

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ANTHONY WHITEHOUSE

Plaintiff

and

BDO CANADA LLP

Defendant

**MOTION RECORD OF THE PLAINTIFF
VOLUME 20 OF 20**

June 15, 2018

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me, this 14th day of June, 2018


.....
A COMMISSIONER FOR TAKING AFFIDAVITS
IRIS GRAHAM

ASSET PURCHASE AGREEMENT

THIS AGREEMENT made this 2nd day of February, 2018

BETWEEN:

GRANT THORNTON LIMITED, in its capacity as Court-appointed receiver of the assets, properties and undertakings of the entities listed on Schedule "A" attached hereto (collectively and individually, the "**Debtor(s)**"), and not in its personal or corporate capacity

(herein called the "**Receiver**")

OF THE FIRST PART.

- and -

BRON RELEASING INC., a corporation incorporated under the laws of the Province of British Columbia

(herein called the "**Buyer**")

OF THE SECOND PART.

- A. **WHEREAS** on April 26, 2017, Grant Thornton Limited was appointed receiver and manager of all of the assets, undertakings and properties of the Debtor pursuant to an order (the "**Appointment Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**").
- B. **AND WHEREAS** pursuant to the Appointment Order, the Receiver was authorized to, among other things, undertake the marketing and sale of the assets, undertakings and properties of certain of the Debtors.
- C. **AND WHEREAS** on June 30, 2017, the Court approved a sale process for the assets, undertakings and properties of certain of the Debtors (the "**Sale Process Order**"). The Sale Process Order and the sale process approved therein govern the process for soliciting and selecting offers for the sale of the assets, undertakings and properties of certain of the Debtors.
- D. **AND WHEREAS** the Receiver has solicited offers for the Sale Assets (as hereinafter defined) and the Buyer hereby submits this offer to acquire from the Receiver all of the right, title and interest in and to the Sale Assets (as hereinafter defined) on the terms and conditions set out herein (the "**Offer**").

NOW THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1
OFFER AND ACCEPTANCE**

- 1.1 **Offer to Purchase.** The Buyer hereby offers to purchase from the Receiver the Sale Assets, upon and subject to the following terms and conditions, such offer to be irrevocable until 5:00 p.m. (Toronto time) on Monday, February 5, 2018. Within 5 Business Days of acceptance of this Offer by the Receiver, the Buyer shall pay a deposit, payable to the order of the Receiver, in trust, by wire transfer to the account specified by the Receiver, in the amount of \$1,437,500 for the Sale Assets (the “**Deposit**”) to be invested in an interest-bearing account with a Canadian bank and otherwise to be dealt with in accordance with the provisions of this Agreement.
- 1.2 **Acceptance of Offer.** Upon acceptance of this Offer by the Receiver, this Offer shall constitute a binding agreement to acquire the Sale Assets on and subject to the terms of this Agreement.

**ARTICLE 2
PURCHASE AND SALE OF ASSETS**

- 2.1 **Purchase and Sale.** At Closing, the Receiver shall sell, transfer, convey and assign to the Buyer, subject to Sections 2.3 and 2.5, free and clear of all Liens, and the Buyer shall purchase and acquire from the Receiver, all the right, title and interest in and to the following (collectively, the “**Sale Assets**”):
- (1) the Loan Agreements;
 - (2) the Security Agreements;
 - (3) the Loan Documents;
 - (4) the Indebtedness;
 - (5) the Assumed Contracts;
 - (6) the Books and Records;
 - (7) the Claims which are not Excluded Claims, including the right to threaten, initiate, commence, continue, prosecute, compromise, settle and/or conclude such Claims which are not Excluded Claims; provided, however, that in no event will the Buyer be permitted to initiate or conclude any proceedings, legal, equitable or otherwise against the Receiver other than as may be permitted under s. 11.2 of this Agreement;
 - (8) all amounts due and to become due or recoverable at and after the Closing Time under or in connection with the Loan Agreements, the Security Agreements, the Loan Documents, the Indebtedness, the Assumed Contracts and the Claims which are not Excluded Claims, and the right to receive same from and after the Closing Time; and

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- (9) all cash and non-cash proceeds of any of any of the foregoing received at or after the Closing Time.

2.2 Assumed Obligations. On the terms and subject to the conditions of this Agreement, the Buyer agrees, effective at the Closing Time to assume and be responsible for and thereafter honour and perform the following obligations of the Crystal Wealth Media Strategy (the “**Media Fund**”) or any other Debtor (the “**Assumed Obligations**”):

- (1) all of the obligations of the Media Fund or any other Debtor as a lender and a creditor under the Loan Agreements, the Security Agreements and the Loan Documents;
- (2) all of the obligations of the Media Fund or any other Debtor under the Assumed Contracts;
- (3) any and all debts, liabilities and obligations of the Media Fund or any other Debtor arising from the Sale Assets not contemplated by Section 2.2(1) or Section 2.2(2);
- (4) all liabilities of the Media Fund or any other Debtor relating to Taxes for which the Buyer is responsible pursuant to Section 3.2; and
- (5) any other obligations expressly assumed under this Agreement.

