

The Ontario Securities Commission

OSC Bulletin

October 10, 2019

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The Ontario Securities Commission administers the
Securities Act of Ontario (R.S.O. 1990, c. S.5) and the
Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

The Ontario Securities Commission

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Chapter 1

Notices

1.1 Notices

1.1.1 OSC Staff Notice 11-739 (Revised) – Policy Reformulation Table of Concordance and List of New Instruments

OSC STAFF NOTICE 11-739 (REVISED)

POLICY REFORMULATION TABLE OF CONCORDANCE AND LIST OF NEW INSTRUMENTS

The following revisions have been made to the Table of Concordance and List of New Instruments. A full version of the Table of Concordance and List of New Instruments as of September 30, 2019 has been posted to the OSC Website at www.osc.gov.on.ca.

Table of Concordance

Item Key
The third digit of each instrument represents the following: 1-National/Multilateral Instrument; 2-National/Multilateral Policy; 3-CSA Notice; 4-CSA Concept Release; 5-Local Rule; 6-Local Policy; 7-Local Notice; 8-Implementing Instrument; 9-Miscellaneous

Reformulation

Instrument	Title	Status
13-502	Fees – Amendments	Ministerial approval published July 18, 2019
13-503	(Commodity Futures Act) Fees – Amendments	Ministerial approval published July 18, 2019
11-739	Policy Reformulation Table of Concordance and List of New Instruments – Revised	Published July 25, 2019
33-750	Compliance and Registrant Regulation – Summary Report for Dealers, Advisers and Investment Fund Managers	Published August 8, 2019
51-358	Reporting of Climate Change-related Risks	Published August 8, 2019
31-355	OBSI Joint Regulators Committee Annual Report for 2018	Published August 15, 2019
31-356	Guidance on Compliance Consultants Engaged by Firms Following a Regulatory Decision	Published August 22, 2019
11-787	Improving Fee Disclosure Through Behavioural Insights	Published August 22, 2019
95-301	Margin and Collateral Requirements for Non-Centrally Cleared Derivatives	Published August 22, 2019
51-102	Continuous Disclosure Obligations and Changes to Certain Policies Related to the Business Acquisition Report Requirements - Amendments	Published for comment September 5, 2019
13-502	Fees – Amendments	Commission approval published September 12, 2019
13-503	(Commodity Futures Act) Fees – Amendments	Commission approval published September 12, 2019
14-101	Definitions – Amendments	Published for comment September 12, 2019
41-101	General Prospectus Requirements – Amendments	Published for comment September 12, 2019

Notices

81-101	Mutual Fund Prospectus Disclosure – Amendments	Published for comment September 12, 2019
81-102	Investment Funds – Amendments	Published for comment September 12, 2019
81-106	Investment Fund Continuous Disclosure – Amendments	Published for comment September 12, 2019
81-107	Independent review Committee for Investment Funds – Amendments	Published for comment September 12, 2019
13-101	System for Electronic Document Analysis and Retrieval (SEDAR) - Amendments	Published for comment September 12, 2019
13-102	System Fees for SEDAR and NRD - Amendments	Published for comment September 12, 2019
11-202	Process for Prospectus Reviews in Multiple Jurisdictions - Amendments	Published for comment September 12, 2019
81-107	Independent Review Committee for Investment Funds – Commentary Amendments	Published for comment September 12, 2019

For further information, contact:

Darlene Watson
Project Specialist
Ontario Securities Commission
416-593-8148

October 10, 2019

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 Farhang (Fred) Dagostar Nikoo – ss. 127(1), 127(10)

FILE NO.: 2019-36

**IN THE MATTER OF
FARHANG (FRED) DAGOSTAR NIKOO**

NOTICE OF HEARING

Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c. S.5

PROCEEDING TYPE: Inter-jurisdictional Enforcement Proceeding

HEARING DATE AND TIME: In writing

PURPOSE

The purpose of this proceeding is to consider whether it is in the public interest for the Commission to make the order requested in the Statement of Allegations filed by Staff of the Commission on October 2, 2019.

Take notice that Staff of the Commission has elected to proceed by way of the expedited procedure for a written hearing provided for by Rule 11(3) of the Commission's *Rules of Procedure*.

Staff must serve on you this Notice of Hearing, the Statement of Allegations, Staff's hearing brief containing all documents Staff relies on, and Staff's written submissions.

You have **21 days** from the date Staff serves these documents on you to file a request for an oral hearing, if you do not want to follow the expedited procedure for a written hearing.

Otherwise, you have **28 days** from the date Staff served these documents on you to file your hearing brief and written submissions.

REPRESENTATION

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

FAILURE TO PARTICIPATE

IF A PARTY DOES NOT PARTICIPATE, 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 dès que possible si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

Dated at Toronto this 3rd day of October, 2019

"Grace Knakowski"
Secretary to the Commission

For more information

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

IN THE MATTER OF
FARHANG (FRED) DAGOSTAR NIKOO

STATEMENT OF ALLEGATIONS
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990 c S.5)

1. Staff of the Enforcement Branch (**Staff**) of the Ontario Securities Commission (the **Commission**) elect to proceed using the expedited procedure for inter-jurisdictional proceedings as set out in Rule 11(3) of the Commission's *Rules of Procedure*.

A. OVERVIEW

2. On February 15, 2019, Farhang (Fred) Dagostar Nikoo (**Nikoo**) entered into a Settlement Agreement and Undertaking (the **Settlement Agreement**) with the Alberta Securities Commission (the **ASC**).
3. Pursuant to the Settlement Agreement, Nikoo agreed to certain undertakings and to be made subject to sanctions, conditions, restrictions or requirements within the province of Alberta.
4. Staff are seeking an inter-jurisdictional enforcement order reciprocating the Settlement Agreement, pursuant to paragraph 5 of subsection 127(10) of the Ontario *Securities Act*, RSO 1990, c S.5 (the **Act**).

B. FACTS

Staff make the following allegations of fact:

(i) The ASC Proceeding

Agreed Facts

5. In the Settlement Agreement, Nikoo agreed with the following facts:

Parties

- (a) Nikoo is a resident of Calgary, Alberta (formerly of Cold Lake, Alberta). He was, at all material times, a financial planner, and has been registered since 1995 as a mutual fund salesperson.

Circumstances

- (b) Bluforest, formerly Greenwood Gold Resources Inc., is a Nevada, U.S.A. (**U.S.**) corporation, whose securities were quoted for trading on the U.S. Over-the-Counter Quotation Board.
- (c) In approximately February 2012, Nikoo, Cem (Jim) Can (**Can**), and Charles Michael Miller (**Miller**), began selling securities of Bluforest to Alberta residents. All three are respondents in a February 5, 2018, Notice of Hearing issued by ASC Staff.
- (d) Over a period of one year, approximately \$1,000,000 was raised from the sale of Bluforest securities to at least seven Albertans (the **Investors**). Several of the Investors were existing or former clients of Nikoo's financial planning business.
- (e) Nikoo promoted the sale of Bluforest securities to some Investors through word of mouth and emails, introduced some Investors to Can and Miller, handled funds and share transfer documents, and delivered share certificates. While not compensated directly for his activities in furtherance of the sale of the Bluforest securities, Nikoo received a \$30,000 payment from Can.
- (f) Nikoo was not registered in accordance with Alberta securities laws as an adviser. At no time was a preliminary prospectus or prospectus filed with and a receipt issued by the Executive Director of the ASC (**ASC's Executive Director**) for the distribution of any securities of Bluforest. There were no reports of exempt distribution filed with respect to any of the sales of Bluforest securities to the Investors.
- (g) During the course of the sale of the Bluforest securities to the Investors, Nikoo made representations or statements as follows:

1. To JD, that she would double her money in six months;
 2. To JD, that the securities would be listed on NASDAQ;
 3. To JD, that the securities would open trading on NASDAQ at a price of \$11; and
 4. To CJB, that once the securities were listed on NASDAQ, they would double in price.
- (h) The above statements were misleading or untrue, and they would reasonably be expected to have a significant effect on the value of Bluforest's securities to JD and CJB.
- (i) At no time did the ASC's Executive Director give Nikoo written or any permission to represent that Bluforest's securities would be listed on an exchange. Nor, to Nikoo's knowledge, did Bluforest at any time make an application for a listing on NASDAQ or any other exchange.

Admitted Breaches of Alberta Securities Laws

- (j) Based on the Agreed Facts, Nikoo admitted that he breached the following sections of the Alberta Securities Act, RSA 2000, c S-4, as amended (the **Alberta Act**):
1. 75(1)(a) of the Alberta Act by acting as an adviser without registration in accordance with Alberta securities laws;
 2. 92(4.1) of the Alberta Act by making a statement he knew or reasonably ought to have known was misleading or untrue, and that would reasonably be expected to have a significant effect on the market price or value of Bluforest's securities; and
 3. 92(3)(b)(i) of the Alberta Act by representing without the written permission of the ASC's Executive Director that Bluforest's securities would be listed on an exchange.

Circumstances Relevant to Settlement

- (k) Nikoo has not been previously sanctioned by the ASC, and cooperated with ASC Staff during their investigation.
- (l) Nikoo, directly or indirectly, alerted the U.S. Securities and Exchange Commission to the activities of Bluforest and its representatives.
- (m) Certain of the Investors took funds out of mutual funds or other safer investments at the suggestion of Nikoo to purchase securities of Bluforest.
- (n) The Settlement Agreement saved the ASC the time and expense associated with a contested hearing under the Alberta Act.

(ii) Settlement and Undertakings

6. Based on the Agreed Facts and Admitted Breaches, Nikoo agreed and undertook to the ASC's Executive Director to:
- (a) Pay to the ASC a monetary settlement of \$50,000, plus \$20,000 in costs; and
 - (b) Be prohibited for a period of 10 years from advising in securities and from acting as a registrant.

C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

7. Pursuant to the Settlement Agreement, Nikoo agreed to be made subject to sanctions, conditions, restrictions or requirements within the province of Alberta.
8. Pursuant to paragraph 5 of subsection 127(10) of the Act, an agreement with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that a person or company is to be made subject to sanctions, conditions, restrictions or requirements may form the basis for an order in the public interest made under subsection 127(1) of the Act.
9. Staff allege that it is in the public interest to make an order against Nikoo.

10. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

D. ORDER SOUGHT

11. Staff request that the Commission make the following inter-jurisdictional enforcement order, pursuant to paragraph 5 of subsection 127(10) of the Act:
- (a) against Nikoo that:
 - i. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Nikoo be prohibited until February 15, 2029 from becoming or acting as a registrant;
 - (b) such other order or orders as the Commission considers appropriate.

DATED at Toronto this 2nd day of October, 2019.

Vivian Lee
Litigation Counsel
Enforcement Branch

Tel: (416) 597-7243
Email: vlee@osc.gov.on.ca

1.4 Notices from the Office of the Secretary

1.4.1 Alan Braun et al.

**FOR IMMEDIATE RELEASE
October 3, 2019**

**ALAN BRAUN,
JERRY BRAUN,
STEVEN MAXWELL (aka STEVEN FASSMAN),
BRAUN DEVELOPMENTS (B.C.) LTD.,
8022275 CANADA INC. and
0985812 B.C. LTD.
(dba TERRACORP INVESTMENT LTD.),
File No. 2019-25**

TORONTO – The Commission issued its Reasons and Decision and an Order pursuant to Subsections 127(1) and 127(10) of the *Securities Act* in the above named matter.

A copy of the Reasons and Decision and the Order dated October 2, 2019 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.4.2 Farhang (Fred) Dagostar Nikoo

**FOR IMMEDIATE RELEASE
October 3, 2019**

**FARHANG (FRED) DAGOSTAR NIKOO,
File No. 2019-36**

TORONTO – The Office of the Secretary issued a Notice of Hearing pursuant to Subsections 127(1) and 127(10) of the *Securities Act*.

A copy of the Notice of Hearing dated October 3, 2019 and Statement of Allegations dated October 2, 2019 are available at www.osc.gov.on.ca.

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GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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1.4.3 MOAG Copper Gold Resources Inc. et al.

FOR IMMEDIATE RELEASE
October 7, 2019

**MOAG COPPER GOLD RESOURCES INC.,
GARY BROWN and
BRADLEY JONES,
File No. 2018-41**

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

A copy of the Order dated October 4, 2019 is available at www.osc.gov.on.ca.

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GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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1.4.4 Issam El-Bouji

FOR IMMEDIATE RELEASE
October 8, 2019

**ISSAM EL-BOUJI,
File No. 2018-28**

TORONTO – The Commission issued its Reasons and Decision in the above named matter.

A copy of the Reasons and Decision dated October 7, 2019 is available at www.osc.gov.on.ca.

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GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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1.4.5 MOAG Copper Resources Inc. et al.

**FOR IMMEDIATE RELEASE
October 8, 2019**

**MOAG COPPER GOLD RESOURCES INC.,
GARY BROWN and
BRADLEY JONES,
File No. 2018-41**

TORONTO – Take notice the hearing in the above named matter scheduled to be heard on November 6, 2019 at 10:00 a.m. will be heard on November 6, 2019 at 9:00 a.m.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Purpose Investments Inc. et al.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund merger and change of manager – merger approval required because the mergers do not meet the criteria for pre-approved reorganizations and transfers in National Instrument 81-102 – manager of a continuing fund is not an affiliate of the manager of the terminating fund – unitholders of the terminating fund are provided with timely and adequate disclosure regarding the merger – National Instrument 81-102 Investment Fund.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.5(1)(a), 5.5(1)(b), 19.1.

September 30, 2019

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
PURPOSE INVESTMENTS INC.
(Purpose)

AND

HAMILTON CAPITAL PARTNERS INC.
(Hamilton)

AND

PURPOSE GLOBAL FINANCIALS INCOME FUND
(the Terminating Fund)

AND

HAMILTON AUSTRALIAN FINANCIALS YIELD ETF
(formerly Hamilton Capital Australian
Financials Yield ETF)
(the Continuing Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Purpose and Hamilton (together, the **Filers**) on behalf of the Terminating Fund and the Continuing Fund (each a **Fund** and, collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) approving:

- (a) the change in manager of the Terminating Fund to Hamilton under section 5.5(1)(a) of National Instrument 81-102 *Investment Funds (NI 81-102)* (the **Change in Manager**); and
- (b) the merger of the Terminating Fund into the Continuing Fund (the **Merger**), pursuant to paragraph 5.5(1)(b) of NI 81-102.

The Change in Manager together with the Merger is referred to herein as the **Approval 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 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 all of the provinces and territories of Canada other than the Jurisdiction (together with the Jurisdiction, the Jurisdictions).

Interpretation

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

Representations

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

Purpose

1. Purpose is a corporation amalgamated under the *Business Corporations Act* (Ontario) with its head office located in Toronto, Ontario.
2. Purpose is registered as: (i) an investment fund manager in Ontario, Québec and Newfoundland and Labrador; (ii) a portfolio manager in British Columbia, Ontario and Québec; (iii) a commodity trading manager in Ontario; and (iv) as an exempt market dealer in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Québec and Saskatchewan.
3. Purpose is the investment fund manager and trustee of the Terminating Fund.
4. Purpose is not in default of any of the requirements of the securities legislation of any of the provinces and territories of Canada.

Hamilton

5. Hamilton is a corporation organized under the laws of Ontario with a head office in Toronto.
6. Hamilton is registered as: (i) an investment fund manager in Ontario, Quebec and Newfoundland & Labrador; (ii) an exempt market dealer in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland & Labrador, Northwest Territories, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan; and (iii) a portfolio manager in Ontario.
7. Hamilton is the investment fund manager and trustee of the Continuing Fund.
8. Hamilton's primary business is to manage and act as portfolio advisor to a suite of exchange-traded funds, including the Continuing Fund.
9. Hamilton is not in default of any of the requirements of the securities legislation of any of the provinces and territories of Canada.

The Funds

10. Each Fund is an open-ended mutual fund trust established under the laws of the Province of Ontario and each are governed by the provisions of NI 81-102.
11. The Terminating Fund is an exchange traded mutual fund with ETF Class units outstanding (the **Terminating Fund ETF Units**).
12. The Terminating Fund is not currently offered by prospectus (its securities were previously offered by way of simplified prospectus and a related annual information form) and Terminating Fund

ETF Units are therefore no longer available for purchase and are not qualified for distribution in any province or territory of Canada. The Terminating Fund ETF Units are, however, still listed and may be traded on the Toronto Stock Exchange (the TSX) under the ticker symbol, "PFG".

13. The Terminating Fund previously offered Class A and Class F mutual fund units, however, no such mutual fund units are currently outstanding and none will be issued prior to the Effective Date (as defined below).
14. The Continuing Fund is an exchange traded mutual fund with Class E – ETF units (**Continuing Fund ETF Units**) outstanding.
15. Continuing Fund Units are qualified for sale in each of the provinces and territories of Canada pursuant to a long form prospectus and ETF facts (together, the **Continuing Fund Offering Documents**). Continuing Fund ETF Units are also listed and traded on the TSX under the ticker symbol, "HFA".
16. The Funds are reporting issuers as defined under the applicable securities legislation of each province and territory of Canada and are not in default of any of the requirements of the securities legislation of any of the provinces and territories of Canada.
17. Other than under circumstances in which the securities regulatory authority or securities regulator of a province or territory of Canada has expressly exempted a Fund therefrom, each of the Funds follow the standard investment restrictions and practices established by NI 81-102.

Reasons for the Exemption Sought

18. Regulatory approval of the Change in Manager is required because Purpose and Hamilton are unaffiliated entities and, under section 5.5(1)(a) of NI 81-102, the approval of the regulator is required before the manager of an investment fund is changed, unless the new manager is an affiliate of the current manager.
19. Regulatory approval of the Merger is required because the Merger does not satisfy all of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102. In particular:
 - (a) as Purpose and Hamilton are unaffiliated entities, the Continuing Fund is not managed by the same manager, or an affiliate, as the manager of the Terminating Fund;

- (b) the fundamental investment objective of the Continuing Fund may not be considered to be “substantially similar” by a reasonable person to the investment objective of the Terminating Fund; and
 - (c) the fee structure of the Continuing Fund is not, or may be considered not to be, “substantially similar” by a reasonable person to the fee structure of the Terminating Fund.
20. Except as described in this decision, the Merger complies with all other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

The Change in Manager

- 21. It is expected that all of the current officers and directors of Hamilton will continue on in their current capacities.
- 22. The members of the Hamilton management team have the requisite integrity and experience as required under NI 81-102.
- 23. Following the completion of the Change in Manager and the Merger, the Continuing Fund will continue to be managed in a manner consistent with the management of the other existing exchange traded funds managed by Hamilton.

The Proposed Merger/Transaction

- 24. In accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure (NI 81-106)*, a press release was issued on September 3, 2019 whereby the Filers announced that they had entered into an agreement (the **Transaction Agreement**) pursuant to which the parties agreed that the Terminating Fund will be merged into the Continuing Fund, subject to approval by the securityholders of the Terminating Fund, obtaining all necessary regulatory approvals and the satisfaction of all other conditions precedent set out in the Transaction Agreement. A material change report with respect to the proposed Merger was filed on SEDAR on September 6, 2019.
- 25. Pursuant to National Instrument 81-107 – *Independent Review Committee for Investment Funds*, the independent review committee of the Terminating Fund (the **IRC**) will review the proposed Merger as a potential “conflict of interest” matter and the process to be followed in connection with the Merger and will determine if the Merger will achieve a fair and reasonable result for the Terminating Fund. The determination of the IRC will be disclosed in the Circular.

- 26. Hamilton has concluded that the Merger is not material to the Continuing Fund, and accordingly, there is no intention to convene a meeting of securityholders of the Continuing Fund.
- 27. A notice of meeting, a management information circular (the **Circular**) and a form of proxy in connection with the special meeting of securityholders of the Terminating Fund, expected to be held on or about October 17, 2019 (the **Meeting**), will be mailed to securityholders of the Terminating Fund and filed on SEDAR on or before September 26, 2019 (the **Mailing Date**).
- 28. The Circular prepared in connection with the Meeting to approve the Merger will provide a comparison of the fundamental investment objectives, fee structures, other material differences between the Funds, and the tax consequences of the Merger to the Terminating Fund, the Continuing Fund and their securityholders. The Circular will also include a copy of the ETF Facts of the Continuing Fund. The Circular will also describe the various ways in which securityholders of the Terminating Fund can obtain, at no cost, a copy of the Continuing Fund Offering Documents, its most recent interim and annual financial statements and management reports of fund performance. Accordingly, securityholders of the Terminating Fund will be provided with sufficient information to make an informed decision about the Merger.
- 29. As the Terminating Fund is no longer in continuous distribution, the Terminating Fund has no offering documents which are required to be amended owing to the announcement of the proposed Merger and the entering into of the Transaction Agreement.
- 30. As the proposed Merger would not constitute a material change for the Continuing Fund, approval by securityholders of the Continuing Fund is not required, nor is any amendment required to the Continuing Fund Offering Documents.
- 31. While the investment objectives of the Funds are not, in the view of the Filers, substantially similar, if the Merger is approved, securityholders of the Terminating Fund will gain exposure to the Australian financial services sector. Such sector has traditionally provided high dividends and a history of long-term outperformance versus the Canadian financials sector. Given its current yield, the Continuing Fund is therefore likely appropriate for investors seeking monthly dividends and portfolio diversification from a group of companies operating in a successful economic market.
- 32. Purpose and/or Hamilton will pay for the costs of the Merger. These costs consist mainly of legal, proxy solicitation, printing, mailing, brokerage costs and regulatory fees.

