

The Ontario Securities Commission

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# Chapter 1

## Notices / News Releases

### 1.1 Notices

#### 1.1.1 CSA Staff Notice 31-352 Monthly Suppression of Terrorism and Canadian Sanctions Reporting



### CSA Staff Notice 31-352 Monthly Suppression of Terrorism and Canadian Sanctions Reporting Obligations

This notice replaces *Canadian Securities Administrators (CSA) Staff Notice 31-317 Reporting Obligations Related to Terrorist Financing (Revised)*, dated July 30, 2010 (CSA Staff Notice 31-317).

**February 22, 2018**

The Canadian Securities Administrators (**CSA**) are issuing this Staff Notice regarding monthly reporting and other requirements applicable, under federal laws, to “entities authorized under provincial legislation to engage in the business of dealing in securities or to provide portfolio management or investment counselling services,” which include registrants, entities engaging in the business of “dealing in securities” pursuant to exemptions from the dealer registration requirement (**exempt dealers**) and entities engaging in the business of providing “portfolio management or investment counselling services” pursuant to exemptions from the adviser registration requirement (**exempt advisers**).

Canada’s legislative measures against terrorist financing, and against financial dealings with certain sanctioned individuals and entities, are contained in various Canadian statutes and regulations.

These statutes, such as the *Criminal Code* (Canada), and regulations set out prohibitions and impose compliance and disclosure obligations relating to specific individuals and entities and their financial activities. In some cases, registrants, exempt dealers and exempt advisers are required to file monthly Suppression of Terrorism or Canadian sanctions reports (**Monthly STCS Reports**).

The *Criminal Code* (Canada) and any current or future legislative provisions requiring Monthly STCS Reports are referred to in this Staff Notice as the **Federal Provisions**.

To assist registrants, exempt dealers and exempt advisers, the CSA has created a *CSA Guide to Monthly Suppression of Terrorism and Canadian Sanctions Reporting* (the **STCS Guide**). The STCS Guide can be found at:

[https://www.securities-administrators.ca/uploadedFiles/Industry\\_Resources/STCSGuide.pdf](https://www.securities-administrators.ca/uploadedFiles/Industry_Resources/STCSGuide.pdf).

Although CSA staff will make best efforts to ensure the STCS Guide is current and include all Federal Provisions requiring Monthly STCS Reports, the CSA cannot guarantee that the list will be up to date at all times. It is the responsibility of each registrant, exempt dealer and exempt adviser to comply with its federal obligations at all times.

Some parts of this guidance were previously published in CSA Staff Notice 31-317. With the publication of the updated guidance in this notice, CSA Staff Notice 31-317 is hereby withdrawn.

#### **Purpose of Staff Notice**

The CSA are issuing this Staff Notice for the following purposes:

- to advise registrants, exempt dealers and exempt advisers that Federal Provisions may be added, modified or repealed at any time, and to accordingly direct these entities to the STCS Guide,

- to provide information regarding the submission of monthly reports under all Federal Provisions and advise registrants, exempt dealers, and exempt advisers that the report may continue to be filed with the principal regulator electronically, and
- to provide summary information on Federal Provisions which impose, among other things, the monthly reporting requirements for registrants, exempt dealers, and exempt advisers.

### Types of reporting

Registrants, exempt dealers, and exempt advisers generally have certain obligations under the Federal Provisions. These can include Monthly STCS Reports. In most cases, a Federal Provision requires reports to be made to a “principal agency or body that supervises or regulates it under federal or provincial law”. In the case of a registrant, CSA staff consider that this reference corresponds to a “principal regulator” for securities purposes. While the Federal Provisions are not specific on this point, for convenience CSA staff advise exempt dealers and exempt advisers to make these reports to the jurisdiction in Canada where most of their clients reside. In this Staff Notice, such a regulator is also referred to as a “principal regulator”.

The information contained in the reports is provided to the Office of the Superintendent of Financial Institutions (OSFI). Further information on these laws and the reporting obligations can be found on the OSFI website at: <http://www.osfi-bsif.gc.ca>.

### Designated Persons

A Federal Provision will generally contain a provision stating that persons or entities associated with terrorism or otherwise subject to Canadian sanctions may be listed (**Designated Persons**). Entities that are subject to Federal Provisions, including registrants, exempt dealers, and exempt advisors must report any dealings they have with Designated Persons.

Generally, the framework for listing Designated Persons is found in the Federal Provisions. Federal Provisions may use different terms to describe Designated Persons. For example, the *Regulations Implementing the United Nations Resolution on the Democratic People’s Republic of Korea* and the *Regulations Implementing the United Nations Resolution on Iran* use the term “Designated Person” as it is defined in section 1 of those Federal Provisions. In contrast, the *Special Economic Measures (Venezuela) Regulations* uses the term “listed person” as it is defined under section 2 of that Federal Provision and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* uses the term “foreign national” as defined in section 2 of that Federal Provision. The *United Nations Al-Qaida and Taliban Regulations* refer to “person[s] associated with the Taliban” and “person[s] associated with Al-Qaida.”

For the purposes of this Staff Notice and the associated monthly reporting form, the term “Designated Person” shall refer to any person or entity listed or designated in a Federal Provision. Please refer to the STCS Guide for consolidated lists of Designated Persons.

### Overview of certain duties (as set out in the STCS Guide)

The duties imposed under Federal Provisions may include the following:

#### Duty to disclose – supervising and regulating agencies

Federal Provisions generally require you to review your records, on a continuing basis to determine whether you are in possession or control of property owned or controlled by or on behalf of a Designated Person and to report your findings on a monthly basis, including the reporting of a *Nil* response if you determine that none of your clients are Designated Persons.

**Reports are usually required to be provided on the 14th day of each month, to your principal regulator.** A senior officer of the firm, preferably the Chief Compliance Officer, should physically or electronically sign the monthly report.

Therefore, it is important that registrants, exempt dealers, and exempt advisers review the STCS Guide periodically; CSA staff recommends that this be done on a monthly basis.

#### Freezing property

Federal Provisions will usually contain a prohibition on any person in Canada and any Canadian outside Canada to knowingly:

- deal, directly or indirectly, with property of a Designated Person,
- enter into or facilitate, directly or indirectly, any transaction in respect of such property, or
- provide any financial or other services for or for the benefit of a Designated Person.

Please refer to the text of a specific Federal Provision for clarity on prohibited dealings and activities.

Duty to disclose – RCMP and CSIS

Federal Provisions will usually contain a reporting requirement applicable to any person in Canada and any Canadian outside Canada to forthwith report to either the Royal Canadian Mounted Police (**RCMP**) or the Canadian Security Intelligence Service (**CSIS**) or both (depending on the Federal Provision) any property held for any Designated Person and any information about transactions or proposed transactions with respect to that property. You may provide information to these organizations as follows:

**RCMP**

Anti-terrorist Financing Team  
Unclassified fax: 613-825-7030

**CSIS**

Financing Unit  
Unclassified fax: 613-369-2303

There are also additional reporting requirements under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, which require the submission of a terrorist property report to the Financial Transactions and Reports Analysis Centre of Canada (**FINTRAC**).

For instructions relating to the preparation and submission of this report, reporting entities should visit the FINTRAC website at: <http://www.fintrac-canafe.gc.ca>.

**New consolidated reporting form**

The CSA regulators have revised their previous reporting form to create a new CSA form which refers to Federal Provisions requiring Monthly STCS Reports, rather than mentioning specific Federal Provisions by name.

The purpose of these changes is to update the form and make it applicable to all Federal Provisions, including those currently in force (which may have come into force after the publication of CSA Staff Notice 31-317) and those which may come into force in the future. The content of the form has also been updated to capture all of the information now required by Federal Provisions currently in force.

The new form will continue to be submitted to the principal regulator by e-mail or electronic form. Members of the Investment Industry Regulatory Organization of Canada (**IIROC**) are requested to use the appropriate reporting forms issued by, and file those forms with, IIROC.

Registrants, exempt dealers and exempt advisers should file only one monthly consolidated report in respect of all Federal Provisions, even though names of Designated Persons may be listed under several Federal Provisions.

The new form is available on the websites of the CSA regulators.

Please refer to the attached Appendix A for the website address of your principal regulator (please complete the form, print it, and have it signed by the appropriate individual before you scan it for e-mailing to your principal regulator, or submit per the electronic form instructions as appropriate).

If you have any questions about these requirements, you can contact your principal regulator at the telephone number or e-mail address listed in Appendix A.

While this Staff Notice reflects CSA staff views on the general application of Federal Provisions, those potentially affected by these federal laws are advised to seek legal advice on the matters dealt with by this Staff Notice. This Staff Notice provides summary information only and reflects information as of the date set out above. Please refer to the text of a specific Federal Provision for a complete description of your obligations.

In addition, there are other federal regulations that may be applicable to registrants, exempt dealers and exempt advisers that include searching, monitoring, asset freezing and reporting obligations with respect to listed persons (as defined in the respective regulations). In the case of reporting obligations under some of these other regulations, you must report to the RCMP and /or CSIS, rather than to your principal regulator on a monthly basis.

Registrants, exempt dealers and exempt advisers should continue to monitor the notices from OSFI for any new regulations that may come into effect regarding similar obligations, or updates to existing obligations to search, monitor and report. You may want to visit the OSFI website at <http://www.osfi-bsif.gc.ca>

In addition, we encourage you to subscribe to the notification service on the OSFI website <http://www.osfi-bsif.gc.ca> in order to receive new updating e-mail notices and reminders concerning new developments and reporting requirements.



## Appendix A

### List of CSA Regulators E-mail Addresses, Websites, and inquiry details for Monthly Reporting (Please send the reports to the principal regulator only)

#### Alberta

Alberta Securities Commission  
Web: [www.albertasecurities.com](http://www.albertasecurities.com)  
Questions: [registration@asc.ca](mailto:registration@asc.ca)  
E-mail to: [unreports@asc.ca](mailto:unreports@asc.ca)

#### British Columbia

British Columbia Securities Commission  
Web: [www.bsc.bc.ca](http://www.bsc.bc.ca)  
Questions: 604 899-6667  
E-mail to: [mstreport@bcsc.bc.ca](mailto:mstreport@bcsc.bc.ca)

#### Manitoba

The Manitoba Securities Commission  
Web: [www.mbsecurities.ca](http://www.mbsecurities.ca)  
Questions: 204-945-2548  
e-mail to: [unreports@gov.mb.ca](mailto:unreports@gov.mb.ca)

#### New Brunswick

Financial and Consumer Services Commission of  
New Brunswick  
Web Site: [www.fcnb.ca](http://www.fcnb.ca)  
Questions : 506 658-3060  
Email : [nrs@fcnb.ca](mailto:nrs@fcnb.ca)

#### Newfoundland and Labrador

Financial Services Regulation Division  
Department of Service NL  
Web: [www.servicenl.gov.nl.ca](http://www.servicenl.gov.nl.ca)  
Questions: 709-729-2595  
Email to: [scon@gov.nl.ca](mailto:scon@gov.nl.ca)

#### Nova Scotia

Nova Scotia Securities Commission  
Web: [www.gov.ns.ca/nssc/](http://www.gov.ns.ca/nssc/)  
Questions: 902-424-4592  
E-Mail to: [brian.murphy@novascotia.ca](mailto:brian.murphy@novascotia.ca)

#### Northwest Territories

Government of the Northwest Territories  
Office of Superintendent of Securities  
Department of Justice  
Web: <https://www.justice.gov.nt.ca/en/divisions/legal-registries-division/securities-office/>  
Questions: 867-767-9305  
E-Mail to: [securitiesregistry@gov.nt.ca](mailto:securitiesregistry@gov.nt.ca)

#### Nunavut

Government of Nunavut  
Office of Superintendent of Securities  
Department of Justice  
Web: [www.justice.gov.nu.ca](http://www.justice.gov.nu.ca)  
Questions: 867 975-6590  
E-mail to: [theffernan@gov.nu.ca](mailto:theffernan@gov.nu.ca)  
or [CorporateRegistrations@gov.nu.ca](mailto:CorporateRegistrations@gov.nu.ca)

#### Ontario

Ontario Securities Commission  
Web: [www.osc.gov.on.ca](http://www.osc.gov.on.ca)  
eform: [link](#)  
Questions: 416 593-8314 or 1-877-785-1555  
E-mail to: [UNReports@osc.gov.on.ca](mailto:UNReports@osc.gov.on.ca)

#### Prince Edward Island

Steven D. Dowling, Acting Director  
Consumer, Corporate and Financial Services Division  
Justice and Public Safety  
Government of Prince Edward Island  
T: (902) 368-4551  
C: (902) 314-7627  
F: (902) 368-5283  
E-mail to: [sddowling@gov.pe.ca](mailto:sddowling@gov.pe.ca)

#### Québec

Autorité des marchés financiers  
Web: [www.lautorite.qc.ca](http://www.lautorite.qc.ca)  
Questions: 1 877 525-0337  
E-mail to: [rappports.terrorisme@lautorite.qc.ca](mailto:rappports.terrorisme@lautorite.qc.ca)

#### Saskatchewan

Financial and Consumer Affairs Authority of Saskatchewan  
Web: [www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)  
Questions: 306-787-9397  
E-mail to: [registrationfcaa@gov.sk.ca](mailto:registrationfcaa@gov.sk.ca)

#### Yukon

Office of the Yukon Superintendent of Securities  
Web: <https://yukon.ca/>  
Questions: 867-667-5466  
E-mail to: [securities@gov.yk.ca](mailto:securities@gov.yk.ca)

**1.3 Notices of Hearing with Related Statements of Allegations**

**1.3.1 Theralase Technologies Inc. and Roger Dumoulin-White – s. 127**

**FILE NO.:** 2018-3

**IN THE MATTER OF  
THERALASE TECHNOLOGIES INC. and  
ROGER DUMOULIN-WHITE**

**NOTICE OF HEARING**

Section 127 of the *Securities Act*, RSO 1990, c S.5

**PROCEEDING TYPE:** Public Settlement Hearing

**HEARING DATE AND TIME:** February 26, 2018 at 10:00 a.m.

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

**PURPOSE**

The purpose of this hearing is to consider whether it is in the public interest for the Commission to approve the Settlement Agreement dated February 16, 2018 between Staff of the Commission and the respondents in respect of the Statement of Allegations filed by Staff of the Commission dated February 21, 2018.

**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 22nd day of February, 2018

"Grace Knakowski"  
Secretary to the Commission

**For more information**

Please visit [www.osc.gov.on.ca](http://www.osc.gov.on.ca) or contact the Registrar at [registrar@osc.gov.on.ca](mailto:registrar@osc.gov.on.ca).

**IN THE MATTER OF  
THERALASE TECHNOLOGIES INC. and  
ROGER DUMOULIN-WHITE**

**STATEMENT OF ALLEGATIONS**

(Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)

**A. ORDER SOUGHT:**

Staff of the Enforcement Branch ("**Enforcement Staff**") of the Ontario Securities Commission (the "**Commission**") request that the Commission make an order pursuant to subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**") to approve the settlement agreement dated as of February 16, 2018 between Theralase Technologies Inc. ("**Theralase**" or the "**Company**"), Roger Dumoulin-White ("**Dumoulin-White**" and, together with Theralase, the "**Respondents**") and Enforcement Staff.

**B. FACTS:**

Enforcement Staff make the following allegations of fact:

**(1) Overview**

1. Requirements for timely, accurate and efficient disclosure of information, be it forward-looking or about historical events, are a primary means for achieving the purposes of the Act. This matter concerns failures by a TSX-Venture-listed issuer, Theralase, and its President and Chief Executive Officer, Dumoulin-White, to provide accurate and complete disclosure about the development of one of Theralase's lead products, the TLC-2000 therapeutic laser (the "**TLC-2000**"). The disclosure issues concern: (a) forward-looking information ("**FLI**") about anticipated milestones and expected revenues; (b) the absence of updates to that information, including why targets were not achieved; and (c) historical information about the status of the device's regulatory approvals.
2. The conduct at issue relates to Theralase's disclosure about the TLC-2000 between November 3, 2006 and August 29, 2017 (the "**Material Time**"). The Company disclosed expected launch dates, revenue projections and growth targets for the TLC-2000 in a manner contrary to National Instrument 51-102 *Continuous Disclosure Obligations* ("**NI 51-102**") and the public interest. The conduct at issue also relates to Theralase's disclosure regarding regulatory applications and approvals in respect of the TLC-2000's biofeedback or Cell Sensing technology from Health Canada and the U.S. Food and Drug Administration (the "**FDA**").
3. This matter does not concern the accuracy of Theralase's financial reporting in its quarterly and annual financial statements filed with the Canadian Securities Administrators on the System for Electronic Document Analysis and Retrieval ("**SEDAR**").
4. During the Material Time, Theralase did not have a Disclosure Committee and Dumoulin-White's wife acted as Theralase's Chief Financial Officer. The respondents in this matter are Theralase and Dumoulin-White.

**(2) Respondents**

5. Theralase is a medical devices company, the registered and head office of which is located in Toronto, Ontario. It is a reporting issuer in Ontario, the common shares ("**Shares**") of which are listed on the TSX Venture Exchange under the trading symbol "TLT". The Shares also trade on the OTCQX Best Market under the trading symbol "TLTFF". Share purchase warrants and stock options of Theralase are also outstanding.
6. Dumoulin-White is Theralase's founder, President, Chief Executive Officer and the Chair of its Board of Directors. He is resident in Toronto, Ontario.

**(3) Theralase's Business**

7. Theralase has two main divisions: the Photo Dynamic Therapy division (the "**PDT Division**") and the Therapeutic Laser Technology division (the "**TLT Division**"). According to a news release of Theralase dated November 29, 2017:
  - (a) the PDT Division researches and develops specially designed molecules called Photo Dynamic Compounds, which are able to localize to cancer cells and then when laser light activated, effectively destroy them; and
  - (b) the TLT Division designs, manufactures, markets and distributes patented super-pulsed laser technology indicated for the treatment of chronic knee pain, and in off-label use, the elimination of pain, reduction of

inflammation and acceleration of tissue healing for numerous nerve, muscle, tendon, ligament, joint and wound conditions.

8. The PDT Division is in early stages, is presently engaged in clinical trials in Toronto, Ontario and is not expected to produce revenues in the near future. Theralase's revenue-generating unit is the TLT Division, the principal products of which are the TLC-1000 and TLC-2000 therapeutic lasers. Theralase has indicated that it expects the TLC-2000 to displace the TLC-1000 as its lead product, once the former is successfully launched. While Theralase continues to work on successfully commercializing the TLC-2000, it is also actively developing its PDT Division.

