Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
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IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED

- AND -

PRO-FINANCIAL ASSET MANAGEMENT INC.,
STUART MCKINNON and JOHN FARRELL

REASONS AND DECISION
(Motion for a Preliminary Determination of an Issue)

Hearing:	November 6, 2015		
Decision:	November 30, 2015		
Panel:	Christopher Portner	-	Commissioner
Appearances:	Alistair Crawley Michael Byers	-	For Stuart McKinnon
	Derek Ferris Catherine Weiler	-	For Staff of the Commission

TABLE OF CONTENTS

REASONS AND DECISION

I. INTRODUCTION

[1] On December 9, 2014, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing in connection with a Statement of Allegations filed by Staff of the Commission ("**Staff**") on December 8, 2014 (the "**Statement of Allegations**") in which Staff makes a number of allegations relating to, among others, Pro-Financial Asset Management ("**PFAM**") and Stuart McKinnon ("**McKinnon**").

[2] On November 6, 2015, the Commission held a hearing to consider a motion brought by McKinnon which requested that the Commission make a preliminary determination of an issue with respect to the Statement of Allegations (the "**Motion**"). More specifically, McKinnon seeks an order from the Commission dismissing Staff's allegations that (a) the conduct of PFAM with respect to certain Principal Protected Notes (collectively, the "**PPNs**" and, individually, a "**PPN**") caused PFAM to breach subsection 2.1 of the Commission's Rule 31-505 *Conditions of Registration* ("**Rule 31-505**"); (b) McKinnon authorized, permitted, or acquiesced in such conduct; and (c) such conduct was contrary to the public interest (collectively, the "**PPN Allegations**"). In the alternative, McKinnon requests an order declaring that it is not in the public interest that the Commission hear the PPN Allegations.

[3] On November 26, 2015, I issued an Order dismissing the Motion which stated that the reasons would follow. Set out below are the reasons for the Order.

II. BACKGROUND

[4] McKinnon was the founder of PFAM and has been a director and directing mind of PFAM since its incorporation on November 6, 2002. On May 17, 2013, the Commission issued a temporary order which suspended PFAM's registration as a dealer in the category of exempt market dealer and attached terms and conditions to PFAM's registration as an adviser in the category of portfolio manager and as an investment fund manager. The temporary order was extended and varied on numerous occasions and, by order dated February 17, 2015 which was issued on consent, PFAM's registration as an adviser in the category of portfolio manager was suspended. PFAM no longer carries on any registrable activity.

[5] McKinnon is also the former president and chief executive officer of Legacy Investment Management Inc. ("**Legacy"**), which carried on business as a mutual fund dealer until its registration was suspended on December 4, 2013.

[6] Nine series of the PPNs were issued by Société-Générale (Canada) ("**SocGen**") and BNP Paribas (Canada) ("**BNP**" and, together with SocGen, the "**PPN Issuers**"). Copies of the Information Statements relating to the PPNs, each of which included a summary of the offering, a plan of distribution, a description of the use of proceeds, risk factors and

certain income tax considerations (collectively, the "**Information Statements**") were attached as Exhibit C to McKinnon's Affidavit sworn October 8, 2015 (the "**McKinnon Affidavit**"). The Information Statements include an unconditional guarantee of all amounts under the PPNs to which they relate, when and as they become due and payable, by either SocGen or BNP, as the case may be.

[7] In the Affidavit of Michael Ho, Staff Accountant, sworn on October 30, 2015 (the "**Ho Affidavit**"), Legacy and PFAM are identified as the brokers for approximately $3.6 million, or 16%, of the total purchases of the PPN series known as Pro 201, Pro 301 and Pro 311 and McKinnon is identified as the dealing representative of the sales made by Legacy. In addition, out of the $94.2 million of PPNs redeemed across all nine series of PPNs, Legacy and PFAM were identified as the brokers for approximately $9.8 million, or 10.4%, of the total amount of PPN redemptions.

[8] In November 2012, staff of the Compliance and Registrant Regulation Branch of the Commission was advised by the former President and Chief Financial Officer of PFAM that there was a discrepancy between the records relating to the PPNs of Investment Administration Solutions Inc. (**"IAS"),** which was the record-keeper for the PPNs, and Concentra Trust or its predecessor, the Co-operative Trust Company of Canada (together, "**Concentra**"), the trustee and escrow agent for various series of PPNs.

