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The Ontario Securities Commission

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Chapter 1

Notices / News Releases

1.2 Notices of Hearing

1.2.1 Donald Mason – s. 8

FILE NO.: 2018-1

IN THE MATTER OF DONALD MASON

NOTICE OF HEARING

Section 8 of the *Securities Act*, RSO 1990, c S.5

PROCEEDING TYPE: Application for Hearing and Review

HEARING DATE AND TIME: January 25, 2018 at 10:00 a.m.

LOCATION: 20 Queen Street West, 17th Floor, Toronto, Ontario

PURPOSE

The purpose of this proceeding is to consider the Application dated 29 December 2017, made by the party named above to review a decision of a Director of the Commission dated 30 November 2017.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 6(1) of the Commission's *Practice Guideline*.

REPRESENTATION

Any party to the proceeding may be represented by a representative at the hearing.

FAILURE TO ATTEND

IF A PARTY DOES NOT ATTEND, THE HEARING MAY PROCEED IN THE PARTY'S ABSENCE AND THE PARTY WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THE PROCEEDING.

FRENCH HEARING

This Notice of Hearing is also available in French on request of a party. Participation may be in either French or English. Participants must notify the Secretary's Office in writing as soon as possible if the participant is requesting a proceeding be conducted wholly or partly in French.

AVIS EN FRANÇAIS

L'avis d'audience est disponible en français sur demande d'une partie, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Bureau du secrétaire par écrit le plus tôt si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

Dated at Toronto this January 19, 2018

"Grace Knakowski"
Secretary to the Commission

For more information

Please visit www.osc.gov.on.ca or contact the Registrar at registrar@osc.gov.on.ca.

1.5 Notices from the Office of the Secretary
1.5.1 The Mutual Fund Dealers Association of Canada and John Richard Wolfenden

FOR IMMEDIATE RELEASE
January 16, 2018

**THE MUTUAL FUND DEALERS
ASSOCIATION OF CANADA and
JOHN RICHARD WOLFENDEN,
File Nos. 2017-75 and 2017-76**

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

A copy of the Order dated January 15, 2018 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.2 Benedict Cheng et al.

FOR IMMEDIATE RELEASE
January 17, 2018

**BENEDICT CHENG,
FRANK SOAVE,
JOHN DAVID ROTHSTEIN and
ERIC TREMBLAY**

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

A copy of the Order dated January 17, 2018 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.3 Benedict Cheng et al.

FOR IMMEDIATE RELEASE
January 17, 2018

**BENEDICT CHENG,
FRANK SOAVE,
JOHN DAVID ROTHSTEIN and
ERIC TREMBLAY**

TORONTO – Following a hearing held in the above noted matter, the Commission issued its Reasons and Decision on a Motion Regarding Privilege.

A copy of the Reasons and Decision on a Motion Regarding Privilege dated January 10, 2018 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.4 Donald Mason

FOR IMMEDIATE RELEASE
January 19, 2018

**DONALD MASON,
File No. 2018-1**

TORONTO – The Ontario Securities Commission will hold a hearing to consider the Application made by Donald Mason to review a decision of a Director of the Commission dated 30 November 2017.

The hearing will be held on January 25, 2018 at 10:00 a.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 January 19, 2018 and the Application dated December 29, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.5 Dennis L. Meharchand and Valt.X Holdings Inc.

FOR IMMEDIATE RELEASE
January 22, 2018

DENNIS L. MEHARCHAND and
VALT.X HOLDINGS INC.

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

A copy of the Order dated January 22, 2018 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 First Avenue Investment Counsel Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from ss. 13.5(2)(b)(ii) and (iii) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations to permit *in specie* transfers between managed accounts and pooled funds – relief subject to usual conditions, such as consent of managed account clients to allow *in specie* transfers, acceptability of portfolio assets to receiving fund or managed account portfolio manager, filer to keep written record of transfers, certain pricing conditions.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5(2)(b), 15.1.

January 2, 2018

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
FIRST AVENUE INVESTMENT COUNSEL INC.
(FAIC)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from FAIC for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the following:

In-specie Transfer Relief

The prohibition in sections 13.5(2)(b)(ii) and 13.5(2)(b)(iii) of NI 31-103 to permit *in specie* subscriptions and redemptions by a Managed Account in a Pooled Fund (the **Exemption Sought**).

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

1. The Ontario Securities Commission (**OSC**) is the principal regulator for this application; and
2. FAIC 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 respect of the Exemption Sought in each province and territory of Canada.

Interpretation

Terms defined in National Instrument 14101 *Definitions*, MI 11-102, NI 31-103, NI 81-102, NI 81-106, NI 81-107 or in the *Securities Act* (Ontario) have the same meaning if used in this decision, unless otherwise defined. The following additional terms shall have the following meanings:

“**Filer**” means, unless otherwise specified, FAIC or a future affiliate of FAIC;

“**Future Pooled Fund**” means each investment fund, which is not a reporting issuer, that is established after the formation of the Initial Pooled Fund, and for which the Filer will act as investment fund manager and/or portfolio adviser.

“**Fund Securities**” means the units or shares of a Pooled Fund.

“**In-specie Transfer**” means causing a Managed Account to deliver securities to a Pooled Fund in respect of the purchase of Fund Securities of such Pooled Fund, or to receive securities from the investment portfolio of a Pooled Fund in respect of a redemption of Fund Securities of such Pooled Fund.

“**Initial Pooled Fund**” means an investment fund, which is not a reporting issuer, and for which FAIC will act as investment fund manager and/or portfolio adviser.

“**Investment Management Agreement**” means an investment management agreement entered into by the Filer and a client thereof in respect to the client’s Managed Account.

“**Managed Account**” means each fully managed account managed by the Filer for a client that is not a responsible person.

“**NI 81-102**” means National Instrument 81-102 *Investment Funds*.

“**Pooled Funds**” means, collectively, the Initial Pooled Fund and the Future Pooled Funds.

Representations

The decision is based on the following facts represented by FAIC:

FAIC

1. FAIC is a corporation incorporated under the laws of Ontario with its head office in Toronto, Ontario.
2. FAIC is registered as a portfolio manager and exempt market dealer in Alberta, British Columbia, Nova Scotia, Ontario, Prince Edward Island, Québec. FAIC has applied to be registered as an investment fund manager in Ontario and Quebec.
3. FAIC is not a reporting issuer in any jurisdiction and is not in default of securities legislation of any jurisdiction of Canada.

The Managed Accounts

4. The Filer offers discretionary portfolio management services to individual and institutional investors, each of whom has entered into an Investment Management Agreement with the Filer.

In-specie Transfers

5. FAIC intends, subject to being registered as an investment fund manager, to establish the Initial Pooled Fund, on or about January 2, 2017, as a trust with a corporation licensed under the *Loan and Trust Corporations Act* (Ontario) acting as trustee thereof.
6. The Filer wishes to invest existing and future Managed Account clients in the Pooled Funds, to the extent that the Pooled Funds are consistent with the investment with the investment objectives of the Managed Accounts.
7. As the Filer may be in the future the trustee of a Future Pooled Fund which is organized as a trust, each such Future Pooled Fund may be an ‘associate’ of the Filer, and accordingly, absent the grant of the Exemption Sought, the Filer would be precluded by the provisions of section 13.5(2)(b)(ii) of NI 31-103 from effecting the *In-specie* Transfers in such circumstances; as the Filer will be a registered adviser and investment fund manager of the Pooled Funds and is,

or will be, the portfolio manager of the Managed Accounts, absent the grant of the Exemption Sought, the Filer would be precluded by section 13.5(2)(b)(iii) of NI 31-103 from effecting the *In-specie* Transfers.

8. The Filer manages certain Managed Accounts on the basis of the same investment objective and investment strategies as those that will apply to the Initial Pooled Fund. As such, the Filer wishes to use the Exemption Sought to (i) effect a one-time *In-specie* Transfer with respect to the establishment of the Initial Pooled Fund, (ii) effect future *In-specie* Transfers with respect to existing and future Managed Accounts clients, and (iii) effect future *In-specie* Transfers with respect to the establishment of Future Pooled Funds. The purpose of the *In-specie* Transfers would be to allow the Filer to manage each asset class held in the existing Managed Accounts more effectively and/or reduce transaction costs for the existing and future Managed Account clients.
9. The Filer submits that by pooling the securities held by the Managed Accounts through the *In-specie* Transfers, the Filer may be able to reduce market impact costs, which can be detrimental to the Managed Accounts or Pooled Fund clients. The *In-specie* Transfer will allow the Filer to retain within its control institutional-sized blocks of securities that otherwise would need to be broken and re-assembled.
10. The only cost which will be incurred by a Pooled Fund or Managed Account in connection with the *In-specie* Transfer will be a nominal administrative charge levied by the custodian of the Pooled Fund.
11. The Filer will obtain written consent of the relevant Managed Account client before it engages in an *In-specie* Transfer in connection with the purchase or redemption of securities of a Pooled Fund for the Managed Account.
12. The Filer, as manager of the Pooled Funds, will value the securities transferred under an *In-specie* Transfer on the same valuation day on which the purchase price or redemption price of the Fund Securities is determined. With respect to the purchase of Fund Securities of a Pooled Fund, the securities transferred to a Pooled Fund under an *In-specie* Transfer in satisfaction of all or part of the purchase price of those Fund Securities will be valued as if the securities were portfolio assets of the Pooled Fund, as contemplated by section 9.4(2)(b)(iii) of NI 81-102. With respect to the redemption of Fund Securities of a Pooled Fund, the securities transferred to a Managed Account in satisfaction of the redemption price of those Fund Securities will have a value equal to the amount at which those securities were valued in calculating the net asset value per security used to establish the redemption price of the Fund Securities of the Pooled Fund, as contemplated by section 10.4(3)(b) of NI 81-102.
13. *In-specie* Transfers will be subject to (i) compliance with the written policies and procedures of the Filer respecting *In-specie* Transfers that are consistent with applicable securities legislation, and (ii) the oversight of the Filer's Chief Compliance Officer, to ensure that the transaction represents the business judgment of the Filer acting in its discretionary capacity with respect to a Pooled Fund and Managed Account, uninfluenced by considerations other than the best interests of the Pooled Fund and Managed Account.
14. Absent the Exemption Sought, neither the Managed Accounts, nor the Filer, on their behalf, will be permitted to engage in *In-specie* Transfers.

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 so long as:

- (a) if the transaction is the purchase of Fund Securities by a Managed Account:
 - (i) the Filer obtains the prior written consent of the client of the relevant Managed Account before it engages in any *In-specie* Transfers in connection with the purchase of Fund Securities;
 - (ii) the Pooled Funds would at the time of payment be permitted to purchase the securities of the Managed Account;
 - (iii) the securities are acceptable to the Filer as portfolio manager of the Pooled Funds and consistent with the Pooled Funds' investment objectives;
 - (iv) the value of the securities sold to the Pooled Funds is at least equal to the issue price of the Fund Securities for which they are payment, valued as if the securities were portfolio assets of the Pooled Funds;

- (v) the account statement next prepared for the Managed Account will include a note describing the securities delivered to the Funds and the value assigned to such securities; and
 - (vi) the Pooled Funds keep written records of all *In-specie* Transfers during the financial year, reflecting details of the securities delivered to the Pooled Funds and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;
- (b) if the transaction is the redemption of Fund Securities by a Managed Account:
- (i) the Filer obtains the prior written consent of the client of the relevant Managed Account to the payment of redemption proceeds in the form of an *In-specie* Transfer;
 - (ii) the securities are acceptable to the Filer as portfolio manager of the Managed Account and consistent with the Managed Account's investment objectives;
 - (iii) the value of the securities is equal to the amount at which those securities were valued in calculating the net asset value per Fund Security used to establish the redemption price;
 - (iv) the holder of the Managed Account has not provided notice to terminate its Investment Management Agreement with the Filer;
 - (v) the account statement next prepared for the Managed Account will include a note describing the securities delivered to the Managed Account and the value assigned to such securities; and
 - (vi) the Pooled Funds keep written records of all *In-specie* Transfers during the financial year, reflecting details of the securities delivered by the Funds and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;
- (c) the Filer does not receive any compensation in respect of any sale or redemption of Fund Securities and, in respect of any delivery of securities further to an *In-specie* Transfer, the only charge paid by the Managed Account, if any, is the commission charged by the dealer executing the trade; and
- (d) should any *In-specie* Transfer contemplated specifically by the Exemption Sought, involve the transfer of an "illiquid asset" (as defined in NI 81-102), the Filer will obtain at least one quote for the asset from an independent arm's length purchaser or seller, immediately before effecting the *In-specie* Transfer (as contemplated by commentary #7 to section 6.1 of National Instrument 81-107 – *Independent Review Committee for Investment Funds*).

"Raymond Chan"
Manager, Investment Funds & Structured Products Branch
Ontario Securities Commission

2.1.2 Nicola Wealth Management Ltd. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act, R.S.B.C. 1996, c. 418, s. 48 – Exemption from the conflict of interest restriction in s. 13.5(2)(b) of NI 31-103 Registration Requirements and Exemptions – An investment fund manager wants relief from the self-dealing restrictions in section 13.5(2)(b) of NI 31-103 for trades in portfolio securities between investment funds managed by the manager in order to execute a mutual fund reorganization – Inter-fund trades are consistent with the investment objective of the funds; funds without an Independent Review Committee (IRC) have constituted an equivalent entity; trades are referred to and approved by the fund's IRC equivalent; the trades will occur at a price determined through an independent arms' length valuation; the manager will cover the costs of the transaction; there will be no material adverse tax consequences.