**(4) Launch Dates, Revenue Projections and Growth Targets**

9. On November 3, 2006, Theralase disclosed the anticipated launch of laser biofeedback technology in 2007. In its subsequent Management's Discussion & Analysis ("**MD&A**"),<sup>1</sup> it specified that commercialization of the biofeedback technology was slated to commence in the first quarter of 2007. On March 6, 2007, Theralase indicated that the biofeedback technology had been housed in the TLC-2000.
10. Over the next eight and a half years, Theralase made various statements in its public disclosure (including news releases and MD&A filed on SEDAR and marketing materials posted on the Theralase website and elsewhere on the Internet) in which it rolled forward the launch date of the TLC-2000 in 30-day to five quarter increments (collectively, the "**Launch Date FLI**"). Sales of the TLC-2000 did not commence until December 15, 2015, following the issuance of regulatory approvals from Health Canada and the FDA.
11. Between 2006 and 2016, Theralase also disclosed revenue projections for the TLC-2000 (the "**Revenue Projections**"). The financial outlooks appeared in offering memoranda and other marketing materials provided to prospective investors and posted on the Internet, as well as in a post on Theralase's Twitter feed. They ranged from \$2.5 million to \$10 million in the first year of launch to \$50 million to \$60 million in the fifth year following launch of the TLC-2000.
12. Theralase also referred to five-year outlooks in its SEDAR filings (the "**Growth Targets**"). For example, in a news release dated August 16, 2012, Dumoulin-White stated that one aspect of the Company's mandate was to build the TLT Division into a "\$50 million annual recurring revenue model within the next 5 to 7 years." Theralase's Annual Information Forms ("**AIF**") dated September 24, 2014 provided that "Theralase's corporate mandate is to capture at least 1% of the therapeutic laser market, thus achieving annual revenues of >\$50 million ... within five years of launch" of the TLC-2000.
13. The financial outlooks were not achieved. By way of example, Theralase's revenues in 2016 were approximately \$1.9 million. On June 30, 2017, at the request of Staff of the Corporate Finance Branch of the Commission, Theralase issued a news release in which it stated that it did not expect to achieve any of the forward-looking targets with respect to revenues that it had previously provided.
14. When Theralase provided the Launch Date FLI, Revenue Projections and Growth Targets, it did not accompany them with the disclosure ("**FLI Required Disclosure**") required by NI 51-102. For example, while some of the FLI was accompanied by a general "boilerplate", forward-looking statement disclaimer, Theralase did not identify the material risk factors that could cause actual results to differ, such as the effect that the regulatory approval process could have on the Launch Date FLI, or the quantitative and qualitative assumptions underlying the Revenue Projections or Growth Targets.
15. Theralase also did not update the FLI in accordance with NI 51-102. For instance, while its news releases and MD&A disclosed new launch dates for the TLC-2000, they did not reference the previous ones or explain why they had not been met.

**(5) Regulatory Approval of Biofeedback or Cell Sensing Technology**

16. Since 2003, Theralase's SEDAR filings have referred to the development of its patented, biofeedback technology, which would eventually be housed in the TLC-2000. The purpose of the biofeedback technology is to sense and target the injured tissue at depth and calibrate the laser's energy dose accordingly. Theralase consistently described this biofeedback feature as an advance that distinguished the TLC-2000 from its competition. In 2015, Theralase trademarked the term "Cell Sensing" to refer to it.
17. On February 9, 2015, Theralase announced that it had applied for Health Canada approval of the TLC-2000 and expected to do the same with respect to the FDA in March 2015. The news release described the TLC-2000 as a biofeedback therapeutic laser possessing Cell Sensing technology. Theralase had not applied to Health Canada for

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<sup>1</sup> Dated November 20, 2006.

approval of the biofeedback or Cell Sensing technology and did not seek approval of it from the FDA until February 2017.

18. In its prospectus supplement to its base shelf prospectus dated February 25, 2015 (the “**2015 Prospectus**”), Theralase stated that it had filed for Health Canada approval of the TLC-2000. The two MD&A,<sup>2</sup> AIF and marketing materials incorporated by reference into the 2015 Prospectus described the TLC-2000 as having biofeedback or Cell Sensing technology.
19. In five subsequent news releases<sup>3</sup> and four MD&A,<sup>4</sup> Theralase indicated that it was awaiting Health Canada and/or the FDA approval to launch the TLC-2000. In the same news releases and MD&A, Theralase described the TLC-2000 as having biofeedback or Cell Sensing technology. For example, according to MD&A: “The TLC-2000 Biofeedback Therapeutic Laser System is currently being reviewed by ... Health Canada and is expected to be approved for commercial distribution in Canada in early Q2 2015. Approval of the TLC-2000 Biofeedback Therapeutic Laser System by the Food and Drug Administration (“FDA”) is expected in 4Q2015 for commercial distribution in the United States ...”
20. On November 25, 2015 and December 14, 2015, respectively, Theralase announced that it had obtained regulatory approval for the TLC-2000 from the FDA and Health Canada. In nine subsequent MD&A<sup>5</sup> and its AIF dated November 7, 2016 (the “**2016 AIF**”), Theralase referred to approval or clearance by Health Canada or the FDA of the TLC-2000. It also described the TLC-2000 as having biofeedback or Cell Sensing technology. For example, according to Theralase’s MD&A dated November 3, 2016 and the 2016 AIF: “The TLC-2000 Biofeedback Therapeutic Laser System ... has a Health Canada approved Medical Device License (Class III).”
21. Two of these MD&A<sup>6</sup> and the 2016 AIF were incorporated by reference into Theralase’s prospectus supplement dated November 7, 2016.

**C. NON-COMPLIANCE WITH ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST**

Enforcement Staff allege the following non-compliance with Ontario securities law and conduct contrary to the public interest:

- (a) Theralase did not provide FLI Required Disclosure with, or update, its Launch Date FLI, Revenue Projections or Growth Targets, contrary to sections 4A.3, 4B.3 and 5.8 of NI 51-102 (with respect to FLI disclosed on or after December 31, 2007, when these provisions came into force) and contrary to the public interest (with respect to the other FLI at issue);
- (b) Dumoulin-White, a director and officer of Theralase, authorized, permitted or acquiesced in Theralase’s non-compliance with Ontario securities law, as set out in subparagraph (a) above, and is deemed not to have complied with Ontario securities law under section 129.2 of the Act;
- (c) certain of Theralase’s disclosure may have conveyed that the regulatory approvals obtained with respect to the TLC-2000 extended to the biofeedback or Cell Sensing technology, when they did not, contrary to the public interest; and
- (d) as set out in subparagraphs (a) through (c) above, the Respondents engaged in conduct contrary to the public interest.

**DATED** this 21st day of February, 2018.

ONTARIO SECURITIES COMMISSION  
20 Queen Street West, 22nd Floor  
Toronto, ON M5H 3S8

Anna Huculak  
Litigation Counsel, Enforcement Branch  
Email: ahuculak@osc.gov.on.ca

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<sup>2</sup> Dated April 29, 2014 and November 27, 2014.

<sup>3</sup> Dated May 1, 2015, May 29, 2015, June 10, 2015, June 11, 2015 and July 17, 2015.

<sup>4</sup> Dated April 30, 2015, May 29, 2015, August 28, 2015 and November 27, 2015.

<sup>5</sup> Dated November 27, 2015, April 29, 2016, May 27, 2016, August 29, 2016, November 3, 2016, November 29, 2016, May 1, 2017, May 30, 2017 and August 29, 2017.

<sup>6</sup> Dated April 29, 2016 and November 3, 2016.

**1.5 Notices from the Office of the Secretary**

**1.5.1 Natural Bee Works Apiaries Inc. et al.**

**FOR IMMEDIATE RELEASE  
February 21, 2018**

**NATURAL BEE WORKS APIARIES INC.,  
TAWLIA CHICKALO,  
RINALDO LANDUCCI and  
ELISE MAXHELEAU,  
File No. 2018-7**

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

A copy of the Order dated February 21, 2018 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

For media inquiries:

[media\\_inquiries@osc.gov.on.ca](mailto:media_inquiries@osc.gov.on.ca)

For investor inquiries:

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

**1.5.2 Theralase Technologies Inc. and Roger Dumoulin-White**

**FOR IMMEDIATE RELEASE  
February 22, 2018**

**THERALASE TECHNOLOGIES INC. and  
ROGER DUMOULIN-WHITE,  
File No. 2018-3**

**TORONTO** – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and the Respondents in the above named matter.

The hearing will be held on February 26, 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 February 22, 2018 and Statement of Allegations dated February 21, 2018 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

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

**1.5.3 Dennis L. Meharchand and Valt.X Holdings Inc.**

**FOR IMMEDIATE RELEASE**  
**February 23, 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 February 23, 2018 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

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

**1.5.4 Donald Mason**

**FOR IMMEDIATE RELEASE**  
**February 23, 2018**

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

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

A copy of the Order dated February 22, 2018 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

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1-877-785-1555 (Toll Free)

**1.5.5 Theralase Technologies Inc. and Roger Dumoulin-White**

**FOR IMMEDIATE RELEASE  
February 26, 2018**

**THERALASE TECHNOLOGIES INC. and  
ROGER DUMOULIN-WHITE,  
File No. 2018-3**

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

A copy of the Order dated February 26, 2018, Settlement Agreement dated February 16, 2018 and Oral Reasons for Approval of Settlement dated February 26, 2018 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

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

**1.5.6 USI Tech Limited et al.**

**FOR IMMEDIATE RELEASE  
February 26, 2018**

**USI TECH LIMITED,  
ELEANOR PARKER AND  
CASEY COMBDEN,  
File No. 2018-8**

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

A copy of the Order dated February 26, 2018 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

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For investor inquiries:

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



**1.5.7 Natural Bee Works Apiaries Inc. et al.**

**FOR IMMEDIATE RELEASE**  
February 26, 2018

**NATURAL BEE WORKS APIARIES INC.,  
TAWLIA CHICKALO,  
RINALDO LANDUCCI and  
ELISE MAXHELEAU,  
File No. 2018-7**

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

A copy of the Order dated February 26, 2018 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

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For investor inquiries:

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

**1.5.8 Donna Hutchinson et al.**

**FOR IMMEDIATE RELEASE**  
February 27, 2018

**DONNA HUTCHINSON,  
CAMERON EDWARD CORNISH,  
DAVID PAUL GEORGE SIDDEERS and  
PATRICK JELF CARUSO**

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

A copy of the Order dated February 26, 2018 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

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

**1.5.9 Omega Securities Inc.**

**FOR IMMEDIATE RELEASE**  
**February 27, 2018**

**OMEGA SECURITIES INC.,**  
**File No. 2017-64**

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

A copy of the Order dated February 27, 2018 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

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

**1.5.10 Omega Securities Inc.**

**FOR IMMEDIATE RELEASE**  
**February 27, 2018**

**OMEGA SECURITIES INC.,**  
**File No. 2017-66**

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

A copy of the Order dated February 27, 2018 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

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For investor inquiries:

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## Chapter 2

# Decisions, Orders and Rulings

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### 2.1 Decisions

#### 2.1.1 Invesco Canada Ltd.

##### Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Mutual funds granted relief from ss.15.3(4)(c) and (f) of National Instrument 81-102 Investment Funds to permit references to Fundata A+ Awards and relief from s.15.3(4)(c) to permit references to FundGrade Ratings in sales communications – Relief subject to conditions requiring specified disclosure and the requirement that the Fundata A+ Awards being referenced not have been awarded more than 365 days before the date of the sales communication.

##### Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 15.3(4)(c) and (f), 19.1.

February 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  
INVESCO CANADA LTD.  
(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 of the principal regulator (the **Legislation**), pursuant to section 19.1 of National Instrument 81-102 *Investment Funds (NI 81-102)*, exempting the existing and future mutual funds for which the Filer acts or will act as the investment fund manager (the **Funds**) from the requirements set out in paragraph 15.3(4)(c) (in respect of both the FundGrade A+ Awards presented annually by Fundata Canada Inc. (**Fundata**) and the FundGrade Ratings) and paragraph 15.3(4)(f) (in respect of the FundGrade A+ Awards only) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

- (i) the rating or ranking is provided for each period for which standard performance data is required to be given, except the period since the inception of the mutual fund; and
- (ii) the rating or ranking is to the same calendar month end that is:
  - (a) not more than 45 days before the date of the appearance or use of the advertisement in which it is included, and
  - (b) not more than three months before the date of first publication of any other sales communication in which it is included

to permit the FundGrade A+ Awards and the FundGrade Ratings to be referenced in sales communications relating to the Funds (collectively, the **Exemption Sought**).

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 section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (together with Ontario, the **Jurisdictions**).

### **Interpretation**

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

### **Representations**

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

#### ***The Filer***

1. The head office of the Filer is located in Toronto, Ontario.
2. The Filer is a corporation governed by the laws of Canada. The Filer is registered as an investment fund manager, portfolio manager, mutual fund dealer, exempt market dealer and commodity trading manager in Ontario and as an investment fund manager and mutual fund dealer in Quebec. The Filer is registered as portfolio manager and exempt market dealer in the rest of the jurisdictions, and additionally as a mutual fund dealer in Alberta, British Columbia, Nova Scotia and Prince Edward Island, and as an investment fund manager in Newfoundland and Labrador.
3. The Filer acts or will act as the investment fund manager of the Funds.
4. The Filer is not in default of the securities legislation of the Jurisdictions.

#### ***The Funds***

5. Each of the Funds is, or will be, a mutual fund established under the laws of Canada or a jurisdiction. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of one or more of the Jurisdictions.
5. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is, or will be, subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.
6. The existing Funds are not in default of the securities legislation of the Jurisdictions.

#### ***Fundata FundGrade Ratings and FundGrade A+ Awards Program***

7. The Filer wishes to include in sales communications of the Funds references to the FundGrade Ratings and references to the FundGrade A+ Awards where such Funds have been awarded a FundGrade A+ Award.
8. Fundata is a "mutual fund rating entity" as that term is defined in NI 81-102. Fundata is a leader in supplying mutual fund information, analytical tools, and commentary. Fundata's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.
9. One of Fundata's programs is the FundGrade A+ Awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to their peers. The FundGrade A+ Awards designate award-winning funds in most individual fund classifications for the previous calendar year, and the awards are announced in January of each year. The categories for fund classification used by Fundata are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to CIFSC), a Canadian organization that is independent of Fundata.
10. The FundGrade A+ Awards are based on a proprietary rating methodology developed by Fundata, the FundGrade Rating system. The FundGrade Rating system evaluates funds based on their risk adjusted performance, measured by

three well-known and widely-used metrics: the Sharpe Ratio; the Information Ratio; and the Sortino Ratio. The ratios are calculated for the two through ten year time periods for each fund. When there is more than one eligible series of a fund, an average ratio is taken for each period. The ratios are ranked across all time periods and an overall score is calculated by equally weighting the yearly rankings.

11. The FundGrade Ratings are letter grades for each fund and are determined each month. The FundGrade Ratings for each month are released on the seventh business day of the following month. The top 10% of funds earn an A Grade; the next 20% of funds earn a B Grade; the next 40% of funds earn a C Grade; the next 20% of funds receive a D Grade; and the lowest 10% of funds receive an E Grade. Because the overall score of a fund is calculated by equally weighting the periodic rankings, to receive an A Grade, a Fund must show consistently high scores for all ratios across all time periods.
12. Fundata calculates a grade using only the retail series of each fund. Institutional series or fee-based series of any fund are not included in the calculation. A fund must have at least two years of history to be included in the calculation. Once a letter grade is calculated for a fund, it is then applied to all related series of that fund.
13. At the end of each calendar year, Fundata calculates a "Fund GPA" for each fund based on the full year's performance. The Fund GPA is calculated by converting each month's FundGrade Rating letter grade into a numerical score. Each A is assigned a grade of 4.0; each B is assigned a grade of 3.0; each C is assigned a grade of 2.0; each D is assigned a grade of 1.0; and each E is assigned a grade of 0. The total of the grades for each fund is divided by 12 to arrive at the fund's GPA for the year. Any fund earning a GPA of 3.5 or greater earns a FundGrade A+ Award.
14. When a fund is awarded a FundGrade A+ Award, Fundata will permit such fund to make reference to the award in its sales communications.
15. The FundGrade Ratings fall within the definition of "performance data" under NI 81-102 as they constitute "a rating, ranking, quotation, discussion or analysis regarding an aspect of the investment performance of an investment fund", given that the FundGrade Ratings are based on performance measures calculated by Fundata. The FundGrade A+ Awards may be considered to be "overall ratings or rankings" given that the awards are based on the FundGrade Ratings as described above. Therefore, references to FundGrade Ratings and FundGrade A+ Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.
16. Paragraph 15.3(4)(c) of NI 81-102 imposes a "matching" requirement for performance ratings or rankings that are included in sales communications for mutual funds. If a performance rating or ranking is referred to in a sales communication, it must be provided for, or "match", each period for which standard performance data is required to be given for the fund, except for the period since the inception of the fund (i.e. for one, three, five and ten year periods, as applicable).
17. While FundGrade Ratings are based on calculations for a minimum of two years through to a maximum of ten years and the FundGrade A+ Awards are based on a yearly average of monthly FundGrade Ratings, specific ratings for the three, five and ten year periods within the two to ten year measurement period are not given. This means that a sales communication referencing FundGrade Ratings cannot comply with the "matching" requirement contained in paragraph 15.3(4)(c) of NI 81-102. Relief from paragraph 15.3(4)(c) of NI 81-102 is, therefore, required in order for a Fund to use FundGrade Ratings in sales communications.
18. The exemption in subsection 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the FundGrade A+ Awards in sales communications for the Funds because it is available only if a sales communication "otherwise complies" with the requirements of subsection 15.3(4). As noted above, sales communications referencing the FundGrade A+ Awards cannot comply with the "matching" requirement in subsection 15.3(4) because the underlying FundGrade Ratings are not available for the three, five and ten year periods within the two to ten year measurement period for the FundGrade Ratings, rendering the exemption in subsection 15.3(4.1) unavailable. Relief from paragraph 15.3(4)(c) is, therefore also, required in order for a Fund to reference the FundGrade A+ Awards in sales communications.
19. Paragraph 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. This paragraph provides that in order for a rating or ranking such as a FundGrade A+ Award to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.
20. Because the evaluation of Funds for the FundGrade A+ Awards will be based on data aggregated until the end of December in any given year and the results will be published in January of the following year, by the time a Fund receives a FundGrade A+ Award in January, paragraph 15.3(4)(f) of NI 81-102 will only allow the FundGrade A+ Award

to be used in an advertisement until the middle of February and in other sales communications until the end of March. Relief from paragraph 15.3(4)(f) is required in order for the FundGrade A+ Awards to be referenced in sales communications relating to the Funds outside the above periods.

21. The Exemption Sought is required in order for the FundGrade Ratings and the FundGrade A+ Awards to be referenced in sales communications relating to the Funds.
22. The FundGrade A+ Awards and the FundGrade Ratings provide important tools for investors, as they provide investors with context when evaluating investment choices. The FundGrade A+ Awards and the FundGrade Ratings provide an objective, transparent and quantitative measure of performance that is based on the expertise of Fundata in fund analysis that alleviates any concern that references to them may be misleading and therefore, contrary to paragraph 15.2(1)(a) of NI 81-102.