33. If all required approvals are obtained, it is expected that the Merger will be effective on or about October 25, 2019 (the **Effective Date**).
34. If the Merger does not receive the required securityholder or regulatory approvals, the Change in Manager will not occur, Purpose and Hamilton will not proceed with the Merger, and the Terminating Fund will be terminated on or about November 29, 2019.

Procedure for the Merger

35. The Merger will be structured substantially as follows:
- (a) The board of directors of Purpose and Hamilton will each approve the Merger.
 - (b) Pursuant to subsection 5.1(f) of NI 81-102, securityholders of the Terminating Fund will be asked to approve the Merger at the Meeting.
 - (c) The trust documentation of each Fund will be amended, as may be required, to permit such actions as are necessary to complete the Merger.
 - (d) Prior to the Merger, as required, the Terminating Fund will sell any securities in its portfolio that do not meet the investment objective and investment strategies of the Continuing Fund. As a result, the Terminating Fund may temporarily hold cash or money market instruments and may not be fully invested in accordance with its investment objective for a brief period of time prior to the Merger being effected.
 - (e) The value of the Terminating Fund's investment portfolio and other assets will be determined at the close of business on the Effective Date in accordance with the constating documents of the Terminating Fund.
 - (f) The Terminating Fund and the Continuing Fund will declare, pay and automatically reinvest a distribution to its securityholders of net realized capital gains and net income, if any, to ensure that it will not be subject to tax for its current tax year.
 - (g) The Terminating Fund's assets and liabilities, after satisfying or providing for any outstanding liabilities, will be transferred to the Continuing Fund. In return, Continuing Fund Units will be issued to the Terminating Fund by the Continuing Fund having an aggregate net

asset value equal to the value of the assets transferred to the Continuing Fund.

- (h) Immediately thereafter, Continuing Fund ETF Units received by the Terminating Fund will be distributed to securityholders of the Terminating Fund in exchange for their securities in the Terminating Fund on a dollar-for-dollar basis. All Terminating Fund ETF Units will be exchanged for Continuing Fund ETF Units.

36. No redemption fee, sales charges, commissions or other fees will be payable by unitholders of the Terminating Fund in connection with the Merger.
37. The Terminating Fund ETF Units will, subject to the approval of the TSX, be de-listed from the TSX in advance of the Effective Date (the **De-Listing Date**).
38. The Terminating Fund will be wound-up as soon as practicable and, in any case, within 30 days following the Effective Date.
39. As noted above, as the Terminating Fund is no longer in continuous distribution, Terminating Fund unitholders may not currently purchase Terminating Fund Securities. However, should the Merger receive all required approvals, ETF securityholders of the Terminating Fund may still trade such securities on the TSX up until the close of business on the De-Listing Date.
40. The Merger will be a qualifying exchange under the *Income Tax Act* (Canada) (the **Tax Act**). Accordingly, the disposition of Terminating Fund Securities in connection with the Merger will be effected on a tax deferred "rollover" basis for unitholders of the Terminating Fund.

Merger Benefits

41. The Filers believe that the Merger will be beneficial to securityholders of the Funds for the following reasons:
- (a) Hamilton is an independent investment management firm that is focussed on growing its investment management business. As part of Hamilton's growth strategy, Hamilton has determined it is appropriate to acquire additional assets under management. As the Terminating Fund was created by a similarly independent investment fund manager, Hamilton believes the addition of the Terminating Fund, through the Merger, would be a natural fit for existing Terminating Fund securityholders and their advisors.

- (b) As the Terminating Fund is no longer in continuous distribution, it is no longer able to attract new assets and has no current potential for growth. Hamilton is an exchange-traded fund manager with significant resources to grow the Continuing Fund. Such growth may lead to economies of scale that may benefit Securityholders. As noted, further growth opportunities are not currently available to the Terminating Fund. As noted, if the Merger is not approved, the Terminating Fund will be terminated.
- (c) The Merger has the potential to lower costs for Securityholders as the operating costs and expenses of the Continuing Fund will be spread over a greater pool of assets when the Terminating Fund merges into the Continuing Fund, potentially resulting in a lower management expense ratio for the Continuing Fund than may occur otherwise.
- (d) The Continuing Fund will have an asset base of greater size, potentially allowing for increased portfolio diversification opportunities and a smaller proportion of assets set aside to fund redemptions. The ability to improve diversification may lead to increased returns and a reduction of risk, while at the same time creating a higher profile that may attract more investors.
- (e) The management expense ratio of the Continuing Fund is lower than that of the Terminating Fund (after waivers and absorptions). Therefore, although Securityholders of the Terminating Fund will be subject to a slight management fee increase if the Merger is approved, it is anticipated that the Continuing Fund will have a lower, overall expense profile.
- (f) The risk rating for the Continuing Fund is "Medium", whereas the risk rating for the Terminating Fund is "Medium-to-High". Such lower risk rating may make the Continuing Fund more suitable for less risk averse investors.
- (g) Hamilton manages a limited number of exchange-traded funds, as compared to Purpose. Hamilton focuses only on the global financial services sector and has a large and experienced portfolio management team with over 60 years of combined experience specializing in only the global financials sector. Consequently, it is anticipated that the Continuing Fund could attract more

assets as marketing efforts by Hamilton will be concentrated on fewer funds within a defined industry sector. The ability to attract assets in the Continuing Fund will benefit investors by ensuring that the Continuing Fund remains a viable, long-term, attractive investment vehicle for existing and potential investors.

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 Approval Sought is granted, provided that the Filers obtain the prior approval of the unitholders of the Terminating Fund for the Merger at a special meeting held for that purpose.

"Darren McKall"
Manager
Investment Funds & Structured Products Branch
Ontario Securities Commission

2.1.2 Gluskin Sheff + Associates Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the conflict of interest restrictions in the Securities Act (Ontario) to permit fund-on-fund structures involving pooled funds under common management subject to conditions.

Applicable Legislative Provisions

Securities Act (Ontario) R.S.O. 1990, c. S.5, as am., ss. 111(2)(b), 111(2)(c), 111(4) and 113.

October 2, 2019

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
GLUSKIN SHEFF + ASSOCIATES INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Filer, a mutual fund trust to be formed under the laws of Ontario (the **Initial Top Fund**), one or more other funds which will be established, advised and managed by the Filer in the future (the **Future Top Funds** and together with the Initial Top Fund, the **Top Funds**), Onex Senior Credit Fund, L.P., a Cayman Islands exempted limited partnership (the **Initial Underlying Fund**) and one or more other funds which have been or will be established and which are or will be advised and managed by Onex Credit Partners, LLC (**Onex Credit**) to operate as an underlying fund in a “fund-on-fund” structure (the **Future Underlying Funds** and together with the Initial Underlying Fund, the **Underlying Funds** and together with the Top Funds, the **Funds** and each a **Fund**), for a decision under the securities legislation of the principal regulator (the **Legislation**) exempting the Funds from:

- (a) the prohibition in the Legislation against an investment fund knowingly making an investment in any person or company in which the investment fund, alone or together with one or more related

investment funds, is a substantial securityholder;

- (b) the prohibition in the Legislation against an investment fund knowingly making an investment in an issuer in which (i) any officer or director of the investment fund, its management company or distribution company or an associate of any of them, or (ii) any person or company who is a substantial securityholder of the investment fund, its management company or its distribution company, has a significant interest; and
 - (c) the prohibition in the Legislation against an investment fund knowingly holding an investment described in (a) or (b) above;
- (the above subsections (a), (b) and (c) are collectively, **the Requested Relief**).

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) in respect of the Requested Relief, the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* is intended to be relied upon in Alberta.

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* or the Act have the same meanings if used in this decision unless they are otherwise defined in this decision.

Representations

The Filer and Affiliates

1. The Filer was founded in 1984 and is one of Canada's pre-eminent wealth management firms serving high net worth private clients and institutional investors. The Filer primarily offers fully discretionary accounts (**Discretionary Accounts**) that invest in equity, fixed income, alternative credit and alternative equity investment portfolios managed by the Filer and also distributes interests in certain investment funds managed by the Filer or its affiliates directly to investors (**Direct Clients**) who may not have a Discretionary Account with the Filer.
2. The head office of the Filer is located at Bay Adelaide Centre, 333 Bay Street, Suite 5100, Toronto, Ontario M5H 2R2.

3. The Filer is registered in each of the provinces and territories as a portfolio manager (other than Prince Edward Island and Nunavut) and as an exempt market dealer (other than Prince Edward Island, Nunavut and the Yukon) and is registered in Ontario, Quebec and Newfoundland and Labrador as an investment fund manager. The Filer is also registered in Ontario as a commodity trading manager.
4. On March 22, 2019, the Filer entered into an arrangement agreement with Onex Corporation, pursuant to which Onex Corporation agreed to acquire all of the issued and outstanding common shares of the Filer by way of a court-approved plan of arrangement under the provisions of Section 182 of the *Business Corporations Act* (Ontario) (the **Arrangement**).
5. The Arrangement was completed June 1, 2019 and Onex Corporation, directly and indirectly, acquired all of the issued and outstanding common shares of the Filer.
6. Onex Corporation was founded in 1984 by Gerald W. Schwartz to make private equity investments in companies located primarily in North America. Today, the firm operates from offices located in Toronto (established in 1984), New York (established in 1986), New Jersey (established in 2007) and London (established in 2012). Onex Corporation's shares trade on the Toronto Stock Exchange under the stock symbol "ONEX".
7. Onex Credit, a U.S.-based limited liability company with its head office located in New Jersey, USA, is the manager of the Initial Underlying Fund.
8. Onex Credit was co-founded by Michael J. Gelblat and Stuart Kovensky and has a track record that includes managing senior secured loans, high-yield bonds and other fixed income instruments since 2001. Today, Onex Credit manages primarily non-investment grade debt through collateralized loan obligations, private debt and other credit strategies.
9. Onex Credit is the credit investing platform of Onex Corporation and is owned indirectly by Onex Corporation and Mr. Gelblat (or certain trusts or other entities which he created).
10. Onex Credit currently is registered in the province of Ontario as a portfolio manager, in the provinces of Ontario, Quebec and Newfoundland and Labrador as an investment fund manager and in each of the provinces and territories of Canada as an exempt market dealer.
11. The Filer will be the investment manager and portfolio manager of each of the Top Funds.

12. The Filer is not a reporting issuer in any jurisdiction of Canada and is not in default of securities legislation in any province or territory of Canada.
13. Onex Credit is not a reporting issuer in any jurisdiction of Canada and is not in default of securities legislation in any province or territory of Canada.
14. Onex Corporation is a reporting issuer and is not in default of securities legislation in any province or territory of Canada.

The Top Funds

15. Contemporaneously with obtaining a decision from the OSC in connection with this application, the Initial Top Fund will be formed pursuant to a supplement to the master declaration of trust dated as of February 28, 2019.
16. Each of the Top Funds will be a "mutual fund" under the Legislation.
17. Units of each of the Top Funds (a) will be available for investment by the Filer's Discretionary Accounts and (b) may be offered to Direct Clients, in each case exclusively on a private placement basis pursuant to available exemptions from the prospectus requirements under Canadian securities legislation.
18. Each of the Top Funds will be managed by the Filer and the Filer will act as trustee.
19. Each Top Fund and the corresponding Underlying Fund will have substantially the same investment objectives and strategies and as such, the investments held by an Underlying Fund will be compatible with the investment objectives and strategies of the corresponding Top Fund.
20. Each Top Fund is not, and will not become, a reporting issuer in Canada.

The Underlying Funds

21. The Initial Underlying Fund is a Cayman Islands exempted limited partnership and was established as of December 1, 2007.
22. The Initial Underlying Fund's investment objective and strategy is to provide investors with attractive risk-adjusted returns primarily by purchasing exposure to syndicated leveraged loans.
23. Each Future Underlying Fund will be structured as a limited partnership or other entity under the laws of: a province or territory of Canada, the Cayman Islands, the United States, Barbados, Bahamas, Ireland, Luxembourg, the Netherlands or the British Virgin Islands.

24. Onex Credit is, or will be, the investment fund manager and portfolio manager of each of the Underlying Funds.

25. None of the Underlying Funds is, or will become, a reporting issuer in Canada. Each existing Underlying Fund is not in default of securities legislation in any province or territory of Canada.

Fund-on-Fund Structure and Submissions

26. Securities of the Initial Underlying Fund, structured as a limited partnership, are not qualified investments for tax-free savings accounts (**TFSAs**) or trusts governed by registered retirement savings plans, registered retirement income funds, registered education savings plans, deferred profit sharing plans or registered disability savings plans each as defined in the *Income Tax Act* (Canada) (collectively, **Tax Deferred Plans**).

27. The Top Funds will be formed as mutual fund trusts in a jurisdiction of Canada for the purpose of accessing a broader base of investors, including TFSAs, Tax Deferred Plans and other investors that may not wish to invest directly in an entity resident in a jurisdiction outside of Canada.

28. For each Top Fund in a fund-on-fund structure, Onex Credit will be able to manage a single portfolio of assets which gives the Filer's Discretionary Accounts and Direct Clients access on a tax effective basis to an Onex Credit-managed portfolio in such Underlying Fund.

29. Managing a single pool of assets provides economies of scale, allows a Top Fund to achieve its investment objective in a cost-efficient manner and eases the burden of balancing and re-balancing portfolios that may be necessary across separate fund structures with identical objectives and strategies.

30. The fund-on-fund structure is also expected to increase the asset base of the Underlying Funds, which is expected to result in additional benefits to holders of interests in the Underlying Funds, including more favourable pricing and transaction costs on portfolio trades, increased access to investments when there is a minimum investment amount and better economies of scale through greater administrative efficiency.

31. In the absence of the Requested Relief, a Top Fund would be precluded from investing substantially all of its assets directly or indirectly in an Underlying Fund because: (a) the amounts invested, from time to time, may result in the Top Fund becoming a substantial securityholder of the Underlying Fund; and (b) a substantial securityholder of the Filer has, or may have, from

time to time, a significant interest in the Underlying Fund.

32. In connection with the fund-on-fund structure, the Filer specifically submits as follows:

(a) No Underlying Fund will itself be a top fund in a fund-on-fund structure.

(b) Each Underlying Fund has, or is expected to have, other investors in addition to a Top Fund.

(c) Securities of each Top Fund and its corresponding Underlying Fund will have monthly redemption and monthly valuation dates on the last business day of each calendar month.

(d) The Filer will manage the liquidity of each Top Fund having regard to the redemption features of the corresponding Underlying Fund to ensure that it can meet redemption requirements for Discretionary Accounts and any redemption requests from Direct Clients.

(e) An investment in an Underlying Fund by a Top Fund will be effected at an objective price. Generally, for this purpose, the objective price will be the net asset value per security of the applicable class or series of the Underlying Fund or will otherwise be determined in accordance with the policies and procedures of the Filer and the manager of the Underlying Fund.

(f) No Underlying Fund holds, or will hold, for a period of 90 days or more, more than 10% of its net asset value in illiquid assets (as defined in National Instrument 81-102 – *Investment Funds*) and thereafter as quickly as commercially reasonable will take all necessary steps to reduce the percentage of its net asset value made up of illiquid assets to 10% or less. In the case of the Initial Underlying Fund, the value of the Initial Underlying Fund's total return swap (the **TRS**), with a Canadian Schedule I bank counterparty, may represent more than 10% of the Initial Underlying Fund's assets. The reference assets of the TRS are priced daily. The TRS can be partially terminated on a daily basis to provide the liquidity required to meet the redemptions of the Top Fund.

(g) The Top Funds and Underlying Funds subject to National Instrument 81-106 – *Investment Fund Continuous Disclosure (NI 81-106)* will prepare annual audited

financial statements and interim unaudited financial statements in accordance with NI 81-106 and will otherwise comply with the requirements of NI 81-106 applicable to them.

(h) The investment assets of each Fund are and will continue to be, or will be, held in accordance with sections 14.5.2 to and including 14.6.2 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

(i) The Filer will not vote the securities of an Underlying Fund held by a Top Fund and attributable to Direct Clients at a meeting of holders of such securities, except that the Filer may arrange for the securities that a Top Fund holds of an Underlying Fund to be voted by the Direct Clients that hold securities of the Top Fund who are not the Filer or an officer, director or substantial securityholder of the Filer.

(j) When purchasing and/or redeeming securities of an Underlying Fund, the Filer and the manager of the Underlying Fund shall, as managers of the applicable Top Fund and Underlying Fund, respectively, act honestly, in good faith and in the best interests of the Top Fund and the Underlying Fund, respectively, and shall exercise the care and diligence that a prudent person would exercise in comparable circumstances.

(k) There will not be any duplication of management fees or performance allocations, distributions or other similar participations in the profits of the Funds, paid to the Filer, Onex Credit or any of their affiliates in connection with the Funds operating as a fund-on-fund structure or any Top Fund's investment in an Underlying Fund.

33. Holders of Discretionary Accounts and Direct Clients will be advised in writing prior to the time of investment: (a) that the Top Fund may purchase securities of a corresponding Underlying Fund; (b) that the Filer will be the investment fund manager and portfolio manager of the Top Fund and that Onex Credit will be the investment fund manager and portfolio manager of the Underlying Fund; (c) that each of the Filer and Onex Credit is a direct or indirect subsidiary of Onex Corporation; (d) that the Top Fund may invest all, or substantially all, of its assets in securities of the corresponding Underlying Fund; (e) the fees, expenses and any performance or special incentive distributions payable by the Underlying Fund in which a Top

Fund invests; and (f) the process or criteria used to select the Underlying Fund, if applicable.

34. The investment by the Initial Top Fund of substantially all of its assets in the Initial Underlying Fund and the investment by each Future Top Fund of substantially all of its assets in a corresponding Future Underlying Fund represents the business judgment of responsible persons of the Filer uninfluenced by considerations other than the best interests of the Funds.

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 Requested Relief is granted provided that:

1. securities of Top Funds are distributed in Canada solely pursuant to exemptions from the prospectus requirement under Canadian securities legislation;
2. the investment by a Top Fund in a corresponding Underlying Fund is compatible with the fundamental investment objectives of the Top Fund;
3. an investment in an Underlying Fund by a Top Fund will be effected at an objective price, calculated in accordance with section 14.2 of NI 81-106;
4. a Top Fund will not invest in an Underlying Fund that is not a reporting issuer unless the Underlying Fund prepares annual audited financial statements for the Underlying Fund's most recently completed financial year and interim financial statements for the Underlying Fund's most recently completed interim period;
5. no Top Fund will purchase or hold a security of an Underlying Fund unless at the time of purchasing securities of the Underlying Fund, the Underlying Fund holds no more than 10% of its net asset value in securities of other mutual funds;
6. no management fees or incentive fees are payable by a Top Fund that, to a reasonable person, would duplicate a fee payable by an Underlying Fund for the same service;
7. no sales fee or redemption fees are payable by a Top Fund in relation to its purchases or redemptions of securities of an Underlying Fund that, to a reasonable person, would duplicate a fee payable by an investor in the Top Fund, other than brokerage fees incurred for the purchase or sale

- of an index participation unit issued by an investment fund;
8. the Filer will not vote the securities of an Underlying Fund held by a Top Fund and attributable to Direct Clients at a meeting of holders of such securities, except that the Filer may arrange for the securities that a Top Fund holds of an Underlying Fund to be voted by the Direct Clients that hold securities of the Top Fund who are not the Filer or an officer, director or substantial securityholder of the Filer;
9. when purchasing and/or redeeming securities of an Underlying Fund, the Filer and the manager of the Underlying Fund shall, as managers of the applicable Top Fund and Underlying Fund, respectively, act honestly, in good faith and in the best interests of the Top Fund and the Underlying Fund, respectively, and shall exercise the care and diligence that a prudent person would exercise in comparable circumstances;
10. a disclosure document, including an offering memorandum where available, of a Top Fund shall be provided to each investor in a Top Fund prior to the time of the investor's investment, and shall disclose:
- (a) that the Top Fund may purchase securities of an applicable, identified Underlying Fund and that if the Top Fund decides to purchase securities of an Underlying Fund that is not identified in the disclosure document, the Top Fund will notify investors of the Top Fund at the time of the purchase;
 - (b) that the Filer is the investment fund manager and portfolio manager of the Top Fund and that an affiliate of the Filer is the investment fund manager and portfolio manager of the Underlying Fund;
 - (c) the approximate or maximum percentage of net assets of the Top Fund that is intended be invested in securities of Underlying Funds;
 - (d) the fees, expenses and any performance or special incentive distributions payable by an Underlying Fund in which the Top Fund invests;
 - (e) the process or criteria used to select an Underlying Fund;
 - (f) for each officer, director and/or substantial security holder of the Filer, or of a Top Fund, that has a significant interest in an applicable Underlying Fund,
- and for the officers and directors and substantial security holders who together in aggregate hold a significant interest in an applicable Underlying Fund, the approximate amount of the significant interest they hold, on an aggregate basis, expressed as a percentage of the applicable Underlying Fund's NAV, and the potential conflicts of interest which may arise;
- (g) that investors are entitled to receive from the Filer, on request and free of charge, a copy of the offering memorandum or other similar disclosure document of each Underlying Fund, if available; and
 - (h) that investors are entitled to receive from the Filer, on request and free of charge, the annual audited financial statements and interim financial reports relating to each Underlying Fund in which the Top Fund invests; and
11. the Filer shall annually inform investors in a Top Fund of their right to receive from the Filer, on request and free of charge, a copy of the offering memorandum or other similar disclosure document of each Underlying Fund, if available, and the annual audited financial statements and interim financial reports relating to each Underlying Fund in which the Top Fund invests.