In addition to any other provision for indemnification by the Buyer contained in this Agreement, the Buyer will, from and after the Closing Time, indemnify and save harmless the Receiver on its own behalf and as trustee for its Affiliates and their current and former directors and officers, employees, agents, advisors and representatives and the Debtor (collectively, the “**Indemnitees**”) from and against all Claims asserted against any of the Indemnitees directly or indirectly arising from or relating to the Assumed Obligations. Notwithstanding anything to the contrary in this Agreement (including this Section 2.2), the Buyer shall not assume, indemnify or otherwise be liable for any obligations, debts or liabilities of any Person arising as a result of or relating to the conduct of the Receiver or its Affiliates, including their respective directors, officers, employees, agents, advisors and representatives.

2.3 Excluded Claims. Notwithstanding anything to the contrary in this Article 2, (i) the Receiver shall not sell, transfer, convey or assign to the Buyer and the Buyer shall not purchase or acquire from the Receiver any right, title or interest in or to Claims which are Excluded Claims or any proceeds therefrom, and (ii) the term “Sale Assets” shall not include Claims which are Excluded Claims or any proceeds therefrom. The Receiver and Buyer agree that nothing in this Agreement shall restrict the Receiver’s right to, directly or indirectly, threaten, initiate, commence, continue, prosecute, compromise, settle and/or conclude any and all Excluded Claims (including, without limiting the generality of the foregoing, any claim, proceeding, action, cross-claim, counterclaim, third party action or application) against any Third Party, regardless of what claims or proceedings may consequently be made, brought or commenced by the Third Party as against any other Person or entity (whether for contribution, indemnity or any other relief), including

without limitation as against the Buyer, its parent or subsidiaries or their respective Affiliates (individually a “**Bron Party**” and collectively the “**Bron Parties**”); provided that if the Receiver commences or continues an Excluded Claim against a Third Party (other than an Excluded Claim against the Debtors’ past and/or present auditor(s), which claim by the Receiver shall not be limited in any way by this Agreement, and the remainder of this Section 2.3 shall accordingly not apply to such a claim) and such Third Party asserts a Third Party Claim Over, the Receiver shall immediately reduce and limit the relief sought against the Third Party so that there is no Third Party Claim Over and, to the extent there is ever any judgment or order in favour of any Third Party in respect of a Third Party Claim Over, the Receiver will waive that part of any order or judgment in its favour so that there is no recovery by the Third Party or the Receiver against any Bron Party in respect of any Third Party Claim Over.

- 2.4 **Excluded Liabilities.** Except for the Assumed Obligations, the Buyer shall not assume or be liable for any liabilities or obligations, absolute, contingent, accrued, known or unknown, which, for greater certainty, shall include but not be limited to any and all debts, liabilities and obligations of the Receiver, the Media Fund or any other Person in respect of any motions, causes of action, litigation proceedings, lawsuits, court proceedings or proceedings before any governmental authority or tribunal against the Receiver, the Media Fund or any Person arising from or relating to the Sale Assets prior to the Closing Time.
- 2.5 **Production Liens Unaffected.** Nothing in this Agreement or the Approval and Vesting Order shall affect the Production Liens, including the relative priority thereof.

ARTICLE 3 PURCHASE PRICE AND PAYMENT

- 3.1 **Purchase Price.** The purchase price for the Sale Assets (the “**Purchase Price**”) shall be an amount equal to the aggregate of the following amounts plus applicable Taxes, if any, and shall be payable at the Closing Time:
- (1) \$14,375,000 (the “**Cash Portion of the Purchase Price**”), payable as follows:
 - (a) as to the amount of the Deposit, by applying the Deposit toward the Purchase Price at the Closing Time; plus
 - (b) as to the balance of the Cash Portion of the Purchase Price, by bank draft or wire transfer at Closing; and
 - (2) by the assumption of the Assumed Obligations.
- 3.2 **Allocation of Transfer Taxes and Fees; Tax Returns.** The Buyer is responsible for and shall pay to the Receiver or as otherwise required by Applicable Law all GST/HST, sales and transfer Taxes and all filing fees and documentary fees or Taxes payable in connection with the purchase and sale of the Sale Assets to the Buyer pursuant to this Agreement. The Buyer and the Receiver shall reasonably cooperate in making available elections or providing any available resale exemption certificate or other similar

documentation. Notwithstanding the Buyers' liability therefor, the party that is required by Applicable Law to make the filings, reports or returns and to handle any audits or controversies with respect to any of the foregoing Taxes shall do so, and the other party shall reasonably cooperate with respect thereto as necessary. The Buyer shall indemnify and save harmless the Indemnitees from all Claims incurred, suffered or sustained as a result of a failure by the Buyer to pay any of the foregoing Taxes or to file any filings, report or returns with respect to any of the foregoing Taxes. For greater certainty, the Purchase Price is exclusive of any applicable GST/HST. The Buyer and the Receiver take the view that GST/HST is not exigible on the transfer of the Sale Assets, and the Receiver shall not collect on Closing any GST/HST from the Buyer in respect of the transfer of the Sale Assets to the Buyer. The Buyer shall nevertheless fully indemnify the Receiver on demand for any GST/HST plus interest and penalty that the Canada Revenue Agency may assess in connection with the transfer of the Sale Assets to the Buyer. This indemnity shall survive Closing.