**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 to permit the FundGrade A+ Awards and the FundGrade Ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the FundGrade A+ Awards and the FundGrade Ratings complies with Part 15 of NI 81-102, other than as set out herein, and contains the following disclosure in at least 10 point type:
  - (a) the name of the category for which the Fund has received the award or rating;
  - (b) the number of mutual funds in the category for the applicable period;
  - (c) the name of the ranking entity, i.e., Fundata;
  - (d) the length of period and the ending date, or, the first day of the period and the ending date on which the FundGrade A+ Award or the FundGrade Rating is based;
  - (e) a statement that FundGrade Ratings are subject to change every month;
  - (f) in the case of a FundGrade A+ Award, a brief overview of the FundGrade A+ Awards;
  - (g) in the case of a FundGrade Rating (other than FundGrade Ratings referenced in connection with a FundGrade A+ Award), a brief overview of the FundGrade Rating;
  - (h) disclosure of the meaning of the FundGrade Ratings from A to E (e.g., rating of A indicates a fund is in the top 10% of its category); and
  - (i) reference to Fundata's website ([www.fundata.com](http://www.fundata.com)) for greater detail on the FundGrade A+ Awards and the FundGrade Ratings;
2. the FundGrade A+ Award being referenced must not have been awarded more than 365 days before the date of the sales communication; and
3. the FundGrade A+ Awards and the FundGrade Ratings being referenced are calculated based on comparisons of performance of mutual funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

## 2.1.2 Emera Incorporated and Nova Scotia Power Incorporated

### Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards (NI 52-107), s. 5.1 – the Filers request relief from the requirements under section 3.2 or NI 52-107 that financial statements be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises to permit the Filers to prepare their financial statements in accordance with the U.S. GAAP.

### Applicable Legislative Provisions

National Instrument 52-107 Acceptable Principles and Auditing Standards.

January 26, 2018

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
NOVA SCOTIA AND ONTARIO  
(the Jurisdictions)**

**AND**

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

**AND**

**IN THE MATTER OF  
EMERA INCORPORATED AND  
NOVA SCOTIA POWER INCORPORATED  
(the Filers)**

**DECISION**

### Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filers under the securities legislation (the **Legislation**) of the Jurisdictions seeking exemption (the **Exemption Sought**) from the requirements of section 3.2 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (**NI 52-107**) that financial statements (a) be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises and (b) disclose an unreserved statement of compliance with IFRS in the case of annual financial statements and an unreserved statement of compliance with IAS 34 in the case of an interim financial report. The Exemption Sought is similar to the exemption granted by the Decision Maker in each of the Jurisdictions to the Filers as of April 28, 2014, in *Re Emera Incorporated and Nova Scotia Power Incorporated* (the **Existing Relief**).

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

- (a) the Nova Scotia 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 British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the **Passport Jurisdictions**); 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

In this decision:

- (a) unless otherwise defined herein, terms defined in National Instrument 14-101 *Definitions*, MI 11-102 or NI 52-107 have the same meaning; and

- (b) “activities subject to rate regulation” has the meaning ascribed in the Chartered Professional Accountants Canada Handbook (the “**CPA Canada Handbook**”) as at the date hereof.

### Representations

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

1. Emera Incorporated (**Emera**) and Nova Scotia Power Incorporated (**NSPI**) are incorporated under the *Companies Act* (Nova Scotia). The head office of each Filer is located at Barrington Tower, Scotia Square, 1223 Lower Water Street, Halifax, Nova Scotia, B3J 3S8.
2. Each Filer is a reporting issuer or equivalent in the Jurisdictions and each Passport Jurisdiction and is not in default of securities legislation in any such jurisdiction.
3. NSPI is a subsidiary of Emera and its financial statements are consolidated into the financial statements of Emera.
4. Each of the Filers currently prepares and files its financial statements for annual and interim periods in accordance with the U.S. GAAP, in reliance on the Existing Relief.
5. Each Filer has activities subject to rate regulation.
6. Neither of the Filers is an SEC issuer.
7. Were either of the Filers SEC issuers, they would be permitted by section 3.7 of NI 52-107 to file their financial statements prepared under the U.S. GAAP.
8. By an order dated April 28, 2014, the Filers have been granted relief substantially similar to the Exemption Sought.
9. The Existing Relief will expire no later than January 1, 2019.
10. The International Accounting Standards Board (**IASB**) continues to work on a project focusing on accounting specific to activities subject to rate regulation. It is not yet known when this project will be completed or whether IFRS will include a specific standard that is mandatory for entities with activities subject to rate regulation.

### Decision

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

The decision of the Decision Maker under the Legislation is that:

- (a) the Existing Relief is revoked;
- (b) the Exemption Sought is granted to each Filer in respect of the Filer’s financial statements required to be filed on or after the date of this order, provided that the Filer prepares those financial statements in accordance with the U.S. GAAP; and
- (c) the Exemption Sought will terminate in respect of a Filer on the earliest of the following:
  - (i) January 1, 2024;
  - (ii) if that Filer ceases to have activities subject to rate regulation, the first day of the Filer’s financial year that commences after the Filer ceases to have activities subject to rate regulation; and
  - (iii) the effective date prescribed by the IASB for the mandatory application of a standard within IFRS specific to entities with activities subject to rate regulation.

“Abel Lazarus”  
Director, Corporate Finance  
Nova Scotia Securities Commission



### 2.1.3 BKC Capital Inc. and Sun Life Institutional Investments (Canada) Inc.

#### Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions. Under paragraph 4.1(1)(b) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations a registered firm must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if the individual is registered as a dealing, advising or associate advising representative of another registered firm. The Filers are affiliated entities and have valid business reasons for the individual to be registered with both firms. The Filers have agreed that up to a maximum of ten individuals will be dually registered under the exemption at any point in time. The Filers have policies in place to handle potential conflicts of interest. The Filers are exempted from the prohibition.

#### Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1, 15.1.

February 21, 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  
BKC CAPITAL INC.  
(BKC)

AND

SUN LIFE INSTITUTIONAL INVESTMENTS (CANADA) INC.  
(SLIIC, and together with BKC, the Filers)

DECISION

#### Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief from the restriction under paragraph 4.1(1)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* (such restriction, the **Dual-Registration Restriction**), pursuant to section 15.1 of NI 31-103, to permit Mr. Michael Andrews (the **Representative**) – and future individuals – to be registered as an advising representative, associate advising representative, and/or dealing representative, as the case may be, of each of BKC and SLIIC (the **Relief Sought**). Previous dual registration relief was granted to BKC and SLIIC in January 2017 and to SLIIC (under its prior name of Sun Life Investment Management Inc.) in February 2014, though the Representative was not subject to either relief. Currently, there is 1 individual dually-registered with each of BKC and SLIIC (the **Existing Representative**). For clarity, the Relief Sought will apply to up to ten representatives at any one time including, for the purposes of the initial grant of the Relief Sought, the Representative and the Existing Representative. Any additional representatives will be comprised of future individuals registered as advising representatives, associate advising representatives, and/or dealing representatives, as the case may be, of BKC and SLIIC (collectively, the **Future Representatives**).

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 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 by the Filers in each jurisdiction of Canada outside of Ontario (together with Ontario, the **Jurisdictions**).

### 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 Filers:

1. BKC is registered as a portfolio manager and exempt market dealer in each of the Jurisdictions and is also registered as an investment fund manager in each of Ontario, Québec and British Columbia.
2. SLIIC is registered as a portfolio manager, exempt market dealer and investment fund manager in each of the Jurisdictions and is also registered as a commodity trading manager in Ontario.
3. Sun Life Financial Inc. (**SLF**) is a publicly-listed company that trades on the Toronto, New York and Philippine stock exchanges and wholly-owns, indirectly, each of the Filers. Since each of SLIIC and BKC is under SLF's common control, each is an affiliate of the other.
4. BKC acts as the investment fund manager and/or portfolio manager of pooled funds that invest indirectly in real estate-related assets, including equity securities of private issuers that hold real estate, real estate investment trusts and debt securities issued in connection with mortgages secured by real estate (the **BKC Pooled Funds**). It acts as exempt market dealer to sell securities of the BKC Pooled Funds, and of private issuers that invest in a portfolio of real estate assets, to Canadian pension plans, other institutional investors and to certain high net worth clients that qualify as "accredited investors" as defined in National Instrument 45-106 *Prospectus Exemptions* in each of the Jurisdictions.
5. SLIIC acts as the investment fund manager, portfolio manager and exempt market dealer of pooled funds consisting of real estate assets, commercial mortgages, private fixed income assets and public bonds and derivatives, or a combination thereof, that are sold to institutional clients that qualify as "accredited investors" as defined in National Instrument 45-106 *Prospectus Exemptions* in each of the Jurisdictions (the **SLIIC Pooled Funds**).
6. The Representative is Senior Managing Director, Canadian Mortgages, Canadian Real Estate at SLIIC. The Representative is also Senior Managing Director, Canadian Mortgages, Canadian Real Estate at The Sun Life Assurance Company of Canada, another affiliate of the Filers. As part of the Representative's duties, he is responsible, under the supervision of an advisory representative, for the portfolio management and monitoring of investments in certain of the SLIIC Pooled Funds. Any Future Representatives would have similar duties at SLIIC in respect of the SLIIC Pooled Funds.
7. The Representative has been registered as an associate advising representative (portfolio manager) with SLIIC since April 24, 2017 in each of the Jurisdictions. The Representative's associate advising representative registration is restricted to (a) advising in respect of mortgages, mortgage-backed securities and securities that reflect an underlying investment in real property, and (b) advising in respect of investments in fixed income and money market assets that is incidental to portfolios consisting of securities referred to in paragraph (a). The Representative is currently in the process of completing the courses required to become a dealing representative (exempt market dealer) with SLIIC. Once the Representative becomes a dealing representative of SLIIC, BKC will apply to have him also registered as a dealing representative under BKC's exempt market dealer registration in order for him to trade (including acts in furtherance of a trade) in securities of certain of the BKC Pooled Funds.
8. The Representative will act as an associate advising representative (portfolio manager) under the supervision of a full advising representative to one or more of the BKC Pooled Funds. The Representative will also continue to act as an associate advising representative (portfolio manager) to certain of the SLIIC Pooled Funds. Any Future Representatives would have similar duties (i.e. as an advising representative or associate advising representative, as the case may be) at BKC in respect of the BKC Pooled Funds.
9. As such, dual registration as an associate advising representative (portfolio manager) of each of SLIIC and BKC would allow the Representative to continue to assist in advising the SLIIC Pooled Funds while also assisting in advising one or more BKC Pooled Funds. Registration as an advising or associate advising representative, as the case may be, for each of the Future Representatives would permit them to conduct similar activities in their applicable capacity. The BKC Pooled Funds and the SLIIC Pooled Funds that the Representative and any Future Representatives will be

advising will not have similar investment strategies and/or are not expected to compete for the same investments, thus minimizing certain conflicts of interest. Other BKC Pooled Funds or SLIIC Pooled Funds may in the future be created that have similar investment strategies; however it is unlikely given the different investment objectives and strategies in the real estate universe that underlie the mandates of each of SLIIC and BKC.

10. Dual registration as a dealing representative (exempt market dealer) of each of SLIIC and BKC would allow the Representative, and the Future Representatives, to market and sell the relevant SLIIC Pooled Funds and/or BKC Pooled Funds.
11. The terms and conditions, if any, on the Representative's, and any Future Representative's, advising, associate advising and/or dealing representative registration with BKC, as the case may be, would be the same as under his or her registration with SLIIC.
12. The Representative, and the Future Representatives, will be subject to supervision by each of the Filers and come under the applicable compliance requirements of both Filers.
13. Each of the Filers' respective Ultimate Designated Persons will ensure that the Representative, and each Future Representative, has sufficient time and resources to adequately serve each Filer and its clients. Each of the Filers' respective Chief Compliance Officers will monitor and assess whether the Representative, and each Future Representative, has sufficient time and resources to adequately serve each Filer and its clients.
14. BKC is not in default of any requirement of securities legislation in any Jurisdiction. SLIIC is not in default of any requirement of securities, commodities or derivatives legislation in any Jurisdiction.
15. BKC and SLIIC are affiliates and accordingly the dual registration of the Representative and the Future Representatives will not give rise to the conflicts of interest present in a similar arrangement involving unrelated, arm's-length firms. The interests of the Filers are aligned, and as the role of the Representative and each Future Representative, is or will be to support the business activities and interests of the Sun Life Financial group of companies (including BKC and SLIIC), the potential for conflicts of interest is remote.
16. The Filers each have adequate policies and procedures in place to address any potential conflicts of interest that may arise as a result of the dual registration of the Representative, and the Future Representatives, and will be able to deal appropriately with any such conflicts. Further, it is expected that, if the Relief Sought is granted, the Representative, and each Future Representative, will be acting as an advising or associate advising representative, as applicable, in respect of pooled funds with different investment strategies. This will further mitigate the risks of conflicts of interest arising from the dual registration of the Representative and the Future Representatives.
17. The Filers do not expect that the dual registration of the Representative or any Future Representative, will create significant additional work for such individual and are confident that the Representative, and each Future Representative, will have sufficient time to adequately serve both firms.
18. The relationship between BKC and SLIIC, and the fact that the Representative, and each Future Representative, is dually registered with both BKC and SLIIC, will be fully disclosed to clients of each of BKC and SLIIC that deal with the Representative, and the Future Representatives. A disclosure document will be sent to existing SLIIC clients, and current prospective clients, of Representative, and each Future Representative, as applicable, to inform them of such person's new registration with BKC and of the new BKC Pooled Fund for which the Representative, and each Future Representative, as applicable, will be an advising or associate advising representative. This disclosure will be sent once the registration of the Representative, and each Future Representative, with BKC has been approved. Disclosure regarding the dual employment of the Representative, and each Future Representative, will also be disclosed in the offering documentation for each of the SLIIC Pooled Funds and BKC Pooled Funds for which the Representative, and each Future Representative, acts as an advising or associate advising representative, as applicable.
19. The Representative, and each Future Representative will act in the best interest of all clients of each Filer and will deal fairly, honestly and in good faith with these clients.
20. In the absence of the Relief Sought, the Filers would be prohibited by the Dual-Registration Restriction from permitting the Representative, and each Future Representative, to be registered as an advising, associate advising and/or dealing representative of each Filer, even though the Filers are affiliates and have controls and compliance procedures in place to deal with the advising, associate advising and/or dealing activities of the Representative, and each Future Representative.

**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 Relief Sought is granted on the following conditions:

- i. That at any point in time, no more than ten (10) representatives are dually registered with both Filers;
- ii. The Representative, and each Future Representative, is subject to supervision by, and the applicable compliance requirements of, both Filers;
- iii. The Chief Compliance Officer and Ultimate Designated Person of each Filer ensures that the Representative, and each Future Representative, has sufficient time and resources to adequately serve each Filer and its respective clients;
- iv. The Filers each have adequate policies and procedures in place to address any potential conflicts of interest that may arise as a result of the dual registration of the Representative, and each Future Representative, and deal appropriately with any such conflicts; and
- v. The relationship between the Filers and the fact that the Representative, and each Future Representative, is dually registered with both of them is fully disclosed in writing to clients of each of them that deal with such person.

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

2.2 Orders

2.2.1 Natural Bee Works Apiaries Inc. et al. – s. 127(8)

FILE NO.: 2018-7

**IN THE MATTER OF  
NATURAL BEE WORKS APIARIES INC.,  
TAWLIA CHICKALO,  
RINALDO LANDUCCI and  
ELISE MAXHELEAU**

D. Grant Vingoe, Vice-Chair and Chair of the Panel

February 21, 2018

**ORDER**  
(Subsection 127(8) of the  
*Securities Act*, RSO 1990, c S.5)

WHEREAS on February 21, 2018, the Ontario Securities Commission (**Commission**) held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario with respect to an application by Staff of the Commission (**Staff**) to extend the temporary cease trade order initially issued on February 8, 2018 (the **Temporary Order**);

ON READING the materials filed by Staff, and on considering the oral submissions of Staff, appearing in person, and Tawlia Chickalo on her own behalf and Elise Maxheleau on her own behalf, Rinaldo Landucci on his own behalf and on behalf of Natural Bee Works Apiaries Inc., all participating by telephone;

IT IS ORDERED THAT:

1. Pursuant to subsection 127(8) of the *Securities Act*, RSO 1990, c S.5, paragraphs 1 and 2 of the Temporary Order are extended until the end of day February 27, 2018;
2. the hearing is adjourned to February 26, 2018 at 2:30 p.m. at which time submissions from the parties will be heard with respect to Staff's application to extend the Temporary Order.

"D. Grant Vingoe"

2.2.2 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

February 23, 2018

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

WHEREAS on February 22, 2018, the Panel reviewed correspondence from the respondent, Dennis L. Merharchand, and found that a hearing was necessary to hear submissions and schedule the next steps in the proceeding;

IT IS ORDERED THAT a hearing shall be held on February 27, 2018, commencing as soon as possible following the conclusion of the confidential conference scheduled by the Order issued on February 5, 2018, which conference commences at 3:30 p.m.

"Timothy Moseley"

2.2.3 Donald Mason – s. 8

FILE NO.: 2018-1

**IN THE MATTER OF  
DONALD MASON**

Mark Sandler, Chair of the Panel

February 22, 2018

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

WHEREAS on February 20, 2018, the Ontario Securities Commission held a hearing in writing pursuant to a request from the representative for the applicant, Donald Mason (“**Mason**”), requesting amendments to the schedule set in a February 7, 2018 Order for the applicant’s motion for a stay of the decision of the Director (the “**Applicant’s Stay Motion**”);

ON READING the email correspondence from the representative for Mason, dated February 20, 2018, and on considering that Staff does not object to the adjournment and revised schedule;

IT IS ORDERED THAT:

1. The hearing date of March 27, 2018 for the Applicant’s Stay Motion is vacated;
2. The deadline for Mason to serve and file his motion and motion record for the Applicant’s Stay Motion is amended to no later than March 14, 2018;
3. The deadline for Staff to serve and file responding materials, if any, on the Applicant’s Stay Motion is amended to no later than March 23, 2018; and
4. Mason’s motion for a stay of the decision of the Director will be heard on April 2, 2018, commencing at 10:00 a.m. or on such other dates or times as may be agreed by the parties and set by the Office of the Secretary.

“Mark J. Sandler”

2.2.4 NYX Gaming Group Limited

**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).

February 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  
NYX GAMING GROUP LIMITED (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, Yukon, Northwest Territories 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:

- a) the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
- b) 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;
- c) 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;
- d) 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
- e) 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.