"Raymond Kindiak"
Commissioner
Ontario Securities Commission

"M. Cecilia Williams"
Commissioner
Ontario Securities Commission

2.1.3 Corton Capital Inc. and the Top Funds

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the conflict of interest investment restrictions in the Securities Act (Ontario) and the self-dealing prohibitions in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations to permit pooled funds to invest in investment funds under common management, that are governed by the laws of a jurisdiction of Canada, or governed by the laws of the Cayman Islands, Barbados, Bahamas or the British Virgin Islands, subject to certain conditions.

Applicable Legislative Provisions

Securities Act (Ontario) R.S.O. 1990, c. S.5, as am., ss. 111(2)(b), 111(2)(c), 111(4) and 113.

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

October 2, 2019

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
CORTON CAPITAL INC.
(the Filer)

AND

IN THE MATTER OF
THE TOP FUNDS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of each of the Filer, the Corton Global Timber Fund (the **Initial Top Fund**) and one or more investment funds that are not reporting issuers under the securities legislation of the principal regulator (the **Legislation**) and which are established or managed by the Filer in the future (the **Future Top Funds** and, together with the Initial Top Fund, the **Top Funds**) for a decision under the Legislation in respect of the Fund on Fund Structure (as defined below):

- (A) exempting the Filer and the Top Funds from the restriction in the Legislation which prohibits
 - (1) an investment fund from knowingly making an investment in a person or company in which the investment fund, alone or together with one or more related investment funds, is a substantial security holder;
 - (2) an investment fund from knowingly making an investment in an issuer in which:
 - (a) any officer or director of the investment fund, its management company or distribution company or an associate of any of them, or

- (b) any person or company who is a substantial security holder of the investment fund, its management company or its distribution company,

has a significant interest; and

- (3) an investment fund, its management company or its distribution company from knowingly holding an investment described in paragraph (i) or (ii) above

(collectively, the **Related Issuer Relief**); and

- (B) exempting the Filer from the restrictions in paragraph 13.5(2)(a) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) which prohibit a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as adviser, to purchase a security of an issuer in which a responsible person or an associate of a responsible person is a partner, officer or director, unless (i) this fact is disclosed to the client and (ii) the written consent of the client is obtained before the purchase (the **Consent Relief**, and together with the Related Issuer Relief, the **Requested Relief**),

to permit the Filer to cause the Top Funds to invest in the Underlying Funds (as defined below).

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

- (a) the Ontario Securities Commission is the principal regulator for the purposes of 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
 - a. in respect of the Related Issuer Relief, in the Province of Alberta; and
 - b. in respect of the Consent Relief, in the provinces of Alberta, British Columbia, New Brunswick and Nova Scotia,

(together with Ontario, the **Jurisdictions**).

Interpretation

Unless expressly defined herein, terms in this decision have the respective meanings given to them in National Instrument 14-101 – *Definitions* and MI 11-102.

Representations

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

Filer

1. The Filer is a corporation incorporated under the laws of the Province of Ontario. The Filer has its head office in Toronto, Ontario.
2. The Filer is registered with the Ontario Securities Commission in the categories of investment fund manager, portfolio manager and exempt market dealer. The Filer is also registered as a portfolio manager and an exempt market dealer in Alberta, British Columbia, New Brunswick and Nova Scotia.
3. The Filer is, or will be, a “responsible person” of the Top Funds and the Underlying Funds, as that term is defined in NI 31-103.
4. A person or company who is a substantial security holder of the Filer or a Top Fund may have a significant interest in an Underlying Fund from time to time.
5. An officer and/or director of the Filer may also be an officer and/or director of an Underlying Fund or may have a significant interest in an Underlying Fund from time to time.
6. The Filer is not a reporting issuer in any jurisdiction of Canada and is not, to the knowledge of the Filer, in default of securities legislation of any jurisdiction of Canada.

The Top Funds

7. The Initial Top Fund is organized under the laws of the Province of Ontario as a trust pursuant to a master declaration of trust (the **Trust Declaration**). Each Future Top Fund will be organized as a trust under the laws of Ontario or another jurisdiction of Canada.
8. Each Top Fund is or will be a “mutual fund” for the purposes of the Legislation.
9. Securities of the Initial Top Fund and each Future Top Fund are, or will be, offered on a private placement basis to qualified investors pursuant to available exemptions from the prospectus requirements under Canadian securities legislation.
10. The Filer acts as the trustee of the Initial Top Fund. The Filer or a third party will act as trustee of a Top Fund.
11. The Filer is, or will be, the investment fund manager and portfolio manager of the Initial Top Fund and each of the Future Top Funds.
12. The investment objective of the Initial Top Fund is to provide capital appreciation by investing in a diversified portfolio of global timber companies operating in the plantation and management of forests and the processing, production and distribution of timber and related wood products by investing all or substantially all of its assets in the Initial Underlying Fund.
13. In addition to the Initial Top Fund, each Top Fund will also invest all or substantially all of its assets in one or more Underlying Funds.
14. The Trust Declaration of the Initial Top Fund describes the investment objectives and investment restrictions applicable to the Initial Top Fund and also describes the fees, compensation and expenses payable by the Initial Top Fund, the calculation of net asset value, distributions, the powers and duties of the investment fund manager and all other matters material to the Initial Top Fund, including the fact that in pursuing its investment objectives, the Initial Top Fund may invest in one or more Underlying Funds as an investment strategy.
15. The Initial Top Fund is not, and each Future Top Fund will not be, a reporting issuer in any jurisdiction in Canada.
16. The Initial Top Fund is not in default of securities legislation of any province or territory of Canada.

The Underlying Funds

17. The Corton Global Timber Fund L.P, (the **Initial Underlying Fund**) is not, and each investment fund that is established, managed and advised by the Filer in the future (the **Future Underlying Funds**, and together with the Initial Underlying Fund, the **Underlying Funds**) will not be, a reporting issuer in any province or territory of Canada.
18. The Initial Underlying Fund is a limited partnership formed under the *Limited Partnerships Act* (Ontario).
19. The Filer is the investment fund manager and portfolio manager of the Initial Underlying Fund and will be the investment fund manager and the portfolio manager of each of the Future Underlying Funds.
20. Each of the Underlying Funds has, or will have, separate investment objectives, strategies and/or restrictions.
21. The investment objective of the Initial Underlying Fund is to provide capital appreciation by investing in a diversified portfolio of global timber companies operating in the plantation and management of forests and the processing, production and distribution of timber and related wood products. The Initial Underlying Fund seeks to achieve its investment objective primarily from applying a conservative valuation framework to security selection and a prudent approach to portfolio construction.
22. Each of the Future Underlying Funds will be structured as a limited partnership under the laws of the Province of Ontario or another jurisdiction of Canada or as an entity organized under the laws of the Cayman Islands, Barbados, Bahamas or the British Virgin Islands (each, an **Offshore Jurisdiction**). In its home jurisdiction, each Underlying Fund will either be distributed pursuant to a prospectus or a prospectus exemption.
23. The Initial Underlying Fund and each of the Future Underlying Funds will be a “mutual fund” for the purposes of the Legislation.

24. Securities of the Underlying Funds offered in Canada will be sold to qualified investors, including the Top Funds, on a private placement basis pursuant to available exemptions from the prospectus requirements under Canadian securities legislation.
25. Persons or companies who are officers or directors of the Filer or substantial security holders of the Top Funds or the Filer may acquire or hold a significant interest in one or more Underlying Funds from time to time.
26. No Underlying Fund is, or will be, a reporting issuer in any jurisdiction of Canada.
27. The Initial Underlying Fund is not in default of securities legislation of any jurisdiction of Canada.

Fund-on-Fund Structure

28. The Initial Top Fund has been, and the Future Top Funds will be, created by the Filer to allow investors in the Top Funds to obtain indirect exposure to the investment portfolio of the Initial Underlying Fund or Future Underlying Funds and their investment strategies through, primarily, direct investments by the Top Funds in securities of the Underlying Funds (the **Fund-on-Fund Structure**).
29. The Fund-on-Fund Structure will permit the Filer to manage a single portfolio of assets for both a Top Fund and an Underlying Fund in a single investment vehicle structure.
30. Managing a single pool of assets provides economies of scale, allows the Top Funds to achieve their investment objectives in a cost-effective manner and will not be detrimental to the interests of other securityholders of an Underlying Fund.
31. The Fund-on-Fund Structure is expected to increase the asset base of the Underlying Funds, which is expected to result in additional benefits to unitholders of the Underlying Funds, including more favorable pricing and transaction costs on portfolio trades, increased access to investments when there is a minimum subscription or purchase amount, and better economies of scale through overall greater administrative efficiency.
32. Securities of the Initial Underlying Fund, structured as a limited partnership, are not qualified investments for tax-free savings accounts (**TFSAs**) and trusts governed by registered retirement savings plans, registered retirement income funds, registered education savings plans, deferred profit-sharing plans and registered disability savings plans (collectively, **Tax Deferred Plans**), each as defined in the *Income Tax Act* (Canada).
33. The Initial Top Fund has been, and the Future top Funds will be, formed as trusts for the purpose of accessing a broader base of investors, including TFSAs, Tax Deferred Plans and other investors that may not wish to invest directly in a limited partnership or an entity formed in an Offshore Jurisdiction. Rather than operating investment portfolios of the Initial Top Fund and the Initial Underlying Fund as separate pools, the Filer wishes to make use of economies of scale by managing only one pool of assets in the Initial Underlying Fund.
34. There are tax advantages for non-Canadian unitholders to invest directly in Future Underlying Funds structured as entities under the laws of an Offshore Jurisdiction. Accordingly, the Filer expects non-Canadian investors to invest directly in the Future Underlying Funds which are structured under the laws of an Offshore Jurisdiction. However, since similar tax advantages are not available to Canadian resident investors, the Filer expects Canadian resident investors to invest directly in a Top Fund in order to obtain indirect exposure to the related Underlying Fund.
35. An investment in an Underlying Fund by a Top Fund will be effected at an objective price. According to the Filer's policies and procedures, an objective price for this purpose will be the net asset value (**NAV**) per security of the applicable class or series of the applicable Underlying Fund.
36. The portfolio of each Underlying Fund consists, or will consist, primarily of publicly traded securities, debt instruments and derivatives. No Underlying Fund holds, or will hold, more than 10% of its NAV in illiquid assets (as defined in National Instrument 81-102 *Investment Funds* (**NI 81-102**)).
37. No Underlying Fund will be a Top Fund in a Fund-on-Fund Structure.
38. Each Underlying Fund has, or is expected to have, other investors in addition to the Top Funds.
39. Securities of the Top Funds and their corresponding Underlying Funds have, or will have, matching monthly redemption dates and matching monthly valuation dates.

40. In all cases, the Filer manages, or will manage, the liquidity of each Top Fund having regard to the redemption features of the corresponding Underlying Fund(s) to ensure that it can meet redemption requests from investors of the Top Funds.
41. The Fund-on-Fund Structures involving Future Top Funds and Future Underlying Funds will be similarly structured to that of the Initial Top Fund and the Initial Underlying Fund in that future structures will also reflect trust or limited partnership arrangements, where a Future Top Fund as a trust, invests in an Underlying Fund(s) that is a Canadian entity, formed as a limited partnership. The Filer also expects future Fund-on-Fund Structures to resemble that of the Initial Top Fund and the Initial Underlying Fund to the extent that they involve a Future Top Fund, formed as a trust, which invests in an Underlying Fund(s) formed in an Offshore Jurisdiction.
42. The Top Funds and Underlying Funds subject to National Instrument 81-106 *Investment Fund Continuous Disclosure (NI 81-106)* will prepare annual audited financial statements and interim unaudited financial statements in accordance with NI 81-106 and will otherwise comply with the requirements of NI 81-106 applicable to them.
43. Prior to purchasing securities of a Top Fund, the purchaser will be provided with a copy of the Top Fund's offering memorandum or, if no offering memorandum is prepared in respect of the Top Fund, the purchaser will be provided with another disclosure document that contains details about the Top Fund and disclosure respecting relationships and potential conflicts of interest between the Top Fund and the applicable Underlying Fund.
44. The amounts invested from time to time in an Underlying Fund by one or more Top Fund may exceed 20% of the outstanding voting securities of the Underlying Fund. As a result, a Top Fund could either alone or together with other Top Funds, become a substantial security holder of an Underlying Fund. The Top Funds are, or will be, related mutual funds by virtue of common management by the Filer.
45. In the absence of the Requested Relief, each of the Top Funds would be precluded from investing in an Underlying Fund since an officer and/or director of the Filer (considered a responsible person within the meaning of the applicable provisions of NI 31-103) will also be an officer and/or director of the Filer of the Underlying Fund.
46. Any investment made by a Top Fund in an Underlying Fund will be aligned with the investment objectives, investment strategy, risk profile and other principal terms of the Top Fund.
47. In the absence of the Related Issuer Relief, the Top Funds would be constrained by the investment restrictions in Canadian securities legislation in terms of the degree to which they could implement the Fund-on-Fund Structure. Specifically, the Top Funds would be prohibited from: (i) becoming a substantial securityholders of the Underlying Funds, either alone or together with related investment funds; and (ii) a Top Fund investing in an Underlying Fund in which an officer or director of the Filer has a significant interest and/or a Top Fund investing in an Underlying Fund in which a person or company who is a substantial securityholder of the Top Fund or the Filer, has a significant interest.
48. In the absence of the Consent Relief, each Top Fund would be precluded from investing in one or more Underlying Funds unless the specific fact is disclosed to securityholders of the Top Fund and the written consent of the securityholders of the Top Fund to the investment is obtained prior to the purchase, since an officer and/or director of the Filer, who may be considered a responsible person (as per section 13.5 of NI 31-103) or an associate of a responsible person, may also be a partner, officer and/or director of the applicable Underlying Fund.
49. The Fund-on-Fund Structure represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of the prospective investors in the Top Funds.

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 Requested Relief is granted provided that:

- (a) securities of the Top Funds are distributed in Canada solely pursuant to exemptions from the prospectus requirements under Canadian securities legislation;
- (b) the investment by a Top Fund in an Underlying Fund is compatible with the fundamental investment objectives of the Top Fund;
- (c) an investment in an Underlying Fund by a Top Fund will be effected at an objective price, calculated in accordance with section 14.2 of NI 81-106;

- (d) a Top Fund will not invest in an Underlying Fund, unless the Underlying Fund complies with the provisions of NI 81-106 that apply to a "mutual fund in Ontario" as defined in the *Securities Act* (Ontario);
- (e) no Top Fund will purchase or hold a security of an Underlying Fund unless, at the time of the purchase of securities of the Underlying Fund, the Underlying Fund holds no more than 10% of its NAV in securities of other mutual funds, unless the Underlying Fund:
 - (i) a "clone fund" (as defined by NI 81-102),
 - (ii) purchases or holds securities of a "money market fund" (as defined by NI 81-102), or
 - (iii) purchases or holds securities that are "index participation units" (as defined by NI 81-102) issued by an investment fund;
- (f) no management fees or incentive fees are payable by a Top Fund that, to a reasonable person, would duplicate a fee payable by an Underlying Fund for the same service;
- (g) no sales fee or redemption fees are payable by a Top Fund in relation to its purchases or redemptions of securities of an Underlying Fund that, to a reasonable person, would duplicate a fee payable by an investor in the Top Fund other than brokerage fees incurred for the purchase or sale of an index participation unit issued by an investment fund;
- (h) the Filer does not cause the securities of an Underlying Fund held by a Top Fund to be voted at any meeting of holders of such securities, except that the Filer may arrange for the securities the Top Fund holds of an Underlying Fund to be voted by the beneficial owners of securities of the Top Fund who are not the Filer or an officer, director or substantial securityholder of the Filer;
- (i) when purchasing and/or redeeming securities of an Underlying Fund, the Filer shall, as investment fund manager of the applicable Top Fund and Underlying Fund, act honestly, in good faith and in the best interests of the Top Fund and Underlying Fund, respectively, and shall exercise the care and diligence that a reasonably prudent person would exercise in comparable circumstances;
- (j) the offering memorandum, where available, or other disclosure document of a Top Fund, will be provided to investors in a Top Fund prior to the time of investment and will disclose:
 - (i) that the Top Fund may purchase securities of the applicable Underlying Fund;
 - (ii) that the Filer is the investment fund manager and/or portfolio manager of both the Top Fund and the Underlying Fund;
 - (iii) that the Top Fund may invest all, or substantially all, of its assets in securities of an Underlying Fund;
 - (iv) the fees, expenses and any performance related allocations payable by an Underlying Fund in which a Top Fund invests;
 - (v) the process or criteria used to select the Underlying Fund, if applicable;
 - (vi) for each officer, director and/or substantial securityholder of the Filer, or of a Top Fund, that has a significant interest in an applicable Underlying Fund, and officers and directors and substantial securityholders who together in aggregate hold a significant interest in an applicable Underlying Fund, the approximate amount of the significant interest they hold, on an aggregate basis, expressed as a percentage of the applicable Underlying Fund's NAV, and the potential conflicts of interest which may arise from such relationship;
 - (vii) that investors are entitled to receive from the Filer, on request and free of charge, a copy of the offering memorandum or other similar disclosure document of the Underlying Fund (if available); and
 - (viii) that investors are entitled to receive from the Filer, on request and free of charge, the annual audited financial statements and interim financial reports relating to the Underlying Fund in which the Top Fund invests;and
- (k) the Filer shall annually inform investors in a Top Fund of their right to receive from the Filer, on request and free of charge, a copy of the offering memorandum or other similar disclosure document of each Underlying Fund, if available,

and the annual audited financial statements and interim financial reports relating to each Underlying Fund in which the Top Fund invests.

The Consent Relief

“Neeti Varma”
Manager, Investment Funds and Structured Products Branch
Ontario Securities Commission

The Related Issuer Relief

“Ray Kindiak”
Commissioner
Ontario Securities Commission

“Cecilia Williams”
Commissioner
Ontario Securities Commission

2.1.4 Callidus Capital Corporation

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Confidentiality – Application by an issuer for a decision that a Management Information Circular previously filed and made public on SEDAR be held in confidence for an indefinite period by the Commission, to the extent permitted by law – Appended valuation contains intimate financial, personal and other sensitive information, the disclosure of which would be seriously prejudicial to the interests of the issuer and other persons affected – Issuer to file and make public on SEDAR a revised version of the Management Information Circular with revised Valuation – Relief granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 140(1) and 140(2).

October 3, 2019

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
CALLIDUS CAPITAL CORPORATION
(the Filer)

DECISION

Background

The principal regulator (the **Decision Maker**) in the Jurisdiction has received an application (the **Application**) from Callidus Capital Corporation (the **Filer**), for a decision (the **Decision Sought**) by the Decision Maker under the securities legislation of the Jurisdiction (the **Legislation**), being section 140(2) of the *Securities Act* (Ontario) (the **Act**), that the requirement for public inspection of records not apply to the version of the Filer's management information circular dated September 17, 2019 (the **Filed Circular**) that was filed on the System for Electronic Document Analysis and Retrieval (**SEDAR**) on September 24, 2019 and that the Filed Circular be held in confidence (and therefore not available to the public for inspection) for an indefinite period, to the extent permitted by law.

Furthermore, the Decision Maker has received a request from the Filer for a decision that the Filer's application be kept confidential for a period that is three years after the date of this decision and that the Revised Blacklined Valuation (as defined below) be kept confidential and not be made public for an indefinite period, in each case to the extent permitted by law (collectively, the **Confidentiality Relief**).