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 48.

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 13.5(2)(b).

December 27, 2017

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

AND

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

AND

**IN THE MATTER OF
NICOLA WEALTH MANAGEMENT LTD.
(the Manager),**

AND

**NWM PRIVATE EQUITY LIMITED PARTNERSHIP
(the Private Equity Fund)**

AND

**NWM PRIVATE DEBT FUND
(the Private Debt Fund)
(together, the Funds)
(collectively, the Filers)**

DECISION

Background

- 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application (the Application) from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the prohibition in section 13.5(2)(b)(iii) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) which prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase or sell a security from or to the investment portfolio of an investment fund for which a responsible person acts as an adviser, in order to permit the one-time purchase by the Private Debt Fund of illiquid securities of two investment funds managed by third parties (the Transferring Funds, defined below) (the Inter-Fund Trade) sold by the Private Equity Fund for cash at a price equal to the net asset value per security of each of the Transferring Funds calculated and

reported to the Manager by each Transferring Fund's manager as of December 31, 2017 (the December 31 NAV) (the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in the provinces of Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick and Newfoundland and Labrador; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- 2 Terms defined in MI 11-102, National Instrument 14-101 *Definitions* and National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) have the same meaning if used in this decision, unless otherwise defined.

Representations

- 3 This decision is based on the following facts represented by the Filers:
 1. the Manager is a company existing under the laws of British Columbia with its head office in Vancouver, British Columbia and is not a reporting issuer in any jurisdiction of Canada;
 2. the Manager is registered as: (i) an investment fund manager in British Columbia, Saskatchewan, Ontario, Quebec and Newfoundland and Labrador; (ii) a portfolio manager in all jurisdictions of Canada, other than Prince Edward Island, Nunavut, the Northwest Territories and Yukon; and (iii) an exempt market dealer in all jurisdictions of Canada, other than Prince Edward Island, Nunavut, the Northwest Territories, and Yukon;
 3. the Manager is the manager and portfolio manager for each of the Funds;
 4. each of the Funds is a mutual fund established as a trust or partnership under the laws of British Columbia, Canada and is not a reporting issuer in any jurisdiction of Canada;
 5. the securities of each of the Funds are distributed on a private placement basis under available prospectus exemptions; neither Fund is subject to National Instrument 81-102 *Investment Funds* (NI 81-102) or NI 81-107;
 6. securities of each of the Funds are distributed solely to clients of the Manager under fully discretionary managed accounts under which the Manager makes investment decisions on behalf of the clients and advisory accounts under which the Manager provides investment advice to clients and clients make the final investment decision for themselves; securities of each of the Funds are also distributed to the NWM Core Portfolio Fund, which invests in a portfolio containing investment funds and limited partnerships managed by the Manager;
 7. the Manager and each of the Funds are not in default of securities legislation in any jurisdiction of Canada;
 8. the investment objective of the Private Equity Fund is to make private equity, mezzanine debt, and subordinated debt or similar asset classes investments and to hold and/or monetize those investments through a combination of the receipt of dividends, the redemption of securities, and the eventual divestment of the investments; the investment objective of the Private Debt Fund is to achieve a high level of current income and some capital appreciation, while emphasizing capital preservation;
 9. the Manager seeks to permit the Inter-Fund Trade by the Private Equity Fund to the Private Debt Fund of (i) Crown Capital Fund IV, LP (the Crown Fund) limited partnership units; and (ii) THL Credit Direct Lending Fund III-B (Cayman) LP (the THL Fund) limited partnership interests (collectively, the Applicable Securities) (the Crown Fund and the THL fund, collectively, the Transferring Funds);
 10. the Crown Fund is an Alberta limited partnership with the head office of its general partner, Crown Capital Fund IV Management Inc., located at Suite 4330, 77 King Street W, Toronto, ON, M5K 1H6; the THL Fund is

a Cayman Islands exempted limited partnership with the head office of its general partner, THL Credit Direct Lending Fund III (Cayman) GP Ltd., located at c/o Maples Corporate Services Limited, P.O. Box 309, Ugland House, KY1-1104, Grand Cayman, Cayman Islands; the THL Fund is an off-shore feeder fund which invests in THL Credit Direct Lending Fund III LLC, a Delaware limited liability company, via THL Credit Direct Lending Fund III-B Blocker LLC, a Delaware limited liability company;

11. the Crown Fund has approximately 97% of its investments in debt securities and approximately 3% in equities and warrants; the Crown Fund investments are focused on senior or subordinated debentures; as of September 30, 2017, the Crown Fund had investments in eight portfolio companies; the THL Fund has 100% of its portfolio in floating rate loans, approximately 89% of which are first lien loans; as of September 30, 2017, the THL Fund had investments in 17 portfolio companies;
12. section 13.5(2)(b)(iii) of NI 31-103 imposes a prohibition on the Inter-Fund Trade;
13. the Manager has determined that it is in the best interests of the Private Equity Fund to dispose of the Applicable Securities as the Private Equity Fund is reducing its private debt exposure and will use the proceeds from the Inter-Fund Trade towards additional private equity investments; the Applicable Securities are the most recent private debt investments acquired by the Private Equity Fund and the Manager views these securities as the most appropriate private debt investments for the Private Equity Fund to divest;
14. the Manager has determined that it is in the best interests of the Private Debt Fund to acquire the Applicable Securities as the Private Debt Fund recently launched and is seeking quality private debt investments with varying maturity dates to add to and diversify its investment portfolio; the Manager has identified, performed due diligence on and approved, the Applicable Securities as suitable private debt investments; the Manager applies a high approval threshold for private debt investments for the Funds which results in few investments being approved and sometimes significant periods of time elapsing before a suitable investment is identified;
15. the Manager has determined that it is appropriate for the Private Equity Fund to dispose of, and for the Private Debt Fund to acquire, the Applicable Securities directly, rather than from a third party, and that it would be in the best interests of the Funds to receive the Exemption Sought because:
 - (a) the Exemption Sought will result in cost and timing efficiencies in respect of the Inter-Fund Trade;
 - (b) the Applicable Securities do not trade on any secondary market and it may not be otherwise possible for the Private Equity Fund to sell, and the Private Debt Fund to acquire, the Applicable Securities; and
 - (c) the Applicable Securities are not readily obtained and if sold could not be easily replaced;
 - (d) the Inter-Fund Trade is consistent with the investment objectives of the Funds;
16. the Filer proposes to conduct the Inter-Fund Trade at the December 31 NAV for securities of each of the Transferring Funds;
17. the Manager will retain an accounting firm registered with the Canadian Public Accountability Board and the valuation services of which are provided by professionals who are members in good standing of the Canadian Institute of Chartered Business Valuators (the Independent Valuator) to opine as to whether the December 31 NAV for securities of each of the Transferring Funds is within the price range of fair market value for securities of each Transferring Funds; the Independent Valuator is not an auditor of the Funds or the Manager and is not related to the Manager;
18. the Manager, as manager of each Fund, will establish an independent review committee (IRC) in respect of each Fund to review and provide its approval for the Inter-Fund Trade;
19. the Inter-Fund Trade will take place as follows: (a) the Funds will enter into a securities purchase agreement (the Purchase Agreement) effective January 1, 2018 12:01am pursuant to which the Private Equity Fund will sell, and the Private Debt Fund will purchase, the Applicable Securities at a price equal to the December 31 NAV for each Transferring Fund; (b) the Purchase Agreement will contain the following closing conditions: (i) the Independent Valuator confirms that the December 31 NAV is a value that is within the price range of its valuation opinion for securities of each of the Transferring Funds; (ii) the Manager refers the Inter-Fund Trade to the IRC of the Funds in the manner contemplated by section 5.1 of NI 81-107 and the IRC approves the Inter-Fund Trade;

20. the IRC of the Funds will be composed by the Manager in accordance with section 3.7 of NI 81-107 and the IRC will comply with the standard of care set out in section 3.9 of NI 81-107; the IRC of the Funds will not approve the Inter-Fund Trade unless it has made the determination set out in subsection 5.2(2) of NI 81-107; members of the IRC will comply with subsection 3.9(1) of NI 81-107;
21. the Manager cannot rely on the exemption from the trading prohibition codified under subsection 6.1(4) of NI 81-107 because neither Fund is a reporting issuer, there are no bid and ask prices of the Applicable Securities readily available, and the transaction is not able to be executed at the current market price of the security (as defined in 6.1(1)(a) of NI 81-107) and would not meet the market integrity requirements (as defined in 6.1(1)(b) of NI 81-107);
22. the Manager considers that it would be in the best interests of the Funds if the Inter-Fund Trade could be effective immediately following a valuation day of the Crown Fund and THL Fund at a price equal to the net asset value (NAV) per security of the Applicable Securities posted by the managers of each of the Transferring Funds on such valuation day because:
 - (a) the Applicable Securities are not traded on any exchange or secondary market and therefore there is no posted market price or bid and ask prices;
 - (b) the NAV of the Applicable Securities is calculated by managers of each of the Transferring Funds who are independent third parties from the Manager;
 - (c) each of the Transferring Funds have independent third party auditors that review the NAV calculation methodologies used by the managers of each of the Transferring Funds;
 - (d) the Crown Fund is an open-ended fund that accepts subscriptions based on NAV; the THL Fund is a closed end fund; the Transferring Funds each calculate NAV quarterly;
 - (e) the Manager has reviewed the NAV calculation methodologies of the managers of each of the Transferring Funds and determined that such methodologies are appropriate for the underlying assets of each of the Transferring Funds;
 - (f) the Manager will retain an independent third party valuator to provide an opinion on whether or not the valuator considers the NAV of securities for each of the Transferring Funds to be fair market value and will provide the opinion to the IRC for consideration in its approval process for the Inter-Fund Trade;
23. if the IRC of a Fund becomes aware that the Manager did not comply with the terms of this decision, or a condition imposed by securities legislation or the IRC in its approval, the IRC of the Fund will, as soon as practicable, notify in writing the securities regulatory authority or regulator in the jurisdiction which is the Fund's principal regulator;
24. the Inter-Fund Trade will not cause a material adverse tax consequence to either of the Funds or to securityholders of the Funds;
25. the Manager has determined that it will be in the best interests of the Funds to obtain the Exemption Sought; and
26. absent the Exemption Sought, neither the Funds, nor the Manager, on their behalf, will be permitted to engage in Inter-Fund Trade.

Decision

- 4 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 Exemption Sought is granted provided that:

- (a) the Independent Valuator provides an opinion to the Manager that the December 31 NAV of securities of each of the Transferring Funds is within the range of fair market value for securities of each of the Transferring Funds;

Decisions, Orders and Rulings

- (b) for the IRC approval process in (d), the Manager provides the report of the Independent Valuator to the IRC and makes available the Independent Valuator to the IRC at their request;
- (c) the Inter-Fund Trade is consistent with the investment objectives of each Fund;
- (d) the IRC established for the Funds approves the inter-fund trades in accordance with section 5.2 of NI 81-107;
- (e) the Applicable Securities are transferred at a price equal to the December 31 NAV for each Transferring Fund;
- (f) each of the Funds keeps written records of the Inter-Fund Trade reflecting details of the Applicable Securities sold by the Private Equity Fund to the Private Debt Fund, and the value assigned to such securities, for five years after the end of the financial year in which the Inter-Fund Trade takes place, the most recent two financial years in a reasonably accessible place; and
- (g) the Manager does not receive any compensation in respect of the Inter-Fund Trade.

“Nigel P. Cave”
Vice Chair
British Columbia Securities Commission

2.1.3 TMS NeuroHealth Centers Inc.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the requirements applicable to issuer bids in Part 2 of NI 62-104 – Non-reporting issuer proposes to exchange its common shares for common shares of a newly incorporated Canadian parent company – Issuer is fundamentally a closely-held company – Transaction will be effected on a voluntary basis and all shareholders will be entitled to participate and will be provided with disclosure – Non-participating shareholders will maintain their proportionate interest in the issuer.

Applicable Legislative Provisions

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

January 19, 2018

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
TMS NEUROHEALTH CENTERS INC.
(the “Filer”)

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 (the “**Legislation**”) exempting the Filer from the requirements applicable to issuer bids in Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (“**NI 62-104**”) in connection with the proposed purchase by the Filer of all of the issued and outstanding common shares (the “**Common Shares**”) of the Filer (the “**Exemption Sought**”).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions

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

- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (“**MI 11-102**”) is intended to be relied upon in Manitoba and British Columbia.