“Jo-Anne Matear”  
Manager, Corporate Finance  
Ontario Securities Commission

**2.2.5 USI Tech Limited et al. – s. 127(8)**

**FILE NO.:** 2018-8

**IN THE MATTER OF  
USI TECH LIMITED,  
ELEANOR PARKER AND  
CASEY COMBDEN**

Timothy Moseley, Vice-Chair and Chair of the Panel

February 26, 2018

**ORDER**  
(Subsection 127(8) of  
*Securities Act*, RSO 1990 c S.5)

WHEREAS on February 26, 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 consider an application by Staff of the Commission to extend a temporary order dated February 14, 2018 (the **Temporary Order**);

ON READING the materials filed by Staff and an email correspondence between Staff and prospective counsel for all of the respondents (the **Email Correspondence**), and on hearing the submissions of the representative for Staff, no one appearing for the respondents although properly served as appears from the Email Correspondence,

IT IS ORDERED THAT:

1. With respect to USI Tech Limited and Casey Combden, pursuant to subsection 127(8) of *Securities Act*, RSO 1990 c S.5 (the **Act**), paragraphs 1 and 2 of the Temporary Order are extended until April 6, 2018;
2. With respect to Eleanor Parker, pursuant to subsection 127(8) of the Act, paragraph 1 of the Temporary Order is extended until April 6, 2018, except that it is only extended with respect to trading in securities of USI Tech Limited;
3. Any motion by Staff to extend the Temporary Order further shall be heard at 10:00am on April 5, 2018.

“Timothy Moseley”

2.2.6 Natural Bee Works Apiaries Inc. et al. – 127(8)

FILE NO.: 2018-7

IN THE MATTER OF  
NATURAL BEE WORKS APIARIES INC.,  
TAWLIA CHICKALO,  
RINALDO LANDUCCI and  
ELISE MAXHELEAU

D. Grant Vingoe, Vice-Chair and Chair of the Panel

February 26, 2018

**ORDER**

(Subsection 127(8) of the  
*Securities Act*, RSO 1990, c S.5)

WHEREAS on February 26, 2018, the Ontario Securities Commission (**Commission**) held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario with respect to an application by Staff of the Commission (**Staff**) to extend the temporary cease trade order initially issued on February 8, 2018 (the **Temporary Order**) and extended on February 21, 2018 to the end of day on February 27, 2018;

ON READING the materials filed by Staff, and on considering the oral submissions of Staff, appearing in person, and Tawlia Chickalo on her own behalf and Elise Maxheleau on her own behalf, and Rinaldo Landucci on his own behalf and on behalf of Natural Bee Works Apiaries Inc., all participating by telephone;

IT IS ORDERED THAT:

1. Pursuant to subsection 127(8) of the *Securities Act*, RSO 1990, c S.5, paragraphs 1 and 2 of the Temporary Order are extended until the end of day June 27, 2018.

“D. Grant Vingoe”

2.2.7 Donna Hutchinson et al.

IN THE MATTER OF  
DONNA HUTCHINSON,  
CAMERON EDWARD CORNISH,  
DAVID PAUL GEORGE SIDDEES and  
PATRICK JELF CARUSO

Mark J. Sandler, Commissioner and Chair of the Panel

February 26, 2018

**ORDER**

WHEREAS on February 26, 2018, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON HEARING the submissions of the representatives for Staff of the Commission (**Staff**) and for Patrick Jelf Caruso, no one appearing for David Paul George Sidders, Donna Hutchinson or Cameron Edward Cornish;

IT IS ORDERED THAT:

1. By no later than March 28, 2018, each of David Paul George Sidders, Patrick Jelf Caruso, Donna Hutchinson and Cameron Edward Cornish shall:
  - a. file and serve a witness list,
  - b. serve a summary of each witness's anticipated evidence on Staff; and
  - c. indicate any intention to call an expert witness;
2. By no later than April 16, 2018, all parties shall file the E-hearing Checklist for the Hearing on the Merits; and
3. the third attendance is scheduled for April 27, 2018 at 9:00 a.m.

“Mark J. Sandler”



2.2.8 Omega Securities Inc. – s. 127(7)

File No.: 2017-64

**IN THE MATTER OF  
OMEGA SECURITIES INC**

Mark J. Sandler, Commissioner and Chair of the Panel

February 27, 2018

**ORDER**

(Subsection 127(7) of the  
*Securities Act*, RSO 1990, c S.5)

WHEREAS on February 27, 2018, the Ontario Securities Commission conducted a hearing in writing, to consider whether to extend the temporary order of the Commission issued on November 23, 2017 in this matter (the **Temporary Order**) and extended on December 5, 2017, and January 26, 2018;

ON READING the material filed by Staff of the Commission and considering Omega Securities Inc.'s consent to the making of this Order;

IT IS ORDERED THAT:

1. Pursuant to section 5.1 of the *Statutory Powers Procedure Act*, RSO 1990, c S.22 and Rule 23(2) of the Ontario Securities Commission *Rules of Procedure and Forms* (2017), 40 OSCB 8988, the hearing be conducted in writing; and
2. Pursuant to subsection 127(7) of the *Securities Act*, RSO 1990, c S.5, the Temporary Order is extended until March 29, 2018.

“Mark J. Sandler”

2.2.9 Omega Securities Inc.

File No.: 2017-66

**IN THE MATTER OF  
OMEGA SECURITIES INC.**

Mark J. Sandler, Commissioner and Chair of the Panel

February 27, 2018

**ORDER**

WHEREAS on February 27, 2018, the Ontario Securities Commission conducted a hearing in writing, to consider a motion by Staff of the Commission;

ON READING the motion of Staff of the Commission, and considering the consent of Omega Securities Inc.;

IT IS ORDERED THAT:

1. This motion is heard in writing in accordance with Rule 23(2) of the Ontario Securities Commission *Rules of Procedure and Forms* (2017), 40 OSCB 8988 and section 5.1 of the *Statutory Powers Procedure Act*, RSO 1990, c S.22;
2. The Second Appearance in this matter scheduled for March 21, 2018, is vacated;
3. The Second Appearance in this matter will be heard on May 2, 2018, at 10:00 a.m., or such other date as may be agreed to by the parties and set by the Office of the Secretary;
4. By no later than April 20, 2018, the respondent shall serve and file any motions regarding Staff's disclosure or seeking disclosure of additional documents; and
5. By no later than April 26, 2018, Staff shall provide preliminary witness lists and statements to the respondent and shall indicate any intent to call an expert witness, including the name of the expert and the issue on which the expert will be giving evidence

“Mark J. Sandler”

2.3 Orders with Related Settlement Agreements

2.3.1 Theralase Technologies Inc. and Roger Dumoulin-White – s. 127(1)

FILE NO.: 2018-3

IN THE MATTER OF  
THERALASE TECHNOLOGIES INC. and  
ROGER DUMOULIN-WHITE

Janet Leiper, Commissioner and Chair of the Panel  
D. Grant Vingoe, Vice-Chair  
Deborah Leckman, Commissioner

February 26, 2018

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

WHEREAS on February 26, 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, to consider an application made jointly by the respondents (Theralase Technologies Inc. (“**Theralase**”) and Roger Dumoulin-White (“**Dumoulin-White**”), together the “**Respondents**”) and Staff of the Commission (“**Staff**”) for approval of a settlement agreement dated as of February 16, 2018 (the “**Agreement**”);

ON READING the Statement of Allegations dated February 21, 2018 and the Joint Application Record for a Settlement Hearing dated February 21, 2018, including the Agreement, the terms of consultant review (attached as Annex I to this Order) and undertakings of each of the Respondents (attached as Annexes II and III to this Order, respectively);

AND ON HEARING the submissions of representatives for the Respondents and Staff, and considering that \$100,000 of the administrative penalty payable by Dumoulin-White has been received by the Commission in accordance with the terms of the Agreement;

IT IS ORDERED THAT:

1. the Agreement is approved;
2. Theralase:
  - a. submit to a review by Peterson McVicar LLP (the “Consultant”) of: (A) Theralase's corporate governance framework, including the composition of its Board of Directors and Disclosure Committee; (B) Theralase's disclosure policies; and (C) the policies, processes, reports and systems related to Theralase's disclosure controls and procedures; and
  - b. institute such changes as may be recommended by the Consultant and accepted by Staff in accordance with the process set forth in Annex I to this Order,pursuant to paragraph 4 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the “**Act**”);
3. the Respondents be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
4. Dumoulin-White immediately resign any position that he holds as a director or officer of an issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;
5. Dumoulin-White is prohibited from becoming or acting as a director or officer of a reporting issuer or any related entity<sup>1</sup> for a period of five years commencing on the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act;

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<sup>1</sup> As defined in Division 4 of National Instrument 45-106 *Prospectus Exemptions*.

## Decisions, Orders and Rulings

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6. Dumoulin-White is prohibited from becoming or acting as a director or officer of a non-reporting issuer, other than a related entity of a reporting issuer,<sup>2</sup> for a period of three years commencing on the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act; and
7. Dumoulin-White pay an administrative penalty in an amount equal to \$250,000 less the costs of the Consultant paid by Dumoulin-White (which will not exceed \$150,000 and will be confirmed by the Consultant as set forth in Annex I to this Order), pursuant to paragraph 9 of subsection 127(1) of the Act, which administrative penalty amount is designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act and shall be paid in full by certified cheque or bank draft within two months of the date the first Management's Discussion & Analysis specified in paragraph 8 of the terms of consultant review (attached as Annex I to this Order) is required to be filed.

"Janet Leiper"

"D. Grant Vingoe"

"Deborah Leckman"

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<sup>2</sup> Under paragraph 5 of this Order, Dumoulin-White is prohibited from becoming or acting as a director or officer of a related entity of a reporting issuer for a period of five years commencing on the date of this Order.

ANNEX I

TERMS OF CONSULTANT REVIEW

IN THE MATTER OF

TERALASE TECHNOLOGIES INC. and ROGER DUMOULIN-WHITE

CONSULTANT'S TERMS OF REVIEW

All terms will have the same meanings herein as in the settlement agreement dated as of February 16, 2018 between Theralase Technologies Inc., Roger Dumoulin-White and Staff of the Ontario Securities Commission.

**A. Consultant's Mandate**

1. To conduct a review of, and to deliver reports addressing: (a) Theralase's corporate governance framework, including the composition of its Board and Disclosure Committee; (b) Theralase's disclosure policies; and (c) the policies, processes, reports and systems related to Theralase's disclosure controls and procedures.

**B. Consultant's and Theralase's Obligations**

2. The Consultant will issue a report to Theralase's Board, Audit Committee and Disclosure Committee and Staff within three months of the date of the Order, provided that the Consultant may seek to extend the review period for one additional three-month term by requesting an extension from Staff. Staff, after consultation with Theralase, may grant the extension if Staff deem it reasonable and warranted.

3. The Consultant's report will address the Consultant's review of the areas specified in Part A and will include a description of the review performed, the conclusions reached, the Consultant's recommendations for any changes or improvements as the Consultant reasonably deems necessary to conform to the law and best practices and a procedure for implementing the recommended changes or improvements.

4. Theralase will adopt all recommendations in the Consultant's report, provided that within 30 days of receipt of the report, it may in writing advise the Consultant and Staff of any recommendation it considers unnecessary or inappropriate. Theralase need not adopt that recommendation, but will propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

5. Theralase and the Consultant will attempt in good faith to reach an agreement on the recommendations Theralase has notified the Consultant of its disagreement with in accordance with paragraph 4. In the event Theralase and the Consultant are unable to agree on an alternative proposal within 60 days of the issuance of the Consultant's report, Theralase will abide by the Consultant's determination.

6. Theralase will retain the Consultant for a period of 12 months from the date of the Order. After the Consultant's recommendations become final pursuant to paragraph 4 or 5 above, the Consultant will oversee the implementation of the recommendations.

7. Twelve months after the date of the Order, the Consultant will provide a report to Theralase's Board, Audit Committee and Disclosure Committee and Staff concerning the progress of the implementation. If not all of the Consultant's recommendations have been implemented in a manner satisfactory to Staff for at least two successive fiscal quarters, Theralase will extend the Consultant's term of appointment until such time as all recommendations have been implemented in a manner satisfactory to Staff for at least two successive fiscal quarters.

8. At the conclusion of the 12-month period specified in paragraph 7, in addition to any requirements under applicable securities laws requiring disclosure related to this matter, Theralase will disclose in each of its next interim and annual MD&A (and its next interim and annual MD&A once any extended period contemplated in paragraph 7 is complete) a summary of:

- (a) the Consultant's report specified in paragraph 2;
- (b) if Theralase disagreed with any recommendations in the Consultant's report, the nature of the disagreement and its resolution, including the policy, procedure or system that was implemented; and
- (c) the implementation of the balance of the Consultant's recommendations.

9. In addition to the reports identified above, the Consultant will provide Theralase's Board, Audit Committee and Disclosure Committee and Staff with such documents or other information concerning the areas specified in Part A as any of them may request during the pendency or at the conclusion of the review.

**C. Terms of Consultant's Retainer**

10. The Consultant will have reasonable access to all of Theralase's books and records and may meet privately with its personnel. Theralase will instruct and otherwise encourage its directors, officers, employees and consultants to cooperate fully with the Consultant and inform its directors, officers, employees and consultants that failure to do so may be grounds for disciplinary action, dismissal or other appropriate actions.

11. The Consultant will make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of its responsibilities, and require all persons and firms retained to assist the Consultant to do so as well. The Consultant will provide Staff with such notes and documents as Staff may request during the pendency or at the conclusion of the review.

12. The Consultant will have the right, as reasonable and necessary in its judgment, to retain lawyers, accountants or other persons or firms, other than directors, officers, employees and consultants of Theralase, to assist in the discharge of its obligations. The fees and expenses of any persons or firms retained by the Consultant will be borne by the Consultant.

13. Within one month of the date the first MD&A specified in paragraph 8 is required to be filed (the "Report Disclosure Date"), the Consultant will provide the Board, Dumoulin-White and Staff with a final account of the costs in respect of its retainer (the "Costs"), including its fees, disbursements, any fees or expenses incurred pursuant to paragraph 12 and any applicable taxes. The Costs shall be payable by Dumoulin-White, subject to a cap of \$150,000. For greater certainty, if the Costs exceed \$150,000, the Consultant shall complete the balance of the work specified in this Annex I at its own expense.

14. Within two months of the Report Disclosure Date, the Consultant will advise the Board and Staff in writing of the amount of the Costs that have been paid to it by Dumoulin-White.

**ANNEX II**

**UNDERTAKING OF THERALASE**

**IN THE MATTER OF  
THERALASE TECHNOLOGIES INC. and  
ROGER DUMOULIN-WHITE**

**UNDERTAKING OF  
THERALASE TECHNOLOGIES INC. TO THE  
ONTARIO SECURITIES COMMISSION**

1. This Undertaking is given in connection with the settlement agreement dated as of February 16, 2018 between Theralase Technologies Inc., Roger Dumoulin-White and Staff of the Ontario Securities Commission (the "Agreement"). All terms will have the same meanings in this Undertaking as in the Agreement.

2. Theralase undertakes to the Commission to:

- (a) appoint Arkady Mandel ("Mandel"), Theralase's Chief Scientific Officer, to act as Theralase's Interim Chief Executive Officer for a period of no more than one year commencing on the date of the Order;
- (b) use best efforts to recruit a Chief Executive Officer to replace Mandel as soon as practicable. The replacement Chief Executive Officer will not be a director, officer, employee or consultant of Theralase on the date of the Order;
- (c) establish a Disclosure Committee to oversee and approve its disclosure, as follows:
  - (i) the Disclosure Committee will be composed of at least three members;
  - (ii) all of the members will be independent directors;
  - (iii) the initial Chair will be Guy Anderson; and
  - (iv) all Theralase's disclosure will be approved by a majority vote of the Disclosure Committee;
- (d) cause each of its directors and officers to complete a corporate governance course on disclosure issues satisfactory to Staff, the costs of which course will not exceed \$2,500;
- (e) for a period of five years commencing on the date of the Order, ensure that Dumoulin-White not engage, directly or indirectly, in any disclosure activities or significant investor relations activities in respect of Theralase and that any of Dumoulin-White's activities in respect of the raising of financing by, or the solicitation of investments in, Theralase are supervised by Theralase's Chief Executive Officer or a member of its Disclosure Committee, all in accordance with the undertakings of Dumoulin-White set forth in subparagraph 46(a) of the Agreement;
- (f) cancel Dumoulin-White's Future Services Options and not effect any transactions to replace them; and
- (g) disseminate and file a news release acceptable to Staff regarding this Agreement, including the matters set out under Part III of the Agreement.

**DATED** at Toronto, Ontario as of the 16th day of February, 2018.

**THERALASE TECHNOLOGIES INC.**

By: "Matthew Perraton"  
Matthew Perraton  
Director

By: "Randy Bruder"  
Randy Bruder  
Director

**ANNEX III**

**UNDERTAKING OF DUMOULIN-WHITE**

**IN THE MATTER OF  
THERALASE TECHNOLOGIES INC. and  
ROGER DUMOULIN-WHITE**

**UNDERTAKING OF  
ROGER DUMOULIN-WHITE TO THE  
ONTARIO SECURITIES COMMISSION**

1. This Undertaking is given in connection with the settlement agreement dated as of February 16, 2018 between Theralase Technologies Inc., Roger Dumoulin-White and Staff of the Ontario Securities Commission (the "Agreement"). All terms will have the same meanings in this Undertaking as in the Agreement.

2. Dumoulin-White undertakes to the Commission to:

- (a) for a period of five years commencing on the date of the Order:
  - (i) not to engage, directly or indirectly, in any disclosure activities, being:
    - 1. preparing any disclosure document, including any document disclosing information about an issuer used in soliciting investments in the issuer on a private placement basis; or
    - 2. participating in any discussions, or making any recommendations or otherwise influencing or attempting to influence an issuer, in respect of the preparation of any disclosure document;except in respect of any disclosure describing Dumoulin-White personally or his relationship with the issuer or as may be required by law;
  - (ii) not to engage, directly or indirectly, in any significant investor relations activities; and
  - (iii) ensure that any of his activities in respect of the raising of financing by, or the solicitation of investments in, Theralase be supervised by its Chief Executive Officer or a member of its Disclosure Committee;
- (b) before engaging in any disclosure activities, investor relations activities or the financing or solicitation activities described in subparagraph (a) above, engage in a full day of one-on-one training with the Consultant regarding disclosure issues;
- (c) before becoming a director or officer of an issuer, complete an education program, satisfactory to Staff, relating to the obligations of directors and officers;
- (d) not dispose of any of his securities of Theralase until the day following the date the first MD&A specified in paragraph 8 of Annex I to the Order is required to be filed;
- (e) pay the costs of Consultant's review, which will not exceed \$150,000, as set forth in Annex I to the Order;
- (f) surrender for cancellation the Future Services Options; and
- (g) pay all of the amounts payable by him under this Agreement, the Order and the Dumoulin-White Undertaking either from his personal assets, without recourse to any insurance, indemnification or similar provision or, if such a provision is relied on, at no cost to Theralase, including in the form of increased insurance premiums.