[9] On April 23, 2013, in response to a request from Staff, PFAM provided Staff with a preliminary reconciliation report, and on September 30, 2013, a further and final reconciliation report, indicating that there was a discrepancy between the records of IAS and Concentra of approximately $1,222,549.45. As a result, the total amount owing to the holders of the PPNs according to the records of IAS exceeded the amount reflected in Concentra's records by $1,222,549.45 after accounting for the amount in PFAM's trust account.

[10] In a letter to Staff dated February 20, 2013, Samantha Pinto, the Chief Financial Officer of PFAM ("**Pinto**"), advised Staff that Legacy withdrew from involvement with the PPN program in 2005 and had been replaced since that time by PFAM. In a prior letter dated January 11, 2013, Pinto indicated that "PFAM, then called Pro Hedge Funds Inc. assisted the issuer, [SocGen], through a PFAM affiliate, Legacy, as an agent in the distribution of the Notes". McKinnon's position is that, while mutual fund clients of Legacy purchased PPNs, Legacy is not a party to these proceedings.

[11] In a letter to Staff dated July 12, 2013 (the "**July 12 Letter**"), SocGen's external counsel stated that:

> PFAM's intended role was solely to be a conduit for client sales orders to receive the funds payable to those clients by [SocGen] following the execution and pricing and to in turn pay those amounts to the holders of Notes. The structure did not contemplate any involvement of PFAM in establishing the value paid to noteholders for their Notes…or any active role by PFAM in the purchase or sale of Notes on its own account.

> …It appears that PFAM undertook on its own initiative a role in the secondary trading of Notes that varies materially from the role that was contemplated by the structure. Please note that this role was undertaken without any discussion with or direction from [SocGen], appears to have been undertaken by PFAM entirely at its own accord and appears to be contrary to PFAM's contractual obligations to SocGen"
>
> …
>
> After the distribution was completed, however, PFAM undertook various other activities with respect to the Notes on its own account and not as agent of [SocGen]. Many of those activities were provided for in the contracts between [SocGen] and PFAM, but not on the basis of PFAM acting as agent for [SocGen].

[12] The parties submitted evidence that PFAM directly, or as the contractual successor of Pro-Hedge-Funds and Legacy, entered into various agreements with the PPN Issuers. I note in this regard that, in the July 12 Letter, SocGen's external counsel also indicated that "PFAM is the successor to a number of distinct entities in the Pro-Financial group, including entities bearing the names of Pro-Hedge, Pro-Performance, and Legacy". The July 12 Letter and the correspondence from Pinto described in paragraph [10] above are consistent and appear to reflect PFAM's assumption of Legacy's obligations with respect to the PPNs at some time during 2005.

[13] PFAM entered into Agency Agreements with SocGen dated March 29, 2006 and July 13, 2006 (the "**Agency Agreements**") pursuant to which SocGen appointed PFAM to act as exclusive agent for SocGen for the purposes of soliciting and receiving offers and selling PPNs. As part of conditions of closing, the Agency Agreements stated that:

> [PFAM] shall, and shall require the Dealers [dealers or brokers] to, comply with all applicable Securities Laws and the provisions of this Agreement that are applicable to them in connection with the solicitation of offers.
>
> …
>
> [PFAM] is registered as a limited market dealer in the Province of Ontario under the Securities Act (Ontario), and such registration is in good standing, and has filed such notices and otherwise done such things in connection with such registration(s) as may be required in order to permit [PFAM] to solicit offers for Notes in such provinces(s).

[14] The Agency Agreement dated March 29, 2006 also states that:

> …the Agent [PFAM] agrees with [SocGen] that it will be the respective responsibilities of the <u>Agent and each Dealer to comply with all applicable suitability rules, regulations, standards or requirements in connection with recommendations to the Agent's and such Dealer's customers regarding the purchase, sale or exchange of [the PPNs], and [PFAM] covenants and</u>

> agrees with [SocGen] that it will comply, and require all Dealers to comply, with such rules, regulations, standards or requirements in connection with any such recommendations. (Emphasis added.)

[15] PFAM also entered into a Marketing Services and Administration Agreement with BNP dated February 13, 2006 pursuant to which, among other things, PFAM represented and warranted that "[PFAM] is registered with the Ontario Securities Commission under the securities laws of Ontario as a limited market dealer and is not in default of any requirement or condition relating to such registration." PFAM also agreed "…to comply in all material respects with (i) the terms and conditions of the Notes, as set out in the Information Statement, and (ii) Securities Legislation, Tax Legislation and other Applicable Laws". (Emphasis added.)