Interpretation

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

Representations

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

1. The Filer is a corporation governed by the Delaware General Corporation Law.
2. The Filer’s registered office is located in Wilmington, Delaware. The Filer’s principal Canadian office is located in Toronto, Ontario.
3. The authorized share capital of the Filer consists of 42,350,000 Common Shares. As at the date hereof, the Filer has 37,524,375 Common Shares issued and outstanding.
4. The Filer is not a “reporting issuer” for the purposes of securities legislation in any jurisdiction in Canada, nor is it the equivalent under the securities laws of any other jurisdiction. There is no published market in respect of the Common Shares.
5. The Filer is not in default of securities legislation in any jurisdiction in Canada.
6. The Filer carries on, directly and through its subsidiaries, the business of healthcare management and administration services to facilitate the delivery of Transcranial Magnetic Stimulation therapy for the treatment of depression and related psychiatric services.
7. The Filer has determined that forming a Canadian parent for the Filer’s business may offer more favourable market opportunities, including potential Canadian public offerings and/or a stock exchange listing.
8. The Filer intends to incorporate a Canadian subsidiary (“**CanCo**”) with the intention of CanCo becoming the parent of the Filer. In order to facilitate this, the Filer will have CanCo offer holders of Common Shares (the “**Shareholders**”) the opportunity to exchange their Common Shares for common shares of CanCo (the “**CanCo Shares**”) on a one-for-one basis (with corresponding changes to outstanding options granted by the Filer) (the “**Transaction**”).

9. The Transaction will be effected on a voluntary basis. Each Shareholder will be provided with a short disclosure document that will include a description of the Transaction, a description of the Canadian and federal United States tax considerations associated with the Transaction, and a description of the material differences between the rights of shareholders of a Canadian corporation relative to the rights of shareholders of a Delaware corporation.
10. Each Shareholder will also be provided with a letter of transmittal that will enable a Shareholder to deliver its share certificate and confirm its intention to exchange its Common Shares for CanCo Shares pursuant to the Transaction. Each Shareholder that signs its letter of transmittal and completes the exchange will become a shareholder of CanCo.
11. Following the completion of the Transaction: (a) a Shareholder that has exchanged its Common Shares for CanCo Shares pursuant to the Transaction will hold an equivalent number of CanCo Shares; (b) a Shareholder that has not exchanged its Common Shares for CanCo Shares pursuant to the Transaction will maintain its proportionate interest in the Filer; and (c) the Filer expects that the majority of the Common Shares will be owned by CanCo.
12. The Transaction will constitute an "issuer bid" as that term is defined in NI 62-104.
13. Pursuant to section 4.9 of NI 62-104 (the "**Non-Reporting Issuer Exemption**"), an issuer bid is exempt from Part 2 of NI 62-104 if all of the following conditions are satisfied:
- (a) the issuer is not a reporting issuer;
 - (b) there is no published market for the securities that are the subject of the bid; and
 - (c) the number of security holders of that class of securities at the commencement of the bid is not more than 50, exclusive of holders who (i) are in the employment of the issuer or an affiliate of the issuer, or (ii) were formerly in the employment of the issuer or in the employment of an entity that was an affiliate of the issuer at the time of that employment, and who while in that employment were, and have continued after that employment to be, security holders of the issuer.
14. The Filer cannot rely on the Non-Reporting Issuer Exemption because the number of security holders of the Filer exceeds 50.
15. The Filer currently has 65 Shareholders, of which 62 acquired their Common Shares pursuant to the accredited investor exemption set out in section 2.3 of National Instrument 45-106 *Prospectus Exemptions* ("**NI 45-106**"). Of the Filer's 65 Shareholders:
- (a) 60 reside in Ontario, holding 32,509,375 Common Shares or approximately 86.63% of the issued and outstanding Common Shares;
 - (b) one resides in British Columbia, holding 112,500 Common Shares or approximately 0.3% of the issued and outstanding Common Shares;
 - (c) one resides in Manitoba, holding 300,000 Common Shares or approximately 0.8% of the issued and outstanding Common Shares; and
 - (d) three reside in the United States, holding 4,602,500 Common Shares or approximately 12.27% of the issued and outstanding Common Shares.
16. Of the Filer's 65 Shareholders:
- (a) two are current or former officers of the Filer or holding companies owned or controlled by current or former officers of the Filer, including one that is a resident of the United States; and
 - (b) two are residents of the United States.
17. Accordingly, the Filer has 61 Shareholders, excluding employees and former employees and residents of the United States.
18. The Filer is fundamentally a closely-held company. Although the Filer is not technically a private issuer as defined in NI 45-106, all of the Shareholders are persons to whom a private issuer is permitted to distribute securities under the exemption in section 2.4 of NI 45-106.
19. Although the proposed exchange of Common Shares for CanCo Shares pursuant to the Transaction will be effected on a voluntary basis, the Filer expects that all of the Shareholders will participate in the Transaction.
20. The Transaction will not result in any change in the business or operations of the Filer or its subsidiaries.

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, at the time of the Transaction:

- (a) the Filer is not a reporting issuer; and
- (b) there is no published market for the Common Shares.

“Naizam Kanji”
Director, Office of Mergers & Acquisitions
Ontario Securities Commission

2.1.4 Portage Biotech Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from prospectus requirements to allow a reporting issuer to effect a distribution in specie of shares in a U.S. issuer to its shareholders – distribution not covered by legislative exemptions – distributed shares are in a public company in the U.S. that is not a reporting issuer in Canada – *de minimis* Canadian presence following distribution – no investment decision required from Canadian shareholders in order to receive shares of the subsidiary.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, 74(1).

January 16, 2018

**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
PORTAGE BIOTECH INC.
(the “Filer”)**

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 (the “**Legislation**”) for an exemption (the “**Exemption Sought**”) from the prospectus requirement of section 53 of the *Securities Act* (Ontario) in connection with the proposed distribution (the “**Dividend**”) by the Filer of the shares of common stock of Biohaven (“**Biohaven Shares**”) of Biohaven Pharmaceutical Holding Company Ltd. (“**Biohaven**”) by way of a dividend in specie to holders (“**Filer Shareholders**”) of shares of common stock of the Filer (“**Filer Shares**”) resident in Canada (“**Filer Canadian Shareholders**”).

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation continued under the laws of the British Virgin Islands. The Filer’s Canadian subsidiary, Portage Services Ltd., which acts as its Canadian agent, is located in Toronto, Ontario. The Filer is a pharmaceutical company that identifies, finances, and develops best-in-class or first-in-class early-to-mid stage products.
2. The Filer is a reporting issuer in Ontario. Its common shares are listed for trading on the Canadian Securities Exchange under the symbol “PBT.U”. It is not a reporting issuer in any other jurisdiction in Canada.
3. The Filer’s common shares also trade on the OTC Bulletin Board market in the United States under the symbol “PTBEF”. The Filer is a “foreign private issuer” under the rules of the Securities Exchange Commission (the “SEC”) and is subject to regular filing and reporting requirements in the United States.
4. The authorized capital stock of the Filer consists of an unlimited number of Filer Shares with no par value per share. As of January 5, 2018, there were 280,719,920 Filer Shares issued and outstanding.
5. Biohaven was incorporated on September 25, 2013 under the laws of the British Virgin Islands with principal executive offices in New Haven, Connecticut. It is a clinical-stage biopharmaceutical company with a portfolio of innovative, late-stage product candidates targeting neurological diseases, including rare disorders. Biohaven has licensed intellectual property from numerous companies and institutions such as Bristol-Myers Squibb Company and Yale University.
6. On April 7, 2017, Biohaven filed a registration statement on form S-1, and subsequently filed amendments to the registration statement on April 24, 2017 and May 1, 2017 (the registration statement, as so amended, is referred to as the **Registration Statement**). The Registration Statement was declared effective by the SEC on May 3, 2017. Biohaven is subject to the United States *Securities Exchange Act of 1934*, as amended from time to time (the “1934 Act”) and the rules, regulations and orders promulgated thereunder.
7. The authorized capital stock of Biohaven consists of a maximum of 200,000,000 common shares of a single class with no par value per share of which 35,931,000 are issued and outstanding as of December 12, 2017 that are held by 3,578 beneficial shareholders (“**Biohaven Share-holders**”), and a maximum of 10,000,000 preferred shares of a single class with no par value per share of which none are issued and outstanding. No other securities of Biohaven are issued and outstanding.
8. The common shares of Biohaven are listed on the New York Stock Exchange (the “NYSE”) under the symbol “BHVN”. Other than the foregoing listing on the NYSE, no securities of Biohaven are listed or posted for trading on any exchange or market in Canada or outside of Canada.
9. Biohaven is not a reporting issuer in any province or territory in Canada and has no present intention to become a reporting issuer in any province or territory of Canada or to list its securities on any stock exchange in Canada following the Dividend.
10. As at the date hereof, the Filer owns 6,216,619 Biohaven Shares representing 17.30% of the issued and outstanding common shares of Biohaven.
11. Based on a geographic analysis of beneficial shareholders prepared for the Filer by Broadridge Financial Solutions, Inc., as of January 4, 2018, (i) there were 419 beneficial Filer Canadian Shareholders holding approximately 35,004,796 Filer Shares, representing approximately 12.47% of the outstanding Filer Shares.
12. On December 4, 2017, the Filer issued a news release announcing that it intended to distribute the bulk of its Biohaven Shares to its shareholders by way of a dividend in specie. The record date for the distribution was announced as January 5, 2018 with the distribution to be effected on January 15, 2018. The Filer subsequently deferred the distribution date to January 16, 2018 as January 15 is a statutory holiday in the United States.
13. The Filer is proposing to distribute 6,102,104 Biohaven Shares to its shareholders by way of a dividend in specie on the basis of one (1) Biohaven Share for each forty-six (46) Filer shares held (the “**Dividend**”) including to the Filer Canadian Shareholders. Based on the above geographical analysis of Filer beneficial shareholders, the number of Biohaven Shares that will be distributed in Canada pursuant to the Dividend

will be approximately 760,932 common shares representing 2.18% of the issued and outstanding Biohaven Shares.

14. Based on a geographic analysis of beneficial holders prepared for the Filer by Biohaven's transfer agent, American Stock Transfer ("AST"), as of December 12, 2017 (i) there are five (5) beneficial Canadian shareholders holding approximately 1,264,935 Biohaven Shares, representing approximately 3.52% of the outstanding Biohaven Shares.
15. After the Dividend, approximately 2,025,867 Biohaven Shares representing 5.63% of the issued and outstanding Biohaven Shares will be held beneficially by Canadian residents, representing 7.90% of the total number of beneficial holders of Biohaven Shares.
16. In connection with the Dividend, the distribution agent will distribute to each Filer Shareholder entitled to Biohaven Shares, the number of whole Biohaven Shares to which the Filer Shareholder is entitled in the form of a book-entry authorization. No fractional Biohaven Shares will be issued. Instead, one Biohaven Share will be issued where there are 23 or more Filer Shares held on the record date. The Biohaven Share allotment for those holding under 23 Filer Shares will be rounded down to zero. There will be no cash distribution.
17. Filer Shareholders will not be required to pay any consideration for the Biohaven Shares, or to surrender or exchange Filer Shares or take any other action to receive their Biohaven Shares. The Dividend will occur automatically and without any investment decision on the part of Filer Shareholders.
18. Subject to the satisfaction of certain conditions, the Dividend will be distributed on January 16, 2018. The Dividend will be effected under the laws of the British Virgin Islands.
19. Because the Dividend will be effected by way of a dividend of Biohaven Shares to Filer Shareholders, no shareholder approval of the Dividend is required (or being sought) under British Virgin Islands law.
20. On January 5, 2018, the Filer filed an Information Statement with respect to the Dividend (the "Information Statement") detailing the terms and conditions of the Dividend. The Information Statement contains prospectus-level disclosure regarding the Filer and Biohaven.
21. Filer Shareholders (including Filer Canadian Shareholders) will receive a notice of internet availability or, where required, a hard copy of the Information Statement. Filer Canadian Share-

holders who receive Biohaven Shares pursuant to the Dividend will have the benefit of the same rights and remedies in respect of the disclosure documentation received in connection with the Dividend that are available to Filer Shareholders resident in the United States.

22. Following the completion of the Dividend, Biohaven will continue to be subject to the requirements of the 1934 Act and the rules and regulations of the NYSE. Biohaven will send concurrently to holders of Biohaven Shares resident in Canada, the same disclosure materials required to be sent under applicable United States securities laws to holders of Biohaven Shares resident in the United States.
23. There will be no active trading market for the Biohaven Shares in Canada following the Dividend and none is expected to develop. Biohaven has no present intention of listing its securities on any Canadian stock exchange or obtaining reporting issuer status in Canada. Consequently, it is expected that any resale of Biohaven Shares distributed in connection with the Dividend will occur through the facilities of the NYSE or any other exchange or market outside of Canada on which Biohaven Shares may be quoted or listed at the time that the trade occurs, or to a person or company outside of Canada.
24. The Dividend to Filer Canadian Shareholders would be exempt from the prospectus requirement pursuant to subsection 2.31(2) of National Instrument 45-106 *Prospectus Exemptions* but for the fact that Biohaven is not a reporting issuer under the securities legislation of any jurisdiction in Canada.
25. Neither the Filer nor Biohaven is in default of any securities legislation in any jurisdiction of Canada.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the first trade in the Biohaven Shares acquired pursuant to the Dividend will be deemed to be a distribution unless the conditions in section 2.6 or subsection 2.14(1) of National Instrument 45-102 *Resale of Securities* are satisfied.