**DATED** at Toronto, Ontario as of the 16th day of February, 2018.

"Guy Anderson"

Witness: Guy Anderson

"Roger Dumoulin-White"

ROGER DUMOULIN-WHITE

**IN THE MATTER OF  
THERALASE TECHNOLOGIES INC. and  
ROGER DUMOULIN-WHITE**

**SETTLEMENT AGREEMENT**

**PART I – INTRODUCTION**

1. Requirements for timely, accurate and efficient disclosure of information, be it forward-looking or about historical events, are a primary means for achieving the purposes of the *Securities Act*. This matter concerns failures by a TSX-Venture-listed issuer, Theralase Technologies Inc. (“Theralase” or the “Company”), and its President and Chief Executive Officer, Roger Dumoulin-White (“Dumoulin-White” and, together with Theralase, the “Respondents”), to provide accurate and complete disclosure about the development of one of Theralase’s lead products, the TLC-2000 therapeutic laser. The disclosure issues concern: (a) forward-looking information about anticipated milestones and expected revenues; (b) the absence of updates to that information, including why targets were not achieved; and (c) historical information about the status of the device’s regulatory approvals.

2. The Ontario Securities Commission (the “Commission”) will issue a Notice of Hearing (the “Notice of Hearing”) to announce that it will hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, RSO 1990, c S.5 (the “Act”), it is in the public interest for the Commission to make certain orders against Theralase and Dumoulin-White in respect of the conduct described herein.

**PART II – JOINT SETTLEMENT RECOMMENDATION**

3. Staff of the Commission (“Staff”) recommend settlement of the proceeding (the “Proceeding”) against the Respondents commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part V of this Agreement. The Respondents consent to the making of an order (the “Order”) in the form attached as Schedule A to this Agreement based on the facts set out herein.

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

**PART III – AGREED FACTS**

**A. INTRODUCTION**

**(1) Overview**

5. The conduct at issue relates to Theralase’s disclosure about its TLC-2000 therapeutic laser (the “TLC-2000”) between November 3, 2006 and August 29, 2017 (the “Material Time”). The Company disclosed expected launch dates, revenue projections and growth targets for the TLC-2000 in a manner contrary to National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”) and the public interest. The conduct at issue also relates to Theralase’s disclosure regarding regulatory applications and approvals in respect of the TLC-2000’s biofeedback or Cell Sensing technology from Health Canada and the U.S. Food and Drug Administration (the “FDA”).

6. This matter does not concern the accuracy of Theralase’s financial reporting in its quarterly and annual financial statements filed with the Canadian Securities Administrators (the “CSA”) on the System for Electronic Document Analysis and Retrieval (“SEDAR”).

7. During the Material Time, Theralase did not have a Disclosure Committee and Dumoulin-White’s wife acted as Theralase’s Chief Financial Officer. Dumoulin-White, Theralase’s founder, President, Chief Executive Officer and the Chair of its Board of Directors (the “Board”), accepts primary responsibility for the disclosure at issue.

8. With respect to that disclosure, Theralase has provided or will provide clarifying disclosure. Theralase has issued corrective disclosure regarding the forward-looking information (“FLI”). As part of this settlement, Theralase will issue additional corrective disclosure regarding the status of the TLC-2000’s regulatory approvals.

**(2) The Law**

9. Requirements for timely, accurate and efficient disclosure of information, be it forward-looking or about historical events, are a primary means for achieving the purposes of the Act.



10. Disclosure of FLI by a reporting issuer – whether in a news release filed on SEDAR, in an offering memoranda provided to prospective private placement investors or on social media available to the general public – is subject to the provisions of NI 51-102.

11. NI 51-102 requires a reporting issuer to supplement certain FLI it discloses with additional disclosure (“FLI Required Disclosure”). Section 4A.3 mandates that material FLI be accompanied by disclosure that states the material factors or assumptions used to develop it, cautions that actual results may vary and identifies material risk factors that could cause material variations. Part 4B sets out additional requirements for financial outlooks, such as revenue guidance and growth targets. In addition to the disclosure required by section 4A.3, section 4B.3 requires financial outlooks to be accompanied by disclosure that explains their purpose and cautions that the information may not be appropriate for other purposes.

12. To assist reporting issuers in complying with their obligations, the CSA and the Commission have issued guidance regarding FLI Required Disclosure.<sup>1</sup> The guidance emphasizes the importance of presenting detailed factors and assumptions specific to the issuer’s business to enable the reader to understand the FLI.<sup>2</sup> General “boilerplate” disclosure does not adequately describe the key assumptions used and how primary risks may impact future performance. As noted in OSC Staff Notice 51-721 *Forward-Looking Information Disclosure*, general risk factors and assumptions provide investors with limited information and do not provide insight on how they relate to and impact the FLI being disclosed.

13. NI 51-102 also requires a reporting issuer to update certain previously disclosed FLI. Its Management’s Discussion & Analysis (“MD&A”) must discuss events and circumstances that are reasonably likely to cause actual results to differ materially from material FLI, as well as the expected differences, unless the issuer has already disclosed that information in a news release. Regardless of any previous disclosure, MD&A must discuss material differences between actual results and any previously disclosed financial outlooks.

14. Ontario securities law also requires issuers to prepare, disseminate and file specific disclosure documents, depending on their activities in the capital markets. For example, reporting issuers are subject to continuous disclosure obligations, including in respect of their MD&A and Annual Information Forms (“AIFs”). An issuer that wishes to offer securities to the public must do so under a prospectus. While the forms setting out disclosure required to be included in a prospectus are more extensive for a long form prospectus than for a short form prospectus, such as a base shelf prospectus, a short form prospectus is also required to incorporate by reference certain disclosure documents of the reporting issuer.

## **B. DETAILED FACTS**

### **(1) Respondents**

15. Theralase is a medical devices company, the registered and head office of which is located in Toronto, Ontario. It is a reporting issuer in Ontario, the common shares (“Shares”) of which are listed on the TSX Venture Exchange under the trading symbol “TLT”. The Shares also trade on the OTCQX Best Market under the trading symbol “TLTFF”. Share purchase warrants and stock options of Theralase are also outstanding.

16. Dumoulin-White is Theralase’s founder, President, Chief Executive Officer and the Chair of its Board. He is resident in Toronto, Ontario.

### **(2) Theralase’s Business**

17. Theralase has two main divisions: the Photo Dynamic Therapy division (the “PDT Division”) and the Therapeutic Laser Technology division (the “TLT Division”). According to a news release of Theralase dated November 29, 2017:

- (a) the PDT Division researches and develops specially designed molecules called Photo Dynamic Compounds, which are able to localize to cancer cells and then when laser light activated, effectively destroy them; and
- (b) the TLT Division designs, manufactures, markets and distributes patented super-pulsed laser technology indicated for the treatment of chronic knee pain, and in off-label use, the elimination of pain, reduction of inflammation and acceleration of tissue healing for numerous nerve, muscle, tendon, ligament, joint and wound conditions.

18. The PDT Division is in early stages, presently engaged in clinical trials led by Princess Margaret Cancer Centre, University Health Network and not expected to produce revenues in the near future. Theralase’s revenue-generating unit is the TLT Division, the principal products of which are the TLC-1000 and TLC-2000 therapeutic lasers. Theralase has indicated that it

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<sup>1</sup> See e.g. Companion Policy 51-102CP *Continuous Disclosure Obligations* and CSA Staff Notice 51-330 *Guidance Regarding the Application of Forward-looking Information Requirements under NI 51-102 Continuous Disclosure Obligations*.

<sup>2</sup> See e.g. CSA Staff Notice 51-341 *Continuous Disclosure Review Program Activities for the Fiscal Year Ended March 31, 2014*.

expects the TLC-2000 to displace the TLC-1000 as its lead product, once the former is successfully launched. While Theralase continues to work on successfully commercializing the TLC-2000, it is also actively developing its PDT Division.

**(3) Launch Dates, Revenue Projections and Growth Targets**

19. On November 3, 2006, Theralase disclosed the anticipated launch of laser biofeedback technology in 2007. In its subsequent MD&A,<sup>3</sup> it specified that commercialization of the biofeedback technology was slated to commence in the first quarter of 2007. On March 6, 2007, Theralase indicated that the biofeedback technology had been housed in the TLC-2000.

20. Over the next eight and a half years, Theralase made various statements in its public disclosure (including news releases and MD&A filed on SEDAR and marketing materials posted on the Theralase website and elsewhere on the Internet) in which it rolled forward the launch date of the TLC-2000 in 30-day to five quarter increments (collectively, the “Launch Date FLI”). Sales of the TLC-2000 did not commence until December 15, 2015, following the issuance of regulatory approvals from Health Canada and the FDA.

21. On July 11, 2014, Theralase granted Dumoulin-White 1,000,000 stock options (the “2014 Options”). According to Theralase’s news release, the 2014 Option grants had been made “as a means of rewarding directors and officers for future services to be provided to the Corporation, including: the launch of the patented TLC-2000 biofeedback therapeutic laser system in 4Q2014 and the commencement of FDA Phase I / IIa human clinical studies in bladder cancer for its patented and patent pending anti-cancer Photo Dynamic Compound (PDC) technology in 1Q2015.”

22. On May 28, 2015, Theralase granted Dumoulin-White an additional 3,000,000 stock options (the “2015 Options” and, together with the 2014 Options, the “Future Services Options”). The related news release explained that they had been “granted as a means of rewarding directors and officers for future service to the Corporation, including: (1) Launch of the patented TLC-2000 biofeedback therapeutic laser system with Cell Sensing™ technology in 2Q2015 and (2) Commencement of the Health Canada Phase Ib human clinical study for the treatment of Non-Muscle Invasive Bladder Cancer with its patented and patent pending anti-cancer Photo Dynamic Therapy in 4Q2015.”

23. Sales of the TLC-2000 did not commence until the fourth quarter of 2015. Dumoulin-White did not forfeit his Future Services Options.

24. Between 2006 and 2016, Theralase also disclosed revenue projections for the TLC-2000 (the “Revenue Projections”). The financial outlooks appeared in offering memoranda and other marketing materials provided to prospective investors and posted on the Internet, as well as in a post on Theralase’s Twitter feed. They ranged from \$2.5 million to \$10 million in the first year of launch to \$50 million to \$60 million in the fifth year following launch of the TLC-2000.

25. Theralase also referred to five-year outlooks in its SEDAR filings (the “Growth Targets”). For example, in a news release dated August 16, 2012, Dumoulin-White stated that one aspect of the Company’s mandate was to build the TLT Division into a “\$50 million annual recurring revenue model within the next 5 to 7 years.” Theralase’s AIF dated September 24, 2014 provided that “Theralase’s corporate mandate is to capture at least 1% of the therapeutic laser market, thus achieving annual revenues of >\$50 million ... within five years of launch” of the TLC-2000.

26. The financial outlooks were not achieved. By way of example, Theralase’s revenues in 2016 were approximately \$1.9 million. On June 30, 2017, at Staff’s request, Theralase issued a news release in which it stated that it did not expect to achieve any of the forward-looking targets with respect to revenues that it had previously provided.

27. When Theralase provided the Launch Date FLI, Revenue Projections and Growth Targets, it did not accompany them with FLI Required Disclosure. For example, while some of the FLI was accompanied by a general “boilerplate”, forward-looking statement disclaimer, Theralase did not identify the material risk factors that could cause actual results to differ, such as the effect that the regulatory approval process could have on the Launch Date FLI, or the quantitative and qualitative assumptions underlying the Revenue Projections or Growth Targets.

28. Theralase also did not update the FLI in accordance with NI 51-102. For instance, while its news releases and MD&A disclosed new launch dates for the TLC-2000, they did not reference the previous ones or explain why they had not been met.

29. Theralase has explained to Staff that it relied on its financial filings (including its annual and interim financial statements and related MD&A) filed in the ordinary course on SEDAR to update its disclosure record.

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<sup>3</sup> Dated November 20, 2006.

**(4) Regulatory Approval of Biofeedback or Cell Sensing Technology**

30. Since 2003, Theralase's SEDAR filings have referred to the development of its patented, biofeedback technology, which would eventually be housed in the TLC-2000. The purpose of the biofeedback technology is to sense and target the injured tissue at depth and calibrate the laser's energy dose accordingly. Theralase consistently described this biofeedback feature as an advance that distinguished the TLC-2000 from its competition. In 2015, Theralase trademarked the term "Cell Sensing" to refer to it.

31. On February 9, 2015, Theralase announced that it had applied for Health Canada approval of the TLC-2000 and expected to do the same with respect to the FDA in March 2015. The news release described the TLC-2000 as a biofeedback therapeutic laser possessing Cell Sensing technology. Theralase had not applied to Health Canada for approval of the biofeedback or Cell Sensing technology and did not seek approval of it from the FDA until February 2017.

32. In its prospectus supplement to its base shelf prospectus dated February 25, 2015 (the "2015 Prospectus"), Theralase stated that it had filed for Health Canada approval of the TLC-2000. The two MD&A,<sup>4</sup> AIF and marketing materials incorporated by reference into the 2015 Prospectus described the TLC-2000 as having biofeedback or Cell Sensing technology.

33. In five subsequent news releases<sup>5</sup> and four MD&A,<sup>6</sup> Theralase indicated that it was awaiting Health Canada and/or the FDA approval to launch the TLC-2000. In the same news releases and MD&A, Theralase described the TLC-2000 as having biofeedback or Cell Sensing technology. For example, according to MD&A: "The TLC-2000 Biofeedback Therapeutic Laser System is currently being reviewed by ... Health Canada and is expected to be approved for commercial distribution in Canada in early Q2 2015. Approval of the TLC-2000 Biofeedback Therapeutic Laser System by the Food and Drug Administration ("FDA") is expected in 4Q2015 for commercial distribution in the United States ..."

34. On November 25, 2015 and December 14, 2015, respectively, Theralase announced that it had obtained regulatory approval for the TLC-2000 from the FDA and Health Canada. In nine subsequent MD&A<sup>7</sup> and its AIF dated November 7, 2016 (the "2016 AIF"), Theralase referred to approval or clearance by Health Canada or the FDA of the TLC-2000. It also described the TLC-2000 as having biofeedback or Cell Sensing technology. For example, according to Theralase's MD&A dated November 3, 2016 and the 2016 AIF: "The TLC-2000 Biofeedback Therapeutic Laser System ... has a Health Canada approved Medical Device License (Class III)."

35. Two of these MD&A<sup>8</sup> and the 2016 AIF were incorporated by reference into Theralase's prospectus supplement dated November 7, 2016.

36. As part of this settlement, Theralase will issue corrective disclosure regarding the status of the regulatory approvals of the Cell Sensing technology.

**C. MITIGATING FACTORS**

37. The Respondents request that the panel presiding at the Settlement Hearing (as defined below) consider the following mitigating circumstances. Staff do not object to the mitigating circumstances set out by the Respondents below.

38. Dumoulin-White represents and warrants to Staff and the Commission that:

- (a) he has never sold a Share; and
- (b) he believed that the Revenue Projections and Growth Targets were reasonable and achievable when they were made.

39. In connection with Staff's review, Theralase has introduced policies and procedures relating to disclosure.

40. Theralase has sought to reach an early resolution of this matter that would enhance its corporate governance and disclosure practices going forward.

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<sup>4</sup> Dated April 29, 2014 and November 27, 2014.

<sup>5</sup> Dated May 1, 2015, May 29, 2015, June 10, 2015, June 11, 2015 and July 17, 2015.

<sup>6</sup> Dated April 30, 2015, May 29, 2015, August 28, 2015 and November 27, 2015.

<sup>7</sup> Dated November 27, 2015, April 29, 2016, May 27, 2016, August 29, 2016, November 3, 2016, November 29, 2016, May 1, 2017, May 30, 2017 and August 29, 2017.

<sup>8</sup> Dated April 29, 2016 and November 3, 2016.

**PART IV – NON-COMPLIANCE WITH ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST**

41. The Respondents acknowledge and admit that, during the Material Time:
- (a) Theralase did not provide FLI Required Disclosure with, or update, its Launch Date FLI, Revenue Projections or Growth Targets, contrary to sections 4A.3, 4B.3 and 5.8 of NI 51-102 (with respect to FLI disclosed on or after December 31, 2007, when these provisions came into force) and contrary to the public interest (with respect to the other FLI at issue);
  - (b) Dumoulin-White, a director and officer of Theralase, authorized, permitted or acquiesced in Theralase's non-compliance with Ontario securities law, as set out in subparagraph (a) above, and is deemed not to have complied with Ontario securities law under section 129.2 of the Act;
  - (c) certain of Theralase's disclosure may have conveyed that the regulatory approvals obtained with respect to the TLC-2000 extended to the biofeedback or Cell Sensing technology, when they did not, contrary to the public interest; and
  - (d) as set out in subparagraphs (a) through (c) above, the Respondents engaged in conduct contrary to the public interest.

**PART V – TERMS OF SETTLEMENT**

42. The Respondents agree to the terms of settlement set forth below.
43. The Respondents consent to the Order, pursuant to which it is ordered that:
- (a) this Agreement be approved;
  - (b) Theralase:
    - (i) submit to a review by Peterson McVicar LLP (the "Consultant") of: (A) Theralase's corporate governance framework, including the composition of its Board and Disclosure Committee; (B) Theralase's disclosure policies; and (C) the policies, processes, reports and systems related to Theralase's disclosure controls and procedures; and
    - (ii) institute such changes as may be recommended by the Consultant and accepted by Staff in accordance with the process set forth in Annex I to the Order,
- pursuant to paragraph 4 of subsection 127(1) of the Act;
- (c) the Respondents be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
  - (d) Dumoulin-White immediately resign any position that he holds as a director or officer of an issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;
  - (e) Dumoulin-White be prohibited from becoming or acting as a director or officer of a reporting issuer or any related entity<sup>9</sup> for a period of five years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act;
  - (f) Dumoulin-White be prohibited from becoming or acting as a director or officer of a non-reporting issuer, other than a related entity of a reporting issuer,<sup>10</sup> for a period of three years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act; and
  - (g) Dumoulin-White pay an administrative penalty in an amount equal to \$250,000 less the costs of the Consultant paid by Dumoulin-White (which will not exceed \$150,000 and will be confirmed by the Consultant as set forth in Annex I to the Order), pursuant to paragraph 9 of subsection 127(1) of the Act, which administrative penalty amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act and be paid in full by certified cheque or bank draft within two months of the

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<sup>9</sup> As defined in Division 4 of National Instrument 45-106 *Prospectus Exemptions*.

<sup>10</sup> Under paragraph 43(e), Dumoulin-White is prohibited from becoming or acting as a director or officer of a related entity of a reporting issuer for a period of five years commencing on the date of the Order.

date the first MD&A specified in paragraph 8 of Annex I to the Order is required to be filed (the "Report Disclosure Date").

44. \$100,000 of the administrative penalty shall be paid by certified cheque or bank draft prior to the issuance of the Order.