[16] In a letter to Staff dated April 23, 2013, Milind Jog, National Sales Manager of PFAM, stated that PFAM's only relationship was with the issuer for which it acted as agent and, in a limited fashion, as investment adviser with respect to the manner in which the issuer invested the proceeds of the distribution.

III. THE ISSUES

[17] The issues arising from the Motion are as follows:

(a) Should the Commission make a preliminary determination of an issue by dismissing the PPN Allegations prior to the hearing on the merits?

(b) In the alternative, should the Commission determine that it is not in the public interest to hear the PPN Allegations?

IV. POSITIONS OF THE PARTIES

[18] McKinnon submits that the PPN Allegations do not disclose any conduct contrary to Rule 31-505 or conduct contrary to the public interest. McKinnon submits that Rule 31-505 is inapplicable as PFAM's conduct that was material to the PPN Allegations did not involve PFAM acting as a dealer or adviser or otherwise engaging in registrable conduct and did not involve dealings with PFAM's clients. In oral submissions, counsel for McKinnon requests that the Commission make a determination on the narrow issue that is, in McKinnon's submission, primarily a question of law.

[19] McKinnon does, however, acknowledge that there is a factual component to the issue of whether or not the holders of the PPNs were clients of PFAM but "it is a relatively narrow factual issue that requires a narrow record and is capable of preliminary determination. And certainly there are – in the civil context, there are many instances in which summary determination is made of issues that are issues of mixed fact and law."

[20] It is McKinnon's position that, notwithstanding the factual complexity of the PPN Allegations, the Motion principally concerns a discrete analysis of the applicability of Rule 31-505 and the Commission's public interest jurisdiction that can be adjudicated by the Commission on the factual record before it.

[21] McKinnon submits that the PPN Allegations do not involve PFAM acting as a dealer or advisor to its clients or engaging in activity requiring registration under securities laws and, accordingly, the PPN Allegations do not fall under Rule 31-505. McKinnon submits that PFAM's roles in respect of the PPNs fell into one of three categories, namely, (i) sales agent; (ii) investment advisor; and (iii) note administrator or administrative agent. McKinnon submits that the PPN Allegations concern the latter category and that PFAM's role as administrator was a back office or intermediary role and involved only passing along orders and transferring funds. McKinnon states that the foregoing activities did not involve typically registrable activities and did not require that PFAM hold any categories of registration or engage any of its formerly held categories of registration.

[22] McKinnon submits that the holders of the PPNs were not PFAM clients within the meaning of section 2.1 of Rule 31-505 and that PFAM only received orders for the PPNs through dealers and advisors with whom the holders of the PPNs had accounts.

[23] McKinnon submits that dismissing the PPN Allegations would dramatically reduce the length and complexity of the hearing on the merits and further the principles of fairness, efficiency and proportionality. McKinnon submits that hearing the PPN Allegations would not further the fundamental aims of securities regulation and would be an unnecessary drain on the Commission's time and resources.

[24] Staff opposes the Motion on the basis that it is premature. Staff alleges that, through various administrative, accounting, compliance and oversight failures relating to the PPNs over the period from approximately July 2003 to February 2013, PFAM and McKinnon were responsible for a shortfall of approximately $1.2 million that is owed to the holders of the PPNs and will ultimately be paid by the PPN Issuers under the terms of their respective guarantees. Staff submits that the legal issues with respect to the PPN Allegations cannot be decided on the factual record before the Commission.

[25] It is Staff's position that, even if the PPN Allegations were dismissed summarily, related allegations would still remain unresolved. Staff submits that, in order to avoid fragmenting the proceeding, the Statement of Allegations in its entirety should be considered at the hearing on the merits on the basis of a full evidentiary record. Staff submits that the Panel hearing the Motion should not make any orders that restrict or limit the discretion of the Panel at the hearing on the merits when dealing with the PPN Allegations.

[26] Staff submits that, given the overlap in the evidence to be called by Staff in respect of the PPN Allegations and the allegations that PFAM failed to establish an adequate system of controls and supervision, it would be impractical and unfair to Staff and the Panel at the hearing on the merits if I were to address the issues raised in the Motion at this preliminary stage. Staff also submits that, at paragraph 62 of McKinnon's Memorandum of Fact and Law, McKinnon's counsel admits that there is a significant overlap between the PPN Allegations and the other allegations of Staff.