- 3.3 **Assumption and Assignment of Contracts.** Upon acceptance of the Offer and until Closing, the Buyer, with the Receiver's prior written consent and cooperation, shall use all reasonable commercial efforts to obtain any required consents to the assignment to the Buyer of any of the Sale Assets and the Receiver shall provide its reasonable cooperation in assisting the Buyer in obtaining such consents. In the event that consent to the assignment to the Buyer of any of the Sale Assets cannot be obtained upon terms satisfactory to the parties acting reasonably, nothing in this Agreement shall be considered as an assignment of such Sale Asset and the Buyer shall have no liability or obligation whatsoever in respect of such Sale Asset.

ARTICLE 4 CLOSING

- 4.1 **Closing.** Consummation of the transactions contemplated by this Agreement shall occur at 10:00 a.m. (Toronto time) (the "**Closing Time**") on the Business Day that is three Business Days after all conditions to closing have been satisfied or waived, which date shall be no later than March 23, 2018 (the "**Closing Date**"), at the offices of the Receiver's counsel Aird & Berlis LLP in Toronto, Ontario, or at such time and place as the Buyer and the Receiver may otherwise agree.
- 4.2 **Deliveries by the Receiver at Closing.** At Closing, the Receiver shall:
- (1) execute, acknowledge, make and deliver to the Buyer the following:
 - (a) an Assignment and Assumption Agreement pursuant to which the Buyer shall be assigned the Sale Assets and shall assume the Assumed Obligations, in form and in substance satisfactory to the parties acting reasonably (the "**Assignment and Assumption Agreement**");
 - (b) a certificate by a senior officer of the Receiver, in his or her capacity as such and without personal liability, certifying that the representations and warranties of the Receiver set out herein are true and correct in all material respects at the Closing Time (unless they are expressed to be made only as

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of an earlier fixed date, in which case they need be true and correct only as of such earlier date);

- (c) a true and complete copy of the issued and entered Approval and Vesting Order as issued by the Court;
 - (d) an executed copy of the Receiver's Certificate; and
 - (e) such certificates, statutory declarations, consents, acknowledgements and other documents as the Buyer may require, acting reasonably, to give effect to the Receiver's obligations hereunder and under the Ancillary Agreements; provided, however, that in the event that any consents with respect to the Sale Assets are not received on or prior to the Closing Date, such lack of consents shall not constitute a failure to fulfill this condition.
- (2) covenant to provide the Buyer, until the first to occur of: (a) one (1) year following the Closing Date; and (b) the discharge of the Receiver from its role as Court-appointed receiver of the assets, properties and undertakings of the Debtors, with reasonable access to the Sale Assets where they have not been already provided to the Buyer.

4.3 Deliveries by the Buyer at Closing. At Closing, the Buyer shall execute, acknowledge, make and deliver to the Receiver the following:

- (1) payment of the balance of the Cash Portion of the Purchase Price required to be paid on Closing pursuant to Section 3.1(1)(a), net of the Deposit, which shall be paid to the Receiver by cash payment by bank draft or wire transfer in immediately available funds to an account designated by the Receiver to Buyer;
- (2) a duly executed Assignment and Assumption Agreement;
- (3) a certificate by a senior officer of Buyer, in his or her capacity as such and without personal liability, certifying that the representations and warranties of Buyer set out herein are true and correct in all material respects at the Closing Time (unless they are expressed to be made only as of an earlier fixed date, in which case they need be true and correct only as of such earlier date);
- (4) a certificate acknowledging that all conditions to Closing have been satisfied or waived;
- (5) payment of all transfer Taxes payable pursuant to Section 3.3, if any; and
- (6) such certificates, statutory declarations, consents, acknowledgments and other documents as the Receiver may require, acting reasonably, to give effect to the Buyer's obligations hereunder and under the Ancillary Agreements.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE RECEIVER

The Receiver represents and warrants to the Buyer as follows:

- 5.1 **Authority.** Subject to the entry of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated herein, the Receiver has the authority to sell the Sale Assets to the Buyer, to enter into and consummate this Agreement and the Ancillary Agreements, and to complete the transactions contemplated hereby and thereby.
- 5.2 **Execution and Delivery.** Subject to the entry of the Approval and Vesting Order and any other orders required by the Court in connection with the transactions contemplated herein, this Agreement constitutes a legal and binding agreement of the Receiver enforceable against the Receiver in accordance with its terms.
- 5.3 **"As Is", "Where Is".** Except as expressly provided in Article 5, no representation, warranty or condition whether statutory (including under the *Sale of Goods Act* (Ontario), the *International Sale of Goods Contracts Convention Act* (Canada) and the *International Sale of Goods Act* (Ontario) or any international equivalent act which may be applicable to the subject matter pursuant to the provisions of this Agreement, including but not limited to the *United Nations Convention on Contracts for the International Sale of Goods*), or express or implied, oral or written, legal, equitable, conventional, collateral, arising by custom or usage of trade, or otherwise is or will be given including as to title, outstanding liens or encumbrances, description, fitness for purpose, merchantability, merchantable quality, quantity, condition (including physical and environmental condition), suitability, durability, assignability, or marketability thereof or any other matter or thing whatsoever, and all of the same are expressly excluded and disclaimed and any rights pursuant to such statutes have been waived by the Buyer.
- 5.4 **Disclaimer of Representations and Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE RECEIVER HAS NOT MADE ANY, AND THERE ARE NO, REPRESENTATIONS, WARRANTIES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, RELATING TO THE SALE ASSETS, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO TITLE, DESCRIPTION, QUANTITY, CONDITION, QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY AND ALL CONDITIONS AND WARRANTIES EXPRESSED OR IMPLIED BY ANY SALE OF GOODS LEGISLATION DO NOT APPLY TO THE SALE OF THE SALE ASSETS AND ARE HEREBY WAIVED BY THE BUYER.
- 5.5 **Termination of Representations and Warranties Upon Closing.** The representations and warranties of the Receiver in this Agreement and each Ancillary Agreement, and the Receiver's covenants in Articles 7.2, shall be true and correct in all material respects on and as of the Closing Time with the same effect as if made on and as of such time. The sole remedy that shall be available to the Buyer as a result of a material breach by the Receiver of such representations, warranties or covenants shall be termination pursuant to Section 11.1(2). The representations and warranties of the Receiver in this Agreement