45. Theralase has given an undertaking (the "Theralase Undertaking") to the Commission in the form attached as Annex II to the Order, under which Theralase undertakes to:

- (a) appoint Arkady Mandel ("Mandel"), Theralase's Chief Scientific Officer, to act as Theralase's Interim Chief Executive Officer for a period of no more than one year commencing on the date of the Order;
- (b) use best efforts to recruit a Chief Executive Officer to replace Mandel as soon as practicable. The replacement Chief Executive Officer will not be a director, officer, employee or consultant of Theralase on the date of the Order;
- (c) establish a Disclosure Committee to oversee and approve its disclosure, as follows:
  - (i) the Disclosure Committee will be composed of at least three members;
  - (ii) all of the members will be independent directors;
  - (iii) the initial Chair will be Guy Anderson; and
  - (iv) all Theralase's disclosure will be approved by a majority vote of the Disclosure Committee;
- (d) cause each of its directors and officers to complete a corporate governance course on disclosure issues satisfactory to Staff, the costs of which course will not exceed \$2,500;
- (e) for a period of five years commencing on the date of the Order, ensure that Dumoulin-White not engage, directly or indirectly, in any disclosure activities or significant investor relations activities in respect of Theralase and that any of Dumoulin-White's activities in respect of the raising of financing by, or the solicitation of investments in, Theralase are supervised by Theralase's Chief Executive Officer or a member of its Disclosure Committee, all in accordance with the undertakings of Dumoulin-White set forth in subparagraph 46(a);
- (f) cancel Dumoulin-White's Future Services Options<sup>11</sup> and not effect any transactions to replace them; and
- (g) disseminate and file a news release acceptable to Staff regarding this Agreement, including the matters set out under Part III.

46. Dumoulin-White has given an undertaking (the "Dumoulin-White Undertaking" and, together with the Theralase Undertaking, the "Undertakings") to the Commission in the form attached as Annex III to the Order, under which Dumoulin-White undertakes to:

- (a) for a period of five years commencing on the date of the Order:
  - (i) not to engage, directly or indirectly, in any disclosure activities, being:
    1. preparing any disclosure document, including any document disclosing information about an issuer used in soliciting investments in the issuer on a private placement basis; or
    2. participating in any discussions, or making any recommendations or otherwise influencing or attempting to influence an issuer, in respect of the preparation of any disclosure document;except in respect of any disclosure describing Dumoulin-White personally or his relationship with the issuer or as may be required by law;

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<sup>11</sup> The 2014 Options have an exercise price of \$0.50 and expire on July 11, 2019. As of January 19, 2018, a Black Scholes valuation methodology resulted in fair values for the 2014 Options such as \$7,477.76 (based on monthly volatility over the previous year) and \$123,130.30 (based on quarterly volatility over the previous year).

The 2015 Options have an exercise price of \$0.50 and expire on May 28, 2020. As of January 19, 2018, a Black Scholes valuation methodology resulted in fair values for the 2015 Options such as \$51,616.57 (based on monthly volatility over the previous year) and \$476,694.87 (based on quarterly volatility over the previous year).

- (ii) not to engage, directly or indirectly, in any significant investor relations activities; and
  - (iii) ensure that any of his activities in respect of the raising of financing by, or the solicitation of investments in, Theralase be supervised by its Chief Executive Officer or a member of its Disclosure Committee;
- (b) before engaging in any disclosure activities, investor relations activities or the financing or solicitation activities described in subparagraph (a) above, engage in a full day of one-on-one training with the Consultant regarding disclosure issues;
  - (c) before becoming a director or officer of an issuer, complete an education program, satisfactory to Staff, relating to the obligations of directors and officers;
  - (d) not dispose of any of his securities of Theralase until the day following the Report Disclosure Date;
  - (e) pay the costs of Consultant's review, which will not exceed \$150,000, as set forth in Annex I to the Order;
  - (f) surrender for cancellation the Future Services Options; and
  - (g) pay all of the amounts payable by him under this Agreement, the Order and the Dumoulin-White Undertaking either from his personal assets, without recourse to any insurance, indemnification or similar provision or, if such a provision is relied on, at no cost to Theralase, including in the form of increased insurance premiums.

47. Dumoulin-White acknowledges that, in addition to any proceedings referred to in paragraphs 50 and 51, failure to pay in full any monetary sanctions and/or costs ordered will result in Dumoulin-White's name being added to the list of "Respondents Delinquent in Payment of Commission Orders" published on the Commission's website.

48. Dumoulin-White consents to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in subparagraphs 43(c), 43(d), 43(e) and 43(f). These sanctions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

49. The Respondents acknowledge that this Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of certain Canadian jurisdictions allow orders made in this matter to take effect in them automatically, without further notice to the Respondents. The Respondents should contact the securities regulator of any other jurisdiction in which the Respondents intend to engage in any securities-related activities, prior to undertaking such activities.

#### **PART VI – FURTHER PROCEEDINGS**

50. If the Commission approves this Agreement, Staff will not commence or continue any proceeding against the Respondents under Ontario securities law based on the misconduct described in Part III of this Agreement, unless the Respondents fail to comply with any term in this Agreement or their respective Undertakings. In that case, Staff may bring proceedings under Ontario securities law against the Respondents that may be based on, among other things, the facts set out in Part III of this Agreement as well as the breach of this Agreement or applicable Undertaking.

51. Dumoulin-White acknowledges that, if the Commission approves this Agreement and Dumoulin-White fails to comply with any term in it or in the Dumoulin-White Undertaking, the Commission is entitled to bring any proceedings necessary to recover the amounts set out in subparagraph 43(g).

52. Each Respondent waives any defences to a proceeding referenced in paragraphs 50 and 51 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Agreement or applicable Undertaking.

#### **PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT**

53. The parties will seek approval of this Agreement at a public hearing (the "Settlement Hearing") before the Commission, which will be held on a date determined by the Secretary to the Commission in accordance with this Agreement and the Commission's *Rules of Procedure* (2017), 40 OSCB 8988.

54. Dumoulin-White, in his personal capacity, and Mandel, on behalf of Theralase, will attend the Settlement Hearing in person.

**Decisions, Orders and Rulings**

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55. The parties confirm that this Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

56. If the Commission approves this Agreement:

- (a) each Respondent irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and
- (b) none of the parties will make any public statement that is inconsistent with this Agreement or with any additional agreed facts submitted at the Settlement Hearing.

57. Whether or not the Commission approves this Agreement, no Respondent will use, in any proceeding, this Agreement or the negotiation or process of approval of this Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

**PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT**

58. If the Commission does not make the Order:

- (a) this Agreement and all discussions and negotiations between Staff and the Respondents before the Settlement Hearing will be without prejudice to Staff and the Respondents; and
- (b) Staff and the Respondents will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any such proceedings, remedies and challenges will not be affected by this Agreement, or by any discussions or negotiations relating to this Agreement.

59. The parties will keep the terms of this Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

**PART IX – EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** at Toronto, Ontario as of the 16th day of February, 2018.

**THERALASE TECHNOLOGIES INC.**

By: "Matthew Perraton"  
Matthew Perraton  
Director

By: "Randy Bruder"  
Randy Bruder  
Director

"Guy Anderson"  
Witness: Guy Anderson

"Roger Dumoulin-White"  
ROGER DUMOULIN-WHITE

**DATED** at Toronto, Ontario as of the 16th day of February, 2018.

**ONTARIO SECURITIES COMMISSION**

By: "Jeff Kehoe"  
Jeff Kehoe  
Director, Enforcement Branch

**SCHEDULE A**

**FORM OF ORDER**

**IN THE MATTER OF  
THERALASE TECHNOLOGIES INC. and  
ROGER DUMOULIN-WHITE**

**File No. [#]**

**[Name of Chair of Panel]**, Chair of the Panel  
**[Name of Commissioner]**, Commissioner  
**[Name of Commissioner]**, Commissioner

**[Day and date Order made]**

**ORDER**

(Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)

**WHEREAS** on **[date]**, 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, to consider an application made jointly by Theralase Technologies Inc. ("Theralase"), Roger Dumoulin-White ("Dumoulin-White" and, together with Theralase, the "Respondents") and Staff ("Staff") of the Commission for approval of a settlement agreement dated as of February 16, 2018 (the "Agreement");

**ON READING** the Statement of Allegations dated **[date]** and the Joint Application Record for a Settlement Hearing dated **[date]**, including the Agreement, the terms of consultant review (attached as Annex I to this Order) and undertakings of each of the Respondents (attached as Annexes II and III to this Order, respectively);

**AND ON HEARING** the submissions of counsel for the Respondents and Staff, including that \$100,000 of the administrative penalty payable by Dumoulin-White has been received by the Commission in accordance with the terms of the Agreement;

**IT IS ORDERED THAT:**

1. the Agreement be approved;
2. Theralase:
  - (a) submit to a review by Peterson McVicar LLP (the "Consultant") of: (A) Theralase's corporate governance framework, including the composition of its Board of Directors and Disclosure Committee; (B) Theralase's disclosure policies; and (C) the policies, processes, reports and systems related to Theralase's disclosure controls and procedures; and
  - (b) institute such changes as may be recommended by the Consultant and accepted by Staff in accordance with the process set forth in Annex I to this Order,pursuant to paragraph 4 of subsection 127(1) of the Act;
3. the Respondents be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
4. Dumoulin-White immediately resign any position that he holds as a director or officer of an issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;
5. Dumoulin-White be prohibited from becoming or acting as a director or officer of a reporting issuer or any related entity<sup>1</sup> for a period of five years commencing on the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act;
6. Dumoulin-White be prohibited from becoming or acting as a director or officer of a non-reporting issuer, other than a related entity of a reporting issuer,<sup>2</sup> for a period of three years commencing on the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act; and

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<sup>1</sup> As defined in Division 4 of National Instrument 45-106 *Prospectus Exemptions*.

<sup>2</sup> Under paragraph 5, Dumoulin-White is prohibited from becoming or acting as a director or officer of a related entity of a reporting issuer for a period of five years commencing on the date of this Order.



7. Dumoulin-White pay an administrative penalty in an amount equal to \$250,000 less the costs of the Consultant paid by Dumoulin-White (which will not exceed \$150,000 and will be confirmed by the Consultant as set forth in Annex I to this Order), pursuant to paragraph 9 of subsection 127(1) of the Act, which administrative penalty amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act and be paid in full by certified cheque or bank draft within two months of the date the first Management's Discussion & Analysis specified in paragraph 8 of Annex I to this Order is required to be filed.

**[Name of Chair of Panel]**

**[Name of Commissioner]**

**[Name of Commissioner]**

ANNEX I

TERMS OF CONSULTANT REVIEW

IN THE MATTER OF  
THERALASE TECHNOLOGIES INC. and  
ROGER DUMOULIN-WHITE

CONSULTANT'S TERMS OF REVIEW

All terms will have the same meanings herein as in the settlement agreement dated as of February 16, 2018 between Theralase Technologies Inc., Roger Dumoulin-White and Staff of the Ontario Securities Commission.

**A. Consultant's Mandate**

1. To conduct a review of, and to deliver reports addressing: (a) Theralase's corporate governance framework, including the composition of its Board and Disclosure Committee; (b) Theralase's disclosure policies; and (c) the policies, processes, reports and systems related to Theralase's disclosure controls and procedures.

**B. Consultant's and Theralase's Obligations**

2. The Consultant will issue a report to Theralase's Board, Audit Committee and Disclosure Committee and Staff within three months of the date of the Order, provided that the Consultant may seek to extend the review period for one additional three-month term by requesting an extension from Staff. Staff, after consultation with Theralase, may grant the extension if Staff deem it reasonable and warranted.

3. The Consultant's report will address the Consultant's review of the areas specified in Part A and will include a description of the review performed, the conclusions reached, the Consultant's recommendations for any changes or improvements as the Consultant reasonably deems necessary to conform to the law and best practices and a procedure for implementing the recommended changes or improvements.

4. Theralase will adopt all recommendations in the Consultant's report, provided that within 30 days of receipt of the report, it may in writing advise the Consultant and Staff of any recommendation it considers unnecessary or inappropriate. Theralase need not adopt that recommendation, but will propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

5. Theralase and the Consultant will attempt in good faith to reach an agreement on the recommendations Theralase has notified the Consultant of its disagreement with in accordance with paragraph 4. In the event Theralase and the Consultant are unable to agree on an alternative proposal within 60 days of the issuance of the Consultant's report, Theralase will abide by the Consultant's determination.

6. Theralase will retain the Consultant for a period of 12 months from the date of the Order. After the Consultant's recommendations become final pursuant to paragraph 4 or 5 above, the Consultant will oversee the implementation of the recommendations.

7. Twelve months after the date of the Order, the Consultant will provide a report to Theralase's Board, Audit Committee and Disclosure Committee and Staff concerning the progress of the implementation. If not all of the Consultant's recommendations have been implemented in a manner satisfactory to Staff for at least two successive fiscal quarters, Theralase will extend the Consultant's term of appointment until such time as all recommendations have been implemented in a manner satisfactory to Staff for at least two successive fiscal quarters.

8. At the conclusion of the 12-month period specified in paragraph 7, in addition to any requirements under applicable securities laws requiring disclosure related to this matter, Theralase will disclose in each of its next interim and annual MD&A (and its next interim and annual MD&A once any extended period contemplated in paragraph 7 is complete) a summary of:

- (a) the Consultant's report specified in paragraph 2;
- (b) if Theralase disagreed with any recommendations in the Consultant's report, the nature of the disagreement and its resolution, including the policy, procedure or system that was implemented; and
- (c) the implementation of the balance of the Consultant's recommendations.

9. In addition to the reports identified above, the Consultant will provide Theralase's Board, Audit Committee and Disclosure Committee and Staff with such documents or other information concerning the areas specified in Part A as any of them may request during the pendency or at the conclusion of the review.

**C. Terms of Consultant's Retainer**

10. The Consultant will have reasonable access to all of Theralase's books and records and may meet privately with its personnel. Theralase will instruct and otherwise encourage its directors, officers, employees and consultants to cooperate fully with the Consultant and inform its directors, officers, employees and consultants that failure to do so may be grounds for disciplinary action, dismissal or other appropriate actions.

11. The Consultant will make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of its responsibilities, and require all persons and firms retained to assist the Consultant to do so as well. The Consultant will provide Staff with such notes and documents as Staff may request during the pendency or at the conclusion of the review.

12. The Consultant will have the right, as reasonable and necessary in its judgment, to retain lawyers, accountants or other persons or firms, other than directors, officers, employees and consultants of Theralase, to assist in the discharge of its obligations. The fees and expenses of any persons or firms retained by the Consultant will be borne by the Consultant.

13. Within one month of the date the first MD&A specified in paragraph 8 is required to be filed (the "Report Disclosure Date"), the Consultant will provide the Board, Dumoulin-White and Staff with a final account of the costs in respect of its retainer (the "Costs"), including its fees, disbursements, any fees or expenses incurred pursuant to paragraph 12 and any applicable taxes. The Costs shall be payable by Dumoulin-White, subject to a cap of \$150,000. For greater certainty, if the Costs exceed \$150,000, the Consultant shall complete the balance of the work specified in this Annex I at its own expense.

14. Within two months of the Report Disclosure Date, the Consultant will advise the Board and Staff in writing of the amount of the Costs that have been paid to it by Dumoulin-White.

**ANNEX II**

**UNDERTAKING OF THERALASE**

**IN THE MATTER OF  
THERALASE TECHNOLOGIES INC. and  
ROGER DUMOULIN-WHITE**

**UNDERTAKING OF  
THERALASE TECHNOLOGIES INC. TO THE  
ONTARIO SECURITIES COMMISSION**

1. This Undertaking is given in connection with the settlement agreement dated as of February 16, 2018 between Theralase Technologies Inc., Roger Dumoulin-White and Staff of the Ontario Securities Commission (the "Agreement"). All terms will have the same meanings in this Undertaking as in the Agreement.

2. Theralase undertakes to the Commission to:

- (a) appoint Arkady Mandel ("Mandel"), Theralase's Chief Scientific Officer, to act as Theralase's Interim Chief Executive Officer for a period of no more than one year commencing on the date of the Order;
- (b) use best efforts to recruit a Chief Executive Officer to replace Mandel as soon as practicable. The replacement Chief Executive Officer will not be a director, officer, employee or consultant of Theralase on the date of the Order;
- (c) establish a Disclosure Committee to oversee and approve its disclosure, as follows:
  - (i) the Disclosure Committee will be composed of at least three members;
  - (ii) all of the members will be independent directors;
  - (iii) the initial Chair will be Guy Anderson; and
  - (iv) all Theralase's disclosure will be approved by a majority vote of the Disclosure Committee;
- (d) cause each of its directors and officers to complete a corporate governance course on disclosure issues satisfactory to Staff, the costs of which course will not exceed \$2,500;
- (e) for a period of five years commencing on the date of the Order, ensure that Dumoulin-White not engage, directly or indirectly, in any disclosure activities or significant investor relations activities in respect of Theralase and that any of Dumoulin-White's activities in respect of the raising of financing by, or the solicitation of investments in, Theralase are supervised by Theralase's Chief Executive Officer or a member of its Disclosure Committee, all in accordance with the undertakings of Dumoulin-White set forth in subparagraph 46(a) of the Agreement;
- (f) cancel Dumoulin-White's Future Services Options and not effect any transactions to replace them; and
- (g) disseminate and file a news release acceptable to Staff regarding this Agreement, including the matters set out under Part III of the Agreement.

**DATED** at Toronto, Ontario as of the ● day of ●, 2018.

**THERALASE TECHNOLOGIES INC.**

By: **[Name]**  
Director

By: **[Name]**  
Director

**ANNEX III**

**UNDERTAKING OF DUMOULIN-WHITE**

**IN THE MATTER OF  
THERALASE TECHNOLOGIES INC. and  
ROGER DUMOULIN-WHITE**

**UNDERTAKING OF  
ROGER DUMOULIN-WHITE TO THE  
ONTARIO SECURITIES COMMISSION**

1. This Undertaking is given in connection with the settlement agreement dated as of February 16, 2018 between Theralase Technologies Inc., Roger Dumoulin-White and Staff of the Ontario Securities Commission (the "Agreement"). All terms will have the same meanings in this Undertaking as in the Agreement.

