



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
20 Queen Street West
Toronto ON M5H 3S8

CP 55, 19e étage
20, rue queen ouest
Toronto ON M5H 3S8

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

- and -

**IN THE MATTER OF NORMAND GAUTHIER,
GENTREE ASSET MANAGEMENT INC.,
R.E.A.L. GROUP FUND III (CANADA) LP, and
CANPRO INCOME FUND I, LP**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

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

I. OVERVIEW

1. This proceeding relates to, among other things, the sale by Gentree Asset Management Inc. (“Gentree”), of securities in Gentree, R.E.A.L. Group Fund III (Canada) LP (“RIII”) and CanPro Income Fund I, LP (“CanPro”) involving misleading or inaccurate information being provided to investors, and the failure by Gentree and its principals to comply with their obligations as registrants in respect of record keeping, capital requirements and portfolio management. In particular, between December 1, 2004 until September 26, 2011, (the “Relevant Period”), the Respondents breached sections 19, 25, 53 and 126.2(1) of the Securities Act, R.S.O. 1990, c. S.5 (the “Act”), engaged in conduct contrary to sections 11.5(a), 13.2 and 13.3 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (“NI 31-103”) and therefore acted in a manner that was contrary to Ontario securities law.

II. THE RESPONDENTS

2. Gentree is a corporation with its head office in Mississauga, Ontario. Until August 17, 2011, Gentree was registered as a dealer in the category of exempt market dealer and as an adviser in the category of portfolio manager in Alberta, British Columbia, and Ontario¹. In Manitoba, Gentree was registered as a dealer in the category of exempt market dealer, and in Québec it was registered as an adviser in the category of portfolio manager. In Ontario, the registration of Gentree as a dealer in the category of exempt market dealer was suspended on August 17, 2011, and its registration as a portfolio manager was suspended on September 26, 2011, as a result of Temporary Orders obtained on consent from the Commission.

3. Normand Gauthier (“Gauthier”) is a resident of Mississauga, Ontario. Until Gentree’s registration was suspended, Gauthier was registered as a dealing representative, chief compliance officer and ultimate designated person of Gentree. Gauthier was also the sole officer and director of RIII, and he controlled the general partner of CanPro.

4. RIII is a limited partnership existing pursuant to the laws of Alberta. The general partner of RIII is R.E.A.L. Group Fund III (Canada) GP Inc., which is solely owned by Gauthier, who is also its president.

5. CanPro is a limited partnership existing pursuant to the laws of the state of Texas, which was formed to operate a real estate development fund in the United States. The general partner of CanPro is CanPro Capital Management LLC, which is controlled by Gauthier.

III. ILLEGAL DISTRIBUTION OF SHARES TO THE PUBLIC

6. The exempt market dealer aspect of Gentree’s business involved the distribution of

¹ In Ontario, Gentree was registered as an investment counsel and portfolio manager, limited market dealer and commodity trading manager (“CTM”) since October 2007. In September 2009, those categories of registration were transitioned to portfolio manager, exempt market dealer and CTM with the coming into force of NI 31-103. Gentree surrendered its CTM registration as at December 31, 2009.

securities including those of Real Group Fund I LLC (“RI”) and of RIII, as well as shares in Gentree itself. RIII and Gentree are related issuers.

7. Between December 1, 2004 and May 31, 2011, Gauthier and Gentree sold common shares, warrants, and preferred shares of Gentree for at least \$1,700,000.00 (the “Gentree Securities”) to approximately 60 Ontario investors, not all of whom qualified as accredited investors or met other applicable prospectus exemptions.

8. Gauthier and Gentree sold shares, between May 2009 and January 2011, in RIII and RI to approximately eight Ontario investors, not all of whom qualified as accredited investors or met other applicable prospectus exemptions.

9. Gauthier and Gentree sold the Gentree Securities and shares in RI to Ontario residents in circumstances where there were no prospectus exemptions available to them under the Act. Through these acts, Gentree acted outside the scope of its categories of registration with the Commission. Further, Gauthier traded and acted outside the scope of his categories of registration with the Commission. Consequently, Gauthier and Gentree breached s. 25(1) of the Act.

10. The sales by Gentree and Gauthier of Gentree Securities and shares in RI constituted trading and distributions of securities, contrary to section 53 of the Act. Neither Gentree nor RI have ever filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of those shares.

IV. MISREPRESENTATIONS TO INVESTORS

11. During the sale of the shares of RIII, each of the Respondents made representations and provided information to potential investors that was inaccurate and misleading, and that the Respondents knew or reasonably ought to have known were misleading or untrue in a material respect, and which would reasonably be expected to have a significant effect on the value of these securities. In so doing, the Respondents breached section 126.2(1) of the Act.