and each Ancillary Agreement do not merge on Closing and shall survive until the first to occur of: (a) one (1) year following the Closing Date; and (b) the discharge of the Receiver from its role as Court-appointed receiver of the assets, properties and undertakings of the Debtor, and thereafter shall be of no further force or effect.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Receiver as follows:

- 6.1 **Organization and Power.** The Buyer is a corporation validly existing under the laws of its jurisdiction of incorporation.
- 6.2 **Authority.** The Buyer has the requisite power and authority to execute this Agreement and the Ancillary Agreements and to complete the transactions contemplated hereby and thereby.
- 6.3 **Execution and Delivery.** The execution and delivery of this Agreement and the completion of the transactions contemplated hereby by the Buyer has been duly authorized by all necessary corporate action, and the execution, delivery and performance of the Ancillary Agreements by the Buyer has been or will be authorized by all necessary corporate action prior to the Closing Date. Subject to the entry of Approval and Vesting Order, this Agreement constitutes, and upon execution and delivery of each of the Ancillary Agreements such agreements will constitute, valid and binding obligations of the Buyer, enforceable against the Buyer in accordance with their respective terms.
- 6.4 **ETA Registration.** The Buyer is a registrant for the purposes of the *Excise Tax Act* (Canada) whose registration number is 851214734 RT0001.
- 6.5 **Not a Non-Canadian.** The Buyer is not a non-Canadian for the purposes of the *Investment Canada Act* (Canada).
- 6.6 **"As Is, Where Is".**
 - (a) The Buyer acknowledges and agrees that it is purchasing the Sale Assets on an "as is, where is" basis and on the basis that the Buyer has conducted to its satisfaction an independent inspection, investigation and verification of the Sale Assets (including a review of title), Assumed Obligations and all other relevant matters and has determined to proceed with the transaction contemplated herein and will accept the same at the Time of Closing in their then current state, condition, location, and amounts. The Buyer acknowledges and agrees that it has relied entirely and solely on its own investigations as to the matters set out above and in determining to purchase the Sale Assets and assume the Assumed Obligations pursuant to this Agreement.
 - (b) The description of the Sale Assets and Assumed Obligations contained herein is for the purpose of identification only and the inclusion of any

item in such description does not confirm the existence of any such items or that any such item is owned by the Media Fund. Except as otherwise explicitly set forth in Article 5, no representation, warranty or condition has been given by the Receiver concerning the completeness or accuracy of such descriptions and the Buyer acknowledges and agrees that any other representation, warranty, statements of any kind or nature, express or implied, (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Media Fund or the quality, quantity or condition of the Sale Assets) are specifically disclaimed by the Receiver.

- (c) Any documents, materials and information provided by or on behalf of the Receiver to the Buyer with respect to the Sale Assets or Assumed Obligations (including any confidential information memorandums, management presentations, or material made available in the electronic data room) have been provided to the Buyer solely to assist the Buyer in undertaking its own due diligence, and the Receiver has not made and is not making any representations or warranties, implied or otherwise, to or for the benefit of the Buyer as to the accuracy and completeness of any such documents, materials or information or the achievability of any valuations, estimates or projections. The Buyer acknowledges that it has not and will not rely upon any such documents, materials or information in any manner, whether as a substitute for or supplementary to its own due diligence, searches, inspections and evaluations. The Receiver and its respective affiliates, directors, officers, employees, agents and advisors shall not be liable for any inaccuracy, incompleteness or subsequent changes to any such documents, materials or information.

- 6.7 **No Litigation.** No material suit or other material proceeding initiated by any Person is pending before any court or governmental authority seeking to restrain or prohibit or declare illegal the purchase and sale contemplated by this Agreement.
- 6.8 **No Consents.** No authorizations, consents or approvals of, or filing with or notice to, any Governmental Authority is required in connection with the execution, delivery or performance of this Agreement. Except for the Approval and Vesting Order, no consent, waiver, authorization or approval of any Person and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Buyer of this Agreement.
- 6.9 **Sufficiency of Funds.** The Buyer has available and at the Time of Closing will have, sufficient funding to enable the Buyer to consummate the purchase of the Sale Assets and the assumption of the Assumed Obligations on Closing on the terms set forth herein and otherwise to perform all of the Buyer's obligations under this Agreement.
- 6.10 **Termination of Representations and Warranties Upon Closing.** The representations and warranties of the Buyer in this Agreement and each Ancillary Agreement shall be true and correct as of the Closing Time in all material respects with the same effect as if made on and as of such time. The sole remedy that shall be available to the Receiver as a

result of a material breach by the Buyer of such representations and warranties shall be termination pursuant to Section 11.1(3). The representations and warranties of the Buyer in this Agreement and each Ancillary Agreement do not merge on Closing and shall survive until the first to occur of: (a) one (1) year following the Closing Date; and (b) the discharge of the Receiver from its role as Court-appointed receiver of the assets, properties and undertakings of the Debtor, and thereafter shall be of no further force or effect.