2. Dumoulin-White undertakes to the Commission to:

- (a) for a period of five years commencing on the date of the Order:
  - (i) not to engage, directly or indirectly, in any disclosure activities, being:
    - 1. preparing any disclosure document, including any document disclosing information about an issuer used in soliciting investments in the issuer on a private placement basis; or
    - 2. participating in any discussions, or making any recommendations or otherwise influencing or attempting to influence an issuer, in respect of the preparation of any disclosure document;  
  
except in respect of any disclosure describing Dumoulin-White personally or his relationship with the issuer or as may be required by law;
  - (ii) not to engage, directly or indirectly, in any significant investor relations activities; and
  - (iii) ensure that any of his activities in respect of the raising of financing by, or the solicitation of investments in, Theralase be supervised by its Chief Executive Officer or a member of its Disclosure Committee;
- (b) before engaging in any disclosure activities, investor relations activities or the financing or solicitation activities described in subparagraph (a) above, engage in a full day of one-on-one training with the Consultant regarding disclosure issues;
- (c) before becoming a director or officer of an issuer, complete an education program, satisfactory to Staff, relating to the obligations of directors and officers;
- (d) not dispose of any of his securities of Theralase until the day following the date the first MD&A specified in paragraph 8 of Annex I to the Order is required to be filed;
- (e) pay the costs of Consultant's review, which will not exceed \$150,000, as set forth in Annex I to the Order;
- (f) surrender for cancellation the Future Services Options; and
- (g) pay all of the amounts payable by him under this Agreement, the Order and the Dumoulin-White Undertaking either from his personal assets, without recourse to any insurance, indemnification or similar provision or, if such a provision is relied on, at no cost to Theralase, including in the form of increased insurance premiums.

**DATED** at Toronto, Ontario as of the ● day of ●, 2018.

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
ROGER DUMOULIN-WHITE

## 2.4 Rulings

### 2.4.1 Chelsea Avondale Ltd. – s. 74

#### Headnote

Application to the Ontario Securities Commission for a ruling pursuant to subsection 74(1) of the Securities Act (Ontario) (the Act) for a ruling that the Applicant be exempted from the adviser registration requirements in subsection 25(3) of the Act. The Applicant will provide advice to an affiliated insurance company in Ontario for so long as such affiliate remains an affiliate of the Applicant.

#### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(3), 74(1).

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

**AND**

**IN THE MATTER OF  
CHELSEA AVONDALE LTD.**

**RULING  
(SECTION 74 OF THE ACT)**

**UPON** the application (the **Application**) of Chelsea Avondale Ltd. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for a ruling pursuant to subsection 74(1) of the Act that the Applicant be exempted from the adviser registration requirements in subsection 25(3) of the Act;

**AND UPON** considering the Application and the recommendation of staff of the Commission;

**AND UPON** the Applicant having represented to the Commission as follows:

1. The Applicant is a corporation existing under the laws of Bermuda. The Applicant's head office and principal place of business is in Bermuda. The Applicant does not have an office or employees in Canada.
2. The Applicant's principal business is to acquire property and casualty insurance companies and to invest the assets of its subsidiary companies utilizing a value-oriented equity investment strategy.
3. The Applicant is exempt from the requirement to register as an investment adviser with the Bermuda Monetary Authority under the Bermuda *Investment Business Act of 2003*. This exemption is available to entities which are providing investment services to not more than 20 persons at any time, and not providing investment services to, or soliciting investment business from, the public.
4. The Applicant is in compliance in all material respects with the securities laws of Bermuda. The Applicant is not in default of any requirements of securities legislation in any jurisdiction of Canada.
5. The Applicant is an affiliate of three Canadian companies, specifically: (1) Max Insurance ("**Max Insurance**"), (2) Chelsea Avondale Holdings (Canada) Inc. ("**Chelsea Holdings**"); and (3) Chelsea Avondale Insurance Services Inc., ("**Chelsea Canada**") (collectively referred to herein as the "**Ontario Affiliates**").
6. Max Insurance was incorporated under the *Corporations Act* (Ontario) on June 28, 2002 as Max Canada Insurance Company and changed its name to Max Insurance by Supplementary Letters Patent dated December 6, 2017. Max Insurance is an indirect wholly-owned subsidiary of the Applicant. Max Insurance is licensed or otherwise duly permitted or authorized to carry on the business of an insurance company in the provinces of Ontario, British Columbia, Alberta, Saskatchewan and Manitoba.
7. Chelsea Holdings was incorporated under the *Canada Business Corporations Act* (the "**CBCA**") on July 5, 2016 and is a wholly-owned subsidiary of the Applicant. Chelsea Holdings is a holding company with its principal business activity

being to hold securities of one or more affiliates that are or will be licensed or otherwise duly permitted or authorized to carry on business as an insurance company or in certain provinces of Canada.

8. Chelsea Canada was incorporated under the CBCA on July 5, 2016 and is an indirect wholly-owned subsidiary of the Applicant. Chelsea Canada and is a holding company with its principal business activity being to hold securities of one or more affiliates that are or will be licensed or otherwise duly permitted or authorized to carry on business as an insurance company in certain provinces of Canada.
9. The Applicant wishes to provide portfolio management services to the Ontario Affiliates and any other affiliates in Ontario which may be formed in the future that (i) are licensed or otherwise duly permitted or authorized to carry on the business of an insurance company in Canada or a branch of a foreign insurance company in Canada, or (ii) are holding companies that have as their principal business activity to hold securities of one or more affiliates that are each licensed or otherwise duly permitted or authorized to carry on business as an insurance company in Canada. These services will include discretionary investment advisory and portfolio management services (the "Advisory Services") in respect of the proprietary assets of the Ontario Affiliates. The investment strategies to be employed by the Applicant relate primarily to investments in North American publicly-traded equity securities.
10. Each of the Ontario Affiliates is a "permitted client" as defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103").
11. No management fee will be charged to the Ontario Affiliates in relation to the provision of the Advisory Services by the Applicant. However, the arrangement between the Applicant and the Ontario Affiliates will provide for the sharing of profits resulting from the provision of the Advisory Services between the Applicant and the Ontario Affiliate. The profit-sharing arrangement will entitle the Applicant to receive fixed percentage of the net profits realized from the performance of the Advisory Services and will be structured in accordance with applicable tax, regulatory and other laws.
12. The Applicant will not provide Advisory Services to any person or company in Canada other than the Ontario Affiliates.
13. The Applicant will provide Advisory Services to the Ontario Affiliates with respect to the proprietary assets of the Ontario Affiliates maintained in connection with their respective businesses. On occasion, the Applicant may provide Advisory Services to other companies located outside of Canada that are wholly-owned by affiliates of the Applicant.
14. The Applicant is not registered as an adviser in any jurisdiction of Canada and cannot rely on the international adviser exemption set out in section 8.26 of NI 31-103 because the Applicant may provide advice on a security that is not a "foreign security" (as defined in section 8.26(2) of NI 31-103).
15. There is no requirement for employees of a corporation to be registered as advisers under the Act if such employees provide investment advice to their corporate employers with respect to the proprietary assets of the corporate employers. The Ontario Affiliates do not currently employ individuals to provide investment advice with respect to its Canadian proprietary assets, but rather the Ontario Affiliates will contract with the Applicant to obtain the Advisory Services as permitted under the *Insurance Act* (Ontario).
16. The assets to be managed by the Applicant are directly owned by Ontario Affiliates. There are no external stakeholders (such as, for example, holders of variable annuity contracts or segregated funds/separate accounts for policy holders) that have any direct or indirect interest in the performance of such portfolios. Accordingly, there are no stakeholders in Ontario or elsewhere other than the Ontario Affiliates that will be affected by the results of the Advisory Services provided by the Applicant. None of the Ontario Affiliates have insurance or annuity products, separate accounts or products where the customer participates in the investment performance.

**AND WHEREAS** section 74 of the Act provides that a ruling may be made by the Commission that a person or company is not subject to section 25 of the Act, subject to such terms and conditions as the Commission considers necessary, where the Commission is satisfied that to do so would not be prejudicial to the public interest;

**AND UPON** the Commission being satisfied that to do so would not be prejudicial to the public interest;

**IT IS RULED**, pursuant to section 74 of the Act, that the Applicant is exempt from the adviser registration requirements of subsection 25(3) of the Act in respect of advice it provides to affiliates in Ontario, provided that:

- (a) the Applicant provides investment advice and portfolio management services in Ontario only to its affiliates that (i) are licensed or otherwise duly permitted or authorized to carry on the business of an insurance company in Canada or a branch of a foreign insurance company in Canada, or (ii) are holding companies that have as their principal business

activity to hold securities of one or more affiliates that are each licensed or otherwise duly permitted or authorized to carry on business as an insurance company in Canada;

- (b) with respect to any particular affiliate described in paragraph (a), the investment advice and portfolio management services are provided only as long as that affiliate remains (i) an “affiliate” of the Applicant, as defined in the Act, and (ii) a “permitted client” as defined in NI 31-103;
- (c) the Applicant notifies the Commission of any regulatory action initiated after the date of this decision in respect of the Applicant, or any predecessors or “specified affiliates” (as defined in Form 33-109F6 to National Instrument 33-109 *Registration Information*) of the Applicant, by completing and filing with the Commission Appendix “A” hereto within ten days of the commencement of such action;
- (d) the Applicant, in the course of its dealings with any particular affiliate described in paragraph (a), acts fairly, honestly and in good faith;
- (e) the Applicant is in compliance with, and remains in compliance with, any applicable adviser licensing or registration requirements under applicable securities legislation in Bermuda; and
- (f) the decision will terminate on the earlier of:
  - (i) five years after the date of this decision; and
  - (ii) the coming into force of a change in securities legislation that exempts the Applicant from the registration requirement in connection with the advising activity it provides to any particular affiliate described in paragraph (a) on terms and conditions other than those set out in this decision.

February 20, 2018

“Janet Leiper”  
Commissioner  
Ontario Securities Commission

“Deborah Leckman”  
Commissioner  
Ontario Securities Commission



APPENDIX "A"

NOTICE OF REGULATORY ACTION

1. Has the firm, or any predecessors or specified affiliates<sup>1</sup> of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes \_\_\_\_ No \_\_\_\_

If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

	Yes	No
a) Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?	___	___
(b) Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?	___	___
(c) Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?	___	___
(d) Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?	___	___
(e) Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?	___	___
(f) Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?	___	___
(g) Issued an order (other than an exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?	___	___

If yes, provide the following information for each action:

Name of entity	
Type of action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

<sup>1</sup> In this Appendix, the term "specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*.

**Decisions, Orders and Rulings**

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3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliates is the subject?

Yes \_\_\_\_ No \_\_\_\_

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm:
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

**Witness**

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal: <https://www.osc.gov.on.ca/filings>

## Chapter 3

# Reasons: Decisions, Orders and Rulings

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### 3.1 OSC Decisions

#### 3.1.1 Theralase Technologies Inc. and Roger Dumoulin-White – s. 127(1)

**IN THE MATTER OF  
THERALASE TECHNOLOGIES INC. and  
ROGER DUMOULIN-WHITE**

**ORAL REASONS FOR APPROVAL OF SETTLEMENT  
(Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)**

**Citation:** *Theralase Technologies Inc. (Re)*, 2018 ONSEC 8

**Date:** 2018-02-26

**File No.:** 2018-3

**Hearing:** February 26, 2018

**Decision:** February 26, 2018

**Panel:** Janet Leiper Commissioner, Chair of the Panel  
D. Grant Vingoe Vice-Chair  
Deborah Leckman Commissioner

**Appearances:** Anna Huculak For Staff of the Commission  
Greg Temelini For Roger Dumoulin-White  
Melissa MacKewn For Theralase Technologies Inc.

**ORAL REASONS FOR APPROVAL OF SETTLEMENT**

*The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the hearing as edited and approved by the panel, to provide a public record of the oral reasons.*

- [1] The respondents have entered into a settlement agreement with Staff of the Commission. In this hearing, the parties submit jointly that it would be in the public interest for us to approve the settlement agreement and to issue the requested order. That order imposes sanctions, including but not limited to an administrative penalty against the individual respondent, Roger Dumoulin-White. Mr. Dumoulin-White is the President and Chief Executive Officer of Theralase Technologies Inc. ("**Theralase**"), which is also a respondent and a party to the settlement. After considering the evidence and the submissions presented to us, including precedent settlement approval decisions, we agree that the requested order is in the public interest. These are our reasons.
- [2] The facts are fully set out in the settlement agreement, which is publicly available. Accordingly, it is unnecessary to set out in detail the relevant conduct. In essence, the respondents admit that Theralase did not provide accurate and complete disclosure about the development of one of Theralase's lead products. The disclosure issues concern:
- a. forward-looking information about anticipated milestones and expected revenues;
  - b. the absence of updates to that information, including why targets were not achieved; and
  - c. historical information about the status of the product's regulatory approvals.
- [3] It is admitted that Theralase's non-compliance was authorized, permitted or acquiesced in by Mr. Dumoulin-White, who is deemed under section 129.2 of the *Securities Act*, RSO 1990, c S.5 (the "**Act**") to have also not complied with Ontario securities law.

- [4] As mitigating factors, the settlement agreement notes that Mr. Dumoulin-White has never sold a common share of Theralase and he believed that the revenue projections and growth targets at issue were reasonable and achievable when they were made. Theralase has since introduced policies and procedures relating to disclosure and sought to reach an early resolution of this matter. These measures are designed to enhance corporate governance and disclosure practices going forward.
- [5] Nonetheless, it is important that public companies comply with their disclosure requirements and ensure, through adequate and ongoing processes, that those requirements are fulfilled in a timely way. Continuous disclosure by reporting issuers is a cornerstone of our securities regulatory regime. It provides, on an ongoing basis, the full and accurate information about material facts and events that is necessary for investors to have confidence in the fair and efficient operation of the markets. Disclosures made by reporting issuers must be current, balanced and accurate. That did not occur here. We are mindful of the fact that the disclosure issues were not momentary, but extended over a period of time longer than 10 years.
- [6] Our jurisprudence establishes that parties should be encouraged to reach settlements. Settlements save valuable resources, including but not limited to hearing time, and promote timely resolutions. Accordingly, a hearing panel should not reject a settlement agreement lightly. A settlement will ordinarily be approved if the sanctions agreed to by the parties are within a reasonable range of appropriateness. It is important to note, however, that the agreed sanctions need not be the sanctions that the panel might have imposed after a hearing on the merits. A settlement is based on the facts admitted by the respondents and agreed to by Staff, which may or may not be the facts that a panel would have found after a contested hearing.
- [7] In our view, the proposed agreed-upon outcome takes into consideration the appropriate aggravating and mitigating factors. The settlement is reasonable and approval is in the public interest, based on the facts and sanctions agreed to by the parties, in light of applicable regulatory principles, prior Commission sanctions and the regulatory settlement process. For these reasons, we approve the settlement agreement, including substantially the same terms contained in the proposed order. These terms are as follows:
- a. Pursuant to paragraph 4 of subsection 127(1) of the Act, Theralase shall submit to a consultant's review of:
    - i. Theralase's corporate governance framework, including the composition of its Board of Directors and Disclosure Committee;
    - ii. Theralase's disclosure policies; and
    - iii. the policies, processes, reports and systems related to Theralase's disclosure controls and procedures.

Theralase will retain Peterson McVicar LLP to conduct the review, using the Terms of Consultant Review that will be appended to our Order. Theralase will institute such changes as may be recommended by the consultant and accepted by Staff in accordance with the process set forth in the Terms of Consultant Review;
  - b. Pursuant to paragraph 6 of subsection 127(1) of the Act, the Respondents shall be reprimanded;
  - c. Pursuant to paragraph 7 of subsection 127(1) of the Act, Mr. Dumoulin-White shall immediately resign any position that he holds as a director or officer of an issuer;
  - d. Pursuant to paragraph 8 of subsection 127(1) of the Act:
    - i. for a period of five years commencing on the date of our Order, Mr. Dumoulin-White shall be prohibited from becoming or acting as a director or officer of a reporting issuer or any related entity; and
    - ii. for a period of three years commencing on the date of our Order, Mr. Dumoulin-White shall be prohibited from becoming or acting as a director or officer of any non-reporting issuer, other than a related entity of a reporting issuer; and
  - e. Pursuant to paragraph 9 of subsection 127(1) of the Act, Mr. Dumoulin-White shall pay an administrative penalty in an amount equal to \$250,000 less the costs of the consultant paid by Mr. Dumoulin-White (which will not exceed \$150,000 and will be confirmed by the consultant as set out in the Terms of Consultant Review). The administrative penalty shall be paid in full within two months of the first Management Discussion & Analysis specified in the Terms of Consultant Review is required to be filed.

**Reasons: Decisions, Orders and Rulings**

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[8] Both respondents have also provided undertakings that will be appended to our Order, once issued. These undertakings form an essential part of the settlement that we are approving.

[9] The reprimands shall be issued following these Reasons.

[10] We thank all counsel for their assistance in this matter.

Dated at Toronto this 26th day of February, 2018.

“Janet Leiper”

“D. Grant Vingo”

“Deborah Leckman”

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## 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
THERE IS NOTHING TO REPORT THIS WEEK.				

### Failure to File Cease Trade Orders

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

### 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

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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](http://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](http://www.sedi.ca)).



## Chapter 11

# IPOs, New Issues and Secondary Financings

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### INVESTMENT FUNDS

**Issuer Name:**

Dynamic Alternative Managed Risk Private Pool Class  
Principal Regulator – Ontario

**Type and Date:**

Amendment #2 to Final Simplified Prospectus and  
Amendment #3 to AIF dated February 23, 2018  
Received on February 23, 2018

**Offering Price and Description:**

Series I shares

**Underwriter(s) or Distributor(s):**

1832 Asset Management L.P.

**Promoter(s):**

1832 Asset Management L.P.

**Project #2609787**

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**Issuer Name:**

Global Healthcare Income & Growth ETF  
Tech Leaders Income ETF  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated February 16,  
2018  
NP 11-202 Preliminary Receipt dated February 22, 2018

**Offering Price and Description:**

Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

Brompton Funds Limited

**Project #2731171**

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**Issuer Name:**

imaxx Short Term Bond Fund  
imaxx Canadian Bond Fund  
imaxx Equity Growth Fund  
imaxx Global Equity Growth Fund  
imaxx Canadian Fixed Pay Fund  
imaxx Canadian Dividend Plus Fund  
Principal Regulator – Ontario

**Type and Date:**

Amendment #2 to Final Simplified Prospectus dated  
February 21, 2018  
Received on February 23, 2018

**Offering Price and Description:**

–

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2609404**

**Issuer Name:**

Invesco Advantage Bond Fund  
Invesco Canadian Bond Fund  
Invesco Canadian Premier Growth Class  
Invesco European Growth Class  
Invesco Floating Rate Income Fund  
Invesco Global Bond Fund  
Invesco Global Dividend Income Fund  
Invesco Global Growth Class  
Invesco Global High Yield Bond Fund  
Invesco Global Monthly Income Fund  
Invesco Global Real Estate Fund  
Invesco Indo-Pacific Fund  
Invesco International Growth Class  
Trimark Canadian Endeavour Fund  
Trimark Canadian Opportunity Class  
Trimark Canadian Plus Dividend Class  
Trimark Diversified Yield Class  
Trimark Emerging Markets Class  
Trimark Energy Class  
Trimark Europlus Fund  
Trimark Fund  
Trimark Global Balanced Class  
Trimark Global Diversified Income Fund  
Trimark Global Dividend Class  
Trimark Global Endeavour Class  
Trimark Global Fundamental Equity Class  
Trimark Global Small Companies Class  
Trimark International Companies Class  
Trimark Resources Fund  
Trimark U.S. Companies Class  
Trimark U.S. Small Companies Class  
Principal Regulator – Ontario

**Type and Date:**

Amendment #3 to Final Simplified Prospectus and  
Amendment #4 to AIF dated February 23, 2018  
Received on February 26, 2018

**Offering Price and Description:**

–

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

Invesco Canada Ltd.