[27] Staff submits that the goal of keeping hearing costs down should not outweigh the goal of the timely, open and efficient administration and enforcement of the Act such that

meritorious allegations by Staff are summarily dismissed. Staff also submits that, contrary to McKinnon's submissions, the connection between the PPN Allegations and Ontario securities law is significant, and that the registrant obligation to act fairly, honestly and in good faith to its clients goes to the heart of registration under the Act.

[28] Staff submits that the determination of whether a client relationship exists is highly fact-specific and is an issue of mixed fact and law and that such issues require the Commission to engage in a fact finding exercise based on a complete factual record.

[29] Staff expects that the evidence will demonstrate that PFAM was identified as the broker for purchases of the Pro 201, Pro 301 and Pro 311 series of PPNs having a value of $45,800 and that PFAM has been solely responsibility with respect to PPNs since 2005. Staff also expects to tender correspondence which will explain PFAM's role in the purchase of PPNs and believes that the evidence to be called at the hearing on the merits will clearly demonstrate that there is a triable issue with respect to Staff's allegation that PFAM breached its obligation as a registrant to act fairly, honestly and in good faith to its clients with respect to the PPN Allegations.

[30] Staff submits that the PPN Allegations raise factual issues which cannot be resolved on the basis of the affidavit evidence that has been filed in connection with the Motion given the seriousness of the allegations, the facts and issues in dispute, the public interest and the consequence of the PPN discrepancy, the ongoing registration application by McKinnon and the evidence that Staff expects to lead at the hearing on the merits.

V. ANALYSIS

A. Should the Commission make a preliminary determination of an issue by dismissing the PPN Allegations prior to the hearing on the merits?

1. Legal Framework

[31] Section 25.01 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c S.22 provides that "a tribunal has the power to determine its own procedures and practices and may for that purpose make orders with respect to the procedures and practices that apply in any particular proceeding". The Divisional Court has held that the Commission is a 'master' of matters which fall under its own procedure (*Costello, Re* (2004), 242 D.L.R. (4th) 301).

[32] The Supreme Court of Canada in *Hryniak v Mauldin*, 2014 S.C.C. 7 ("***Hryniak***") has recognized that, if the process is disproportionate to the nature of the dispute and the interests involved, it will not achieve a fair and just result and that the proportionality principle means that the best forum for resolving a dispute is not always that with the most painstaking procedure (at paras. 28 and 29).

[33] The Commission has relied on *Hryniak* in the context of a motion brought during the hearing on the merits to permit written witness statements in lieu of oral examinations in chief (*Sino-Forest Corp., Re* (2015), 38 O.S.C.B. 6205). The Commission held that "the apparent time and expense of this [*Sino-Forest Re*] case to date confirm the importance of the Supreme Court decision in *Hryniak"* (para. 25) and found that "to acknowledge the

wisdom of the decision in *Hyrniak* requires an effort to shorten the proceedings" (para.26).

[34] The Commission does not generally conduct preliminary determinations of matters involving disputed facts separately from the hearing on the merits (*Furtak (Re),* (2015) 38 O.S.C.B. 6209 ("***Furtak***") at paras 13-14; *Khan (Re)* (2014), 37 O.S.C.B. 1035 ("***Khan***") at paras. 14-16; *Uranium308 Resources Inc. et al (Re)* (2010), 33 O.S.C.B. 12028 ("***Uranium308***") at para. 9; *Sabourin (Re)* (2009), 32 O.S.C.B. 2707 ("***Sabourin***") at paras. 22-24). Instead, the Commission has determined that it is more appropriate to consider the matter at the hearing on the merits unless the evidentiary foundation for the determination is not in dispute (*Duggan (Re),* (1994), 17 O.S.C.B. 2103 ("***Duggan***"); *Belteco Holdings Inc. (Re)* (1997), 20 O.S.C.B. 1835 ("***Belteco***"); *Heidary; Boyle (Re),* (2006) 29 O.S.C.B. 3365 ("***Boyle***")).

[35] The Commission has held that "interlocutory proceedings ought not to be permitted to take on lives of their own and it is important to the fair and expeditious determination of the matters to be determined on the merits that hearings not become fragmented (*TSX Inc. (Re),* (2008), 30 O.S.C.B. 8917 at para. 188).

[36] In *A Re* (2007), 30 O.S.C.B. 6921 ("***A***") and *Mega C Power Corp.(Re)* (2007) 33 O.S.C.B. 8245 ("***Mega C***"), the Commission determined that it has broad discretion with respect to the adoption of its own procedures which must be exercised with due regard to all circumstances, interests and the rights of the parties.