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

- (a) the Ontario Securities Commission is the principal regulator for the 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 British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, the Northwest Territories and Nunavut (the **Other Jurisdictions**).

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

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

1. The Filer is a corporation formed under the *Business Corporations Act* (Ontario) (the **OBCA**). The Filer is a specialty asset-based lender, focused primarily on Canadian companies and select U.S. companies that are unable to obtain adequate financing from traditional lenders.
2. The Filer is a reporting issuer in Ontario and the Other Jurisdictions.
3. The issued and outstanding common shares of the Filer (the **Common Shares**) are currently listed and trade on the Toronto Stock Exchange.
4. As disclosed by press release dated August 15, 2019, the Filer entered into a definitive agreement with Braslyn Ltd. (**Braslyn**) pursuant to which Braslyn will acquire all of the Common Shares held by persons (**Minority Shareholders**) other than Braslyn, certain investment funds managed by The Catalyst Capital Group Inc., and FigCorp Ltd. (a company controlled by Newton Glassman) and James Riley by way of a court-approved Plan of Arrangement (the **Transaction**) under the OBCA subject to, among other conditions, approval of the Transaction by the holders of Common Shares in accordance with the requirements of the OBCA and MI 61-101 – *Protection of Minority Securityholders in Special Transactions* (**MI 61-101**).
5. In connection with the Transaction, a special committee of the independent directors (the **Special Committee**) of the Filer was established and Blair Franklin Capital Partners Inc. (**Blair Franklin**) was retained by the Special Committee to provide, under the supervision of the Special Committee, an independent formal valuation of the Common Shares (**Valuation**) prepared in accordance with MI 61-101.
6. On September 17, 2019, the Filer obtained an interim order of the Ontario Superior Court of Justice permitting the holding of the Meeting on the Meeting Date (as defined below) and the mailing of the Filed Materials (the **Interim Order**). The provisions of sections 10 and 12 of the Interim Order permit the Filer to make amendments to the Filed Materials, and section 11 of the Interim Order permits the Filer to adjourn the Meeting Date, in each case without further approval of the Court. Section 12 of the Interim Order establishes requirements for the delivery of materials in respect of the Meeting to Shareholders, including the timing for delivery of those materials pursuant to National Instrument 54-101 — *Communications with Beneficial Owners of Securities of a Reporting Issuer*.
7. The Valuation was included as an appendix to the Filed Circular prepared in connection with the meeting of holders of Common Shares (**Shareholders**) called to consider, and if deemed advisable, approve, a statutory plan of arrangement in connection with the Transaction (the **Meeting**) on October 23, 2019 (the **Meeting Date**). The Filed Circular, together with the related form of proxy (the **Filed Proxy**) and letter of transmittal (the **Filed Letter of Transmittal**, and together with the Filed Circular and the Filed Proxy, the **Filed Materials**) were posted on the Filer's profile on SEDAR at www.sedar.com on September 24, 2019 pursuant to Part 9 of National Instrument 51-102 – *Continuous Disclosure Obligations*. The Filed Materials have not yet been mailed to Shareholders.
8. On September 26, 2019, it came to the attention of certain operating management of the Filer that the Valuation included certain confidential information (the **Confidential Information**) relating to the Filer and third parties with which it has commercial relations (**Third Parties**).
9. The Filer believes that the Confidential Information constitutes intimate financial, personal or other information and that continued public access to the Confidential Information on SEDAR would seriously prejudice the interests of the Filer and Third Parties, for the following reasons:
 - (a) should the Filed Circular remain on SEDAR, commercially sensitive information would continue to be readily available to the general public, including competitors and other third parties, which could detrimentally affect the Filer and/or the Third Parties, their respective commercial relations as well as their ability to negotiate future transactions; and
 - (b) to the extent that the Decision Sought is granted, the Filer will be able to limit further dissemination of the Confidential Information and thereby limit prejudice to the Filer and Third Parties.

10. Prior to the filing of the Filed Circular, neither the Confidential Information nor information similar in nature has been included in the Filer's disclosure filed under applicable securities legislation as it was not considered to be material by the Filer nor otherwise required to be filed.
11. The Filer has had discussions with Blair Franklin relating to revisions to the Valuation that would maintain the confidentiality of the Confidential Information. Following discussions with the Filer, its counsel and counsel to the Special Committee, Blair Franklin has prepared a revised version of the Valuation (a **Revised Valuation**) that includes all information contained in the Valuation except for the Confidential Information that, in its professional judgment, satisfies the applicable requirements of MI 61-101 and the Investment Industry Regulatory Organization of Canada (IIROC) rules. In particular, the Filer confirms that Blair Franklin: (i) sought and obtained a decision of the Special Committee, in accordance with IIROC rules, that the perceived detriment to the Filer and Third Parties of the disclosure of the Confidential Information in the Valuation outweighs the benefit of disclosure of such information to the readers of the Valuation; and (ii) considers the Revised Valuation will continue to enable a reader to understand the methodology used to value the Common Shares and the reasons for the methodology selected, and that the omission of the Confidential Information will not detract from the reader's understanding of Blair Franklin's analysis and valuation conclusion, which are unchanged in the Revised Valuation.
12. The Special Committee has considered the Revised Valuation with its counsel, and concurs with Blair Franklin's assessment, and does not believe that the removal of the Confidential Information would reasonably be expected to affect the decision of Shareholders, including the Minority Shareholders, to vote for or against the Transaction. The Special Committee does not think that the specific detail of the Confidential Information contained in the Valuation is relevant to the reader as the valuation analysis indicates that, without taking into account the consideration to be received by Braslyn from The Catalyst Capital Group Inc. pursuant to the shareholders agreement to be entered into between such parties, the value attributable to holders of Common Shares would be negative and, accordingly, the valuation range would be materially below the purchase price payable pursuant to the Transaction of \$0.75 per share. The exclusion of the detail of the Confidential Information would not affect this fundamental aspect of the Valuation.
13. The Confidential Information (i) is not, and does not contain, a "material fact" (as defined in the Act), and (ii) is not material information to the Shareholders of the Filer in that its disclosure is not reasonably expected to influence the decision of Shareholders, including Minority Shareholders, to vote for or against the Transaction, nor considered material to the Shareholders or investors generally or necessary to satisfy the Filer's disclosure obligations.
14. Disclosure of the Filer's application, which contains specific reference to the type and nature of the Confidential Information and the nature by which such information could be used to the prejudice of the Filer and Third Parties, and all documents included in the application that compare the Revised Valuation with the Valuation provided in the application (the **Revised Blacklined Valuation** and together with the Filer's application, the **Application Material**), would be prejudicial to the Filer and Third Parties.
15. The desirability of avoiding further disclosure of the Confidential Information and the Application Material (together, the **Confidential Material**) outweighs the desirability of adhering to the principle that such material be made available to the public for inspection, and the disclosure of the Confidential Material is not necessary in the public interest.
16. The Decision Sought contemplates that the Meeting Date will be deferred to a date beyond October 23, 2019. This deferral is required in order to permit the Filer to comply with the Delivery Requirements contained in the Interim Order. Accordingly, the New Circular and related Meeting materials will reflect a date for the Meeting that is deferred beyond the Meeting Date, as well as other consequential changes resulting from the deferral of the date of the Meeting.
17. The Filer acknowledges that making the Filed Circular (which includes the Valuation) private on the SEDAR website provides no assurance that the Valuation is not available elsewhere in the public domain.

Decision

18. The Decision Maker is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.
19. The decision of the Decision Maker under the Legislation is that the Decision Sought is granted, provided that:
 - (a) a new management information circular (the **New Circular**) identical in all respects to the Filed Circular except that:
 - i. the Valuation will be deleted and replaced with the Revised Valuation;

- ii. the Meeting Date and the date by which proxies are required to be submitted and other dates dependent upon the Meeting Date contained in the Filed Circular will be amended so as to be based on a deferred meeting date that is not less than 5 days and not more than 15 days after the meeting date of October 23, 2019 set forth in the Filed Circular, which date will in part be dependent on the date of the disposition of the Filer's application;
 - iii. the Notice of Application of the Ontario Superior Court of Justice will be deleted and replaced with an Amended Notice of Application that is identical in all material respects to the Notice of Application other than that the date of the hearing of the application to obtain approval of the Transaction will be amended;
 - iv. the New Circular will bear a legend indicating that it is an amended and restated management information circular that replaces the Filed Circular; and
 - v. other ancillary changes resulting from the changes referred to above.
- (b) a new form of proxy identical in all respects to the Filed Proxy except that reference to the New Circular rather than the Filed Circular will be made, and the Meeting Date and the date by which proxies are required to be submitted will be amended to conform to those dates to be contained in the New Circular; and
- (c) a new letter of transmittal identical in all respects to the Filed Letter of Transmittal except that reference to the New Circular rather than the Filed Circular will be made, and the Meeting Date and expected effective date of the Transaction will be updated.

20. The further decision of the Decision Maker is that the Confidentiality Relief is granted.

"Grant Vingo"
Commissioner
Ontario Securities Commission

2.2 Orders

2.2.1 Alan Braun et al. – ss. 127(1), 127(10)

FILE NO.: 2019-25

IN THE MATTER OF
ALAN BRAUN,
JERRY BRAUN,
STEVEN MAXWELL
(aka STEVEN FASSMAN),
BRAUN DEVELOPMENTS (B.C.) LTD.,
8022275 CANADA INC. and
0985812 B.C. LTD.
(dba TERRACORP INVESTMENT LTD.)

M. Cecilia Williams, Commissioner and Chair of the Panel

October 2, 2019

ORDER
(Subsections 127(1) and 127(10)
of the Securities Act, RSO 1990, c. S.5)

WHEREAS the Ontario Securities Commission (the **Commission**) held a hearing in writing to consider a request by Staff of the Commission (**Staff**) for an order imposing sanctions against Alan Braun (**Alan**), Jerry Braun (**Jerry**), Steven Maxwell (aka Steven Fassman) (**Maxwell**), Braun Developments (B.C.) Ltd. (**Braun Developments**), 8022275 Canada Inc. (**8022275**) and 0985812 B.C. Ltd. (dba TerraCorp Investment Ltd.) (**0985812**) (collectively, the **Respondents**) pursuant to subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5 (the **Act**);

ON READING the Findings of the British Columbia Securities Commission (the **BCSC**) dated October 24, 2018 and the Decision of the BCSC dated February 19, 2019 (the **BCSC Order**) with respect to the Respondents, and on reading the materials filed by Staff;

IT IS ORDERED:

1. against Alan that:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Alan shall cease permanently, except that he may trade securities or derivatives for his own account through a registered dealer, if he gives the registered dealer copies of the BCSC Order and this Order;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Alan shall cease permanently, except that he may purchase securities for his own account through a registered dealer, if he gives the registered dealer copies of the BCSC Order and this Order;

- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Alan permanently;
- (d) pursuant to paragraphs 7, and 8.1 of subsection 127(1) of the Act, Alan shall resign any positions that he holds as a director or officer of any issuer, or registrant;
- (e) pursuant to paragraphs 8, and 8.2 of subsection 127(1) of the Act, Alan is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
- (f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Alan is prohibited permanently from becoming or acting as a registrant or promoter.

2. against Jerry that:

Until the later of February 19, 2034 and the date that Jerry satisfies the monetary orders as set out in paragraphs 77(g) and 77(h) of the BCSC Order:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Jerry shall cease, except that he may trade securities or derivatives for his own account through a registered dealer, if he gives the registered dealer copies of the BCSC Order and this Order;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Jerry shall cease, except that he may purchase securities for his own account through a registered dealer, if he gives the registered dealer copies of the BCSC Order and this Order;
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Jerry;
- (d) pursuant to paragraphs 7, and 8.1 of subsection 127(1) of the Act, Jerry shall resign any positions that he holds as a director or officer of any issuer, or registrant, except that he may continue to act as a director or officer of August Stone Inc. for so long as that entity does not engage in capital raising activities, and that copies of the BCSC Order and this Order, are provided to all directors and securityholders of that company;

- (e) pursuant to paragraphs 8, and 8.2 of subsection 127(1) of the Act, Jerry is prohibited from becoming or acting as a director or officer of any issuer or registrant, except as set out above; and
 - (f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Jerry is prohibited from becoming or acting as a registrant or promoter;
3. against Maxwell that:
 - (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Maxwell shall cease permanently;
 - (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Maxwell shall cease permanently;
 - (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Maxwell permanently;
 - (d) pursuant to paragraphs 7, and 8.1 of subsection 127(1) of the Act, Maxwell shall resign any positions that he holds as a director or officer of any issuer, or registrant;
 - (e) pursuant to paragraphs 8, and 8.2 of subsection 127(1) of the Act, Maxwell is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
 - (f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Maxwell is prohibited permanently from becoming or acting as a registrant or promoter;
4. against each of Braun Developments, 8022275 and 0985812 that:
 - (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by, or of, Braun Developments, 8022275 and 0985812 shall cease permanently;
 - (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Braun Developments, 8022275 and 0985812 shall cease permanently; and
 - (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Braun Developments, 8022275 and 0985812 permanently.

"M. Cecilia Williams"

2.2.2 Atlatsa Resources Corporation

Headnote

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

Applicable Legislative Provisions

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

October 2, 2019

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

AND

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

AND

IN THE MATTER OF ATLATSA RESOURCES CORPORATION (the Filer)

ORDER

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (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 dual application):

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (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 Alberta and Quebec, and
- (c) this order is the order of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 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

- ¶ 3 This order is based on the following facts represented by the Filer:
1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets;
 2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;
 3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 Marketplace Operation or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;
 4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and
 5. the Filer is not in default of securities legislation in any jurisdiction.

Order

- ¶ 4 Each of the Decision Makers is satisfied that the order meets the test set out in the Legislation for the Decision Maker to make the order.

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

"John Hinze"
Director, Corporate Finance
British Columbia Securities Commission

2.2.3 MOAG Copper Gold Resources Inc. et al.

FILE NO.: 2018-41

**IN THE MATTER OF
MOAG COPPER GOLD RESOURCES INC.,
GARY BROWN and
BRADLEY JONES**

Timothy Moseley, Vice-Chair and Chair of the Panel

October 4, 2019

ORDER

WHEREAS on October 4, 2019, the Ontario Securities Commission held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON HEARING the submissions of the representatives for Staff of the Commission, and Bradley Jones, appearing in person, and the submissions of Gary Brown (**Brown**), participating by telephone, and of Theo Bullmore, participating by telephone on behalf of MOAG Copper Gold Resources Inc.;

IT IS ORDERED THAT:

1. for reasons delivered orally, Brown's request for an adjournment of the merits hearing in this matter is dismissed; and
2. the previously-ordered joint merits and sanctions hearing scheduled to commence on November 4, 2019, and to continue on November 5, 6, 8, 11, 12, 13 and 14, 2019, shall proceed on those dates as a merits hearing only for all Respondents.

"Timothy Moseley"

2.2.4 0944460 B.C. Ltd.

the securities regulatory authority or regulator in Ontario.

Headnote

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

Applicable Legislative Provisions

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

October 4, 2019

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

AND

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

AND

**IN THE MATTER OF
0944460 B.C. LTD.
(the Filer)**

ORDER

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (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 dual application):

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (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 Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland, and
- (c) this order is the order of the principal regulator and evidences the decision of

Interpretation

¶ 2 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

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

- 1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
- 2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;
- 3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;
- 4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and
- 5. the Filer is not in default of securities legislation in any jurisdiction.

Order

¶ 4 Each of the Decision Makers is satisfied that the order meets the test set out in the Legislation for the Decision Maker to make the order.

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

“John Hinze”
Director, Corporate Finance
British Columbia Securities Commission

2.2.5 Genus Capital Management Inc. et al.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Funds deemed to cease to be reporting issuer under securities legislation – Funds not eligible to use the procedure in section 19 of NP 11-206 because units are held by more than 15 securityholders in one or more jurisdictions in Canada and more than 51 securityholders worldwide and Funds unable to rely upon procedures in BC Instrument 11-502 because of the number of securityholders of each Fund and because each Fund is a reporting issuer in multiple jurisdictions other than British Columbia – Funds distributed on exempt basis to accredited investors and to fully managed accounts.

Applicable Legislative Provisions

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

September 6, 2019

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

AND

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

AND

**IN THE MATTER OF
GENUS CAPITAL MANAGEMENT INC.
(the Filer)**

AND

**GENUS GOVERNMENT BOND FUND,
GENUS SHORT-TERM BOND FUND,
GENUS DIVIDEND EQUITY FUND,
GENUS FOSSIL FREE CORPORATE BOND FUND,
GENUS FOSSIL FREE DIVIDEND EQUITY FUND,
GENUS FOSSIL FREE CANGLOBE EQUITY FUND AND
GENUS FOSSIL FREE HIGH IMPACT EQUITY FUND
(the Funds)**

ORDER

¶ 1 Background

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

- (a) the British Columbia Securities Commission is the principal regulator for this application
- (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 Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Québec, Saskatchewan, Northwest Territories, Nunavut and Yukon, and
- (c) the order is the order of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 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

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

The Filer

1. the Filer is a corporation organized under the laws of British Columbia with its head office in Vancouver, British Columbia;
2. the Filer is registered in:
 - (a) all jurisdictions of Canada as a portfolio manager and exempt market dealer; and
 - (b) British Columbia, Ontario, Québec, and Newfoundland and Labrador as an investment fund manager;
3. the Filer's principal business is to provide investment management services through mutual funds and specialty equity and fixed income investment portfolios, to individuals, families, foundations, endowments, not-for-profit organizations, institutions and multi-employer pension and benefit plans (each, a Client) through managed accounts (each, a Managed Account);
4. the Filer serves as the investment fund manager and principal portfolio advisor for each of the Funds;
5. the Filer and the Funds are not in default of securities legislation in any jurisdiction of Canada;

The Funds

6. the Funds are established as trusts organized under the laws of British Columbia;
7. the Funds are reporting issuers in each of the jurisdictions of Canada;
8. each Fund offers Series F units and Series O units;
9. Series F units of each Fund are qualified for sale pursuant to a simplified prospectus dated October 30, 2018 prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (the Simplified Prospectus);
10. as at the date hereof, there are no Series F units of any of the Funds outstanding and no Series F units have been issued pursuant to the Simplified Prospectus; Series F units were established for distribution to retail investors pursuant to the Simplified Prospectus; however, the Filer has determined that it does not wish to offer the Funds to retail investors; the Filer does not intend to sell any units under the Simplified Prospectus and does not intend to renew the Simplified Prospectus following its lapse date;
11. the only outstanding securities issued by the Funds are Series O units; Series O units of each Fund are only offered, and will in the future only be offered, to investors from the following categories in reliance on exemptions from applicable prospectus requirements:
 - (a) investors who qualify as "accredited investors", as defined in National Instrument 45-106 *Prospectus Exemptions* (NI 45-106), other than pursuant to paragraph (q) of the definition, and
 - (b) investors who have entered into a Managed Account Agreement (as defined below) with the Filer or a similar agreement with another qualified portfolio manager, making the Filer or such other portfolio manager the accredited investor pursuant to paragraph (q) of the "accredited investor" definition in NI 45-106;
12. for so long as the Filer is the manager of the Funds, the portfolio assets of the Funds will be held in the custody of an entity that meets the requirements of section 6.2 of National Instrument 81-102 *Investment Funds* (NI 81-102) for assets held in Canada and section 6.3 of NI 81-102 for assets held outside of Canada

or otherwise in compliance with the client asset requirements of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

13. the Managed Accounts are managed by representatives of the Filer (the Portfolio Managers) who meet the proficiency requirements of an advising representative under the applicable securities legislation in the Jurisdictions;
14. the Portfolio Managers have full discretionary authority to trade in securities for each Managed Account without obtaining the specific consent of the Client to the trade pursuant to investment management services agreements executed by each Client (the Managed Account Agreements); the Managed Account Agreements set out how the applicable Managed Account operates and informs the Client of the Portfolio Manager's various rules, procedures and policies; at no time have these Clients been provided with a simplified prospectus;
15. at the initial meeting between a new Client and a Portfolio Manager, the Portfolio Manager establishes the Client as a new client of the Filer by describing how the applicable Managed Account operates and informs the Client of the applicable Portfolio Manager's various rules, procedures and policy statements (collectively, the New Client Documentation); the New Client Documentation describes how the applicable Managed Account operates and describes the Client's strategies, asset allocation, risk tolerance and liquidity requirements; to the extent that a Client's goals or circumstances change, there will be updated New Client Documentation that is created to reflect that change;
16. Clients receive a quarterly statement showing current holdings and a summary of all transactions carried out in their Managed Account in each month during which a transaction was effected in such Clients' accounts; the Portfolio Manager is available to review and discuss with the Client all account statements; the Portfolio Manager provides the Client with a comprehensive quarterly portfolio reporting package that includes current holdings, capital allocation, asset mix and performance;
17. ceasing to be a reporting issuer for each of the Funds will reduce the regulatory and financial burdens associated therewith, such as the costs of the preparation of Management Reports of Fund Performance; this will be a benefit to the Unitholders, as the management expense ratio of the Funds will be reduced to the extent the costs and expenses associated with these requirements will no longer be applicable;
18. the Funds are not eligible to cease being reporting issuers pursuant to the simplified procedure in section 19 of NP 11-206 because the number of outstanding securities, including debt securities, of each Fund are beneficially owned, directly or indirectly, by more than 15 securityholders in one or more jurisdictions in Canada and more than 51 securityholders in total worldwide;
19. none of the Funds are OTC reporting issuers under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
20. no securities of any of the Funds 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;
21. the Funds have no intention to seek public financing by way of an offering of securities; and
22. upon granting of the Order Sought, the Funds will not be reporting issuers or the equivalent in any jurisdiction in Canada.