"Grant Vingoe"
Vice Chair
Ontario Securities Commission

"Tim Moseley"
Vice Chair
Ontario Securities Commission

2.2 Orders

2.2.1 The Mutual Fund Dealers Association of Canada and John Richard Wolfenden – ss. 8, 21.7

FILE NO.: 2017-75 and 2017-76

IN THE MATTER OF
THE MUTUAL FUND DEALERS
ASSOCIATION OF CANADA

AND

IN THE MATTER OF
JOHN RICHARD WOLFENDEN

D. Grant Vingoe, Vice-Chair and Chair of the Panel
Timothy Moseley, Vice-Chair
Frances Kordyback, Commissioner

January 15, 2018

ORDER

Sections 8 and 21.7 of the
Securities Act, RSO 1990, c S.5

WHEREAS on January 15, 2018, the Ontario Securities Commission (the **Commission**) held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, in relation to an application by the Mutual Fund Dealers Association of Canada (the **MFDA**) filed on November 2, 2017 to review a decision of the MFDA (**MFDA Application**), and in relation to an application by John Richard Wolfenden filed on November 22, 2017 to review a decision of the MFDA (**Wolfenden Application**), and in relation to Mr. Wolfenden's motion to dismiss the MFDA Application (**Motion to Dismiss**);

ON READING the MFDA Application, the Wolfenden Application, and the materials filed in support of the Motion to Dismiss, and on hearing the submissions of Staff of the MFDA (**MFDA Staff**), appearing in person; Staff of the Commission, appearing in person; and Mr. Wolfenden, appearing by telephone; including the parties' consent to hearing the MFDA Application and the Wolfenden Application together;

IT IS ORDERED THAT:

1. Pursuant to section 147 of the *Securities Act*, RSO 1990, c S.5 (the **Act**), the MFDA Application is considered to be timely filed and the Motion to Dismiss is denied;
2. Pursuant to section 147 of the Act, the Wolfenden Application is considered to be timely filed;
3. Pursuant to subsection 9.1(1)(b) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22, the MFDA Application and the Wolfenden Application will be heard at the same time;

4. MFDA Staff shall serve and file the record of the proceeding before the MFDA no later than January 19, 2018;
5. The parties shall give notice of any intention to rely on documents or things not included in the record of the original proceeding, and shall disclose such documents or things, no later than May 22, 2018;
6. No later than May 25, 2018, Mr. Wolfenden shall file and serve witness lists and notice of intention to call an expert witness, if any, and shall serve (but not file) summaries of the anticipated evidence of any witnesses;
7. No later than May 29, 2018, MFDA Staff shall file and serve witness lists and notice of intention to call an expert witness, if any, and shall serve (but not file) summaries of the anticipated evidence of any witnesses;
8. The parties shall serve and file hearing briefs no later than June 8, 2018;
9. The parties shall serve and file written submissions no later than June 15, 2018; and
10. The hearing of both applications will be held on June 25, 26, and 27, 2018 at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, commencing at 10:00 a.m. on each scheduled day, or on such other dates or times as may be agreed to by the parties and set by the Office of the Secretary.

"D. Grant Vingoe"

"Timothy Moseley"

"Frances Kordyback"

2.2.2 Benedict Cheng et al.

**IN THE MATTER OF
BENEDICT CHENG,
FRANK SOAVE,
JOHN DAVID ROTHSTEIN AND
ERIC TREMBLAY**

Janet Leiper, Chair of the Panel

January 17, 2018

ORDER

WHEREAS the Ontario Securities Commission conducted a hearing in writing regarding a request by Mr. Cheng to not release to the public the Reasons and Decision on a Motion Regarding Privilege dated January 10, 2018 in this matter (the **Reasons**);

ON READING the request of Mr. Cheng and the submissions of the representatives for Staff of the Commission (**Staff**) and for Mr. Cheng; Mr. Soave and Mr. Tremblay not participating; and with no one appearing for John David Rothstein, having settled the allegations against him in respect of this proceeding;

IT IS ORDERED THAT the Reasons be released to the public forthwith.

“Janet Leiper”

2.2.3 AuRico Metals Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

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

January 19, 2018

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the “Jurisdiction”)**

AND

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

AND

**IN THE MATTER OF
AURICO METALS INC.
(the “Filer”)**

ORDER

Background

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

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (“**MI 11-102**”) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut.

Interpretation

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

Representations

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

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
2. 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 of Canada and fewer than 51 securityholders in total worldwide;
3. 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;
4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and
5. the Filer is not in default of securities legislation in any jurisdiction.

Order

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

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

"Sonny Randhawa"
Deputy Director
Corporate Finance Branch

2.2.4 Enbridge Gas Distribution Inc. – s. 158(1.1) of the OBCA

Headnote

Order pursuant to subsection 158(1.1) of the Business Corporations Act (Ontario) that an offering corporation is authorized to dispense with its audit committee – Issuer is an indirect wholly-owned subsidiary of a parent company that is subject to audit committee requirements of National Instrument 52-110 Audit Committees (NI 52-110) – Issuer is exempt from audit committee requirements of NI 52-110 – Relief conditional upon issuer continuing to satisfy the subsidiary entity eligibility criteria for exemption from audit committee requirements of NI 52-110 or any successor instrument.

Applicable Legislative Provisions

Business Corporations Act, R.S.O. 1990, c. B.16, ss. 158(1) and (1.1).
National Instrument 52-110 Audit Committees, s. 1.2.

**IN THE MATTER OF
THE BUSINESS CORPORATIONS ACT,
R.S.O 1990, CHAPTER B.16, AS AMENDED
(the OBCA)**

AND

**IN THE MATTER OF
ENBRIDGE GAS DISTRIBUTION INC.
(the Applicant)**

**ORDER
(Subsection 158(1.1) of the OBCA)**

UPON the application of the Applicant to the Ontario Securities Commission (the **Commission**) for an order pursuant to subsection 158(1.1) of the OBCA for a determination that the Applicant be authorized to dispense with an audit committee;

AND UPON considering the application and the recommendation of staff of the Commission;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was continued under the OBCA and is a rate-regulated natural gas distribution utility serving residential, commercial and industrial customers primarily in central and eastern Ontario as well as northern New York State.
2. As of December 4, 2017, the capital structure of the Applicant consists of: (a) an unlimited number of common shares (**Common Shares**), of which 213,337,897 Common Shares are issued and outstanding; (b) a limited number of preference shares (the **Preference Shares**), of which 4,000,000 Group 3, Series D preference shares (**Group 3, Series D Preference Shares**) are

issued and outstanding; and (c) unsecured non-convertible debt securities (the **Debt Securities**), of which an aggregate principal amount of \$3,780 million was issued and outstanding. The Group 3, Series D Preference Shares are convertible, at the holder's option, into Group 2, Series D preference shares on a one-for one basis on July 1, 2019 and every five years thereafter. The Group 3, Series D Preference Shares are held by three holders and do not trade on a marketplace.

3. All of the Applicant's Common Shares are held by its immediate parent, Enbridge Energy Distribution Inc., which is an indirect wholly owned subsidiary of Enbridge Inc. (**Enbridge**). Enbridge is the Applicant's ultimate parent and is a Canadian corporation that is a reporting issuer in all of the provinces of Canada. The common shares of Enbridge are listed on the Toronto and New York stock exchanges.
4. The Applicant is a reporting issuer and is subject to securities legislation in each of the provinces in Canada (the **Legislation**). The Applicant is not in default of any of its obligations as a reporting issuer under the Legislation.
5. National Instrument 52-110 *Audit Committees (NI 52-110)* prescribes requirements for audit committees of reporting issuers in Canada. The requirements of NI 52-110 do not apply to reporting issuers that are subsidiary entities if they satisfy the criteria set out in section 1.2(e) of NI 52-110 (the **Subsidiary Entity Exemption Criteria**).
6. The Applicant satisfies the Subsidiary Entity Exemption Criteria of NI 52-110 because (a) the Applicant is a subsidiary entity within the meaning of NI 52-110; (b) the Applicant does not have equity securities trading on a marketplace; and (c) the parent of the Applicant, Enbridge, is an issuer that is subject to the requirements of NI 52-110.
7. As an indirect wholly-owned subsidiary of Enbridge, the function of an audit committee for the Applicant is carried out at the level of Enbridge during a review of Enbridge's consolidated financial statements. The board of directors of the Applicant will approve the Applicant's financial statements, as is required by the OBCA.
8. The terms and conditions of the Group 3, Series D Preference Shares are set out in the Applicant's amended and restated articles of incorporation and the terms and conditions of the Debt Securities are set out in trust indentures. Neither the Preference Shares rights nor the Debt Securities contain restrictions or affirmative or negative covenants requiring the Applicant's board of directors to have an audit committee.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the Applicant's shareholders.

IT IS ORDERED, pursuant to subsection 158(1.1) of the OBCA, that the Applicant is authorized to dispense with an audit committee for so long as the Applicant continues to satisfy the Subsidiary Entity Exemption Criteria of NI 52-110 or any successor instrument.

DATED at Toronto, Ontario, this 19th day of December, 2018

"Mark Sandler"
Commissioner
Ontario Securities Commission

"Anne Marie Ryan"
Commissioner
Ontario Securities Commission

**2.2.5 Dennis L. Meharchand and Valt.X Holdings Inc.
– s. 127(1)**

**IN THE MATTER OF
DENNIS L. MEHARCHAND and
VALT.X HOLDINGS INC.**

Timothy Moseley, Vice-Chair and Chair of the Panel
Deborah Leckman, Commissioner
Robert P. Hutchison, Commissioner

January 22, 2018

ORDER
Section 127(1) of the
Securities Act, RSO 1990, c S.5

WHEREAS on January 22, 2018, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario to hear a motion brought by Dennis L. Meharchand and Valt.X Holdings Inc. (the **Respondents**), seeking an Order for the recusal of certain Staff of the Commission (**Staff**) from this proceeding;

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

IT IS ORDERED THAT:

1. The Respondents' motion is dismissed;
2. The Respondents shall serve and file any further notices of motion or notice of constitutional question by February 6, 2018; and
3. The parties shall adhere to the following timeline for the delivery of materials for the merits hearing:
 - a. the Respondents shall serve and file their affidavit evidence and memorandum of law and brief of authorities by February 12, 2018; and
 - b. Staff shall serve and file reply materials, if any, by February 20, 2018.

"Timothy Moseley"

"Deborah Leckman"

"Robert P. Hutchison"

2.2.6 Castle Resources Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceases to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

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

January 18, 2018

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

AND

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

AND

**IN THE MATTER OF
CASTLE RESOURCES INC.
(the Filer)**

ORDER

Background

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

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia and Alberta.

Interpretation

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

Representations

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

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
2. 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 of Canada and fewer than 51 securityholders in total worldwide;
3. 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;
4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and
5. the Filer is not in default of securities legislation in any jurisdiction.

Order

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

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

“Winnie Sanjoto”
Manager, Corporate Finance
Ontario Securities Commission

2.2.7 DIR Industrial Properties Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

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

January 23, 2018

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

AND

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

AND

**IN THE MATTER OF
DIR INDUSTRIAL PROPERTIES INC.
(the Filer)**

ORDER

Background

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

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

- (a) the Ontario Securities Commission (the **Principal Regulator**) is the principal regulator for this application, and
- (b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.

Interpretation

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

Representations

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

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
2. 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 of Canada and fewer than 51 securityholders in total worldwide;
3. 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;
4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and
5. the Filer is not in default of securities legislation in any jurisdiction.

Order

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

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

“Winnie Sanjoto”
Manager, Corporate Finance
Ontario Securities Commission

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Benedict Cheng et al.

**IN THE MATTER OF
BENEDICT CHENG,
FRANK SOAVE,
JOHN DAVID ROTHSTEIN and
ERIC TREMBLAY**

REASONS AND DECISION ON A MOTION REGARDING PRIVILEGE

Citation: *Cheng (Re)*, 2018 ONSEC 2

Date: 2018-01-10

Hearing: December 18-22, 2017

Decision: January 10, 2018

Panel: Janet A. Leiper Chair of the Panel

Appearances: Shara N. Roy For Benedict Cheng
Brian Kolenda

David Hausman For Frank Soave
Jonathan Wansbrough

Maureen Doherty For Eric Tremblay

Yvonne Chisholm For Staff of the Ontario Securities Commission
Jennifer Lynch
Christina Galbraith

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REASONS AND DECISION

I. INTRODUCTION

- [1] On April 12, 2017, Staff of the Ontario Securities Commission issued a Statement of Allegations pursuant to section 127 of the *Securities Act*¹ against the Respondents.²
- [2] The allegations concern illegal insider tipping and trading, misleading statements made to investigators and breaches of confidentiality. The events giving rise to the allegations took place within Aston Hill Financial Inc. and its related subsidiaries during the early spring and summer of 2014 and during the investigation by Staff of the OSC in 2015-2016.
- [3] The hearing into the merits of the allegations is scheduled for the weeks of April 16, 23 and 30, 2018.
- [4] On December 18-22, 2017, one of the respondents, Benedict Cheng, brought a motion requesting relief on the basis that solicitor-client privilege attaches to certain evidence from Mr. Michael K. that Staff may seek to introduce at the hearing on the merits. Staff brought a cross motion to defer the privilege issue to the hearing on the merits. For reasons issued separately, that motion was dismissed and the privilege motion ordered to proceed on the question of whether a solicitor-client relationship existed between Mr. Cheng and Mr. K. and if so, whether any of the communications were subject to solicitor-client privilege.
- [5] The evidence and a portion of the submissions on this privilege motion were heard in the absence of the public because solicitor-client privilege was at issue.
- [6] For the reasons below, Mr. Cheng's privilege motion is dismissed. Mr. Cheng has not established on a balance of probabilities that he had a solicitor-client relationship with Mr. K. at the time of the relevant events. Accordingly, the evidence of and documents from Mr. K at issue here are not subject to any privilege with respect to Mr. Cheng and do not give rise to a ground of relief on that basis.