ARTICLE 7 COVENANTS OF THE RECEIVER

The Receiver covenants and agrees with the Buyer that:

- 7.1 **Commercially Reasonable Efforts.** The Receiver shall use its commercially reasonable efforts to cause, to the extent within the Receiver's reasonable control, the conditions set forth in Article 9 to be satisfied and to facilitate and cause the consummation of the transactions contemplated hereby.
- 7.2 **New Commitments.** Without the prior written consent of the Buyer, except as may be required by the Court or Applicable Law, the Receiver shall not prior to the Closing (i) enter into any new agreement or commitment outside of the ordinary course of business with respect to the Sale Assets, (ii) modify or terminate any existing agreements relating to the Sale Assets outside of the ordinary course of business, or (iii) encumber, sell or otherwise dispose of any of the Sale Assets.
- 7.3 **Business Records.** Prior to Closing, the Receiver shall afford the Buyer and its employees, agents, counsel, accountants or other representatives reasonable access to the Sale Assets during normal business hours, including all books and records whether retained by the Receiver or otherwise and furnish such information relating to the Sale Assets as the Buyer from time to time reasonably requests.

ARTICLE 8 COVENANTS OF THE BUYER

The Buyer covenants and agrees with the Receiver that:

- 8.1 **Commercially Reasonable Efforts.** The Buyer shall use its commercially reasonable efforts (i) to cause, to the extent within the Buyer's reasonable control, the conditions set forth in Article 9 to be satisfied, (ii) to facilitate and cause the consummation of the transactions contemplated hereby, and (iii) to assist and cooperate with the Receiver in obtaining any consents or approvals required in connection with the transactions contemplated hereby, including the approval of the Court.
- 8.2 **Preservation of Records.** The Buyer will preserve any Books and Records delivered to it at the Time of Closing for a period of six years from the Closing Date, or for such other period as is required by any Applicable Law, and will afford the Receiver and its

employees, agents, counsel, accountants or other representatives reasonable access to the Books and Records during normal business hours, whether retained by the Buyer or otherwise and furnish such information relating to the Sale Assets as the Receiver from time to time reasonably requests, and the right to make copies thereof at the Receiver's expense.

- 8.3 **PIPEDA Compliance.** The Buyer will comply with the *Personal Information Protection and Electronic Documents Act* (Canada) and other similar Applicable Laws relating to privacy and the protection of personal information in respect of the Books and Records, Contracts and any other business and financial records related to the Sale Assets.

ARTICLE 9 CONDITIONS TO CLOSING

- 9.1 **The Receiver's Conditions to Closing.** The obligations of the Receiver at Closing are subject to the satisfaction at Closing of the following conditions, which may be waived in whole or in part by the Receiver by written notice to the Buyer prior to Closing:

- (1) all representations and warranties of the Buyer contained in this Agreement shall be true in all material respects at and as of Closing and the Buyer shall have performed and satisfied in all material respects (other than payment of any amount payable at Closing, which shall be paid in full) all material obligations required by this Agreement to be performed and satisfied by the Buyer at or prior to Closing. The Buyer shall have provided the Receiver with a certificate executed by a responsible officer of the Buyer to such effect;
- (2) the Buyer will have performed or complied in all material respects with all of the obligations and covenants of this Agreement to be performed or complied with by the Buyer at or prior to the Time of Closing;
- (3) to the knowledge of the Receiver, no material suit or other material proceeding initiated by any Person shall be pending before any court or governmental authority seeking to restrain or prohibit or declare illegal the purchase and sale contemplated by this Agreement;
- (4) the issuance of and the entry by the Court of the Approval and Vesting Order and the Approval and Vesting Order shall be a Final Order; and
- (5) the Buyer shall have made the payments and delivered the documents referred to in Section 4.2(2).

- 9.2 **Buyer's Conditions to Closing.** The obligations of the Buyer at Closing are subject to the satisfaction at Closing of the following conditions, which may be waived in whole or in part by the Buyer by written notice to the Receiver prior to Closing:

- (1) all representations and warranties of the Receiver contained in this Agreement shall be true in all material respects at and as of Closing and the Receiver shall have performed and satisfied in all material respects all material obligations

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required by this Agreement to be performed and satisfied by the Receiver at or prior to Closing;

- (2) the Receiver will have performed or complied in all material respects with all of the obligations and covenants of this Agreement to be performed or complied with by the Receiver at or prior to the Time of Closing;
- (3) to the knowledge of the Buyer, no material suit or other material proceeding initiated by any Person shall be pending before any court or governmental authority seeking to restrain or prohibit or declare illegal the purchase and sale contemplated by this Agreement;
- (4) the issuance of and entry by the Court of the Approval and Vesting Order and the Approval and Vesting Order shall be a Final Order; and
- (5) the Receiver shall have delivered the documents referred to in Section 4.2.