Order

- ¶ 4 Each of the Decision Makers is satisfied that the order meets the test set out in the Legislation for the Decision Makers to make the order.

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

"John Hinze"
Director, Corporate Finance
British Columbia Securities Commission

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Alan Braun et al. – 127(1), 127(10)

Citation: *Braun (Re)*, 2019 ONSEC 32

Date: October 2, 2019

File No. 2019-25

IN THE MATTER OF
ALAN BRAUN,
JERRY BRAUN,
STEVEN MAXWELL (aka STEVEN FASSMAN),
BRAUN DEVELOPMENTS (B.C.) LTD.,
8022275 CANADA INC. and
0985812 B.C. LTD. (dba TERRACORP INVESTMENT LTD.)

REASONS AND DECISION (Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5)

Hearing: In Writing

Decision: October 2, 2019

Panel: M. Cecilia Williams Commissioner and Chair of the Panel

Appearances: Hanchu Chen For Staff of the Commission

No submissions were made on behalf of Alan Braun, Jerry Braun, Steven Maxwell (aka Steven Fassm (B.C.) Ltd, 8022275 Canada Inc. or 0985812 B.C. Ltd. (dba TerraCorp Investment Ltd.)

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REASONS AND DECISION

I. INTRODUCTION AND BACKGROUND

[1] In a decision issued by the British Columbia Securities Commission (the **BCSC**) on October 24, 2018,¹ the BCSC Hearing Panel (the **BCSC Panel**) found that:

- (a) Alan Braun (**Alan**), Jerry Braun (**Jerry**), Steven Maxwell (**Maxwell**), Braun Developments (B.C.) Ltd. (**Braun Developments**) and 8022275 Canada Inc. (**8022275**) perpetrated a fraud with respect to three investments by two investors in the amount of \$450,000, contrary to section 57(b) of the British Columbia *Securities Act* (the **BC Act**);²

¹ Exhibit 1, Staff's Hearing Brief, Tab1, *Re Braun*, 2018 BCSECCOM 332 (**BCSC Findings**)

² RSBC 1996, c 418

- (b) 0985812 B.C. Ltd. (**0985812**) perpetrated a fraud with respect to two investments by one investor in the amount of \$300,000, contrary to section 57(b) of the BC Act; and
 - (c) Alan and Jerry were liable under section 168.2 of the BC Act for Braun Developments' and 0985812's contraventions of the BC Act; and
 - (d) Maxwell was liable under section 168.2 of the BC Act for 8022275's contraventions of the BC Act.
- [2] In a second decision, dated February 19, 2019 (the **BCSC Order**),³ the BCSC Panel imposed various sanctions, conditions, restrictions or requirements on Alan, Jerry, Maxwell, Braun Developments, 8022275 and 0985812 (collectively, the **Respondents**). The details of the BCSC Order are provided in Section II.
- [3] Staff of the Ontario Securities Commission (**Staff of the Commission**) relies on the inter-jurisdictional enforcement provisions found in subsection 127(10) of the Ontario *Securities Act* (the **Act**)⁴ and requests that the Commission issue an order that, for the most part, replicates the non-monetary sanctions imposed by the BCSC Panel.
- [4] For the reasons that follow, I find that it is in the public interest to issue an order substantially in the form requested by Staff.

II. BRITISH COLUMBIA PROCEEDINGS AND FINDINGS

A. BCSC PROCEEDING AND FINDINGS

1. Findings – Breach of Sections 57(b) and 168.2 of the BC Act

- [5] The conduct for which the Respondents were sanctioned occurred between approximately 2013 and 2014 (the **Material Time**).⁵
- [6] During the Material Time, Alan, his son Jerry, and Maxwell were residents of British Columbia. Alan was a church pastor. None of Alan, Jerry, or Maxwell has ever been registered under the BC Act. The BCSC Panel noted that Maxwell has a significant history of criminal fraud.⁶
- [8] Braun Developments was incorporated in British Columbia on September 17, 2009. During the Material Time, Alan and Jerry were directors of Braun Developments, and Alan and his wife were also officers of the company.⁷
- [9] 8022275 was federally incorporated in Canada on November 14, 2011. During the Material Time, Maxwell was a director, or *de facto* director, of 8022275.⁸
- [10] 0985812 was incorporated in British Columbia on November 17, 2013. During the Material time, Alan and Jerry were officers and directors of 0985812.⁹
- [11] None of Braun Developments, 8022275 nor 0985812 has ever been registered under the BC Act, and has never filed a prospectus under the BC Act.¹⁰

Investor L

- [12] Investor L is an Ontario resident. Investor L met Alan in 2005 while working at a seminary, and Alan was on the Board of Trustees of that seminary.¹¹ During the Material Time, Alan approached Investor L with an opportunity to invest money to be used to acquire a specific house, and then receive his money back plus a 50% return in 60 days following the subsequent resale of the property.¹²
- [13] Jerry later sent Investor L a "purchase sales agreement" between "Braun Developments Ltd." as purchaser, and 8022275 as vendor, of a specific Edmonton property for the purchase price of \$150,000, with Investor L's company as

³ Exhibit 1, Staff's Hearing Brief, Tab 2, *Re Braun*, 2019 BCSECCOM 65 (**BCSC Order**)

⁴ RSO 1990 c S.5

⁵ BCSC Findings at paras 13, 26, 29, 46, and 48

⁶ BCSC Findings at paras 6-8; BCSC Order at para 20

⁷ BCSC Findings at para 9

⁸ BCSC Findings at para 10

⁹ BCSC Findings at para 11

¹⁰ BCSC Findings at paras 9-11

¹¹ BCSC Findings at para 12

¹² BSCS Findings at paras 15-16

“investor”. The agreement reflected that Investor L would receive a total repayment of \$225,000, representing his initial \$150,000 investment plus 50% interest, within 60 days of the date of the agreement. In default of the agreed payment date, Investor L would receive monthly default payments of \$11,250.00, until both his investment and promised return were repaid.¹³

- [14] Investor L provided Jerry with \$1,000 to secure the investment and borrowed the remaining \$149,000 for the investment from a friend (Z). Z transferred \$149,000 into 8022275’s account on behalf of L.¹⁴
- [15] Following expiry of the 60-day payment period, Investor L received three payments from Alan totaling \$3,500 as partial payment of the amount owed under the Purchase Sales Agreement. Neither Investor L, nor Z, have received any further payments.¹⁵
- [16] The BCSC Panel found that the \$149,000 received from Z on behalf of Investor L, was spent by 8022275 and Braun Developments on matters unrelated to the property reflected in the purchase sales agreement, including personal living expenses of the Braun family.¹⁶
- [17] The BCSC Panel further found that title records reflect that the Edmonton property described in Investor L’s purchase sales agreement was never acquired during the Material Time by any of “Braun Developments Ltd.”, Braun Developments or 8022275.¹⁷

Investor ML

- [18] Investor ML is an Ontario resident, introduced by Investor L to the investment opportunity and to Alan and Jerry. The BCSC Panel noted that Investor ML was a vulnerable investor.¹⁸
- [19] Investor ML entered into two “purchase sales agreements”, essentially like Investor L’s. Each agreement provided Investor ML would invest \$150,000, for a combined total of \$300,000 with a return within 60 days. Investor ML’s agreements were in respect of acquiring two other Edmonton properties, and listed the purchaser as 0985812.¹⁹
- [20] Jerry and Maxwell assisted Investor ML in obtaining a bank draft in the amount of \$300,000 payable to 8022275, and the draft was subsequently deposited into 8022275’s account.²⁰
- [21] Within a short time, 8022275 spent \$87,500 it had retained of Investor ML’s funds on matters unrelated to the properties specified in her two purchase sales agreements. Within two weeks of having received a total of \$212,500 of Investor ML’s funds, Braun Developments also spent those funds on matters unrelated to the purpose of Investor ML’s investments, including personal living expenses of the Braun family.²¹
- [22] The BCSC Panel further found that title records reflect that the two properties referenced in Investor ML’s purchase sales agreements were never acquired during the Material Time by any of 0985812, “Braun Developments Ltd.”, Braun Developments or 8022275.²²

2. BCSC Order

- [23] In the BCSC Order, the BCSC Panel imposed monetary sanctions against the Respondents. Staff does not seek an order replicating those sanctions.
- [24] The BCSC Panel also imposed the following non-monetary sanctions²³:

Alan:

- (a) Under section 161(1)(d)(i) of the BC Act, Alan resign any position he holds as a director or officer of an issuer or registrant;

¹³ BCSC Findings at paras 17 and 19
¹⁴ BCSC Findings at paras 24-26 and 29
¹⁵ BCSC Findings at paras 33-34
¹⁶ BCSC Findings at paras 35-36
¹⁷ BCSC Findings at para 37
¹⁸ BCSC Findings at paras 39-41
¹⁹ BCSC Findings at paras 44-45
²⁰ BCSC Findings at para 48
²¹ BCSC Findings at paras 50-51
²² BCSC Findings at para 52
²³ BC Order at para 77

- (b) Alan is permanently prohibited:
 - (i) Under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts, except that he may trade and purchase securities or exchange contracts for his own account through a registered dealer, if he gives the registered dealer a copy of the BCSC Order;
 - (ii) Under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision;
 - (iii) Under section 161(1)(d)(ii) of the BC Act, from becoming or acting as a director or officer of any issuer or registrant;
 - (iv) Under section 161(1)(d)(iii) of the BC Act, from becoming or acting as a registrant or promoter;
 - (v) Under section 161(1)(d)(iv) of the BC Act, from acting in a management or consultative capacity in connection with activities in the securities market; and
 - (vi) Under section 161(1)(d)(v) of the BC Act, from engaging in investor relations activities;

Jerry:

- (a) Under section 161(1)(d)(i) of the BC Act, Jerry resign any position he holds as a director or officer of an issuer or registrant, except that he may continue to act as a director or officer of August Stone Inc., for so long as that entity does not engage in capital raising activities and that a copy of the BCSC Order is provided to all other directors and securityholders of that company;
- (b) Jerry is prohibited for the longer of 15 years and the date that the obligations set out in subparagraphs 77(g) and 77(h) of the BCSC Order are paid:
 - (i) Under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts, except that he may trade and purchase securities or exchange contracts for his own account through a registered dealer, if he gives the registered dealer a copy of the BCSC Order;
 - (ii) Under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision;
 - (iii) Under section 161(1)(d)(ii) of the BC Act, from becoming or acting as a director or officer of any issuer or registrant;
 - (iv) Under section 161(1)(d)(iii) of the BC Act, from becoming or acting as a registrant or promoter;
 - (v) Under section 161(1)(d)(iv) of the BC Act, from acting in a management or consultative capacity in connection with activities in the securities market; and
 - (vi) Under section 161(1)(d)(v) of the BC Act, from engaging in investor relations activities;

Maxwell:

- (a) Under section 161(1)(d)(i) of the BC Act, Maxwell resign any position he holds as a director or officer of an issuer or registrant;
- (b) Maxwell is permanently prohibited;
 - (i) Under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts;
 - (ii) Under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision;
 - (iii) Under section 161(1)(d)(ii) of the BC Act, from becoming or acting as a director or officer of an issuer or registrant;
 - (iv) Under section 161(1)(d)(iii) of the BC Act, from becoming or acting as a registrant or promoter;

- (v) Under section 161(1)(d)(iv) of the BC Act, from acting in a management or consultative capacity in connection with activities in the securities market; and
- (vi) Under section 161(1)(d)(v) of the BC Act, from engaging in investor relations activities;

Braun Developments:

- (a) Braun Developments is permanently prohibited:
 - (i) Under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts;
 - (ii) Under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision; and
- (b) Under section 161(1)(b)(i) of the BC Act, that all persons permanently cease trading in, and be prohibited from purchasing, any securities of Braun Developments;

8022275:

- (a) 8022275 is permanently prohibited:
 - (i) Under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts;
 - (ii) Under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision; and
- (b) Under section 161(1)(b)(i) of the BC Act, that all persons permanently cease trading in, and be prohibited from purchasing, any securities of 8022275;

0985812:

- (a) 0985812 is permanently prohibited:
 - (i) Under section 161(1)(b)(ii) of the BC Act, from trading in or purchasing any securities or exchange contracts;
 - (ii) Under section 161(1)(c) of the BC Act, from relying on any of the exemptions set out in the BC Act, the regulations or a decision; and
- (b) Under section 161(1)(b)(i) of the BC Act, that all persons permanently cease trading in, and be prohibited from purchasing, any securities of 0985812 (dba TerraCorp Investment Ltd.).

III. SERVICE AND PARTICIPATION

- [25] In this proceeding, the Respondents were served with the Notice of Hearing, Statement of Allegations, Staff's Hearing Brief,²⁴ written submissions and Book of Authorities (**Staff's Materials**) in the following manner:²⁵
- (a) Alan, personally and on behalf of Braun Developments, by email and by courier on July 17, 2019;
 - (b) Jerry, personally and on behalf of Braun Developments, by email and by courier on July 17, 2019;
 - (c) Maxwell personally by email and courier on July 17, 2019;
 - (d) Braun Developments by courier on July 18, 2019 to the last known registered office address of Braun Developments. The courier advised that Staff's Materials could not be delivered because it was an incorrect address for Braun Developments;
 - (e) 8022275 by courier on July 18, 2019 to its last known registered office address. The courier advised that Staff's Materials could not be delivered because it was an incorrect address for 8022275. Service on 8022275

²⁴ Staff's Hearing Brief marked as Exhibit 1

²⁵ Exhibit 2, Affidavit of Service of Lee Crann, Sworn July 25, 2019

was also attempted by courier on July 22, 2019 at a second corporate address. The courier was unable to effect delivery of Staff's Materials on 8022275 at the second address as well. At my request, Staff's Materials were also served on Maxwell on behalf of 8022275, who had been found by the BCSC Panel to be a *de facto* director of 8022275,²⁶ by email on August 1, 2019;²⁷

- (f) 0985812 by courier on July 18, 2019 to the last known registered office of 0985812. Staff's Materials were also served on Tom Hughes, a director and officer of 0985812, by courier on July 18, 2019.

[26] Pursuant to Rule 11(3) of the *Ontario Securities Commission Rules of Procedure and Forms* (the **OSC Rules of Procedure**)²⁸ the deadline for the Respondents to serve and file written submissions was August 29, 2019. No materials were filed on behalf of the Respondents.

[27] I am satisfied that the Respondents were provided with adequate notice of this proceeding. Pursuant to the *Statutory Powers Procedure Act* and the *OSC Rules of Procedure*, the Commission may proceed in the absence of a party where the party has been given notice of the hearing.²⁹

IV. ANALYSIS

A. Statutory authority to make public interest orders

[28] Subsection 127(10) of the Act facilitates the inter-jurisdictional enforcement of orders imposed following breaches of securities law. The subsection provides, in paragraph 4, that the Commission may make an order under subsection 127(1) or (5) if a person or company is subject to an order made by a securities regulatory authority of another jurisdiction that imposes sanctions, conditions, restrictions or requirements on the person or company.

[29] The BCSC is a securities regulatory authority. In the BCSC Order, the BCSC made the orders set out in Part II.2 above, imposing sanctions on the Respondents. The test under paragraph 4 of subsection 127(10) of the Act is, therefore, satisfied.

[30] I must, therefore, consider whether it is in the public interest for the Commission to make an order against the Respondents, and if so, what that order should be.³⁰

[31] Orders made under subsection 127(1) of the Act are "protective and preventative" and are made to restrain potential conduct that could be detrimental to the integrity of the capital markets and, therefore, prejudicial to the public interest.³¹

[32] An Ontario connection is not a pre-condition to the exercise of the Commission's jurisdiction in considering an inter-jurisdictional order under subsection 127(10) of the Act.³² While it isn't a pre-condition, the evidence presented at the BCSC hearing in this case demonstrates that funds were raised from investors within Ontario.

B. Appropriate sanctions

[33] Staff submits that the Respondents' conduct warrants an order designed to protect Ontario investors from the Respondents, by preventing or limiting the Respondents' participation in Ontario's capital markets. I agree that such an order is in the public interest.

[34] The Supreme Court of Canada has affirmed that the Commission may make an order under section 127 of the Act for the purposes of general and specific deterrence.³³

[35] In determining specific sanctions, the Commission may consider several factors including the seriousness of the misconduct, the harm suffered by investors, specific and general deterrence and any aggravating or mitigating factors.³⁴

²⁶ BCSC Findings at para 10

²⁷ Exhibit 3, Supplementary Affidavit of Service of Lee Crann, Sworn August 1, 2019

²⁸ *Ontario Securities Commission Rules of Procedure and Forms* (2019), 42 OSCB 6528, r 11(3)(g) (**OSC Rules of Procedure**)

²⁹ *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 7(2); *OSC Rules of Procedure*, r 21(3)

³⁰ The Act at 127(10) and 127(1); *Euston Capital Corp (Re)*, 2009 ONSEC 23, (2009) 32 OSCB 6313 at para 46; *Elliott (Re)*, 2009 ONSEC 26, (2009) 32 OSCB 6931 at para 24

³¹ *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43

³² *Biller (Re)*, 2005 ONSEC 15, (2005) 28 OSCB 10131 at paras 32-35; *Cook (Re)*, 2018 ONSEC 6 at para 9; *Currey (Re)*, 2018 ONSEC 47 at para 20

³³ *Cartaway Resources Corp. (Re)*, 2004 SCC 26 at paras 60 and 52

³⁴ *Belteco Holdings Inc. (Re)* (1998), 21 OSCB 7743 at 7746-7747

- [36] The BCSC Panel found that the Respondents perpetrated a fraud and noted that the BCSC has consistently held that fraud is the most serious misconduct found in the BC Act. The BCSC Panel held:³⁵

...[T]he misconduct of all of the respondents in this case was exacerbated by what can only be described as the predatory nature of the respondents' interactions with one of the two investors. This investor testified during the hearing and was clearly a vulnerable investor. All of the respondents interacted with her and would have immediately recognized that she was a vulnerable investor. Yet that did not deter the respondents and they fraudulently entered into investment transactions with her. Alan and Jerry preyed upon a shared spirituality with the investor. Jerry and Maxwell drove the investor to her financial institution in order to assist her in transferring her money to the respondents. That Jerry appears to have been acting principally at the direction of his father, is only a partial mitigation of his culpability with respect to the very serious misconduct that occurred in this case.

- [37] Similarly, this Commission has consistently held that fraud is one of the most egregious securities regulatory violations. It causes direct and immediate harm to its investors, and it significantly undermines confidence in the capital markets.³⁶
- [38] The harm suffered by investors was significant. The BCSC Panel found that Investor ML experienced significant financial loss and has not recouped any of the funds she invested with the Respondents. The BCSC Panel found that Investor L was repaid a small portion of his investment. However, Investor L's friend, Z, has lost almost all the funds he provided for the purpose of Investor L's investment with the Respondents.³⁷
- [39] The BCSC Panel found that in differing amounts, each of Alan, Jerry and Maxwell was significantly enriched, directly or indirectly, by their misconduct.³⁸
- [40] With respect to mitigating factors, the BCSC Panel acknowledged none of the Respondents has a history of securities regulatory misconduct. The BCSC Panel noted, however, that Maxwell has a significant history of criminal fraud, and held that although this criminal record did not involve securities fraud, it highlights the risk that Maxwell poses to the capital markets.³⁹
- [41] The BCSC Panel concluded, with respect to the risk the Respondents pose to the capital markets, that the Respondents "took advantage, in a most egregious way, of a vulnerable investor" and represent "a very serious risk to our capital markets."⁴⁰ In justifying the sanctions imposed, the BCSC Panel added:⁴¹

Each of Maxwell, Alan and Jerry carried out their misconduct through the use of family, or closely held, corporations and through their roles as directors and officers of those corporations. It is clear that their actions fall far short of the legal obligations incumbent on those who wish to act as a director or officer of a corporation and our orders must reflect this.