II. BACKGROUND

A. The Entities

- [7] In 2014 Aston Hill Financial Inc. was a publicly traded company with its shares listed on the Toronto Stock Exchange and its head office in Calgary, Alberta. Aston Hill had five subsidiaries, including Aston Hill Asset Management (**AHAMI**) and Aston Hill Securities (**AHS**).
- [8] AHS was an investment dealer and member of Investment Industry Regulatory Organization of Canada (**IIROC**). It had offices in Toronto and a head office in Halifax, Nova Scotia.
- [9] AHAMI was a registered investment fund manager specializing in the development, sales and management of closed end investment funds, open end funds and hedge funds. Its office was in Toronto, Ontario where it shared contiguous space with AHS, although the two entities had different business functions and maintained separate entrances.

B. The Respondents and Other Individuals at Aston Hill

- [10] Eric Tremblay was the Chief Executive Officer and Chair of the Board of Directors of Aston Hill. He was also the Ultimate Designated Person of AHAMI and was responsible for AHAMI's compliance with securities laws in Ontario. He worked out of the Aston Hill office in Calgary.
- [11] Benedict Cheng was the President and a director of Aston Hill and the Co-Chief Investment Officer of Aston Hill and AHAMI. He was a portfolio manager at AHAMI and was registered with the OSC in that capacity. Mr. Cheng reported to Mr. Tremblay.
- [12] J.D. Rothstein was the Senior Vice President and National Sales Manager of AHAMI. He reported to Mr. Cheng. At the time of the motion, Mr. Rothstein had entered into a settlement with the OSC and was no longer appearing on the matter.
- [13] Frank Soave was a client of J.D. Rothstein. He was also an investment advisor at CIBC Wood Gundy.

¹ RSO 1990, c S.5.

² On October 26, 2017, Staff issued an Amended Statement of Allegations.

[14] Larry T. was the Chief Financial Officer at Aston Hill and worked in Calgary. John H. was the President, Chief Compliance Officer, UDP and CFO of AHS. He worked out of the Halifax office.

[15] From June 2010 until September 2014, Mr. K. was the Chief Operating Officer of Aston Hill, including AHS and AHAMI. He was also the President of AHAMI. Mr. Cheng's motion claims that Mr. K. was employed as Chief Legal Officer for Aston Hill. This question is discussed in greater detail below.

C. Mr. K.'s Employment Background and Term as Chief Operating Officer at Aston Hill

[16] Mr. K. was called to the bar of Ontario in 1992 and practiced for several years at a large firm in Toronto. Prior to joining Aston Hill, he was Senior Vice President and General Counsel at a financial organization. Mr. Cheng, who is not a lawyer, was employed at the same financial organization for eight years. Mr. Cheng testified that he knew that Mr. K. was a lawyer from his time there.

[17] Mr. K. testified he left the financial organization because he wanted to change career direction. He was tired of the role of general counsel, the work with people in conflict and the "tedious" subject matter. He decided to look for a leadership position that did not involve legal work. He was encouraged to pursue executive education and to that end, took an intensive course at Harvard University in the U.S.A. On his return to Canada in 2008, the job market had taken a downturn, so he spent some time networking. He then accepted a role at a cheque company as Executive Vice President and Chief Legal Officer.

[18] In 2009, Mr. Cheng assisted Mr. K. by providing him with contract work and office space in downtown Toronto. The contract work included the use of Mr. K.'s legal skills as he reviewed documents and did the "due diligence" on an acquisition. Mr. Cheng saw Mr. K. as doing both the legal and acquisition work for this contract. Mr. K. described himself as the "quarterback" of the deal, a role which does not require legal training. This experience led to an offer of employment with Aston Hill, negotiated between Mr. Cheng and Mr. K.

[19] The offer of June 15, 2010 described Mr. K.'s role as "Chief Operating Officer" of Aston Hill Financial Inc. In addition to a salary, bonus, stock options and benefits, Mr. K. was provided with parking, expenses and his Law Society membership fees. Business insurance held by the company was stipulated to cover any liability associated with the performance of his duties. Mr. K. maintained his license to practice law during the time he was employed at Aston Hill.

[20] On June 16, 2010, Mr. K. signed back the offer of employment. On July 27, 2010 Aston Hill issued a press release announcing Mr. K. had been appointed COO, to "take a lead role in growing Aston Hill's own mutual fund and structured financial products business." The press release made no mention of any legal position or legal duties assigned to Mr. K.

[21] On January 1, 2013, Mr. K.'s employment status was formalized. Two members of Aston Hill's Board of Directors and Mr. K. signed an executive employment agreement which described his position and acknowledged he had been so employed since August of 2010. The agreement set out Mr. K.'s duties as the COO of the corporation, which required him to:

- a. perform the duties and responsibilities of the COO of the corporation, including all those duties and responsibilities customarily performed by a person holding the same or an equivalent position in entities of a similar size to the corporation, engaged in business similar to that of the corporation, as well as such other related duties and responsibilities as may be assigned to the Executive by the CEO from time to time;
- b. accept such other office or offices which may be elected or appointed by the Board in addition to that of COO, and
- c. devote the whole of his working time, attention, efforts and skill to the performance of his employment duties and responsibilities as set out herein, and truly and faithfully serve the best interests of the corporation at all times. In particular and without limiting the generality of the foregoing, the Executive shall not engage in any personal activities or any employment consulting work, trade or other business activity on his own account or on behalf of any other Person which may compete, conflict or interfere with the performance of the Executive's duties hereunder in any way.

[22] The Executive Employment Agreement did not mention any duties as General Counsel or Chief Legal Officer. It included provisions as to confidentiality but did not discuss privilege or the specific duties of confidentiality owed by lawyers to clients.

[23] The Aston Hill organizational charts obtained and filed by Staff showed Mr. K. as COO to the parent company and to the subsidiaries AHS and AHAMI. These charts do not identify Mr. K. as having any counsel or legal officer role.

- [24] Staff's motion materials included copies of Aston Hill regulatory filings under Mr. K.'s signature. The filings recorded Mr. K.'s title as COO of Aston Hill, President of AHAMI or both.
- [25] On September 16, 2014, Mr. Tremblay sent an email to one of the Aston Hill Directors who had also signed Mr. K.'s employment agreement. The email advised of a plan to let Mr. K. go from the company and discussing his work as the COO. The email identified problems with staff being "alienated." He wrote that Mr. T. had become "very cautious" forwarding even the "simplest task" to outside counsel. Mr. Tremblay wrote that as a result the "legal bills are adding up." The email did not identify Mr. K. as general counsel or a chief legal officer.
- [26] On September 18, 2014, Aston Hill issued a press release over the names of Eric Tremblay, CEO and Ben Cheng, President announcing Mr. K.'s successor as COO and AHAMI President. Mr. K.'s successor was also a lawyer and he was not identified as Chief Legal Officer.

D. The Amaya Acquisition and Subsequent Investigation within AHS: April-October 2014

- [27] The events underlying these proceedings concerned trading in advance of the public announcement of a major gaming company acquisition. In 2014, Amaya Gaming Group Inc. was pursuing an acquisition of PokerStars and Full Tilt Poker brands. On April 25, 2014, a representative of Amaya's financial advisor from Canaccord Genuity Group Inc. asked AHAMI to sign a confidentiality agreement (NDA). Mr. Cheng arranged to have an AHAMI employee, (M.)K. sign the NDA. On signing the NDA, Mr. (M.)K. received a slide presentation on April 29, 2014 which described an offer to participate in the acquisition.
- [28] The slide presentation set out an opportunity for funds managed by AHAMI to participate in the financing in exchange for debt and new Amaya shares priced at \$20 per share. Mr. (M.)K. shared this information with Mr. Cheng and provided him with a copy of the presentation. Mr. Cheng agreed to have AHAMI participate in the financing.
- [29] On June 12, 2014, Amaya announced the acquisition of the owner of the PokerStars and Full Tilt Poker brands.
- [30] The CCO for AHS, Mr. H., noticed that certain AHS accounts had accumulated "a lot of Amaya" prior to the June 12 announcement. He decided to review the trades to find out whether there were any regulatory concerns. Mr. H. sent an email on June 13, 2014 to three traders at AHS letting them know that he was looking at the trading activity and would be speaking with them. Mr. H. copied Mr. K. on the email. Mr. H. and Mr. K. also spoke by phone within a few days of the June 13 email about next steps.
- [31] Mr. H. consulted with outside counsel as arranged by Mr. K. He updated Mr. K. on his work as it progressed. As required by IIROC rules, Mr. H. alerted IIROC of the investigation into unusual trading by filing a "ComSet" report concerning the three AHS brokers. In October 2014, Mr. H. filed further ComSet reports with IIROC which concluded there had not been any improper use of insider information by the brokers at AHS.
- [32] On the AHAMI side of the business, Mr. K. learned that there may have been trading in Amaya prior to the announcement of the acquisition. He consulted with outside counsel and as a result began to gather documents such as pre-clearance forms, trading records, emails and expense reports concerning trading by AHAMI employees, including Mr. Cheng. Mr. K. did not complete the review of the AHAMI trading before he was let go from Aston Hill.
- [33] During the period from mid-June to late July, Mr. K. created four memos to file describing information he learned during his review and interactions that he had with senior members of Aston Hill, including Mr. Cheng. During the investigation, these memos were produced to Staff by Mr. K. under summons. They are part of the intended evidence over which Mr. Cheng claims privilege.

E. The OSC Investigation: FINRA Referral, the Anonymous Letter and Identification of Potential Privilege Issues

- [34] On February 25, 2015, the Financial Industry Regulatory Authority Inc. (FINRA) referred information to the Commission about suspicious trading in Amaya in Ontario. The FINRA letter mentioned an Aston Hill account, the April 29, 2014 NDA concerning the private placement, clients of AHS and employees of AHS and AHAMI.
- [35] In April of 2015, the Staff investigator assigned to the matter was provided with an anonymous letter. The letter, dated in January of 2015, was sent by its author to both the OSC and the Autorité des marchés financiers (AMF) in Quebec. The letter alleged insider trading or tipping by a list of individuals, employees or clients of Aston Hill parent or subsidiary companies.
- [36] During the Commission's investigation into Aston Hill, Staff served summonses under the Act. The recipients were reminded to ensure that any correspondence between Aston Hill and any legal counsel were to be removed from the production of materials in response to the summons.

- [37] Aston Hill produced documents to the OSC but had not completed a document by document review for potential claims of privilege. Staff took the step of having a litigation counsel unconnected with the investigation review these materials and identify documents which could lead to a claim of privilege. Because of that review, all of the materials were returned to counsel for Aston Hill to do a further privilege review and remove potentially privileged material before making further production of documents. These steps were not related to the Mr. K. memo productions, which happened later.
- [38] Aston Hill produced a new set of documents that included emails sent/received by Mr. K. A protocol was created with notice to counsel to address any documents that could lead to a claim of privilege.
- [39] On August 11, 2015, counsel to Aston Hill confirmed that his client was not claiming privilege over any documents produced to date. Counsel stated that "Aston Hill is aware that Mr. K. would provide legal advice from time to time (as you noted, we are told that he trained and practiced as a lawyer prior to joining Aston Hill.)" Counsel suggested to Staff that it is possible that "recipients of that advice might regard their communications with Mr. K. as privileged." Those recipients were not identified. At this stage, the memos created by Mr. K. during his investigation, and over which Mr. Cheng claims privilege, were not known to or produced to Staff.
- [40] As part of its investigation, Staff contacted Mr. K. Counsel for Mr. K. accepted service of a section 13 summons for Mr. K. Counsel for Mr. K. identified potential privilege issues and Staff advised him that AHF had waived privilege over communications with him in relation to documents produced to Staff.
- [41] On April 6, 2016, Mr. K. attended at the OSC under summons. During that meeting, Mr. K. was not interviewed because he had documents to produce which could lead to a claim of privilege by Aston Hill. A log was created by counsel to Mr. K. and an agreement to postpone the interview was reached pending instructions from Aston Hill's counsel as to any potential privilege issues arising from documents produced by Mr. K. to Staff.
- [42] The documents produced by Mr. K. were provided to counsel for Aston Hill. On receipt of instructions, counsel to Aston Hill advised Staff that Aston Hill was not asserting any privilege over the documents held by Staff and agreed that Staff should access those documents. Counsel to Mr. K. confirmed his understanding and noted "We are unaware of any other claim or possible or potential claim of privilege in relation to any of the documents."
- [43] Staff unsealed the documents produced by Mr. K. on May 5, 2016 and used these, including the disputed memos to file, as part of its ongoing investigation.
- [44] On June 2, 2016, Staff interviewed Mr. K. under section 13 summons. During that interview, Mr. K. discussed the making of the memos and his inquiries into the Amaya trading at Aston Hill. He did not identify any other potential clients who might have an interest in these communications at the time of his interview.
- [45] Mr. K. admitted that he was the author of the anonymous letter to the OSC and to the AMF.
- [46] On June 9, 2016, Mr. Cheng was interviewed under a section 13 summons. He was asked questions about the memos written by Mr. K. Through counsel, Mr. Cheng reserved the right to claim privilege over any of the documents. Staff noted the OSC had been informed that Mr. K. did not hold a general counsel position at Aston Hill and had been employed there as the COO. Mr. Cheng testified at his examination that Mr. K. was also Chief Legal Officer of Aston Hill.
- [47] With this background in place, the issues relating to Mr. Cheng's claims of privilege on this motion are ready to be discussed.