[37] The Commission's decision in *Mega C* sets out the following criteria for the purpose of determining whether a motion is appropriate for determination on a preliminary basis or during the hearing on the merits:

> 34 …
>
> (a) Can the issues raised in the motions be fairly, properly or completely resolved without regard to contested facts and the anticipated evidence that will be presented at the hearing on the merits? In other words, will the evidence relied upon on the motions likely be distinct from, and unique of, the evidence to be tendered at the hearing on the merits?
>
> (b) Is it necessary for a fair hearing that the relief sought in the motions be granted prior to the proceeding on its merits?
>
> (c) Will the resolution of the issues raised in the motions materially advance the resolution of the matter, or materially narrow the issues to be resolved at the hearing on the merits such that it will be efficient and effective to have them resolved in advance of the commencement of the hearing on the merits?

> 35 If the answer to any of these questions is "yes", in our view, the Commission should hear the Constitutional Motions as pre-hearing motions, in advance of the Hearing, absent strong reasons to the contrary.
>
> 36 In contrast, if the answer to all of these questions is "no", the Commission should be reluctant to address the motions as pre-hearing motions, absent strong reasons to the contrary.
>
> *(Mega-C, supra* at paras. 34-36.)

[38] I will consider each of the foregoing factors in the context of the relief sought in the Motion.

2. Preliminary determination on an issue with respect to the PPN Allegations

[39] It is evident from a review of the affidavits filed in connection with the Motion that the evidence relating to the PPN Allegations would not likely be distinct from the evidence to be tendered at the hearing on the merits relating to other allegations in the Statement of Allegations. In particular, it is clear that the evidence relating to the PPN Allegations will not be distinct from the allegations relating to PFAM's alleged failure to establish, maintain and apply policies and procedures that establish an adequate system of controls and supervision.

[40] McKinnon's counsel acknowledges that the "Statement of Allegations reveals significant overlap between the PPN Allegations and other allegations, including PFAM's alleged failure to retain books, records and other documents; PFAM's allegedly inadequate controls and compliance systems; and McKinnon's alleged failings as ultimate designated person, President and CEO of PFAM." Examples of alleged overlapping conduct are set out in the Ho Affidavit, including allegations that PFAM (i) made unsupported requests for the redemption of PPNs; (ii) mishandled PPN redemption payments; (iii) failed to account for monies in PFAM's trust account; (iv) caused or permitted deficiencies in the PPN records; and (v) failed to communicate and investigate PPN discrepancies when they arose.

[41] The facts relating to PFAM's relationship with the holders of the PPNs, an issue that is central to the PPN Allegations, are clearly disputed by the parties. McKinnon submits that PFAM's activities did not require PFAM to hold any categories of registration or engage in any of its formerly held categories of registration, and that the PPN Issuers "are more than capable of protecting their commercial interests to the extent that they believe they have been damaged by any deficient performance by PFAM of its contractual duties." However, as reflected in part in paragraphs [13], [14] and [15] above, PFAM undertook to perform certain duties that, with the benefit of a full evidentiary record, might support Staff's contention that some of the holders of the PPNs were clients of PFAM for the purposes of Rule 31-505 or that some of PFAM's activities on behalf of the holders of PPNs were registrable in nature.

[42] Staff submits that it has been the Commission's practice in enforcement proceedings to determine whether a respondent was engaged in registrable conduct, breached an

obligation owed to clients or otherwise contravened Ontario securities law during the hearing on the merits of Staff's allegations with the benefit of a full evidentiary record and argument by the parties (*Furtak, supra* at paras. 13-14; *Khan, supra* at paras 14-16; *Uranium308, supra* at para 9; *Sabourin, supra* at paras.22-24).

[43] McKinnon submits that, if the Motion is granted, the hearing on the merits will proceed in a much more expeditious fashion. Although a shorter hearing may result if the PPN Allegations were dismissed, the Commission has held that the time saved is not determinative of the matter (*Duggan, supra* at para. 11).

[44] The hearing on the merits ensures a fair process for presenting and testing evidence and provides the parties with an opportunity to make arguments prior to the Commission determining whether Staff has proved its allegations (*Superintendent of Financial Services and Ontario Securities Commission v Universal Settlements International Inc.*, [2001] O.J. No. 4301 at paras. 26 and 29).