**Project #2636650**

**Issuer Name:**

Sentry All Cap Income Fund  
 Sentry Canadian Income Class  
 Sentry Canadian Income Fund  
 Sentry Diversified Equity Class  
 Sentry Diversified Equity Fund  
 Sentry Global Growth and Income Class  
 Sentry Global Growth and Income Fund  
 Sentry Global Infrastructure Fund  
 Sentry Global Mid Cap Income Fund  
 Sentry Growth and Income Fund  
 Sentry Small/Mid Cap Income Class  
 Sentry Small/Mid Cap Income Fund  
 Sentry U.S. Growth and Income Class  
 Sentry U.S. Growth and Income Currency Neutral Class  
 Sentry U.S. Growth and Income Fund  
 Sentry Canadian Resource Class  
 Sentry Energy Fund  
 Sentry Global REIT Class  
 Sentry Global REIT Fund  
 Sentry Precious Metals Class  
 Sentry Precious Metals Fund  
 Sentry Alternative Asset Income Fund  
 Sentry Conservative Balanced Income Class  
 Sentry Conservative Balanced Income Fund  
 Sentry Conservative Monthly Income Fund  
 Sentry Global Monthly Income Fund  
 Sentry U.S. Monthly Income Fund  
 Sentry Canadian Bond Fund  
 Sentry Corporate Bond Class  
 Sentry Corporate Bond Fund  
 Sentry Global High Yield Bond Class  
 Sentry Global High Yield Bond Fund  
 Sentry Money Market Class  
 Sentry Money Market Fund  
 Sentry Growth Portfolio  
 Sentry Growth and Income Portfolio  
 Sentry Balanced Income Portfolio  
 Sentry Conservative Income Portfolio  
 Sentry Defensive Income Portfolio  
 Sentry Canadian Equity Income Private Pool Class  
 Sentry Global Equity Income Private Pool Class  
 Sentry International Equity Income Private Pool Class  
 Sentry International Equity Income Private Trust  
 Sentry U.S. Equity Income Private Pool Class  
 Sentry U.S. Equity Income Currency Neutral Private Pool Class  
 Sentry Energy Private Trust  
 Sentry Global Infrastructure Private Trust  
 Sentry Balanced Yield Private Pool Class  
 Sentry Global Balanced Yield Private Pool Class  
 Sentry Canadian Fixed Income Private Pool  
 Sentry Global High Yield Fixed Income Private Trust  
 Sentry Global Investment Grade Private Pool Class  
 Sentry Global Tactical Fixed Income Private Pool  
 Sentry Real Growth Pool Class  
 Sentry Real Long Term Income Pool Class  
 Sentry Real Mid Term Income Pool Class  
 Sentry Real Short Term Income Pool Class  
 Sentry Real Income 1941-45 Class  
 Sentry Real Income 1946-50 Class  
 Sentry Real Income 1951-55 Class  
 Principal Regulator – Ontario

**Type and Date:**

Amendment #2 to Final Simplified Prospectus dated February 21, 2018  
 Received on February 23, 2018

**Offering Price and Description:**

–

**Underwriter(s) or Distributor(s):**

Sentry Investments Inc.

**Promoter(s):**

Sentry Investments Inc.

**Project #2622242**

**Issuer Name:**

Vanguard Global Balanced Fund  
 Vanguard Global Dividend Fund  
 Vanguard International Growth Fund  
 Vanguard US Value Windsor Fund  
 Principal Regulator – Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated February 21, 2018  
 NP 11-202 Preliminary Receipt dated February 21, 2018

**Offering Price and Description:**

–

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

Vanguard Investments Canada Inc.

**Project #2731117**

**Issuer Name:**

BetaPro S&P 500 VIX Short-Term Futures™ 2x Daily Bull ETF  
 BetaPro S&P 500 VIX Short-Term Futures™ Daily Inverse ETF  
 Principal Regulator – Ontario

**Type and Date:**

Amendment #1 to Final Long Form Prospectus dated February 15, 2018  
 NP 11-202 Receipt dated February 20, 2018

**Offering Price and Description:**

–

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2697878**

**Issuer Name:**

Clearpoint Global Dividend Fund  
Clearpoint Short Term Income Fund  
Principal Regulator – Ontario

**Type and Date:**

Final Simplified Prospectus dated February 23, 2018  
NP 11-202 Receipt dated February 26, 2018

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2718381**

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**Issuer Name:**

Dynamic Alternative Managed Risk Private Pool Class  
Principal Regulator – Ontario

**Type and Date:**

Amendment #2 to Final Simplified Prospectus and  
Amendment #3 to AIF dated February 23, 2018  
NP 11-202 Receipt dated February 26, 2018

**Offering Price and Description:**

Series I shares

**Underwriter(s) or Distributor(s):**

1832 Asset Management L.P.

**Promoter(s):**

1832 Asset Management L.P.

**Project #2609787**

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**Issuer Name:**

PowerShares 1-10 Year Laddered Investment Grade  
Corporate Bond Index ETF  
PowerShares 1-3 Year Laddered Floating Rate Note Index  
ETF

PowerShares 1-5 Year Laddered All Government Bond  
Index ETF

PowerShares 1-5 Year Laddered Investment Grade  
Corporate Bond Index ETF

PowerShares Canadian Dividend Index ETF

PowerShares Canadian Preferred Share Index ETF

PowerShares DWA Global Momentum Index ETF

PowerShares FTSE RAFI Canadian Fundamental Index  
ETF

PowerShares FTSE RAFI Canadian Small-Mid  
Fundamental Index ETF

PowerShares FTSE RAFI Global+ Fundamental Index ETF

PowerShares FTSE RAFI U.S. Fundamental Index ETF

PowerShares FTSE RAFI U.S. Fundamental Index ETF II

PowerShares Fundamental High Yield Corporate Bond  
Index ETF

PowerShares LadderRite U.S. 0-5 Year Corporate Bond  
Index ETF

PowerShares QQQ Index ETF

PowerShares S&P 500 High Dividend Low Volatility Index  
ETF

PowerShares S&P 500 Low Volatility Index ETF

PowerShares S&P Emerging Markets Low Volatility Index  
ETF

PowerShares S&P Global ex. Canada High Dividend Low  
Volatility Index ETF

PowerShares S&P International Developed Low Volatility  
Index ETF

PowerShares S&P/TSX Composite Low Volatility Index  
ETF

PowerShares S&P/TSX REIT Income Index ETF

PowerShares Senior Loan Index ETF

PowerShares Ultra Liquid Long Term Government Bond  
Index ETF

Principal Regulator – Ontario

**Type and Date:**

Final Long Form Prospectus dated February 16, 2018  
NP 11-202 Receipt dated February 20, 2018

**Offering Price and Description:**

USD Units, CAD Units and CAD Hedged Units @ Net  
Asset Value

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

Invesco Canada Ltd.

**Project #2703193**

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**Issuer Name:**

Steadyhand Equity Fund  
Steadyhand Founders Fund  
Steadyhand Global Equity Fund  
Steadyhand Income Fund  
Steadyhand Savings Fund  
Steadyhand Small-Cap Equity Fund  
Principal Regulator – British Columbia

**Type and Date:**

Final Simplified Prospectus dated February 23, 2018  
NP 11-202 Receipt dated February 23, 2018

**Offering Price and Description:**

Series A and Series O Units

**Underwriter(s) or Distributor(s):**

Steadyhand Investment Funds Inc.

**Promoter(s):**

Steadyhand Investment Management Ltd.

**Project #2707478**

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**Issuer Name:**

Sun Life BlackRock Canadian Balanced Fund  
Sun Life BlackRock Canadian Equity Fund  
Sun Life Dynamic American Fund  
Sun Life Dynamic Equity Income Fund  
Sun Life Dynamic Strategic Yield Fund  
Sun Life Franklin Bissett Canadian Equity Class  
Sun Life Granite Balanced Growth Portfolio  
Sun Life Granite Balanced Portfolio  
Sun Life Granite Conservative Portfolio  
Sun Life Granite Enhanced Income Portfolio  
Sun Life Granite Growth Portfolio  
Sun Life Granite Income Portfolio  
Sun Life Granite Moderate Portfolio  
Sun Life Infrastructure Fund  
Sun Life MFS Canadian Bond Fund  
Sun Life MFS Canadian Equity Fund  
Sun Life MFS Canadian Equity Growth Fund  
Sun Life MFS Canadian Equity Value Fund  
Sun Life MFS Dividend Income Fund  
Sun Life MFS Low Volatility Global Equity Fund  
Sun Life MFS Low Volatility International Equity Fund  
Sun Life MFS U.S. Equity Fund  
Sun Life NWQ Flexible Income Fund  
Sun Life Schroder Global Mid Cap Fund  
Sun Life Sentry Value Fund  
Sun Life Sionna Canadian Small Cap Equity Class  
Sun Life Templeton Global Bond Fund  
Sun Life Trimark Canadian Class  
Principal Regulator – Ontario

**Type and Date:**

Final Simplified Prospectus dated February 16, 2018  
NP 11-202 Receipt dated February 20, 2018

**Offering Price and Description:**

Series A, Series AT5, Series T5, Series T8, Series D,  
Series F, Series F5, Series F8, Series FT5, Series I and  
Series O securities

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2715135**

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**Issuer Name:**

TD Canadian Aggregate Bond Index ETF  
TD International Equity CAD Hedged Index ETF  
TD International Equity Index ETF  
TD S&P 500 CAD Hedged Index ETF  
TD S&P 500 Index ETF  
TD S&P/TSX Capped Composite Index ETF  
Principal Regulator – Ontario

**Type and Date:**

Final Long Form Prospectus dated February 22, 2018  
NP 11-202 Receipt dated February 23, 2018

**Offering Price and Description:**

Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2705854**

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NON-INVESTMENT FUNDS

**Issuer Name:**

Big Dougie Capital Corp.  
Principal Regulator – Alberta (ASC)

**Type and Date:**

Preliminary CPC Prospectus (TSX-V) dated February 16, 2018

NP 11-202 Preliminary Receipt dated February 20, 2018

**Offering Price and Description:**

\$200,000.00

2,000,000 common shares

Price: \$0.10 per common share

**Underwriter(s) or Distributor(s):**

PI Financial Corp.

**Promoter(s):**

Al J. Kroontje

Project #2730282

**Issuer Name:**

Izotropic Corporation  
Principal Regulator – British Columbia

**Type and Date:**

Preliminary Long Form Prospectus dated February 22, 2018

NP 11-202 Preliminary Receipt dated February 23, 2018

**Offering Price and Description:**

2,000,000 Common Shares

Price: \$0.10 per Common Share

\$200,000.00

**Underwriter(s) or Distributor(s):**

Chippingham Financial Group Limited

**Promoter(s):**

Robert Thast

Project #2731890

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**Issuer Name:**

Chorus Aviation Inc.  
Principal Regulator – Nova Scotia

**Type and Date:**

Preliminary Short Form Prospectus dated February 26, 2018

NP 11-202 Preliminary Receipt dated February 26, 2018

**Offering Price and Description:**

\$100,000,800.00

11,628,000 Variable Voting Shares and/or Voting Shares

Price: \$8.60 per Share

**Underwriter(s) or Distributor(s):**

RBC Dominion Securities Inc.

CIBC World Markets Inc.

Scotia Capital Inc.

National Bank Financial Inc.

TD Securities Inc.

Cormark Securities Inc.

Canaccord Genuity Corp.

Paradigm Capital Inc.

**Promoter(s):**

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Project #2730792

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**Issuer Name:**

PONDEROUS PANDA CAPITAL CORP.  
Principal Regulator – British Columbia

**Type and Date:**

Preliminary CPC Prospectus (TSX-V) dated February 20, 2018

NP 11-202 Preliminary Receipt dated February 22, 2018

**Offering Price and Description:**

\$600,000.00 – 2,000,000 Common Shares

Price: \$0.30 per Common Share

**Underwriter(s) or Distributor(s):**

Canaccord Genuity Corp.

**Promoter(s):**

Rodney W. Reum

Project #2731357

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**Issuer Name:**

Prometic Life Sciences Inc.  
Principal Regulator – Quebec

**Type and Date:**

Preliminary Shelf Prospectus dated February 20, 2018

NP 11-202 Preliminary Receipt dated February 21, 2018

**Offering Price and Description:**

\$250,000,000.00

Common Shares

**Underwriter(s) or Distributor(s):**

–

**Promoter(s):**

–

Project #2730767



**Issuer Name:**

The Green Organic Dutchman Holdings Ltd.  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated February 16, 2018

NP 11-202 Preliminary Receipt dated February 20, 2018

**Offering Price and Description:**

Minimum Public Offering: \$\* / \* Units

Maximum Public Offering: \$\*/ \* Units

Price Per Unit: \$\*

**Underwriter(s) or Distributor(s):**

Canaccord Genuity Corp.

PI Financial Corp.

Industrial Alliance Securities Inc.

INFOR Financial Inc.

Echelon Wealth Partners Inc.

Mackie Research Capital Corporation

**Promoter(s):**

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**Project #2730272**

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**Issuer Name:**

Xanadu Mines Ltd

**Type and Date:**

Preliminary Long Form Prospectus dated February 23, 2018

(Preliminary) Receipted on February 23, 2018

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

–

**Promoter(s):**

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**Project #2732406**

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**Issuer Name:**

ABcann Global Corporation

Principal Regulator – Ontario

**Type and Date:**

Final Short Form Prospectus dated February 22, 2018

NP 11-202 Receipt dated February 23, 2018

**Offering Price and Description:**

\$40,250,000.00 (11,500,000 Units at a price of \$3.50 per Unit)

\$30,000,000.00 Aggregate Principal Amount of 6.0%

Unsecured Convertible Debentures (30,000 Debentures at a price of \$1,000.00 per Debenture)

20,000,000 Common Shares issuable on Conversion of 7.0% Unsecured Convertible Debentures in the Principal Amount of \$30,000,000.00

**Underwriter(s) or Distributor(s):**

Canaccord Genuity Corp.

Eight Capital

GMP Securities L.P.

PI Financial Corp.

**Promoter(s):**

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**Project #2723521**

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**Issuer Name:**

Apolo II Acquisition Corp.

Principal Regulator – Ontario

**Type and Date:**

Final CPC Prospectus (TSX-V) dated February 21, 2018

NP 11-202 Receipt dated February 22, 2018

**Offering Price and Description:**

OFFERING: \$500,000.00 (5,000,000 Common Shares)

Price: \$0.10 per Common Share

**Underwriter(s) or Distributor(s):**

Richardson GMP Limited

**Promoter(s):**

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**Project #2717088**

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**Issuer Name:**

Equitable Group Inc.

Principal Regulator – Ontario

**Type and Date:**

Final Shelf Prospectus dated February 26, 2018

NP 11-202 Receipt dated February 26, 2018

**Offering Price and Description:**

\$500,000,000.00

Common Shares

Preferred Shares

Debt Securities

Subscription Receipts

Warrants

Share Purchase Contracts

Units

**Underwriter(s) or Distributor(s):**

–

**Promoter(s):**

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**Project #2713454**

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**Issuer Name:**

Filo Mining Corp.

Principal Regulator – British Columbia

**Type and Date:**

Final Short Form Prospectus dated February 22, 2018

NP 11-202 Receipt dated February 22, 2018

**Offering Price and Description:**

\$15,002,000 – 5,770,000 Common Shares

Price: \$2.60 per Offered Share

**Underwriter(s) or Distributor(s):**

Haywood Securities Inc.

GMP Securities L.P.

Echelon Wealth Partners Inc.

Canaccord Genuity Corp.

Cormark Securities Inc.

**Promoter(s):**

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**Project #2726272**

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**Issuer Name:**

Gold Standard Ventures Corp.  
Principal Regulator – British Columbia

**Type and Date:**

Final Short Form Prospectus dated February 19, 2018  
NP 11-202 Receipt dated February 20, 2018

**Offering Price and Description:**

\$25,001,800.00 – 12,196,000 Common Shares  
Price: \$2.05 per Offered Share

**Underwriter(s) or Distributor(s):**

Macquarie Capital Markets Canada Ltd.  
BMO Nesbitt Burns Inc.  
Cormark Securities Inc.  
PI Financial Corp.

**Promoter(s):**

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**Project #2726114**

**Issuer Name:**

Tetra Bio-Pharma Inc.  
Principal Regulator – Ontario

**Type and Date:**

Final Short Form Prospectus dated February 26, 2018  
NP 11-202 Receipt dated February 26, 2018

**Offering Price and Description:**

\$10,000,000.00  
10,000,000 Units  
Price: \$1.00 per Unit

**Underwriter(s) or Distributor(s):**

Echelon Wealth Partners Inc.

**Promoter(s):**

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**Project #2728947**

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**Issuer Name:**

Namaste Technologies Inc. (formerly Next Gen Metals Inc.)  
Principal Regulator – British Columbia

**Type and Date:**

Final Short Form Prospectus dated February 20, 2018  
NP 11-202 Receipt dated February 20, 2018

**Offering Price and Description:**

\$35,001,300 – 13,726,000 UNITS  
Price: 2.55 per Unit

**Underwriter(s) or Distributor(s):**

Eight Capital  
Canaccord Genuity Corp.  
Beacon Securities Limited

**Promoter(s):**

Sean Dollinger

**Project #2726896**

**Issuer Name:**

Skyscape Capital Inc.  
Principal Regulator – Ontario

**Type and Date:**

Final CPC Prospectus (TSX-V) dated February 20, 2018  
NP 11-202 Receipt dated February 22, 2018

**Offering Price and Description:**

\$500,000.00 – 1,000,000 Common Shares  
Price: \$0.50 per Common Share

**Underwriter(s) or Distributor(s):**

Canaccord Genuity Corp.

**Promoter(s):**

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**Project #2722142**

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## Chapter 12

# Registrations

### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	GRUPO 4X Inc.	Restricted Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	February 20, 2018
Voluntary Surrender	Clairwood Capital Management Inc.	Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	January 29, 2018
Consent to Suspension (Pending Surrender)	Les Conseillers En Valeurs Razorbill Inc. / Razorbill Advisors Inc.	Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	February 21, 2018
New Registration	Cape Cove Financial Management Inc.	Exempt Market Dealer	February 22, 2018
New Registration	JP Milani Asset Management Inc.	Portfolio Manager	February 26, 2018
New Registration	Tyche Global Financial Inc.	Exempt Market Dealer	February 26, 2018

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