooperation Program*, (2014) 37 O.S.C.B. 2583.

[6] Having considered the terms of the Settlement Agreement and the submissions of the parties, the Panel takes note, in particular, of the following:

- (a) CII provided prompt, detailed and candid co-operation to Staff during Staff's investigation of the alleged Forward Fund Control and Supervision Inadequacy, and to the Panel during the confidential settlement conference with Staff and CII;
- (b) Although Staff has alleged that there had been previous opportunities for the identification of the Forward Fund Control and Supervision Inadequacy and the existence of the Interest, once appropriately elevated within the organization, CII promptly self-reported the matter to Staff;
- (c) The Interest has, at all times, remained in bank accounts established for the Forward Funds and has never been co-mingled with assets of CII;
- (d) When self-reporting to Staff, CII indicated its intention, to the extent possible, to put former and current investors in the Affected Funds who purchased units prior to May 31, 2015 back into the economic position they would have been in if the matter had not occurred;
- (e) Pursuant to the Settlement Agreement, CII will pay an amount equal to the Interest without the deduction of any management and administrative fees, and other compensation, to the Affected Investors, in accordance with a plan submitted by CII to Staff and reviewed by the Panel (the "**Compensation Plan**");
- (f) CII has also agreed to make a voluntary payment to the Commission in the amount of \$8,000,000 to advance the Commission's mandate of protecting investors and fostering fair and efficient capital markets and has also agreed to pay Staff's costs in the amount of \$50,000;
- (g) The Affected Investors who redeemed their units prior to February 29, 2016 will receive an amount in respect of the time value of money that they will be receiving calculated at a simple rate of interest of 3% per annum;
- (h) The Compensation Plan sets out the details of the steps that CII will undertake to locate Affected Investors and address Affected Investor inquiries through an escalation process;
- (i) Staff is not aware of any other instance of a Forward Fund Control and Supervision Inadequacy and CII has developed and, on its own initiative, is implementing procedures and controls as well as supervisory and monitoring systems designed to enhance CII's control and supervision procedures; and
- (j) Staff does not allege and has found no evidence of dishonest or intentional misconduct by CII.

- [7] Although the Compensation Plan has not been filed by the parties with the Settlement Agreement, the Panel is satisfied that the Settlement Agreement, which governs in the event of any conflict with the Compensation Plan, sets out the relevant terms of the settlement. There may be circumstances in the future that would warrant the inclusion of any compensation plan with the settlement agreement submitted to the Commission for approval, however, we do not consider it essential in this matter.
- [8] For the foregoing reasons, we have concluded that it would be in the public interest for us to approve the Settlement Agreement which we will do by issuing the order in the form attached to the Settlement Agreement filed by the parties.

Approved by the Chair of the Panel on the 22nd day of February, 2016.

“Christopher Portner”

Christopher Portner