III. ISSUES AND ANALYSIS

- [48] Mr. Cheng seeks to claim privilege over a broad collection of evidence disclosed by Staff, including things such as memos written by Mr. K, the anonymous letter delivered to the Commission and AMF and transcripts of compelled testimony.
- [49] The issues here are:
- a. Did Mr. K. and Mr. Cheng have a solicitor-client relationship?
 - b. If such a solicitor-client relationship is established by the evidence, which, if any of the communications identified by Mr. Cheng, are subject to solicitor-client privilege?

[50] The parties agree that in considering whether privilege attaches to any communication, the following statement of the law from *Solosky* and *Campbell* applies:

Where legal advice of any kind is sought from a professional legal adviser in his capacity as such, the communications relating to that purpose, made in confidence by the client, are at his instance permanently protected from disclosure by himself or by the legal adviser, except the protection be waived.³

A. Did Mr. K. and Mr. Cheng have a solicitor-client relationship?

[51] The first step in determining whether privilege attaches to any communication is to determine whether any advice was sought by Mr. Cheng from Mr. K. acting as a legal adviser. The mere demonstration of a communication between the two parties, where one is a lawyer, will not be enough to establish a solicitor-client relationship.

[52] The “capacity” of the professional legal adviser must be determined with regard to the evidence of the relationship. This is a fact driven analysis. It is considered using objective criteria, looked at from the perspective of the client. Indications of a solicitor-client relationship may be found in any of the following:

- a. a contract or retainer;
- b. a file opened by the lawyer;
- c. meetings between the lawyer and the party;
- d. correspondence between the lawyer and the party;
- e. a bill rendered by the lawyer to the party;
- f. a bill paid by the party;
- g. instructions given by the party to the lawyer;
- h. the lawyer acting on instructions given;
- i. statements made by the lawyer that the lawyer is acting for the party;
- j. a reasonable expectation by the party about the lawyer’s role;
- k. legal advice given; and
- l. any legal documents created for the party.⁴

[53] Formality is not a prerequisite to forming a solicitor-client relationship.⁵ The onus of establishing a solicitor-client relationship is on the party asserting the privilege.⁶

1. Did Aston Hill Have a Solicitor-Client Relationship with Mr. K.?

[54] As part of the analysis into any solicitor-client relationship between Mr. Cheng and Mr. K., it is important to consider both Mr. K.’s corporate role at Aston Hill as well as his role as potential counsel to Mr. Cheng personally. If Mr. K. was counsel to Aston Hill this could be relevant to the reasonableness of Mr. Cheng’s claim that he had a personal solicitor-client relationship with Mr. K.

[55] The Aston Hill corporate records, internally and externally, consistently described Mr. K. as a COO at Aston Hill and/or President of AHAMI. The records are silent on any legal responsibilities. This was consistent with Mr. K.’s evidence about his role. Mr. K. testified that from the beginning of his employment he made it clear that “he did not want to be the ‘go-to’ guy for legal issues.” Although Mr. K. maintained his status as a licensee of the Law Society of Upper Canada by reporting to his legal regulator that was “exempt in-house counsel,” he said he did so to maintain his membership.

³ *R v Campbell*, [1999] 1 SCR 565 (*Campbell*) at para 49; *Solosky v The Queen*, [1980] 1 SCR 821 (*Solosky*) at 835.

⁴ *Jeffers v Calico Compression Systems*, 2002 ABQB 72 (*Jeffers*) at para 8; applied in *Trillium Motor World Ltd. v General Motors of Canada Ltd.*, [2015] OJ No 3602 (*Trillium*) at para 412.

⁵ *Mammarino’s Creative Foods Inc. v Pezzaniti*, 2015 ONSC 1190 at para 13.

⁶ *Gower v Tolko Manitoba Inc.*, 2001 MBCA 11 (*Gower*) at para 18.

- [56] Mr. Cheng recalled a different set of discussions leading to Mr. K.'s employment at Aston Hill. He said that initially he offered a contract to Mr. K., to assist with an acquisition of a set of funds, and that this included legal work. This in turn led to the offer of employment at Aston Hill. Mr. Cheng said Mr. K. agreed to take on operational duties and take care of legal issues that arose with senior management. Mr. Cheng said that he had not read through the employment agreement signed by Mr. K. but if it only described the COO role that "regardless, it was agreed upon between [Mr. K.] and myself and Mr. Tremblay that [Mr. K.] would handle all of the legal responsibilities at the firm."
- [57] As noted above, Mr. K.'s executive employment contract described him as COO and did not refer to any legal duties. The contract did not require an active law licence, nor did it describe any of the specific responsibilities owed by lawyers to clients under the Rules of Professional Conduct for privilege and confidentiality or the importance of avoiding potential conflicts when acting as in-house counsel. Although the offer in 2010 included payment of Mr. K.'s licensing fees, the agreement was silent on this aspect of remuneration.
- [58] The signatories to the employment agreement for Aston Hill, two members of the board, did not testify as to the employment arrangement or any additional legal duties expected of Mr. K. and not mentioned in the agreement.
- [59] Mr. K. described his duties as COO: he handled operations, product development, people management and vendor relationships including auditors, lawyers, the fund custodian and the information technology providers to Aston Hill. Where legal advice was required for Aston Hill funds and entities, outside counsel performed this function. He reported largely to Mr. Cheng, but noted that the organization chart showed joint reporting to Mr. Cheng and Mr. Tremblay. He was not challenged on his description of his operational duties to Aston Hill.
- [60] Mr. K. testified that he took steps to remind Mr. Tremblay of his role on the occasions when Mr. Tremblay introduced Mr. K. to third parties as a lawyer.
- [61] Mr. K. testified that during his time at Aston Hill he did not provide legal advice to Mr. Cheng on any of the issues raised by Mr. Cheng in the motion materials. He denied giving legal advice in any of the areas claimed by Mr. Cheng, specifically about his capacity as portfolio manager, his responsibilities with the IA Clarington Funds, advice about conflicts among funds, and advice on trading, blackouts and confidentiality agreements. Mr. K. testified that he did not provide legal advice to Mr. Tremblay or to any other senior executive at AHAMI.
- [62] Mr. Cheng described the legal needs of the organization as being "complex." He testified that Mr. K. assisted him with trading in Aston Hill stock, with blackout periods and questions about confidentiality agreements. He testified that Mr. K.'s replacement was also a lawyer and was retained to handle operational and legal issues. Mr. Cheng testified that Mr. K. assisted the firm, himself and all subsidiaries with legal issues on a consistent basis. In cross-examination, Mr. Cheng was unable to identify a specific occasion when he received personal advice from Mr. K. Mr. Cheng agreed that he did not have any documentation or opinion letters concerning personal legal advice received from Mr. K.
- [63] In cross-examination, Mr. Cheng agreed that the titles and entities shown on the organizational charts for himself, the CEO, the CFO and for Mr. K. as COO were accurate. He agreed that there was no reference on the organizational charts to Mr. K. being Chief Legal Officer or Counsel to Aston Hill.
- [64] Staff put an article describing a 2013 interview with Mr. K. to Mr. Cheng in cross-examination. Mr. K. described his work in that interview, which pre-dated the Amaya acquisition, in operational terms. The interview was consistent with Mr. K.'s evidence about his intended career trajectory to seek "a broader leadership opportunity." Mr. Cheng agreed that the article did not describe any legal work on the part of Mr. K. The only portions of the article that referred to law were the summary of Mr. K.'s biography and a reference to the highly regulated mutual fund sector and his ability to "contribute with my corporate-and securities-law backgrounds."
- [65] Mr. Cheng agreed that as a public company, it was important for Aston Hill's filings to be accurate. He agreed that all public filings referred to Mr. K. as COO or President, and none of the filings described his role as Chief Legal Officer.
- [66] The CEO of Aston Hill, Mr. Tremblay, did not testify on the motion.
- [67] In support of his position that Mr. K. provided legal officer services while at Aston Hill, Mr. Cheng tendered email communications in which Mr. K. was asked for or provided information about matters that had legal implications for either Aston Hill or officers of Aston Hill. These are described and discussed in turn:
- a. **An email string concerning employment/termination negotiations alongside outside counsel in June of 2014:**
- these communications were consistent with Mr. K.'s evidence that he managed relationships with outside professionals including employment counsel in June of 2014. Mr. K.'s passed along external counsel's

communications and an offer from opposing counsel. The communication is consistent with being from an executive representative tasked with managing outside relationships with counsel and having an HR function. Mr. K. testified that he had these responsibilities. There is no legal advice in the email communication from Mr. K.

- b. **A one-page email report from Mr. K. to Mr. Tremblay, Mr. Cheng and the CFO of Aston Hill on his attendance at a mediation, and an offer to settle made to the former employee:**

Mr. K. testified that he did not recall if he was there as a representative of the company alongside external counsel, or was there for Aston Hill without counsel present. The emails do not contain any legal advice.

- c. **A May 13, 2014 email in which Mr. Cheng sent an NDA to Mr. K. along with a request to look at it for “any issues”:**

Mr. K testified that part of his operational role was to review NDAs. No response or advice from Mr. K. was tendered. At its highest, and if there were no other evidence about Mr. K.’s role at Aston Hill, this request could be seen to be ambiguous. If an employee asked this question of a lawyer in the role of general counsel, it could fairly be described as a request for advice of a legal nature, consistent with that role. If made to a head of operations, it could also be seen to be ensuring that the person responsible for company activities on a broader context is aware and able to provide strategic direction on issues that could accompany non-disclosure. An executive in that role might identify legal issues to be pursued with counsel to the firm. This would be consistent with an executive tasked with making referrals to outside providers of services, including legal services. Mr. K. testified that part of his role was to be the common record keeping of NDAs. On its own, this communication without more, does not determine the question of Mr. K’s role.

- d. **An email of April 14, 2014 sent by Mr. K. to Mr. Tremblay, Mr. Cheng and the CFO marked “Confidential” in which Mr. K. described the termination provisions in a contract with a mutual fund provider:**

The email included underlined provisions around the expiry and continuation of the contract. The CFO forwarded it to the Board of Directors by the CFO who wrote “Below is an update from (Mr. K.) regarding the situation with (the fund) as requested at the last Board meeting.” Mr. K. testified that he underlined the point in the email because there was confusion in the office about the contract. He said he summarized its content, did not provide legal advice and that the question was a strategic rather than a legal point. As with the question about the NDA, this question is ambiguous.

Although Mr. K.’s clarification of the contract in is consistent with providing legal advice to a corporate client interested in its responsibilities under that contract, it is equally consistent with a reading of the contract by an executive. It could have been reasonable for any of the recipients to conclude that on that isolated occasion, they had the benefit of Mr. K.’s legal training in reading legal text. It is a second isolated example in the larger context of the role and duties undertaken by Mr. K. In the context of the other consistent evidence about Mr. K.’s role, including corporate documentation, this communication does not establish that Mr. K. was acting throughout his time at Aston Hill as a legal officer or in-house counsel.

- e. **A request for advice in relation to trading in the Amaya stock by a member of the Board of Directors referred to one of Mr. K.’s memos:**

Mr. K. noted that he had been approached by a Board member for advice on trading in Amaya. Mr. K. said that he received a faxed copy of a late fee notice from SEDI to the Board member. Mr. K. spoke with the Board member who reported getting advice from a person in the Aston Hill Calgary office. Mr. K. asked the Board member’s permission to look into the matter and contacted outside counsel to get advice from them on what to do next. He passed along this advice to the Board member, and gave no legal advice himself. This was consistent with the documents filed about that contact and the other evidence of his role. No evidence was called to the contrary and Mr. K. was not cross-examined on this description of that event.

[68] As the Supreme Court of Canada noted in *Campbell*, lawyers may be valuable as much for their business sense as for legal acumen. “No solicitor-client privilege attaches to advice on purely business matters even where it is provided by a lawyer.” The finder of fact must determine the nature of the relationship, the subject matter of the advice and the circumstances in which the information is sought and provided.⁷

⁷ *Campbell* at para. 50.

[69] Here, the documents that defined the relationship from the beginning of the employer-employee relationship, the extrinsic evidence of statements made about the role in 2013 during the interview with Mr. K. and the unchallenged account of Mr. K.'s actions when asked directly for advice by a Board member, are consistent with an operational, not a legal role. Mr. Cheng's assertion of a different negotiation and hiring arrangement is not borne out by the contracts, announcements, filings and contemporaneous description of Mr. K.'s role.

[70] Mr. Cheng's evidence that he understood to be Mr. K. was acting as Chief Legal Officer cannot be said to have been reasonably held. The ambiguous nature of the isolated communications tendered by Mr. Cheng and discussed above are insufficient to establish a solicitor-client relationship between Aston Hill and Mr. K. during Mr. K's employment. The indicia applied in *Jeffers* and *Trillium* to determine the existence of a solicitor-client relationship are largely absent here, with the only common factor being meetings among executives in a regulated industry, with public and private legal obligations attaching to the work at hand.