...

Each of the corporate Respondents has been used to carry out fraudulent misconduct. Our orders must ensure that these entities cannot be used in a similar manner in the future.

- [42] It is important that this Commission impose sanctions that will protect Ontario investors by specifically deterring the Respondents from engaging in similar or other misconduct in Ontario, and by acting as a general deterrent to other like-minded persons. I accept Staff's submission that the sanctions imposed by the BCSC Panel are proportionate to the Respondents' misconduct and that it would be appropriate for me to issue a substantially similar order.

C. Differences between BC and Ontario sanctions

- [43] However, due to differences between the Act and the BC statute, some of the sanctions I impose cannot be identical to those imposed by the BCSC Panel. This is true with respect to two aspects of the sanctions.
- [44] First, the BCSC Panel prohibited the Respondents from trading in or purchasing "exchange contracts". Subsection 127(1) of the Act does not expressly refer to exchange contracts. The BC Act defines "exchange contract" to mean a futures contract or option that meets certain specified requirements. As a result, Staff seeks an order permanently

³⁵ BCSC Order at para 15

³⁶ *Black Panther (Re)*, 2017 ONSEC 8 at para 48

³⁷ BCSC Order at paras 16-17

³⁸ BCSC Order at paras 18, 54-55, 66 and 77

³⁹ BCSC Order at paras 19-20

⁴⁰ BCSC Order at para 21

⁴¹ BCSC Order at paras 22-23

prohibiting the Respondents from trading in derivatives. In my view, when considering the factors described above that support the making of orders prohibiting trading, there is no reason to distinguish between securities and derivatives. In the circumstances of this case, it is equally in the public interest to protect Ontario investors and the capital markets by prohibiting the Respondents from trading in derivatives. I will therefore make the order requested by Staff.

- [45] Second, the BCSC Order prohibits Alan, Jerry and Maxwell from engaging in “investor relations activities” and from “acting in a management or consultative capacity in connection with activities in the securities market”. In Ontario, the Act does not use those terms. Instead, such activities would largely be covered by the prohibitions already requested, against individuals acting as a director or officer of an issuer or against any respondent acting as a registrant or promoter. I find that it is in the public interest to make the order as requested by Staff, and that such an order effectively mirrors the relevant provisions of the BCSC Order.

V. CONCLUSION

- [46] For the reasons set out above, I find that it is in the public interest to impose the sanctions as requested by Staff. I will therefore order:

Against Alan that:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Alan shall cease permanently, except that he may trade securities or derivatives for his own account through a registered dealer, if he gives the registered dealer copies of the BCSC Order and this Order;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Alan shall cease permanently, except that he may purchase securities for his own account through a registered dealer, if he gives the registered dealer copies of the BCSC Order and this Order;
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Alan permanently;
- (d) pursuant to paragraphs 7, and 8.1 of subsection 127(1) of the Act, Alan shall resign any positions that he holds as a director or officer of any issuer, or registrant;
- (e) pursuant to paragraphs 8, and 8.2 of subsection 127(1) of the Act, Alan is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
- (f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Alan is prohibited permanently from becoming or acting as a registrant or promoter.

Against Jerry that:

Until the later of February 19, 2034 and the date that Jerry satisfies the monetary orders as set out in paragraphs 77(g) and 77(h) of the BCSC Order:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Jerry shall cease, except that he may trade securities or derivatives for his own account through a registered dealer, if he gives the registered dealer copies of the BCSC Order and this Order;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Jerry shall cease, except that he may purchase securities for his own account through a registered dealer, if he gives the registered dealer copies of the BCSC Order and this Order;
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Jerry;
- (d) pursuant to paragraphs 7, and 8.1 of subsection 127(1) of the Act, Jerry shall resign any positions that he holds as a director or officer of any issuer, or registrant, except that he may continue to act as a director or officer of August Stone Inc. for so long as that entity does not engage in capital raising activities, and that copies of the BCSC Order and this Order, are provided to all directors and securityholders of that company;
- (e) pursuant to paragraphs 8, and 8.2 of subsection 127(1) of the Act, Jerry is prohibited from becoming or acting as a director or officer of any issuer or registrant, except as set out above; and

- (f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Jerry is prohibited from becoming or acting as a registrant or promoter;

Against Maxwell that:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Maxwell shall cease permanently;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Maxwell shall cease permanently;
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Maxwell permanently;
- (d) pursuant to paragraphs 7, and 8.1 of subsection 127(1) of the Act, Maxwell shall resign any positions that he holds as a director or officer of any issuer, or registrant;
- (e) pursuant to paragraphs 8, and 8.2 of subsection 127(1) of the Act, Maxwell is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
- (f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Maxwell is prohibited permanently from becoming or acting as a registrant or promoter;

Against each of Braun Developments, 8022275 and 0985812 that:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by, or of, Braun Developments, 8022275 and 0985812 shall cease permanently;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Braun Developments, 8022275 and 0985812 shall cease permanently; and
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Braun Developments, 8022275 and 0985812 permanently.

Dated at Toronto this 2nd day of October, 2019.

“M. Cecilia Williams”

3.1.2 Issam El-Bouji – s. 127

Citation: *El-Bouji (Re)*, 2019 ONSEC 33

Date: October 7, 2019

File No. 2018-28

IN THE MATTER OF
ISSAM EL-BOUJI

REASONS AND DECISION
(Section 127 of the *Securities Act*, RSO 1990, c S.5)

Hearing: July 16, August 24 and September 4, 2019

Decision: October 7, 2019

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

Appearances: Joseph Groia For Issam El-Bouji
Bethanie Pascutto
Derek Ferris For Staff of the Ontario Securities Commission
Ryan Lapensee

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REASONS AND DECISION

VI. OVERVIEW

- [1] This decision considers a motion brought by Issam El-Bouji, who is presently a respondent in a proceeding commenced by Staff of the Commission pursuant to a Statement of Allegations, dated May 24, 2018 (the **Statement of Allegations**). In the current proceeding, Staff alleges that Mr. Bouji is in violation of an Order of the Commission, dated April 16, 2014 (the **Order**), which imposed sanctions agreed to by Mr. Bouji in a Settlement Agreement to which he was a party, dated April 14, 2014 (the **Settlement Agreement**). The Settlement Agreement and the Order relate to a separate prior proceeding in which Mr. Bouji was a named respondent. The Order concerns the approval of the Settlement Agreement and the related terms and conditions on the respondents, including market participation restrictions on Mr. Bouji. Staff now alleges in the Statement of Allegations that, contrary to the market participation restrictions set forth in the Settlement Agreement and the Order, Mr. Bouji subsequently functioned as an officer of Global RESP Corporation (**Global RESP**), another party to the Settlement Agreement, which was also a named respondent in the prior proceeding.
- [2] Mr. Bouji indicates that he intends to raise several defences to the current allegations that he improperly performed the officer role at Global RESP. One such defence is that the Order is not final, since it states that "[t]he Commission will make an order", and no such further order was issued. Staff argues that, to the contrary, the Order provides a basis for enforcing the prohibition on Mr. Bouji acting as an officer of Global RESP and that the conduct of the parties indicated that they intended to establish an enforceable obligation.
- [3] While this brief description of the disagreement about the interpretation of the Order provides background information, the interpretation of the Order itself is not before the Panel on Mr. Bouji's current motion. Instead, Mr. Bouji brings the current motion seeking to halt the proceedings against him, in whole or in part, on the basis that the Commission lacks jurisdiction to hear some or all of the allegations. He asserts institutional bias, a breach of natural justice, a breach of

fairness and a misuse of the Commission's public interest jurisdiction as the basis for the Commission's lack of jurisdiction. Mr. Bouji's counsel has not separately delineated these grounds, instead making overarching arguments that are subsumed collectively under them, but broadly falling within the category of alleged bias.

- [4] At the heart of all of the grounds for the motion is the argument that it is unfair for the Commission to sit in judgment of its own conduct and Staff's conduct in this case based on asserted institutional bias. The Staff conduct in question is the drafting of the Order and the decision to use s. 127 of the *Securities Act* (the **Act**)¹ to initiate an enforcement proceeding against Mr. Bouji before the Commission, rather than seeking to enforce the Order in court proceedings under s. 128 of the Act.
- [5] With respect to the Commission's conduct, Mr. Bouji argues that the continuing involvement of Commissioners in policy and administration of the Commission, including board oversight of Staff and involvement in adjudication, establishes that the Order cannot be fairly considered by a panel of Commissioners acting as adjudicators.
- [6] Mr. Bouji argues that the conflict between the roles of Commissioners acting in their policy capacity and as adjudicators is exacerbated by a third function, in which Commissioners act as a board of directors of the corporation constituting the Commission. He submits that the Commissioners' duties to the Commission as a corporation, especially the board members' duties of financial oversight, would lead to an institutional bias in favour of finding the Order enforceable.
- [7] In advancing the institutional bias argument, Mr. Bouji also takes issue with the process by which the amounts collected for administrative penalties under the Settlement Agreement and the Order were allocated by a quorum of the board for particular uses in accordance with the Act. He argues that the allocation process means that a Commission panel would have a bias in favour of finding the Order enforceable so as to avoid acting in a manner asserted to be contrary to the Commission's financial interests and facing perceived difficulties of dealing with those funds if the Order was subsequently found to have Mr. Bouji's asserted flaw.
- [8] While not bringing a motion for my removal as a panel member, Mr. Bouji alleges that my personal involvement as a board member in the allocation process regarding the funds paid to the Commission pursuant to the Settlement Agreement reinforces the concern of institutional bias. In 2016, almost two years after the Settlement Agreement was entered into and more than three years before Staff's current Statement of Allegations, I was a member of a quorum of the board that communicated with Staff about Staff's recommendations for the allocation of the funds received by the Commission as a result of the Settlement Agreement. Mr. Bouji likens the interaction between a board member and Staff in the allocation process as similar to a pattern of private conversations between a prosecutor and a judge during ongoing proceedings. He argues that the alleged pattern of contact with Staff means that a panel member, and me specifically in this instance, would favour an alleged financial interest of the Commission and gloss over the effect of any error in the Order, finding in favour of Staff's view that the officer ban referred to in the Order constitutes an enforceable ban without the need for a further order.
- [9] Mr. Bouji also argues that institutional bias exists because of a prior decision of the Commission resulting from an application for hearing and review that considered the fitness for registration of Mr. Bouji's daughter as the ultimate designated person of Global RESP. In 2017, in the Reasons and Decision issued in that application for hearing and review, for the purposes of that decision only and without making a finding upon which Staff could rely in the future, the panel in that proceeding found that Mr. Bouji was acting as an officer of Global RESP.² Mr. Bouji asserts that a subsequent panel will have a disqualifying difficulty freeing itself of a preconception because of that prior finding.
- [10] Mr. Bouji's counsel made it clear in his submissions that Mr. Bouji does not contest the enforceability of the Settlement Agreement itself, which he asserts Mr. Bouji has abided by, including by making the payments for disgorgement, administrative penalties and costs called for by that Agreement. Counsel also made it clear that Mr. Bouji does not object to the appropriateness of Staff pursuing its case based on the circumstances set out in the Settlement Agreement, which he would defend, or seeking a new order that would impose officer and director bans now, with prospective effect, as called for by the Settlement Agreement. However, Mr. Bouji objects to a s. 127 proceeding based on a violation of the Order, which could result in the imposition of an administrative penalty if the allegations are proven and found to be appropriate as a sanction. The risk of an administrative penalty would arise in a s. 127 proceeding alleging breach of the Order since an order of the Commission forms part of "Ontario securities law", as defined in the Act. In contrast, the terms of the Settlement Agreement, unless they are incorporated into an enforceable order, cannot support the imposition of an administrative penalty on its own.
- [11] I have determined to dismiss the motion for the reasons given below.

¹ RSO 1990, c S.5.

² *Bouji (Re)*, 2017 ONSC 38, (2017) 40 OSCB 8845 at para 67 (*Hanane Bouji*).

VII. ISSUES

[12] Mr. Bouji's motion raises the following issues:

- a. Is the Commission precluded from conducting the merits hearing due to a reasonable apprehension of institutional bias on the part of the Commission?
- b. Does the involvement of a quorum of the Commission in the allocation process related to funds paid under a settlement agreement and pursuant to an order that is later called into question preclude the subsequent involvement of a panel member in a proceeding involving an interpretation of that order? Is such involvement unfair on the ground of bias?
- c. Where there are allegations of bias against the Commission and there is a court procedure that could be pursued in lieu of a Commission proceeding, should the Commission proceeding be stayed or adjourned in favour of the court procedure?

[13] For the purposes of this motion, I need not make any findings about the validity or enforceability of the Order. I have not considered the merits of the parties' positions on the scope and meaning of the Order or whether the Order has been, or is capable of being, breached.

VIII. STATUTORY BACKGROUND

A. Roles and Authority of the Commission

[14] Commissioners have three overarching roles that are established in the Act:

- a. Board members, with directors' responsibility over the Commission's activities and operations,³
- b. Commission members, to consider policy matters, including the promulgation of rules,⁴ and
- c. Adjudicators, to hear administrative proceedings under the Act.⁵

[15] The overlapping nature of these roles is specifically required by the Act. Subsection 3.1(1) provides that "[t]he Commission shall have a board of directors composed of the members of the Commission." In s. 3.1(2), the board of directors is directed "to oversee the management of the financial and other affairs of the Commission." The Act states that the Commission is "responsible for the administration of this Act and shall perform the duties assigned to it under this Act and any other Act [in which it is assigned to carry out a role]."⁶

[16] In addition to other specific powers set forth in the Act, including the ability to make specified orders, the Commission, acting in its adjudicative capacity, is authorized to make the enumerated orders set out in s. 127(1) "if in its opinion it is in the public interest to make the order or orders..." Paragraph 9 of s. 127(1) specifically authorizes the Commission to impose the following sanction:

If a person or company has not complied with Ontario securities law, an order requiring the person or company to pay an administrative penalty of not more than \$1 million for each failure to comply.

[17] Ontario securities law is defined in s. 1(1) of the Act, in relevant part, in respect of a person or company, to include "a decision of the Commission to which the person or company is subject". A "decision" is defined in the same subsection to include an order made pursuant to a power or right conferred by the Act.

B. Designation of Funds for Allocation or Use

[18] The Commission can designate funds for allocation or for use when it receives administrative penalties or funds arising from disgorgement pursuant to an order under s. 127(1) of the Act or when it receives a payment to settle a proceeding.⁷ In addition to authorizing the collection of the Commission's costs in connection with a proceeding, s.

³ Act, s 3.1(1).

⁴ Act, s 2.2.

⁵ Act, ss 3.5 and 127(1).

⁶ Act, s 3.2(2).

⁷ The introductory paragraph of s. 3.4(2) provides that the Commission shall pay such funds into Ontario's Consolidated Revenue Fund when received, other than money paid to reimburse the Commission's costs, or money designated for allocation or use pursuant to the Act.

3.4(2)(b) of the Act authorizes the Commission to designate funds received “under the terms of an order or settlement”:

- a. for allocation to or for the benefit of third parties, or
- b. for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets.

[19] As set out in s. 3.4(2)(b) of the Act, once funds are designated in a settlement agreement to settle a proceeding commenced by the Commission or pursuant to a requisite order, the funds may only be applied by the Commission for the designated purposes. The Commission cannot apply the funds for general budgetary purposes of the Commission and such funds are subject to the ability of the Minister to direct that surplus funds be transferred to Ontario's Consolidated Revenue Fund. Subject to this authority of the Minister, the subsequent allocation or use of funds is overseen by the Commission's board of directors. This responsibility arises because the financial affairs of the Commission are administered by the board as directed in s. 3.1(2) of the Act.

[20] A settlement agreement becomes an enforceable contract when it is duly authorized, executed and delivered by the parties to it. The separate adjudicative process to consider whether to approve the settlement agreement is completed if and when an order approving the settlement agreement is issued, which may include the designation of funds for purposes of s. 3.4(2)(b).

[21] It is the power to allocate funds designated for the benefit of third parties in an order or settlement agreement, or both, that authorizes the board, in appropriate cases, to use these funds for purposes that advance the objectives of the Act, including payments to investors (considered to be third parties for this purpose), who have experienced losses resulting from the misconduct giving rise to those administrative penalties, as well as for the specified educational purposes, among other permissible uses.

C. Member Duties

[22] Section 3.12 of the Act specifically provides that the *Corporations Act*⁸ does not apply to the Commission. If the *Corporations Act* did apply, then the Act would incorporate the provisions applicable to members of the boards of non-share capital corporations, including the standard of care and the duty of loyalty, as formulated in the *Corporations Act*. Those provisions do not currently apply to the Commission.

[23] The Act itself has certain provisions addressing these subjects, including an obligation for the Chair to be a full-time member,⁹ and for other members, including the Vice-Chairs, to devote the time necessary to fulfill their duties.¹⁰ The Chair and Vice-Chairs are appointed by the Lieutenant-in-Council, each for a maximum term of five years, and may be re-appointed. Two members of the Commission constitute a quorum.¹¹ Subsection 3(9) of the Act, which protects members from liability, imposes a “good faith” standard for the protection to apply to members' exercise of authority.

[24] A specific provision addresses the potential conflict that can arise between the adjudicative function and the performance of certain investigative functions implemented through the issuance of investigative orders by the Commission that may give rise to an enforcement proceeding. Specifically, s. 3.5(4) provides:

No member who exercises a power or performs a duty of the Commission under Part VI [Investigations and Examinations] except section 17 [Disclosure by Commission] in respect of a matter under investigation or examination shall sit on a hearing by the Commission that deals with the matter, except with the written consent of the parties to the proceeding.

[25] In contrast, there is no specific limitation in the Act that would prevent a board member from carrying out board member responsibilities and then sitting on any hearing.

[26] Unlike other forms of corporations in respect of which other duties apply to directors (such as the duty to act in the best interests of the corporation in the case of many business corporations under applicable statutes), whether acting as a member of the Commission or board member, all Commissioner actions are subject to the overarching purposes of the Act set out in s. 1.1:

- a. to provide protection to investors from unfair, improper or fraudulent practices;

⁸ RSO 1990, c C.38.

⁹ Act, s 3(7).

¹⁰ Act, s 3(8).

¹¹ Act, s 3(11).

- b. to foster fair and efficient capital markets and confidence in capital markets; and
- c. to contribute to the stability of the financial system and the reduction of systemic risk.

[27] In addition, the Act provides a standard for decisions made in the performance of adjudicative functions, as stated in the provision authorizing the issuance of orders. Subsection 127(1) imposes the standard that an order can be issued by the Commission “if in its opinion it is in the public interest to make the order...” It is well established that the Commission’s public interest jurisdiction in issuing such orders is not unlimited and must be viewed in light of the legislated purposes of the Act.¹²

[28] Unlike the purposes of a business corporation, which include the seeking of profit, the Commission has the public mandates stated in s. 1.1. The financial management responsibility of the board members of the Commission must be assessed in light of the Act’s purposes, and in exercising their board responsibilities, the members are required to prudently use the Commission’s financial resources to those ends.

IX. ANALYSIS

[29] Mr. Bouji challenges the ability of the Commission to adjudicate the effect of the Order based on allegations of institutional bias. He cites the principle that no one ought to be a judge in his own cause.

[30] In *Brosseau v Alberta Securities Commission*, the Supreme Court of Canada expresses the general principle underlying the protections against bias as follows:¹³

The maxim *nemo judex in causa debet esse* underlies the doctrine of “reasonable apprehension of bias”. It translates into the principle that no one ought to be a judge in his own cause. In this case, it is contended that the chairman, in acting as both investigator and adjudicator in the same case, created a reasonable apprehension of bias. As a general principle, this is not permitted in law because the taint of bias would destroy the integrity of proceedings conducted in such a manner.

A. No Bias Arises from the Commission’s Structure

[31] Mr. Bouji makes structural complaints concerning the Commission that he advances to demonstrate institutional bias. I consider those complaints to be completely answered by the reasoning in *Brosseau*. As reflected in the quotation provided above, *Brosseau* considered the possible conflict between the exercise of investigative authority in conjunction with an administrative proceeding. The Supreme Court found, as an exception to the *nemo judex* principle, that the legislature can statutorily authorize an overlap of functions, assuming the constitutionality of the statute. That exception is equally applicable to the administrative functions involved in board activities. As stated in that case:¹⁴

Administrative tribunals are created for a variety of reasons and to respond to a variety of needs. In establishing such tribunals, the legislator is free to choose the structure of the administrative body. The legislator will determine, among other things, its composition and the particular degrees of formality required in its operations. **In some cases, the legislator will determine that it is desirable, in achieving the ends of the statute, to allow for an overlap of functions which in normal judicial proceedings would be kept separate.** In assessing the activities of administrative tribunals, the courts must be sensitive to the nature of the body created by the legislator. **If a certain degree of overlapping functions is authorized by statute, then, to the extent that it is authorized, it will not generally be subject to the doctrine of “reasonable apprehension of bias” per se.** (emphasis added)

[32] As discussed above, the Act confers the right on the Commission to order the designation of funds obtained through administrative penalties for specified purposes. It confers financial management responsibility on the board by which the Commission’s assets, including designated funds, must be managed in a manner consistent with the purposes of the Act. The Act stipulates that for specific overlapping investigatory and adjudicative functions, a Commissioner will be prevented from sitting on hearings for proceedings in which the Commissioner has been involved in the issuance of certain investigative orders.¹⁵ In contrast, the Legislature did not enact any exceptions preventing hearings by members

¹² *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43 and 45.