ARTICLE 10 OBLIGATIONS AFTER CLOSING

The parties shall have the following obligations after Closing:

- 10.1 Execution and Delivery of Instruments.** The Receiver and the Buyer shall each execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such instruments and take such other actions as may be necessary or advisable to carry out their obligations under this Agreement, the Ancillary Agreements or any document, certificate or other instrument delivered pursuant hereto or thereto or required by Applicable Law.

ARTICLE 11 TERMINATION

- 11.1 Termination.** The Agreement may be terminated as follows:

- (1) by either the Buyer or the Receiver at its option, if Closing shall not have occurred on or prior to March 23, 2018, unless Closing is extended by mutual written agreement of the parties, or with the approval of the Court; *provided*, that the Buyer or the Receiver, as the case may be, shall not be entitled to terminate this Agreement pursuant to this Section 11.1(1) if the failure of the Closing to occur on or prior to such date results primarily from such party itself breaching any representation, warranty or covenant contained in this Agreement;
- (2) by the Buyer, by written notice given to the Receiver at or before Closing, if there has been (i) a material breach by the Receiver of any of its representations and warranties herein or (ii) a material failure on the part of the Receiver to comply with its obligations herein; provided, that in each case such breach or failure to comply is not cured within five (5) Business Days after written notice thereof and, in any event, prior to Closing;

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- (3) by the Receiver, by written notice given to the Buyer at or before Closing, if there has been (i) a material breach by the Buyer of any of its representations and warranties herein or (ii) a material failure on the part of the Buyer to comply with its obligations herein; provided, that in each case such breach or failure to comply is not cured within five (5) Business Days after written notice thereof and, in any event, prior to Closing;
- (4) by either the Receiver or Buyer if there shall be in effect a Final Order restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; or
- (5) mutual written agreement of the Receiver and the Buyer.

11.2 Effect of Termination. Upon the termination of this Agreement in accordance with Section 11.1, the parties shall be relieved of any further obligations or liability under this Agreement other than (i) any obligations for breaches of this Agreement occurring prior to such termination, (ii) any other obligations which by their terms survive or are to be performed after such termination and (iii) Article 13. If this Agreement is terminated by the Receiver pursuant to Section 11.1(3), the Deposit and all interest earned thereon shall be paid to the Receiver as liquidated damages, which liquidated damages shall be the Receiver's sole and exclusive remedy for any breach by the Buyer. If this Agreement is terminated pursuant to any other provision of this Agreement, the Deposit shall be repaid to the Buyer together with all interest earned thereon in accordance with the written instructions of the Buyer.

ARTICLE 12 APPROVAL AND VESTING ORDER

12.1 Approval and Vesting Order. Upon the execution of this Agreement:

- (1) the Receiver shall use all reasonable efforts to obtain an order or orders of the Court, substantially in the form attached hereto as Schedule "B" (with only such changes as the Receiver and the Buyer shall approve in their reasonable discretion, but in all cases in form and substance acceptable to the Receiver and the Buyer, the "**Approval and Vesting Order**") (i) approving this Agreement and the transactions contemplated by this Agreement; (ii) and vesting in the Buyer all of the right, title and interest in and to the Sale Assets subject to Section 2.5, free and clear of all Liens, such vesting to occur upon the delivery by the Receiver to the Buyer of the Receiver's certificate (the "**Receiver's Certificate**"); the Receiver shall consult and co-ordinate with the Buyer and their respective legal advisors regarding the parties upon whom the motion seeking the Approval and Vesting Order will be served and the manner and timing of service, provided that the motion seeking the Approval and Vesting Order shall be served upon such parties not less than seven (7) Business Days prior to the scheduled date for hearing of the motion;
- (2) the Receiver shall provide to the Buyer: (i) not less than two (2) Business Days before service thereof, a draft of all affidavits, reports and other materials to be

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served by it in connection with the motion seeking the Approval and Vesting Order, and (ii) promptly upon receipt, a copy of all materials received by the Receiver or filed with the Court in response or opposition to the motion seeking the Approval and Vesting Order; and

- (3) the Buyer shall cooperate with the Receiver in its efforts to obtain the Approval and Vesting Order, and shall use reasonable commercial efforts to provide or cause to be provided to the Receiver at the Receiver's request all certificates, affidavits or other documents and instruments reasonably required by the Receiver to obtain the Approval and Vesting Order.

ARTICLE 13 GENERAL PROVISIONS

- 13.1 Notice.** All notices hereunder shall be in writing, dated and signed by the party giving the same. Each notice shall be either (i) delivered in person to the address of the party for whom it is intended at the address of such party as shown below, or (ii) sent by e-mail or fax. The effective date of such notice shall be the date of delivery thereof, or if such date is not a business day, on the next business day following. The addresses of the parties, until changed by notice in accordance with the foregoing, are:

- (1) Receiver:

Grant Thornton Limited
200 King Street West,
11th Floor
Toronto, ON
M5H 3T4

Email: Bruce.Bando@ca.gt.com
Fax: 416.360.4949
Attn: Bruce S. Bando

With a copy to:

Aird & Berlis LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON
M5J 2T9

Email: sgraff@airdberlis.com; mvanzandvoort@airdberlis.com;
jmerk@airdberlis.com
Fax: 416.863.1515
Attn: Steven Graff; Mark van Zandvoort; Jeffrey Merk

- (2) Buyer:

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Bron Releasing Inc.
5542 Short Street
Burnaby, BC
V5J 1L9

Email: bri_ba@bronstudios.com
Attn: Business Affairs

With a copy to:

Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON
M5H 2T6

Email: sbrotman@fasken.com/ndecicco@fasken.com
Fax: 416-364-7813
Attn: Stuart Brotman/Natasha De Cicco

- 13.2 **Amendment.** No amendment, supplement, modification, waiver or termination of this Agreement shall be effective unless in writing executed by the parties.
- 13.3 **Payment of Costs.** Each party shall pay its own costs incurred in negotiating this Agreement and in consummating the transactions contemplated hereby, including any fees or commission payable to any third party pursuant to any agreement or arrangement relating to this Agreement or the transactions contemplated hereby.
- 13.4 **Headings.** The headings of the Articles and Sections of this Agreement are for convenience of reference only and shall not affect the interpretation of any of the provisions of this Agreement.
- 13.5 **References.** References made in this Agreement, including use of a pronoun, shall be deemed to include, where applicable, masculine, feminine, singular or plural, individuals, partnerships or corporations. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".
- 13.6 **Confidentiality.** Each of the Buyer and the Receiver covenants and agrees that neither it nor its respective Affiliates or representatives will disclose the existence or terms of this Agreement or the fact of its execution and delivery to any third party without the prior consent of the other party, which consent shall not be unreasonably withheld or delayed, except (a) as and to the extent required by Applicable Law, (b) to its directors, officers, employees, agents, managers and their representatives and Affiliates, (c) in the case of Receiver (subject to Section 12.1), (i) as may be required under the Sale Process Order, and (ii) in connection with seeking and obtaining the Approval and Vesting Order, or (d) as otherwise may be required by the Court. The Buyer and the Receiver will receive the written consent of the other, which consent shall not be unreasonably withheld,

conditioned or delayed, with respect to the issuance of any press release or other public statement regarding this Agreement and the transaction contemplated herein.

- 13.7 **Applicable Law.** This Agreement and the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without giving effect to rules of conflict of laws. The parties agree and attorn to the non-exclusive jurisdiction of the courts in the Province of Ontario with respect to any matter arising out of or in respect of this Agreement or the transactions contemplated hereby.
- 13.8 **Dispute.** Any dispute arising out of or in connection with this Agreement shall be submitted to and finally resolved by a motion brought before the Court in the receivership proceeding in respect of the Debtor.
- 13.9 **Entire Agreement.** This Agreement and the Schedules attached hereto and the other agreements referred to herein constitute the entire agreement and understanding of the parties, and supersede any and all prior agreements, arrangements and understandings, whether oral or written, between the parties, with respect to the subject matter hereof or thereof.
- 13.10 **Binding Effect.** This Agreement shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. Nothing contained in this Agreement, or implied herefrom, is intended to confer upon any other Person any benefits, rights, or remedies.
- 13.11 **Assignment.** Neither this Agreement nor any of the rights or obligations hereunder may be assigned or transferred, in whole or in part, by the Receiver or the Buyer without the prior written consent of the other party provided, however, that the Buyer may, upon giving notice to the Receiver at any time on or prior to the Closing Date, assign the Agreement or any of its rights hereunder to any Affiliate acceptable to the Receiver, acting reasonably but in no event will such assignment relieve Buyer of its obligations hereunder.
- 13.12 **Survival.** Except as otherwise provided in this Agreement, the representations and warranties of the parties contained in this Agreement shall merge on Closing and the covenants of the parties contained herein to be performed after the Closing, and the other provisions identified herein as surviving, shall survive Closing and remain in full force and effect.
- 13.13 **Time of the Essence.** Time shall be of the essence in respect of the obligations of the parties arising prior to Closing under this Agreement.
- 13.14 **Severability.** If a court of competent jurisdiction determines that any provision of this Agreement is void, illegal or unenforceable, the other provisions of this Agreement shall remain in full force and effect.
- 13.15 **Execution.** It is understood and agreed that this Agreement may be executed by the parties in separate counterparts, which together shall constitute one and the same

agreement. Delivery of an executed counterpart by facsimile or in PDF format shall have the same effect as delivery of an original.

- 13.16 Status of the Receiver.** The Buyer acknowledges and agrees that, in carrying out and completing the transactions contemplated herein or exercising any rights, entitlements or benefits as seller under this Agreement, the Receiver is acting solely in its capacity as receiver and manager of the Debtor and not in its personal or corporate capacity and shall have no personal no corporate liability to the Buyer or any permitted assigns.
- 13.17 Enforcement of Agreement.** Each of the parties acknowledges and agrees that each of the other parties would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by a party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which a party may be entitled under this Agreement, at law or in equity, it shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.
- 13.18 Currency.** All references in this Agreement to payments in cash, unless otherwise specifically indicated, are to payments in lawful currency of Canada.

ARTICLE 14 DEFINITIONS

- 14.1** In this Agreement, the following terms have the following meanings:

“Affiliate” of any Person means any affiliate within the present meaning of the *Business Corporations Act* (Ontario).

“Agreement” means this asset purchase agreement constituted by the Receiver’s acceptance of the Offer including all appendices, schedules and all amendments or restatements, as permitted, and references to “Article”, “Section”, “Appendix” or “Schedule” mean the specified Article, Section, Appendix or Schedule to this Agreement.