2. Did Mr. Cheng have a Solicitor-Client Relationship with Mr. K. prior to the June 2014 Review?

[71] In Mr. Cheng's affidavit he testified he sought legal advice from Mr. K. on matters relating to his own personal trading, his obligations under non-disclosure agreements, blackout periods and otherwise. However, Mr. Cheng's affidavit also stated that he would not waive privilege in any of these discussions and was not intending to get into the substance of those discussions. This leaves his position as a bare assertion, without substance, of a personal solicitor-client relationship with Mr. K.

[72] As described above, Mr. K. specifically denied giving any personal legal advice to Mr. Cheng. I accept this evidence.

[73] I am unable to find that Mr. Cheng has established on a balance of probabilities that he had a solicitor-client relationship with Mr. K. prior to the June 2014 Review.

[74] These findings do not complete the analysis. By June of 2014, Mr. K. had assigned himself the task of reviewing certain trades made by AHAMI in Amaya and liaising with John H., in the investigation mandated by IIROC rules. In June, Mr. K. requested that a staff member begin pulling the necessary records to assist with this review. This raises the related question as to whether Mr. K.'s role changed at this stage to include legal responsibilities and again whether he formed a solicitor-client relationship with Mr. Cheng.

[75] The question of whether such a relationship developed in June and July of 2014 is considered below.

3. The June 2014 Review: Did Mr. K.'s Role Change? Was Any Solicitor-Client Relationship Formed with Mr. Cheng During the Review?

[76] Mr. K. gave evidence that he asked for advice from outside counsel about whether to review trades made in advance of the Amaya announcement within AHAMI. He brought these recommendations to Mr. Tremblay and to Mr. Cheng. His goal was to avoid jumping to conclusions, and to be thorough. Mr. K. identified the need to have outside counsel because of the complexity of securities law and due to close personal relationships between two staff members being investigated by Mr. H. on the AHS side, and Mr. Cheng.

[77] In June and July of 2014, Mr. K. made personal notes and observations about what he was hearing from his fellow officers on a laptop computer. These are the memos which have attracted a claim of privilege from Mr. Cheng. Mr. Cheng disputes some of the comments attributed to him by Mr. K. in these memos, and does not have a separate recollection of what was said on these occasions. His affidavit in support of the motion says he is not certain about the details of these conversations and at times, Mr. Tremblay was present. Mr. Cheng testified that generally Mr. K. had given him advice about the risks to the company as well as to himself, personally, but he provided no further detail, recordings or notes.

[78] It is not the task on this motion to determine the accuracy of the conversations in Mr. K.'s memos. On their face, the memos describe conversations among executives, including Mr. K., in casual locations, in the company of other people. There is no direct request for legal advice or response with legal advice recorded in any of the memos. Mr. Cheng did not describe a specific recollection or recording of requests for legal advice on these occasions. They are therefore not associated with "consultation for legal advice."⁸

[79] It will be for the merits panel to resolve the dispute about any apparent admissions of wrongdoing by Mr. Cheng as found in the memos from Mr. K. If these are accurate recordings of Mr. K.'s recollection of the events, they are not couched in the language of requests for advice by Mr. Cheng. They are more in line with assertions to Mr. K. by an officer senior to him about the utility of the review. If the memos are inaccurate, there is no reliable alternative account

⁸ *Pritchard v Ontario (Human Rights Commission)*, [2004] SCJ No 16 at para 15.

of advice sought or received that provides support for the assertion that Mr. Cheng had a solicitor and client relationship with Mr. K. as of the summer of 2014.

[80] Mr. Cheng testified that he thought that the conversations described in the memos would be kept confidential. In the context of the confidentiality provisions contained in the employment agreement Mr. K. signed, this is reasonable. Mr. K. agreed with this and recorded the following in his memo of July 2, 2014:

They [Mr. Tremblay and Mr. Cheng] seemed worried that [Mr. H.] would jump to conclusions so I told them we were working together on this and I would personally make sure they were in the loop before any kind of further filing or outside involvement was necessary.

[81] This expectation of business confidentiality, during a review that was ongoing, does not equate to a solicitor-client obligation of confidentiality merely because the person conducting the review had legal training or credentials.

[82] Staff described Mr. K as an “officer of the company engaged in a fact-finding exercise who happened to have a law degree.” This is a fair characterization of Mr. K.’s role during June-September 2014. The evidence does not establish that Mr. K.’s role as COO expanded during the review to include a solicitor-client relationship with Mr. Cheng, or jointly with Mr. Tremblay.

IV. CONCLUSION

[83] Having found that Mr. K. was not counsel to Aston Hill, nor to Mr. Cheng at any of the relevant times, solicitor-client privilege does not attach to the communications recorded or reported by Mr. K. concerning these events. The balance of the motion for relief depends on such a finding and as such, Mr. Cheng’s motion is dismissed.

Dated at Toronto this 10th day of January, 2018.

“Janet A. Leiper”

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

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Alliance Growers Corp.	05 January 2018	19 January 2018

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
THERE IS NOTHING TO REPORT THIS WEEK.		

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
Katanga Mining Limited	15 August 2017	

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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 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:

Desjardins Money Market Fund
Desjardins Canadian Bond Fund
Desjardins SocieTerra Canadian Bond Fund
Desjardins Enhanced Bond Fund
Desjardins Global Inflation Linked Bond Fund
Desjardins Global Corporate Bond Fund
Desjardins Floating Rate Income Fund
Desjardins Global Tactical Bond Fund
Desjardins Canadian Preferred Share Fund
Desjardins Emerging Markets Bond Fund
Desjardins Tactical Balanced Fund
Desjardins Québec Balanced Fund
Desjardins Dividend Growth Fund
Desjardins Canadian Equity Income Fund
Desjardins Canadian Equity Fund
Desjardins Canadian Equity Value Fund
Desjardins Canadian Equity Growth Fund
Desjardins American Equity Value Fund
Desjardins American Equity Growth Fund
Desjardins American Equity Growth Currency Neutral Fund
Desjardins SocieTerra American Equity Fund
Desjardins Overseas Equity Growth Fund
Desjardins Global Dividend Fund
Desjardins SocieTerra Environment Fund
Desjardins Global Small Cap Equity Fund
Desjardins IBrix Low Volatility Emerging Markets Fund
Desjardins Emerging Markets Fund
Desjardins Emerging Markets Opportunities Fund
Desjardins Global Infrastructure Fund
Melodia Maximum Growth Portfolio
SocieTerra Conservative Portfolio
SocieTerra Maximum Growth Portfolio
Principal Regulator – Quebec

Type and Date:

Amendment #3 to Final Simplified Prospectus dated
January 16, 2018

Received on January 17, 2018

Offering Price and Description:

–

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

Desjardins Investments Inc.

Project #2579930

Issuer Name:

Dividend 15 Split Corp.
Principal Regulator – Ontario

Type and Date:

Preliminary Short Form Prospectus (NI 44-101) dated
January 16, 2018

NP 11-202 Preliminary Receipt dated January 16, 2018

Offering Price and Description:

Offering: \$ *- * Preferred Shares and * Class A Shares

Price: \$* per Preferred Share and Class A Share

Underwriter(s) or Distributor(s):

National Bank Financial Inc.

CIBC World Markets Inc.

Scotia Capital Inc.

RBC Dominion Securities Inc.

TD Securities Inc.

BMO Nesbitt Burns Inc.

Canaccord Genuity Corp.

Industrial Alliance Securities Inc.

Echelon Wealth Partners Inc.

GMP Securities L. P.

Raymond James Ltd.

Desjardins Securities Inc.

Mackie Research Capital Corporation

Manulife Securities Incorporated

Promoter(s):

N/A

Project #2718536

Issuer Name:

Dividend 15 Split Corp.
Principal Regulator – Ontario

Type and Date:

Amended and Restated to Preliminary Short Form
Prospectus dated January 17, 2018
NP 11-202 Preliminary Receipt dated January 18, 2018

Offering Price and Description:

Offerings: \$103,893,900 – 4,971,000 Preferred Shares and
4,971,000 Class A Shares
Price: \$10.00 per Preferred Share and \$10.90 per Class A
Share

Underwriter(s) or Distributor(s):

National Bank Financial Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
Industrial Alliance Securities Inc.
Echelon Wealth Partners Inc.
GMP Securities L. P.
Raymond James Ltd.
Desjardins Securities Inc.
Mackie Research Capital Corporation
Manulife Securities Incorporated

Promoter(s):

N/A

Project #2718536

Issuer Name:

Dividend Growth Split Corp.
Principal Regulator – Ontario

Type and Date:

Amendment #1 to Final Shelf Prospectus dated January
17, 2018
Received on January 17, 2018

Offering Price and Description:

–

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2472931

Issuer Name:

Global Innovation Dividend Fund
Principal Regulator – Alberta (ASC)

Type and Date:

Preliminary Long Form Prospectus dated January 19, 2018
NP 11-202 Preliminary Receipt dated January 19, 2018

Offering Price and Description:

Maximum Offering: \$* – * Units
Minimum Offering: \$20,000,000 – 2,000,000 Units
Price: \$10.00 per unit
Minimum Purchase: \$1000 – 100 Units

Underwriter(s) or Distributor(s):

CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
National Bank Financial Inc.
Raymond James Ltd.
Manulife Securities Incorporated
Industrial Alliance Securities Inc.
Middlefield Capital Corporation
Desjardins Securities Inc.
Mackie Research Capital Corporation

Promoter(s):

Middlefield Limited

Project #2719879

Issuer Name:

Mackenzie Emerging Markets Fund
Mackenzie Emerging Markets Large Cap Fund
Mackenzie Emerging Markets Small Cap Fund
Mackenzie US Small Cap Fund
Principal Regulator – Ontario

Type and Date:

Preliminary Simplified Prospectus dated January 19, 2018
NP 11-202 Preliminary Receipt dated January 19, 2018

Offering Price and Description:

Series A, AR, D, F, FB, O, PW, PWF, PWFB, PWX and R

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

Mackenzie Financial Corporation

Project #2719732

Issuer Name:

Marijuana Opportunities Fund
Principal Regulator – Ontario

Type and Date:

Amendment #1 to Final Simplified Prospectus dated
January 16, 2018

Received on January 17, 2018

Offering Price and Description:

–

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

Redwood Asset Management Inc.

Project #2610753

Issuer Name:

Sphere FTSE Canada Sustainable Yield Index ETF
Sphere FTSE Europe Sustainable Yield Index ETF
Sphere FTSE Emerging Markets Sustainable Yield Index
ETF

Principal Regulator – Ontario

Type and Date:

Amendment #2 to Final Long Form Prospectus dated
January 16, 2018

Received on January 19, 2018

Offering Price and Description:

–

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2584700

Issuer Name:

The GBC Money Market Fund
The GBC Canadian Bond Fund
The GBC Growth and Income Fund
The GBC Canadian Growth Fund
The GBC American Growth Fund Inc.
The GBC International Growth Fund

Principal Regulator – Quebec

Type and Date:

Amended and Restated to Final Simplified Prospectus
dated January 15, 2018

Received on January 16, 2018

Offering Price and Description:

–

Underwriter(s) or Distributor(s):

Pembroke Private Wealth Management Ltd.

Promoter(s):

Pembroke Private Wealth Management Ltd.

Project #2596116

Issuer Name:

1832 AM Canadian Dividend LP
1832 AM Canadian Growth LP
1832 AM Canadian Preferred Share LP
1832 AM Global Completion LP
1832 AM North American Preferred Share LP
1832 AM Tactical Asset Allocation LP
Scotia Global Low Volatility Equity LP
Scotia Total Return Bond LP
Scotia U.S. Dividend Growers LP
Scotia U.S. Low Volatility Equity LP

Type and Date:

Final Simplified Prospectus dated January 18, 2018

Received on January 18, 2018

Offering Price and Description:

Series I units

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

1832 Asset Management L.P.

Project #2708872

Issuer Name:

Barometer Disciplined Leadership Balanced Fund
Barometer Disciplined Leadership Equity Fund
Barometer Disciplined Leadership Tactical Income Growth
Fund

Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated January 18, 2018

NP 11-202 Receipt dated January 19, 2018

Offering Price and Description:

Series A, F and I units @ net asset value

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2708068

Issuer Name:

BMO Canadian Top 15 Small Cap TACTIC Fund
BMO FinTech Sector TACTIC Fund
BMO U.S. Top 15 Small Cap TACTIC Fund
Principal Regulator – Ontario

Type and Date:

Final Long Form Prospectus dated January 17, 2018

NP 11-202 Receipt dated January 18, 2018

Offering Price and Description:

Units

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

BMO Nesbitt Burns Inc.