¹³ [1989] 1 SCR 301 (*Brosseau*) at para 19.

¹⁴ *Brosseau* at para 22.

¹⁵ Act, s 3.5(4).

who have been involved in the allocation of funds obtained through administrative penalties or settlements.¹⁶

B. No Bias Arises from the Designation Process for Funds

[33] In carrying out the allocation process arising from the designation of funds received pursuant to an order or settlement agreement, it is reasonably necessary for the board, acting through a quorum or otherwise, to interact with Staff members to determine whether it is practicable to distribute funds to harmed investors as third parties to whom an allocation may be made following a designation under s. 3.4(b) of the Act. Staff can reasonably be expected to have information regarding the number of known investors and their losses, or the costs of ascertaining such information and the costs of implementing a potential distribution to harmed investors, based on a variety of means that could be employed to make a distribution.

[34] Mr. Bouji's counsel submits that this process can be compared to a pattern of discussions between a prosecutor and a judge. He argues that, since there is evidence of communications between Staff and a quorum of the board in this case regarding the allocation decision, the burden should shift to Staff to demonstrate that there is no bias.

[35] Since Mr. Bouji has not brought a motion for recusal of a panel member on the grounds of individual bias, I take this argument to be a response to language in *Brosseau* that indicates that, if acts are authorized by the statutory scheme, something going further must be found to establish bias:¹⁷

In order to disqualify the commission from hearing the matter in the present case, some act of the commission going beyond its statutory duties must be found.

[36] I have concluded that the allocation process that follows from s. 3.4(b) does not go beyond the statutory duties assigned to Commissioners.

[37] The designation under s. 3.4(b) requires a subsequent allocation or use of funds, which appropriately involves the board's financial management decisions about the possible allocation of the funds to investors, other third parties or for other specified purposes. These are not funds available for the Commission's general expenditure, since they are designated by an order or settlement agreement for specified purposes, taking into account the purposes of the Act set forth in s. 1.1.

[38] In this case, the allocation of funds was authorized by a quorum of the board on March 29, 2016, almost two years after the Settlement Agreement and the Order and over two years before the Statement of Allegations was issued against Mr. Bouji in the current proceeding. Communications between a quorum of the board and Staff about an allocation of funds after the conclusion of a settlement agreement or issuance of an order are not comparable to *ex-parte* discussions between a prosecutor and a judge during an ongoing proceeding. The allocation discussions occur in support of the quorum's activities as board members. Unlike communications between a judge and a prosecutor during a case, there is no ongoing proceeding at the time of the allocation discussions with Staff and therefore no influence being exerted on a proceeding reasonably within contemplation. There is no evidence that anyone was aware of the alleged defect, or the "frailty" in the Order as Mr. Bouji's counsel termed it, at the time of the allocation decision.

[39] Designated funds do not enhance the Commission's operational funds, since the Legislature has required that they be allocated for specified purposes. The total amount of such funds is shown as designated funds in the Commission's annual financial statements. Any actions by Commissioners authorized by the Act, including the allocation of funds, must be performed taking into account the purposes of the Act set out in s. 1.1. Where the Legislature intended to prohibit the carrying out of multiple roles by Commissioners, they chose express prohibitions, as is the case with Commissioners who issue investigative orders being prohibited from sitting on subsequent proceedings, absent consent. There is no such applicable prohibition in the current circumstances.

[40] The manner in which Commissioners are required to act is defined by the purposes of the Act set out in s. 1.1, the structure of the other provisions of the Act, including the public interest jurisdiction in s. 127, and the Commission's and courts' decisions regarding the exercise of these duties. These requirements differ from the responsibilities of directors of private enterprises. There is no incentive on the part of the Commission to retain funds that the Commission is not authorized to retain for the purposes of the Act. There is no reasonable apprehension of bias arising from the allegation that Commissioners will act in a manner contrary to their duties as expressed through the Act.

[41] Given the statutory provisions, board members are authorized to exercise their authority to make allocations of funds

¹⁶ Although not set forth in the Act, s. 5(1) of the Commission's *Adjudication Guideline* specifically provides that: "Members should perform their adjudicative responsibilities independently from their other responsibilities as Members of the Commission, and should make sure that their other responsibilities as Members of the Commission, or otherwise, do not detract from the performance of their adjudicative responsibilities."

¹⁷ *Brosseau* at para 21.

received pursuant to orders or settlement agreements and they are not precluded from participating as adjudicators in a subsequent proceeding in which the enforceability of aspects of the order are in question.

- [42] If there are any legal impediments identified in the past allocation of funds under the Order, then the Commission will have to consider the appropriate treatment and disposition of the amounts in question based on the purposes of the Act and in light of all legal considerations.
- [43] Commissioners are presumed to act fairly and impartially in discharging their adjudicative functions, in the absence of any evidence to the contrary.¹⁸ Given the circumstances of the allocation of the funds that were received pursuant to the Settlement Agreement and the structure and provisions of the Act, I do not find that the evidence submitted on behalf of Mr. Bouji regarding the allocation decision by a quorum of the Commission and the attendant communications with Staff at the time, constitutes sufficient evidence to counter the presumption of impartiality and to shift the burden to Staff. Mr. Bouji's evidence fails to meet his onus to show that bias or a reasonable apprehension of bias exists such that the Commission, or members of the Commission who participated in the allocation decision, should not participate in a proceeding in which the effect of the Order is at issue.
- [44] The suspicion that the Commission might seek to retain funds received pursuant to a settlement agreement to which it is not entitled and that Commissioners would skew their interpretation of an order to achieve this result is unwarranted. Such unsupported speculation does not meet the test for challenging institutional impartiality based upon what would be understood by "a reasonable person informed of all the relevant circumstances; that is, a person who is fully informed of any safeguards in place at the Commission."¹⁹
- [45] Mr. Bouji's submissions based on studies and reports concerning proposals for the further separation of adjudicative and non-adjudicative functions at the Commission provide context for his arguments.²⁰ But those submissions do not overcome the conclusion that the Commission's institutional structure is authorized by the Act.
- [46] In addition, submissions concerning governance at the Commission, the size of the designated fund, the use of such funds for particular purposes and the absence of a recent five-year review are political and regulatory commentary and do not change the analysis of the effect of the current structure and operations of the Commission under the Act.

C. No Bias Arises from Prior Proceedings

- [47] Mr. Bouji also submitted that institutional bias arises from a finding that Mr. Bouji acted as an officer of Global RESP made by a different Commission panel solely for the purpose of a hearing and review application involving a decision about the registration of an ultimate designated person (UDP) for Global RESP.²¹ In that case, the Panel was alive to the fact that any finding would necessarily have limited application, stating:²²

We are mindful of the fact that Mr. Bouji is not a party to the application before us, and that therefore he was not present to challenge any evidence that might implicate him. However, our findings here do not bind him personally.

- [48] That finding was accompanied by a Staff commitment not to rely on the finding for other purposes, undertaking in writing:²³

not [to] take the position in any subsequent proceedings against Mr. Bouji, Global RESP and/or [Global Growth Assets Inc.] alleging a breach of the 2014 Order that findings made by this panel regarding compliance with the 2014 Order are binding on Mr. Bouji, Global RESP and/or [Global Growth Assets Inc.] in any subsequent proceeding brought against them.

- [49] I find Mr. Bouji's argument unpersuasive. Adjudicators frequently separate their analysis of factual matters from prior findings made by other adjudicators in other proceedings before the same or other tribunals. Adjudicators are expected to approach their tasks with a fresh perspective and open mind, and there is no reason why this case is different. This

¹⁸ *Norshield Asset Management (Canada) Ltd (Re)*, 2009 ONSEC 4, (2009) 32 OSCB 1249 at para 64 (**Norshield**), citing *EA Manning v Ontario Securities Commission* (1995), 23 OR (3d) 257 at para 28, leave to appeal to SCC refused.

¹⁹ *Norshield* at para 68.

²⁰ For instance, Mr. Bouji's evidence included: *Report of the Fairness Committee to David A. Brown, Q.C. Chair of the Ontario Securities Commission* (5 March 2004); Ontario, Legislative Assembly, *Official Report of Debates (Hansard) of the Standing Committee on Finance and Economic Affairs*, 38-1, (18 August 2004); Ontario, Legislative Assembly, Standing Committee on Finance and Economic Affairs, *Report on the Five Year Review of the Securities Act* (October 2004); and Ontario, Legislative Assembly, Standing Committee on Government Agencies, *Report on Agencies, Boards and Commissions* (March 2010).

²¹ *Hanane Bouji*

²² *Hanane Bouji* at para 61.

²³ *Hanane Bouji* at para 61.

is codified in s. 2(1) of the Commission's *Adjudicative Guideline*, which states that "Panel Members have a duty to conduct hearings and render decisions in a fair and impartial manner."

- [50] In the same category of argument was Mr. Bouji's counsel's submission that there was a "home court" advantage favouring Staff, based on a simple wins and losses tally of my own record in Commission proceedings. Each decision must be considered on its own, and I found this argument to be lacking rigorous analysis, evidentiary support or any basis for comparison. The lack of rigor was demonstrated by counsel's failure to exclude applications for settlement approval, including no-contest settlements, or proceedings seeking to reciprocate non-monetary extra-territorial court and agency decisions to protect Ontario residents where the matters had been adjudicated by other commissions and by courts.²⁴ Mr. Bouji's counsel did not formulate an argument as to why it was appropriate to include such proceedings in the analysis of Staff's and Respondents' outcomes in the matters that I participated in adjudicating. These submissions are insufficient to call into question the fairness or impartiality of the adjudicative process at the Commission, including the decisions I have rendered or participated in as a Commissioner.

D. Staff Chooses the Venue

- [51] Mr. Bouji also seeks an order dismissing the s. 127 proceeding on the basis that a s. 128 proceeding to enforce the Order in Court is the preferable approach, since it avoids the institutional bias arguments he advances. I reject this argument. If the institutional bias arguments Mr. Bouji advances fail, as they now have, it is solely within Staff's authority to pursue the avenue it chooses to enforce the Order and it is not appropriate for the Panel to limit Staff's options.
- [52] As stated by the Commission in *Techocan International Co Ltd (Re)*, citing the Supreme Court's decision in *R v T(V)*, the "functions of prosecutors and of judges must not be blurred", and the Commission should "be loath" to inquire into Staff's exercise of discretion absent evidence of abuse of the discretion.²⁵
- [53] In light of my rejection of Mr. Bouji's allegations of bias, it would be inappropriate for me to question Staff's decision as to the manner or venue in which it seeks to proceed in this case.

X. CONCLUSION

- [54] Mr. Bouji brought the motion under consideration to halt the proceeding against him, in whole or in part, on the basis that the Commission lacks jurisdiction to hear the matter as a result of institutional bias, a breach of natural justice, a breach of fairness and a misuse of the Commission's public interest jurisdiction. These grounds were all broadly subsumed under his arguments concerning institutional bias. I have rejected these arguments.
- [55] The Act expressly establishes the overlapping functions of Commissioners as policy-makers, adjudicators and board members. Based on *Brosseau*, the existence of such overlapping functions in the statutory structure overcomes concerns of institutional bias, absent something going beyond what was authorized by the Act. I find that the circumstances of the allocation of the funds received pursuant to the Settlement Agreement are consistent with the responsibilities assigned to Commissioners under the Act. The evidence did not shift the onus to Staff or enable Mr. Bouji to establish bias. Given the purposes of the Act and the duties of Commissioners, there is no incentive on the part of Commissioners to seek to inappropriately retain or apply funds to enhance the financial position of the Commission. Mr. Bouji has not submitted evidence that overcomes the presumption of impartiality applicable to Commissioners. Mr. Bouji has also not established a basis to believe that a panel, including members of the Commission who participated in the allocation process, cannot approach the interpretation of the Order fairly and with an open mind. Nor has Mr. Bouji established a reasonable basis for me to interfere with Staff's exercise of discretion in determining the manner or venue in which this matter should proceed.
- [56] For the reasons given above, I dismiss Mr. Bouji's motion.

Dated at Toronto this 7th day of October 2019.

"D. Grant Vingoe"

²⁴ Such inter-jurisdictional enforcement orders are made pursuant to s 127(10) of the Act.

²⁵ *Techocan International Co Ltd (Re)*, 2017 ONSEC 44, (2017) 40 OSCB 10123 at para 53.

3.2 Director's Decisions

3.2.1 Paul Wenden

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

AND

IN THE MATTER OF
THE REGISTRATION OF
PAUL WENDEN

1. At all material times, Paul Wenden (**Wenden**) was registered under the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the **Act**) as a mutual fund dealing representative. Wenden's registration is sponsored by PFSL Investments Canada Ltd. (**PFSL**).
2. Wenden resides in Alberta, and his principal regulator is the Alberta Securities Commission (the **ASC**). Wenden is also registered in Saskatchewan, Manitoba and Ontario.
3. On August 14, 2019, the ASC wrote to PFSL to inform them that ASC Staff was recommending that terms and conditions be imposed on Wenden's registration subjecting him to strict supervision. The recommendation was made in response to a financial disclosure change filed for Wenden indicating that he was subject to a requirement to pay from the Canada Revenue Agency, which included substantial fees and late charges. Wenden consented to the recommended terms and conditions, and they became effective on August 26, 2019.
4. Pursuant to Multilateral Instrument 11-102 *Passport System*, the terms and conditions automatically took effect in Manitoba and Saskatchewan. They did not, however, automatically take effect in Ontario.
5. On September 11, 2019, staff of the Ontario Securities Commission (**Staff**) sent Wenden a letter informing him that they were recommending to the Director that his registration under the Act be subject to the same terms and conditions as his registration in Alberta, on the grounds that Staff wished to ensure that Wenden's activities with respect to his Ontario clients would also be appropriately supervised given ASC staff's concerns regarding his solvency. Additionally, Staff was of the view that it would be objectionable for Wenden to be registered without any terms and conditions in Ontario while his registration in Alberta, Saskatchewan and Manitoba is subject to strict supervision. The letter also informed Wenden of his right to request an opportunity to be heard under section 31 of the Act if he wished to oppose Staff's recommendation.
6. Wenden has provided written confirmation to Staff that he consents to the terms and conditions on his registration, and accordingly terms and conditions have been imposed on his Ontario registration effective September 24, 2019.
7. The terms and conditions shall remain in effect until the terms and conditions imposed by the ASC have been removed.

"Jeff Scanlon"
Registration Manager
Compliance and Registrant Regulation

October 1, 2019

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
BetterU Education Corp.	03 October 2019	
CBLT Inc.	04 October 2019	
Cotinga Pharmaceuticals Inc.	04 October 2019	
Energold Drilling Corp.	03 October 2019	
Enfield Exploration Corp.	04 October 2019	
Espial Group Inc.	05 September 2019	04 October 2019
Folkstone Capital Corp.	04 October 2019	
Vector REIT Inc.	04 October 2019	

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
Beleave Inc.	06 August 2019	02 October 2019
BetterU Education Corp.	02 August 2019	03 October 2019
CannTrust Holdings Inc.	15 August 2019	

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

For the weeks ending October 4 and October 11

Issuer Name:

Bristol Gate Concentrated Canadian Equity ETF
Bristol Gate Concentrated US Equity ETF
Principal Regulator - Ontario

Type and Date:

Amendment #1 to Final Long Form Prospectus dated
September 25, 2019
Received on September 26, 2019

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

Bristol Gate Capital Partners Inc.
Project #2858224

Issuer Name:

CI First Asset Core Canadian Equity ETF
CI First Asset Core U.S. Equity ETF
Principal Regulator - Ontario

Type and Date:

Amendment #3 to Final Long Form Prospectus dated
September 23, 2019
Received on September 24, 2019

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2887249

Issuer Name:

Clearpoint Global Dividend Fund
Principal Regulator - Ontario

Type and Date:

Amendment #4 to Final Simplified Prospectus dated
September 27, 2019
Received on September 27, 2019

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2866730

Issuer Name:

Middlefield Global Real Asset Fund
Principal Regulator - Alberta (ASC)

Type and Date:

Preliminary Long Form Prospectus dated September 23,
2019
NP 11-202 Preliminary Receipt dated September 24, 2019

Offering Price and Description:

Maximum: \$- -Units
Minimum: \$20,000,000 - 2,000,000 Units
\$10.00 per Unit

Underwriter(s) or Distributor(s):

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

Promoter(s):

Middlefield Limited
Project #2969372

Issuer Name:

Bristol Gate Concentrated Canadian Equity ETF
Bristol Gate Concentrated US Equity ETF
Principal Regulator - Ontario

Type and Date:

Amendment #1 to Final Long Form Prospectus dated
September 25, 2019
NP 11-202 Receipt dated September 30, 2019

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

Bristol Gate Capital Partners Inc.
Project #2858224

Issuer Name:

CI First Asset 1-5 Year Laddered Government Strip Bond Index ETF

CI First Asset Active Canadian Dividend ETF

CI First Asset Core Canadian Equity ETF

CI First Asset Core U.S. Equity ETF

Principal Regulator - Ontario

Type and Date:

Amendment #3 to Final Long Form Prospectus dated September 23, 2019

NP 11-202 Receipt dated September 25, 2019

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2887249

Issuer Name:

Ninepoint 2019 Short Duration Flow-Through Limited Partnership

Principal Regulator - Ontario

Type and Date:

Final Long Form Prospectus dated September 26, 2019

NP 11-202 Receipt dated September 26, 2019

Offering Price and Description:

\$20,000,000 (maximum)

800,000 Limited Partnership Units

Price per Unit: \$25

Minimum Subscription: \$2,500 (100 Units)

Underwriter(s) or Distributor(s):

RBC Dominion Securities Inc.

CIBC World Markets Inc.

TD Securities Inc.

National Bank Financial Inc.

Scotia Capital Inc.

BMO Nesbitt Burns Inc.

GMP Securities L.P.

Industrial Alliance Securities Inc.

Manulife Securities Incorporated

Raymond James Ltd.

Canaccord Genuity Corp.

Desjardins Securities Inc.

Echelon Wealth Partners Inc.

Promoter(s):

Ninepoint 2019 Corporation

Project #2957358

Issuer Name:

First Trust Senior Loan ETF (CAD-Hedged)

Principal Regulator - Ontario

Type and Date:

Amendment #2 to Final Long Form Prospectus dated October 2, 2019

Received on October 2, 2019

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

FT Portfolios Canada Co.

Promoter(s):

N/A

Project #2889290

Issuer Name:

Mackenzie Corporate Bond Fund

Mackenzie Canadian Equity Class, formally Mackenzie

Canadian All Cap Value Class

Mackenzie Canadian Dividend Class, formally Mackenzie

Canadian Large Cap Dividend Class

Principal Regulator - Ontario

Type and Date:

Amendment #4 to Final Simplified Prospectus and Amendment #5 to Annual Information Form dated September 27, 2019

Received on October 2, 2019

Offering Price and Description:

Series LB, LW, Series LF, Series LF5, Series LW5 and Series LX securities

Underwriter(s) or Distributor(s):

LBC Financial Services Inc.

Promoter(s):

Mackenzie Financial Corporation

Project #2827888

Issuer Name:

TD Canadian Aggregate Bond Index ETF

Principal Regulator - Ontario

Type and Date:

Amendment #1 to Final Long Form Prospectus dated October 4, 2019

Received on October 4, 2019

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

TD Asset Management Inc.

Project #2865147

Issuer Name:

Clearpoint Global Dividend Fund
Principal Regulator - Ontario

Type and Date:

Amendment #4 to Final Simplified Prospectus dated
September 27, 2019

NP 11-202 Receipt dated October 3, 2019

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2866730

Issuer Name:

First Trust Senior Loan ETF (CAD-Hedged)
Principal Regulator - Ontario

Type and Date:

Amendment #2 to Final Long Form Prospectus dated
October 2, 2019

NP 11-202 Receipt dated October 7, 2019

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

FT Portfolios Canada Co.