[45] There are, however, circumstances in which the preliminary determination of a matter prior to the hearing on the merits is appropriate. Staff submits that the Commission has found that a preliminary determination of a matter should be conducted in circumstances when:

(a) A matter raised on a preliminary motion would conclude the whole matter expeditiously on relatively narrow grounds (*Belteco, supra* at para. 20);

(b) The argument raised is a legal one and disposing of it would conclude the matter or narrow it, saving all parties time and expense (*Heidary, supra* at para. 9;

(c) If all counsel agree the evidentiary basis for the determination is clear, or there are no facts relevant to the motion that are in dispute or that need to be clarified through further evidence (*Duggan, supra* at paras. 7 and 12; *Boyle, supra* at paras. 57-58.).

[46] In my view, (i) disposing of the PPN Allegations on a preliminary motion would not conclude the whole matter expeditiously; (ii) the issue raised with respect to the applicability of Rule 31-505 is not a purely legal issue, but rather an issue of mixed fact and law which cannot be determined on the basis of the evidentiary record provided in connection with the hearing on the Motion; and (iii) counsel for the parties do not agree that the evidentiary basis for the determination of the issues raised in the Motion relating to the PPN Allegations is clear and the facts relating to the matter are clearly in dispute.

[47] McKinnon relies on *Boyle* in support of his request that the Commission make a preliminary determination and dispose of the PPN Allegations. In *Boyle,* the Commission quashed the statement of allegations and notice of hearing and dismissed the proceeding against the respondents, Boyle and Melnick, on the basis of the expiry of the limitation period pursuant to section 129.1 of the Act. The Commission held that "even if the evidence in a hearing on the merits were to prove all the events referenced in the statement of allegations, that would not change the reality that the allegations of wrongdoing in the statement of allegations are not based on a last event subsequent to the limitation date." (*Boyle, supra* at para.58.)

[48] Unlike the circumstances in this matter, the Commission in *Boyle* found that there were no facts relevant to the motion that were in dispute or that needed to be clarified through further evidence.

[49] The Commission has typically determined whether or not alleged conduct is contrary to the public interest at the conclusion of a hearing on the merits and not as a preliminary determination.

[50] In my view, and to paraphrase *Mega C*:

(a) The issues raised in the Motion cannot be fairly, properly or completely resolved without regard to contested facts and the anticipated evidence at the hearing on the merits;

(b) It is not necessary for a fair hearing that the relief sought in the Motion be granted prior to the hearing on the merits; and

(c) The resolution of the issues raised in the Motion will not advance the matter or materially narrow the issues to be resolved at the hearing on the merits such that it will be efficient and effective to have them resolved prior to the commencement of the hearing on the merits.

B. Should the Commission determine that it is not in the public interest to hear the PPN Allegations?

[51] The purposes of the Act, as set out in section 1.1, are:

> (a) to provide protection to investors from unfair, improper or fraudulent practices; and
>
> (b) to foster fair and efficient capital markets and confidence in those markets.

[52] Subsection 2.1(3) of the Act provides that "Effective and responsive securities regulation requires timely, open and efficient administration and enforcement of this Act by the Commission." Further, subsection 2.1(6) of the Act provides that "Business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized." The Commission is guided by these animating purposes and principles in administering and enforcing the Act (*Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 41).

[53] McKinnon submits that, in appropriate circumstances, the Commission may decline to hear a matter or a particular allegation even if it finds that Staff is able to demonstrate an arguable breach of securities law. McKinnon submits that, even if the Commission finds that there may be a basis for a finding that PFAM's conduct violated section 2.1 of Rule

31-505, the Commission should decline to hear the PPN Allegations because the connection to Ontario securities law is at most marginal.

[54] In McKinnon's view, allowing the PPN Allegations to proceed will inevitably result in the parties and the Commission spending countless hours and significant funds allocating blame for what was an accounting miscommunication between commercially sophisticated counterparties and which resulted in no investor harm.

[55] Staff submits, and I agree, that declining to hear the PPN Allegations would be inconsistent with the purposes and principles of the Act because such purposes and principles demand that allegations against registrants be dealt with in a thorough, fair, open and timely fashion. There is a public interest in seeing serious allegations of breaches of Ontario securities law properly and fairly adjudicated in a public forum on a full evidentiary record and mindful of the need to be fair to the parties.

[56] In my view, there is no compelling public interest consideration arising in the Motion that should prompt the Commission to decline to hear the PPN Allegations.

VI. CONCLUSION

[57] For the foregoing reasons, and without having made any findings with respect to the merits of the PPN Allegations, the Motion is dismissed.

Dated at Toronto this 30th day of November, 2015.

"Christopher Portner"

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Christopher Portner