Project #2568232

Issuer Name:

Dividend Growth Split Corp.
Principal Regulator – Ontario

Type and Date:

Amendment #1 to Final Shelf Prospectus dated January 17, 2018

NP 11-202 Receipt dated January 19, 2018

Offering Price and Description:

–

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2472931

Issuer Name:

Dynamic Active Canadian Dividend Fund
Dynamic Active Crossover Bond Fund
Dynamic Active Global Dividend Fund
Dynamic Active Global Financial Services Fund
Dynamic Active Preferred Shares Fund
Dynamic Active Tactical Bond Fund
Dynamic Active U.S. Dividend Fund
Dynamic Active U.S. Mid-Cap Fund
Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated January 15, 2018

NP 11-202 Receipt dated January 17, 2018

Offering Price and Description:

Series O Units

Underwriter(s) or Distributor(s):

1832 Asset Management L.P.

Promoter(s):

1832 Asset Management L.P.

Project #2708029

Issuer Name:

Dynamic iShares Active Canadian Dividend ETF
Dynamic iShares Active Crossover Bond ETF
Dynamic iShares Active Global Dividend ETF
Dynamic iShares Active Global Financial Services ETF
Dynamic iShares Active Preferred Shares ETF
Dynamic iShares Active Tactical Bond ETF
Dynamic iShares Active U.S. Dividend ETF
Dynamic iShares Active U.S. Mid-Cap ETF
Principal Regulator – Ontario

Type and Date:

Final Long Form Prospectus dated January 19, 2018

NP 11-202 Receipt dated January 22, 2018

Offering Price and Description:

Units @ Net Asset Value

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2710247

Issuer Name:

Horizons China High Dividend Yield Index ETF
Principal Regulator – Ontario

Type and Date:

Final Long Form Prospectus dated January 18, 2018

NP 11-202 Receipt dated January 19, 2018

Offering Price and Description:

Class A units @ net asset value

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2708632

Issuer Name:

Mackenzie Balanced ETF Portfolio
Mackenzie Conservative ETF Portfolio
Mackenzie Conservative Income ETF Portfolio
Mackenzie Growth ETF Portfolio
Mackenzie Moderate Growth ETF Portfolio
Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated January 15, 2018

NP 11-202 Receipt dated January 16, 2018

Offering Price and Description:

Series A, AR, D, F, F5, FB, FB5, O, PW, PWF, PWF5, PWFB, PWFB5, PWT5, PWX, PWX5 and T5 securities

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

Mackenzie Financial Corporation

Project #2694335

Issuer Name:

RP Strategic Income Plus Fund
Principal Regulator – Ontario

Type and Date:

Final Simplified Prospectus dated January 12, 2018

NP 11-202 Receipt dated January 16, 2018

Offering Price and Description:

Class A, Class F, Class O and Class M Units @ Net Asset Value

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

RP Investment Advisors GP Inc.

Project #2708952

Issuer Name:

Vanguard Balanced ETF Portfolio
Vanguard Conservative ETF Portfolio
Vanguard Global Liquidity Factor ETF
Vanguard Global Minimum Volatility ETF
Vanguard Global Momentum Factor ETF
Vanguard Global Value Factor ETF
Vanguard Growth ETF Portfolio
Principal Regulator – Ontario

Type and Date:

Final Long Form Prospectus dated January 9, 2018
NP 11-202 Receipt dated January 17, 2018

Offering Price and Description:

units @ net asset value

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

Vanguard Investments Canada Inc.

Project #2692070

NON-INVESTMENT FUNDS

Issuer Name:

Emblem Corp. (formerly Saber Capital Corp.)
Principal Regulator – Ontario

Type and Date:

Preliminary Short Form Prospectus dated January 18, 2018
NP 11-202 Preliminary Receipt dated January 18, 2018

Offering Price and Description:

\$25,000,002.00 Offering of Units
(12,195,123 Units at a price of \$2.05 per Unit)
– and –
\$25,000,000.00 of 8.0% Convertible Unsecured
Debentures due in 2021
(25,000 Debentures at a price of \$1,000.00 per Debenture)

Underwriter(s) or Distributor(s):

Eight Capital
Canaccord Genuity Corp.
Echelon Wealth Partners Inc.
GMP Securities L.P.

Promoter(s):

–

Project #2717673

Issuer Name:

Golden Predator Mining Corp.
Principal Regulator – British Columbia

Type and Date:

Preliminary Short Form Prospectus dated January 22, 2018
NP 11-202 Preliminary Receipt dated January 22, 2018

Offering Price and Description:

\$*
* Flow-Through Units
Price: \$* per Flow-Through Unit

Underwriter(s) or Distributor(s):

Clarus Securities Inc.

Promoter(s):

–

Project #2720224

Issuer Name:

Mandalay Resources Corporation
Principal Regulator – Ontario

Type and Date:

Preliminary Shelf Prospectus dated January 22, 2018
NP 11-202 Preliminary Receipt dated January 22, 2018

Offering Price and Description:

C\$250,000,000.00
Common Shares, Debt Securities, Subscription Receipts,
Warrants, Units

Underwriter(s) or Distributor(s):

–

Promoter(s):

–

Project #2720137

Issuer Name:

Organigram Holdings Inc. (formerly, Inform Exploration
Corp.)

Principal Regulator – New Brunswick

Type and Date:

Preliminary Short Form Prospectus dated January 16, 2018
NP 11-202 Preliminary Receipt dated January 16, 2018

Offering Price and Description:

\$100,000,000.00 – 6.00% Convertible Unsecured
Debentures
Price: \$1,000.00 per Debenture

Underwriter(s) or Distributor(s):

Eight Capital
Canaccord Genuity Corp.
GMP Securities L.P.
Mackie Research Capital Corporation

Promoter(s):

–

Project #2717089

Issuer Name:

Pro Real Estate Investment Trust
Principal Regulator – Quebec

Type and Date:

Preliminary Short Form Prospectus (NI 44-101) dated
January 16, 2018
NP 11-202 Preliminary Receipt dated January 16, 2018

Offering Price and Description:

\$25,001,000.00 – 10,870,000 Trust Units
Price \$2.30 Per Trust Unit

Underwriter(s) or Distributor(s):

Canaccord Genuity Corp.
TD Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Haywood Securities Inc.
Raymond James Ltd.
Laurentian Bank Securities Inc.
Leede Jones Gable Inc.
Industrial Alliance Securities Inc.

Promoter(s):

–

Project #2717155

Issuer Name:

Stelco Holdings Inc.
Principal Regulator – Ontario

Type and Date:

Preliminary Shelf Prospectus dated January 19, 2018
NP 11-202 Preliminary Receipt dated January 19, 2018

Offering Price and Description:

\$100,000,000.00 – Common Shares, Preferred Shares,
Debt Securities, Warrants, Subscription Receipts, Units

Underwriter(s) or Distributor(s):

–

Promoter(s):

–

Project #2719745

Issuer Name:

Torex Gold Resources Inc.
Principal Regulator – Ontario

Type and Date:

Preliminary Shelf Prospectus dated January 16, 2018
NP 11-202 Preliminary Receipt dated January 17, 2018

Offering Price and Description:

\$500,000,000.00 – Common Shares, Debt Securities,
Subscription Receipts, Warrants, Units

Underwriter(s) or Distributor(s):

–

Promoter(s):

–

Project #2718724

Issuer Name:

AIM2 Ventures Inc.
Principal Regulator – Ontario

Type and Date:

Final CPC Prospectus (TSX-V) dated January 17, 2018
NP 11-202 Receipt dated January 18, 2018

Offering Price and Description:

Minimum Offering: \$360,000.00 or 3,600,000 Common
Shares
Maximum Offering: \$500,000.00 or 5,000,000 Common
Shares

Price: \$0.10 per Common Share

Underwriter(s) or Distributor(s):

Haywood Securities Inc.

Promoter(s):

–

Project #2713016

Issuer Name:

Cannabis Growth Opportunity Corporation
Principal Regulator – Ontario

Type and Date:

Final Long Form Prospectus dated January 16, 2018
NP 11-202 Receipt dated January 17, 2018

Offering Price and Description:

Minimum: \$5,000,000.00 of Units
Maximum: \$75,000,000.00 of Units
Price: \$2.50 per Unit

Underwriter(s) or Distributor(s):

Eight Capital
Canaccord Genuity Corp.
Haywood Securities Inc.
Mackie Research Capital Corporation
Beacon Securities Limited
PI Financial Corp.
Velocity Trade Capital Ltd.

Promoter(s):

CGOC Management Corp.

Project #2700140

Issuer Name:

Cronos Group Inc.
Principal Regulator – Ontario

Type and Date:

Final Short Form Prospectus dated January 18, 2018
NP 11-202 Receipt dated January 18, 2018

Offering Price and Description:

\$40,000,003.75 – 4,571,429 Common Shares
Price: \$8.75 per Share

Underwriter(s) or Distributor(s):

PI Financial Corp.
GMP Securities L.P.
Beacon Securities Limited
Cormark Securities Inc.

Promoter(s):

Alan Friedman

Project #2716224

Issuer Name:

MedReleaf Corp.
Principal Regulator – Ontario

Type and Date:

Final Short Form Prospectus dated January 22, 2018
NP 11-202 Receipt dated January 22, 2018

Offering Price and Description:

\$132,500,000.00 – 5,000,000 Units
Price: \$26.50 per Unit

Underwriter(s) or Distributor(s):

Canaccord Genuity Corp.
GMP Securities L.P.,
Clarus Securities Inc.
Cormark Securities Inc.
Beacon Securities Limited
Echelon Wealth Partners Inc.
Eight Capital
PI Financial Corp.

Promoter(s):

–

Project #2716533

Issuer Name:

The Stars Group Inc.
Principal Regulator – Ontario

Type and Date:

Final Shelf Prospectus dated January 16, 2018
NP 11-202 Receipt dated January 16, 2018

Offering Price and Description:

US\$3,000,000,000.00 – Common Shares, Preferred
Shares, Debt Securities, Subscription Receipts, Warrants,
Units

Underwriter(s) or Distributor(s):

–

Promoter(s):

–

Project #2706343

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	Liberty House Asset Management Inc.	Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	January 16, 2018
Consent to Suspension (Pending Surrender)	Foremost Capital Inc.	Exempt Market Dealer	January 16, 2018
Voluntary Surrender	TAO Securities Inc.	Exempt Market Dealer	January 16, 2018
Voluntary Surrender	Sampfurd Advisors Inc.	Exempt Market Dealer	January 16, 2018
Consent to Suspension (Pending Surrender)	Oechsle International Advisors, LLC	Portfolio Manager	January 16, 2018
Suspension (Non-Renewal)	Diversified Global Asset Management Corporation	Commodity Trading Adviser	January 1, 2018
New Registration	Crimson Asset Management Ltd.	Portfolio Manager, Exempt Market Dealer and Investment Fund Manager	January 22, 2018

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 IIROC – Proposed Amendments to IIROC Continuing Education Rules – Request for Comment

REQUEST FOR COMMENT

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

PROPOSED AMENDMENTS TO IIROC CONTINUING EDUCATION RULES

IIROC is publishing for public comment proposed amendments to Rule 2650 *Continuing Education Requirements for Approved Persons* (the CE Rules), which were recently implemented as stand-alone rules, separate from and in advance of the proposed plain language version of the Dealer Member rules.

In response to certain feedback received in the course of IIROC's ongoing review of the continuing education program, IIROC is proposing a few substantive changes to the CE Rules. The changes address inconsistencies in the CE Rules and support IIROC's goal of modernizing and simplifying the CE Program.

A copy of the IIROC Notice and appendices, which includes the proposed amendments, is also published on our website at <http://www.osc.gov.on.ca>. The 30-day comment period ends on February 26, 2018.

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Chapter 25

Other Information

25.1 Exemptions

25.1.1 BMO Nesbitt Burns Inc. – s. 19.1 of NI 41-101 General Prospectus Requirements

Headnote

Order pursuant to subsection 158(1.1) of the Business Corporations Act (Ontario) that an offering corporation is authorized to dispense with its audit committee – Issuer is an indirect wholly-owned subsidiary of a parent company that is subject to audit committee requirements of National Instrument 52-110 Audit Committees (NI 52-110) – Issuer is exempt from audit committee requirements of NI 52-110 – Relief conditional upon issuer continuing to satisfy the subsidiary entity eligibility criteria for exemption from audit committee requirements of NI 52-110 or any successor instrument.

Applicable Legislative Provisions

Business Corporations Act, R.S.O. 1990, c. B.16, ss. 158(1) and (1.1).
National Instrument 52-110 Audit Committees, s. 1.2.

January 17, 2018

Blake, Cassels & Graydon LLP

Attention: Jill Davis

Dear Sir/Madam:

Re: BMO Nesbitt Burns Inc. (the Filer)

Preliminary Long Form Prospectus dated December 20, 2016

BMO FinTech Sector TACTIC Fund, BMO Canadian Top 15 Small Cap TACTIC Fund, BMO U.S. Top 15 Small Cap TACTIC Fund (collectively, the Funds)

Exemptive Relief Application under Part 19 of National Instrument 41-101 *General Prospectus Requirements* (NI 41-101)

Application No. 2017/0569; SEDAR Project Number 2568232

By letter dated January 5, 2018 (the Application), the Filer, as manager of the Funds, applied on behalf of the Funds to the Director of the Ontario Securities Commission (the Director) under section 19.1 of NI 41-101 for relief from the operation of subsection 2.3(1.1) of NI 41-101, which prohibits an issuer from filing a final prospectus more than 90 days after the date of the receipt for the preliminary prospectus which relates to the final prospectus.

This letter confirms that, based on the information and representations made in the Application, and for the purposes described in the Application, the Director intends to grant the requested exemption to be evidenced by the issuance of a receipt for the Fund's final prospectus, subject to the condition that the final prospectus be filed by no later than February 15, 2018.

Yours very truly,

“Darren McCall”
Manager, Investment Funds and Structured Products Branch
Ontario Securities Commission

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