Promoter(s):

N/A

Project #2889290

Issuer Name:

Mackenzie Corporate Bond Fund
Mackenzie Canadian Equity Class, formally Mackenzie
Canadian All Cap Value Class
Mackenzie Canadian Dividend Class, formally Mackenzie
Canadian Large Cap Dividend Class
Principal Regulator - Ontario

Type and Date:

Amendment #4 to Final Simplified Prospectus and
Amendment #5 to Annual Information Form dated
September 27, 2019

NP 11-202 Receipt dated October 7, 2019

Offering Price and Description:

Series LB, LW, Series LF, Series LF5, Series LW5 and
Series LX securities

Underwriter(s) or Distributor(s):

LBC Financial Services Inc.

Promoter(s):

Mackenzie Financial Corporation

Project #2827888

Issuer Name:

High Interest Savings Account ETF
Principal Regulator - Ontario

Type and Date:

Preliminary Long Form Prospectus dated Sep 26, 2019
NP 11-202 Preliminary Receipt dated Sep 27, 2019

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2970557

Issuer Name:

Mackenzie Mortgage Opportunities Fund.
Principal Regulator - Ontario

Type and Date:

Preliminary Simplified Prospectus dated Oct 3, 2019
NP 11-202 Preliminary Receipt dated Oct 3, 2019

Offering Price and Description:

Series R Units

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2972785

Issuer Name:

Veritas Absolute Return Fund
Principal Regulator - Ontario

Type and Date:

Preliminary Simplified Prospectus dated Oct 1, 2019
NP 11-202 Final Receipt dated Oct 1, 2019

Offering Price and Description:

Series I Units, Series A Units and Series F Units

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2953553

Issuer Name:

Purpose Structured Equity Yield Portfolio
Principal Regulator - Ontario

Type and Date:

Preliminary Simplified Prospectus dated Oct 2, 2019
NP 11-202 Final Receipt dated Oct 4, 2019

Offering Price and Description:

Series F shares, Series A shares and Series I shares

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2946418

Issuer Name:

The McElvaine Investment Trust
Principal Regulator – British Columbia

Type and Date:

Preliminary Simplified Prospectus dated Sep 27, 2019
NP 11-202 Preliminary Receipt dated Sep 30, 2019

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2971023

Issuer Name:

Mackenzie All China Equity Fund
Mackenzie Balanced ETF Portfolio
Mackenzie Canadian All Cap Value Class
Mackenzie Canadian All Cap Value Fund
Mackenzie Canadian Bond Fund
Mackenzie Canadian Growth Balanced Class
Mackenzie Canadian Growth Balanced Fund
Mackenzie Canadian Growth Class
Mackenzie Canadian Growth Fund
Mackenzie Canadian Large Cap Dividend Class
Mackenzie Canadian Large Cap Dividend Fund
Mackenzie Canadian Money Market Fund
Mackenzie Canadian Resource Fund
Mackenzie Canadian Short Term Income Fund
Mackenzie Canadian Small Cap Class
Mackenzie Canadian Small Cap Fund
Mackenzie China Bond Fund
Mackenzie Conservative ETF Portfolio
Mackenzie Conservative Income ETF Portfolio
Mackenzie Corporate Bond Fund
Mackenzie Cundill Canadian Balanced Fund
Mackenzie Cundill Canadian Security Class
Mackenzie Cundill Canadian Security Fund
Mackenzie Cundill US Class
Mackenzie Cundill Value Class
Mackenzie Cundill Value Fund
Mackenzie Diversified Alternatives Fund
Mackenzie Emerging Markets Fund
Mackenzie Floating Rate Income Fund
Mackenzie Global Credit Opportunities Fund
Mackenzie Global Dividend Fund
Mackenzie Global Environmental Equity Fund
Mackenzie Global Equity Fund
Mackenzie Global Growth Balanced Fund
Mackenzie Global Growth Class
Mackenzie Global Leadership Impact Fund
Mackenzie Global Resource Class
Mackenzie Global Small Cap Class
Mackenzie Global Small Cap Fund
Mackenzie Global Strategic Income Fund
Mackenzie Global Sustainability and Impact Balanced Fund
Mackenzie Global Tactical Bond Fund
Mackenzie Global Tactical Investment Grade Bond Fund
Mackenzie Gold Bullion Class
Mackenzie Growth ETF Portfolio
Mackenzie Growth Fund
Mackenzie High Diversification Canadian Equity Class
Mackenzie High Diversification Emerging Markets Equity Fund
Mackenzie High Diversification European Equity Fund
Mackenzie High Diversification Global Equity Fund
Mackenzie High Diversification International Equity Fund
Mackenzie High Diversification US Equity Fund
Mackenzie Income Fund
Mackenzie International Dividend Fund
Mackenzie Investment Grade Floating Rate Fund
Mackenzie Ivy Canadian Balanced Class
Mackenzie Ivy Canadian Balanced Fund
Mackenzie Ivy Canadian Fund
Mackenzie Ivy European Class
Mackenzie Ivy Foreign Equity Currency Neutral Class
Mackenzie Ivy Foreign Equity Fund

Mackenzie Ivy Global Balanced Class
Mackenzie Ivy Global Balanced Fund
Mackenzie Ivy International Class
Mackenzie Ivy International Fund
Mackenzie Moderate Growth ETF Portfolio
Mackenzie Monthly Income Balanced Portfolio
Mackenzie Monthly Income Conservative Portfolio
Mackenzie North American Corporate Bond Fund
Mackenzie Precious Metals Class
Mackenzie Private Canadian Focused Equity Pool
Mackenzie Private Canadian Focused Equity Pool Class
Mackenzie Private Global Conservative Income Balanced Pool
Mackenzie Private Global Equity Pool
Mackenzie Private Global Equity Pool Class
Mackenzie Private Global Fixed Income Pool
Mackenzie Private Global Income Balanced Pool
Mackenzie Private Income Balanced Pool
Mackenzie Private Income Balanced Pool Class
Mackenzie Private US Equity Pool
Mackenzie Private US Equity Pool Class
Mackenzie Strategic Bond Fund
Mackenzie Strategic Income Fund
Mackenzie Unconstrained Fixed Income Fund
Mackenzie US All Cap Growth Fund
Mackenzie US Dividend Fund
Mackenzie US Growth Class
Mackenzie US Mid Cap Growth Class
Mackenzie US Mid Cap Growth Currency Neutral Class
Mackenzie USD Global Strategic Income Fund
Mackenzie USD Global Tactical Bond Fund
Mackenzie USD Ultra Short Duration Income Fund
Symmetry Balanced Portfolio
Symmetry Balanced Portfolio Class
Symmetry Conservative Income Portfolio
Symmetry Conservative Portfolio
Symmetry Equity Portfolio Class
Symmetry Fixed Income Portfolio
Symmetry Growth Portfolio
Symmetry Growth Portfolio Class
Symmetry Moderate Growth Portfolio
Symmetry Moderate Growth Portfolio Class

Type and Date:

Combined Preliminary and Pro Forma Simplified Prospectus dated Sep 27, 2019

NP 11-202 Final Receipt dated Oct 2, 2019

Offering Price and Description:

Series T8 securities, Series O5 securities, Series A securities, Series F8 securities, Series PWT8 securities, Series PWR securities, Series R securities, Series PWT5 securities, Series S8 securities, Series O securities, Series PWFB securities, Series PWB securities, Series DA securities, Series D securities, Series PWX8 securities, Series F5 securities, Series PWFB5 securities, Series SC securities, Series PWF5 securities, Series PWT8 securities, Series PW securities, Series G securities, Series PWFB securities, Series PWX securities, Series FB securities, Series B securities, Series PWFB5 securities, Series GP securities, Series FB5 securities, Series PWX5 securities, Series AR securities, Series I securities, Series C securities, Series S5 securities, Investor Series securities, Series PWF8 securities, Series T5 securities, Series PWF securities, Series F securities and Series FB5 securities

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2951971

Issuer Name:

Evolve Active US Core Equity Fund
Evolve Active Short Duration Bond Fund
Principal Regulator - Ontario

Type and Date:

Amendment #1 to Final Long Form Prospectus dated
September 26, 2019

NP 11-202 Receipt dated October 1, 2019

Offering Price and Description:

Hedged Class A Units, Hedged Class F Units, Hedged ETF
Units, USD Unhedged ETF Units and Unhedged ETF Units

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2936920

Issuer Name:

Manulife Canadian Dividend Growth Class
Manulife Canadian Dividend Growth Fund
Manulife Canadian Investment Class
Manulife Dividend Income Class
Manulife Dividend Income Fund
Manulife Dividend Income Plus Class
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Manulife Global Franchise Class (formerly Manulife Global
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Equity Unconstrained Fund)
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Manulife Global Fixed Income Private Trust
Principal Regulator - Ontario

Promoter(s):

N/A

Project #2828268

Type and Date:

Amended and Restated Simplified Form Prospectus dated
September 25, 2019

NP 11-202 Receipt dated September 27, 2019

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Issuer Name:

Signature Canadian Balanced Fund
Principal Regulator - Ontario

Type and Date:

Amendment #2 to Simplified Prospectus dated September 30, 2019

NP 11-202 Receipt dated October 4, 2019

Offering Price and Description:

Class A units, Class AT6 units, Class D units, Class E units, Class EF units, Class F units, Class I units, Class O units, Class P units, Class U units, Class Z units

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2924573

Issuer Name:

Sentry Alternative Asset Income Fund
Sentry Canadian Bond Fund
Sentry Canadian Fixed Income Private Pool
Sentry Conservative Monthly Income Fund
Sentry Corporate Bond Class
Sentry Corporate Bond Fund
Sentry Diversified Equity Class
Sentry Diversified Equity Fund
Sentry Global Growth and Income Class
Sentry Global Growth and Income Fund
Sentry Global High Yield Bond Class
Sentry Global High Yield Bond Fund
Sentry Global Infrastructure Fund
Sentry Global Mid Cap Income Fund
Sentry Global Monthly Income Fund
Sentry Global REIT Class
Sentry Global REIT Fund
Sentry Global Tactical Fixed Income Private Pool
Sentry Growth and Income Fund
Sentry Money Market Class
Sentry Money Market Fund
Sentry Precious Metals Class
Principal Regulator - Ontario

Type and Date:

Amendment #2 to Simplified Prospectus dated September 26, 2019

NP 11-202 Receipt dated October 3, 2019

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

N/A

Promoter(s):

N/A

Project #2918575

NON-INVESTMENT FUNDS

Issuer Name:

Algernon Pharmaceuticals Inc.
Principal Regulator - British Columbia

Type and Date:

Final Short Form Prospectus dated September 30, 2019
NP 11-202 Receipt dated October 1, 2019

Offering Price and Description:

Minimum Public Offering: \$2,500,000.00/ 22,727,272 Units
Maximum Public Offering: \$5,000,000.00/ 45,454,545 Units
Price: \$0.11 per Unit

Underwriter(s) or Distributor(s):

MACKIE RESEARCH CAPITAL CORPORATION

Promoter(s):

-

Project #2937735

Issuer Name:

Almaden Minerals Ltd.
Principal Regulator - British Columbia

Type and Date:

Preliminary Shelf Prospectus dated October 4, 2019
NP 11-202 Preliminary Receipt dated October 4, 2019

Offering Price and Description:

US\$100,000,000
Common Shares
Warrants
Subscription Receipts
Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #2973185

Issuer Name:

American Aires Inc.
Principal Regulator - Ontario

Type and Date:

Final Long Form Prospectus dated October 2, 2019
NP 11-202 Receipt dated October 2, 2019

Offering Price and Description:

Minimum Offering: \$7,200,000.00
Maximum Offering: \$7,560,000.00
Minimum of 24,000,000 Common Shares and up to a
Maximum of 25,200,000
Common Shares (the "Offering")
Price: \$0.30 Per Common Share

Underwriter(s) or Distributor(s):

CANACCORD GENUITY CORP.

Promoter(s):

Dimitry Serov
Igor Serov

Project #2945289

Issuer Name:

Canadian Imperial Bank of Commerce
Principal Regulator - Ontario

Type and Date:

Preliminary Shelf Prospectus dated October 4, 2019
NP 11-202 Preliminary Receipt dated October 4, 2019

Offering Price and Description:

\$5,000,000,000.00 - Medium Term Notes (Principal at Risk
Structured Notes)

Underwriter(s) or Distributor(s):

CIBC WORLD MARKETS INC.
DESJARDINS SECURITIES INC.
INDUSTRIAL ALLIANCE SECURITIES INC.
LAURENTIAN BANK SECURITIES INC.
MANULIFE SECURITIES INCORPORATED
NATIONAL BANK FINANCIAL INC.
RICHARDSON GMP LIMITED
RAYMOND JAMES LTD.
ECHELON WEALTH PARTNERS INC.

Promoter(s):

-

Project #2973090

Issuer Name:

Continuum Residential Real Estate Investment Trust
Principal Regulator - Ontario

Type and Date:

Preliminary Long Form Prospectus dated October 3, 2019
NP 11-202 Preliminary Receipt dated October 3, 2019

Offering Price and Description:

\$ *
18,650,000 Units

Underwriter(s) or Distributor(s):

DESJARDINS SECURITIES INC.
CIBC WORLD MARKETS INC

Promoter(s):

Q MANAGEMENT LP

Project #2972863

Issuer Name:

Docebo Inc.
Principal Regulator - Ontario

Type and Date:

Final Long Form Prospectus dated October 1, 2019
NP 11-202 Receipt dated October 1, 2019

Offering Price and Description:

C\$75,000,000.00
4,687,500 Common Shares
Price: C\$16.00 per Share

Underwriter(s) or Distributor(s):

CANACCORD GENUITY CORP.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.

Promoter(s):

-

Project #2953654

Issuer Name:

Dream Industrial Real Estate Investment Trust
Principal Regulator - Ontario

Type and Date:

Preliminary Shelf Prospectus dated October 4, 2019
NP 11-202 Preliminary Receipt dated October 4, 2019

Offering Price and Description:

\$2,000,000,000.00 - Units, Subscription Receipts, Debt Securities,

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #2973119

Issuer Name:

Medicenna Therapeutics Corp.
Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated October 1, 2019
NP 11-202 Preliminary Receipt dated October 1, 2019

Offering Price and Description:

Minimum: \$* (* Units)
Maximum: \$* (* Units)
Price: \$* per Unit

Underwriter(s) or Distributor(s):

BLOOM BURTON SECURITIES INC.
MACKIE RESEARCH CAPITAL CORPORATION
HAYWOOD SECURITIES INC.

Promoter(s):

Fahar Merchant
Rosemina Merchant

Project #2972182

Issuer Name:

Medicenna Therapeutics Corp.
Principal Regulator - Ontario

Type and Date:

Amendment dated October 2, 2019 to Preliminary Short Form Prospectus dated October 1, 2019
NP 11-202 Preliminary Receipt dated October 2, 2019

Offering Price and Description:

Minimum: \$* (* Units)
Maximum: \$* (* Units)
Price: \$1.30 per Unit

Underwriter(s) or Distributor(s):

BLOOM BURTON SECURITIES INC.
MACKIE RESEARCH CAPITAL CORPORATION
HAYWOOD SECURITIES INC.

Promoter(s):

Fahar Merchant
Rosemina Merchant

Project #2972182

Issuer Name:

Mercer International Inc.
Principal Regulator - British Columbia

Type and Date:

Preliminary Prospectus - MJDS dated October 1, 2019
NP 11-202 Preliminary Receipt dated October 2, 2019

Offering Price and Description:

US\$750,000,000.00

Debt Securities

Common Stock

Preferred Stock

Warrants to Purchase Common Stock or Debt Securities
Any Combination of the Above

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #2972374

Issuer Name:

Optimum Ventures Ltd.
Principal Regulator - British Columbia

Type and Date:

Final Long Form Prospectus dated September 27, 2019
NP 11-202 Receipt dated October 1, 2019

Offering Price and Description:

\$600,000.00 - 4,000,000 Common Shares at \$0.15 per Offered Share

Underwriter(s) or Distributor(s):

Mackie Research Capital Corporation

Promoter(s):

-

Project #2941894

Issuer Name:

Tectonic Metals Inc.
Principal Regulator - British Columbia

Type and Date:

Preliminary Long Form Prospectus dated October 2, 2019
NP 11-202 Preliminary Receipt dated October 3, 2019

Offering Price and Description:

\$5,817,696.00 - 16,621,988 Common Shares and
16,621,988 Common Share Purchase Warrants on
exercise or
deemed exercise of 16,621,988 Special Warrants

Underwriter(s) or Distributor(s):

CANACCORD GENUITY CORP.
HAYWOOD SECURITIES INC.

Promoter(s):

Antonio Reda

Project #2972678

Issuer Name:

VOTI Detection Inc. (formerly Steamsand Capital Corp.)
Principal Regulator - Quebec

Type and Date:

Final Short Form Prospectus dated October 4, 2019
NP 11-202 Receipt dated October 4, 2019

Offering Price and Description:

\$5,310,001.00 - 3,034,286 Common Shares
Price: \$1.75 per Offered Share

Underwriter(s) or Distributor(s):

GMP SECURITIES L.P.
HAYWOOD SECURITIES INC.
CANACCORD GENUITY CORP.
DESJARDINS SECURITIES INC.
ECHELON WEALTH PARTNERS INC.

Promoter(s):

-

Project #2969076

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	JayCap Financial Ltd.	Exempt Market Dealer	October 1, 2019
New Registration	Vesta Wealth Partners Ltd.	Exempt Market Dealer, Investment Fund Manager, Portfolio Manager	October 4, 2019
New Registration	Brightspark Financial Inc.	Exempt Market Dealer	October 4, 2019
New Registration	Westfield Partners Ltd.	Exempt Market Dealer	October 4, 2019
Change in Registration Category	Prime Quadrant Corp.	From: Portfolio Manager and Exempt Market Dealer To: Investment Fund Manager, Portfolio Manager and Exempt Market Deale	October 7, 2019

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Toronto Stock Exchange – TSX Company Manual – Notice of Housekeeping Rule Amendments

TORONTO STOCK EXCHANGE

NOTICE OF HOUSEKEEPING RULE AMENDMENTS TO THE TSX COMPANY MANUAL

Introduction

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 (the “**Protocol**”), Toronto Stock Exchange (“**TSX**”) has adopted, and the Ontario Securities Commission has approved, certain housekeeping amendments (the “**Amendments**”) to TSX Reporting Form 4 – *Personal Information Form* (the “**PIF**”), TSX Reporting Form 4B – *Declaration* (the “**Declaration**”), the TSX Listing Application (the “**Listing Application**”) and Part VII of the TSX Company Manual (the “**Manual**”). The Amendments are Housekeeping Rules under the Protocol and therefore have not been published for comment. The Ontario Securities Commission has not disagreed with the categorization of the Amendments as Housekeeping Rules.

Reasons for the Amendments

The Amendments reduce the frequency with which individuals (i.e., directors, officers and 10% shareholders of an issuer) have to submit PIFs to TSX. Currently, if within 36 months of submitting a PIF, an individual is required to submit another PIF under TSX’s rules, such person is permitted to submit a Declaration in lieu of a PIF. Pursuant to the Amendments, TSX will accept a Declaration instead of a PIF if the individual has submitted a PIF to TSX or TSX Venture Exchange (“**TSXV**”) within the last 60 months. The Declaration asks the individual to confirm that the information contained in his or her most recently submitted PIF continues to be true and/or accurate, which is less burdensome than completing the PIF again. The Amendments will reduce the regulatory burden on TSX issuers by reducing the time and cost associated with having individuals complete PIFs.

The Amendments also remove the requirement for individuals to file PIFs if the issuer is graduating from TSXV to TSX. Currently, the Listing Application states that insiders are required to file a PIF with TSX. Removing the requirement for insiders of TSXV-listed issuers to file a PIF when the issuer is graduating to TSX will reduce the burden on issuers associated with a graduation to TSX. TSX will retain the right to request a PIF or a Declaration in exceptional circumstances, including where a significant number of the directors and/or officers of the graduating issuer are replaced in connection with the graduation to TSX.

Summary of the Non-Public Interest Amendments

	Document/ Section of the Manual	Amendment
1.	PIF	Changing the period by which an individual can submit a Declaration from 36 months to 60 months.
2.	Declaration	Changing the period by which an individual can submit a Declaration from 36 months to 60 months.
3.	Listing Application	- Changing the period by which an individual can submit a Declaration from 36 months to 60 months. - Removing the requirement to submit PIFs or Declarations for individuals who are officers, directors or 10% shareholders of a TSXV listed issuer graduating to TSX. TSX reserves the right to request a PIF or Declaration, including if a significant number of the directors and/or officers of the TSXV listed issuer are being replaced in connection with the graduation to TSX.
4.	Section 716 - <i>Management</i>	Changing the period by which an individual can submit a Declaration from 36 months to 60 months.

Text of the Amendments

For the text of the Amendments, please see the TSX website at:
http://tmx.complinet.com/en/display/display.html?rbid=2072&element_id=1181.

Effective Date

The Amendments become effective on October 10, 2019.

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