12. Significantly, the Respondents made statements that the funds raised by the distribution of RIII securities would be used to invest in units of CanPro, which would in turn invest in real estate development projects in the United States. However, a significant portion of the funds raised from investors were utilized for purposes other than as intended and disclosed to the investors, including to fund Gentree's business operations. In particular, the Respondents:

- (a) transferred funds to Gentree that were not related to legitimate RIII expenses and which were not disclosed to RIII investors, such as a \$150,000 USD "syndication fee" that was not disclosed in RIII's offering documents;
- (b) recorded additional accounts receivable on Gentree's books due from RIII and CanPro that were not related to legitimate RIII or CanPro expenses; and
- (c) commingled RIII investor funds with RI funds in a RIII bank account.

13. This conduct was contrary to Ontario securities law.

V. FAILURE TO KEEP PROPER BOOKS AND RECORDS

14. Gentree and Gauthier also failed to keep books, records and other documents as are necessary for the proper recording of market participants' business transactions and financial affairs, contrary to section 19 of the Act.

VI. GENTREE WAS INSUFFICIENTLY CAPITALIZED

15. From at least June 2011, Gentree had solvency issues and was not meeting the minimum capital requirements as outlined in subsection 12.1(3) of NI 31-103. Gauthier proposed to rectify this capital deficiency by raising further funds from investors through the distribution of additional Gentree Securities.

16. Gentree was also funding its business operations with RIII investor funds, as described above.

VII. GENTREE'S PORTFOLIO MANAGEMENT BUSINESS WAS DEFICIENT

17. The portfolio management aspect of Gentree's business involved the management of approximately 127 accounts for 65 individual clients over which the firm had discretionary trading authority. The total assets under Gentree's management as of May 31, 2011 amounted to approximately \$7.6 million at that time. The securities contained in these client accounts were held by unaffiliated custodians.

18. In the months prior to its suspension as a portfolio manager, Gentree's portfolio management responsibilities were not being properly discharged or supervised by Gentree and Gauthier. Gentree violated the know your client and suitability obligations as outlined in subsections 13.2 and 13.3 of NI 31-103, as the advising representative failed to meet with clients and to ensure that sufficient information was on hand when making or approving all trades. Further, Gentree did not maintain written records of trade instructions and failed to maintain evidence of portfolio oversight, thereby failing to meet the general record requirements of subsection 11.5(1) of NI 31-103.

19. In addition, despite the fact that he is not registered as an advising representative, Gauthier has instructed trading in managed accounts of Gentree's clients without obtaining approval from the firm's advising representative, contrary to s. 25(3) of the Act.

VIII. GAUTHIER'S NON-COMPLIANCE

20. Gauthier authorized, permitted or acquiesced in the breaches by Gentree, RIII and CanPro, of sections 19, 25, 53, and 126.2(1) of the Act, along with the breaches of NI 31-103, contrary to section 129.2 of the Act, and in so doing has engaged in conduct contrary to Ontario securities law.

IX. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

21. The foregoing conduct engaged in by the Respondents constituted breaches of Ontario securities law. In particular:

- (a) Gauthier and Gentree traded and acted outside the scope of their categories of registration with the Commission. In relation to the Gentree Securities, this conduct was contrary to section 25(1)(a) of the Act as that section existed at the time the conduct at issue commenced on December 1, 2004. Further, for the Gentree Securities and the shares in RI, this conduct was also contrary to section 25(1) of the Act, as subsequently amended on September 28, 2009;
- (b) Gauthier and Gentree traded in Gentree Securities and shares in RI without the required prospectus receipt or appropriate exemption, contrary to section 53 of the Act;
- (c) Gauthier and Gentree failed to keep books, records and other documents as are necessary for the proper recording of market participants' business transactions and financial affairs, contrary to section 19 of the Act;
- (d) The Respondents made statements to investors that were misleading or untrue in a material respect, in contravention of s. 126.2(1) of the Act;
- (e) Gentree was not meeting the minimum capital requirement in violation of subsection 12.1(3) of NI 31-103;
- (f) Gentree's portfolio management responsibilities were not properly discharged or supervised by Gentree and Gauthier in violation of subsections 11.5 (a), 13.2 and 13.3 of NI 31-103;
- (g) Gauthier engaged in, or held himself out as engaging in, the business of advising

with respect to investing in securities without being registered to advise in securities, contrary to section 25 of the Act; and

- (h) Gauthier has authorized, permitted or acquiesced in the breaches by Gentree, RIII and CanPro, of sections 19, 25, 53, and 126.2(1) of the Act, along with the breaches of NI 31-103, contrary to section 129.2 of the Act.

22. By reason of the foregoing, the Respondents violated the requirements of Ontario securities law and/or engaged in conduct contrary to the public interest.

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

Dated at Toronto this 27th day of March, 2012.