“Ancillary Agreements” means any agreements between the parties required by this Agreement to be entered into at Closing.

“Applicable Law” means, with respect to any Person, any federal, provincial or local law, statute, code, ordinance, rule, regulation, or other lawful requirement applicable to such Person or its business, properties or assets, and includes any requirement at common law.

“Assumed Contracts” means all agreements or instruments entered into by the Media Fund, or Crystal Wealth Management System Limited on behalf of the Media Fund, in connection with the administration of the Loan Agreements, the Loan Documents, the Security Agreements or the Indebtedness including the Master Assignment Agreement

dated October 6, 2011 between MHC and Media Fund and the Production Loan Administration Agreement dated August 12, 2011 between MHC and Media Fund, as each of such agreements or instruments may be amended, modified or supplemented from time to time.

"Borrower(s)" refers to the Persons set out in and described in Schedule "C" attached hereto in the column called "Name of Borrower(s)"

"Books and Records" means all books and records, including all agreements, instruments, notes, financial information and correspondence files (together with, in the case of such information which is stored electronically, the media on which the same is stored) relating to or in respect of the Sale Assets.

"Bron Party" or "Bron Parties" has the meaning ascribed in Section 2.3.

"Business Day" means any day of the year, other than a Saturday, Sunday or any day on which major banks are closed for business in Toronto, Ontario.

"Claim" means any right or claim that may be asserted or made in whole or in part, whether or not asserted or made, in connection with, arising from or relating to the Loan Agreements, the Security Agreements, the Loan Documents, the Indebtedness or the Assumed Contracts and all terms and conditions thereof and transactions contemplated therein, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of statute, contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), or under the provisions of any statute, and, whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by guarantee, surety, insurance deductible or otherwise, and whether or not such right is executory or anticipatory in nature including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or to be commenced in the future.

"Closing" means the time for completion of the transactions completed by this Agreement to be completed at Closing, or the completion of such transactions, as the context requires.

"Excluded Claims" means the right to initiate, continue, prosecute, compromise, settle, assert, and/or conclude any and all Claims against Persons other than the Subject Parties, which Persons include without limitation the Debtors' past and present auditor(s).

"Final Order" means, in respect of any order of the Court or any other court, the operation and effect of such order shall not have been stayed, amended, modified, reversed, dismissed or appealed (or any motion or other proceeding to stay, amend,

modify, reverse or dismiss such order or any such appeal shall have been dismissed with no further appeal therefrom, or the applicable appeal periods shall have expired).

“Governmental Authority” means any domestic or foreign legislative, executive, judicial or administrative body or person having jurisdiction in the relevant circumstances.

“Indebtedness” shall mean any and all debts, liabilities or obligations, direct, indirect, liquidated, unliquidated, contingent or other, including any obligation to pay principal, interest, charges and fees, and other obligations of the Obligor arising under, pursuant to or otherwise in respect of the Loan Agreements, the Security Agreements and the Loan Documents and the transactions contemplated therein, and any item or part of any thereof, including all indebtedness under or in respect of the items set out in Schedule “C” attached hereto.

“Liens” shall mean any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims or charges, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise imposed by any Person in any jurisdiction.

“Loan Agreements” shall mean the loan agreements between Media Fund or Media House Capital (Canada) Corp., as lender and the Obligor set out in and described in Schedule “C” attached hereto, as amended, modified or supplemented from time to time.

“Loan Documents” shall mean the Loan Agreements, the Security Agreements and any other agreement or instrument entered into in connection with any of the Loan Agreements, as amended, modified or supplemented from time to time, including those agreements or instruments included in the definition of “Loan Documents”, as such term is defined in each of the Loan Agreements.

“Media Fund” means Crystal Wealth Media Strategy (formerly named Crystal Wealth Strategic Yield Media Fund).

“MHC” means Media House Capital (Canada) Corp.

“Obligors” means the Persons set out in and described in Schedule “C” attached hereto in the column called “Name of Borrower(s)”, together with each other Person that has executed and delivered any Loan Agreements, Security Agreements or other Loan Documents, collectively or individually, as the context requires.

“Person” shall mean any individual, corporation, partnership, joint venture, trust, limited liability company, business association, governmental entity or other entity.

“Production Collateral” means the assets, undertakings and properties of the Obligors used or held for use by each such Obligor in the production of the film associated with it in Schedule “C” hereto and pledged as collateral to Production Secured Parties.

"Production Liens" means all Liens upon Production Collateral held by Production Secured Parties, and includes the obligations and indebtedness secured thereby.

"Production Secured Parties" means all bonding companies, completion guarantors, guilds, unions, production financiers, distributors and other Persons (excluding the Debtor and the Receiver) who have extended credit or other accommodations to the Obligors in connection with the production of the films listed on Schedule "C".

"Security Agreements" shall mean all of agreements or instruments executed and delivered by any Person as guarantee or security for the payment or performance of all or part of the obligations of the Obligor under any of the Loan Agreements or the Loan Documents, as amended, modified or supplemented from time to time.

"Subject Parties" shall mean: (i) the Bron Parties; (ii) the Borrowers; and (iii) all Persons who guaranteed or provided security for the payment or performance of all or part of the obligations of the Borrowers pursuant to the Loan Agreements, but only with respect to claims against such Persons pursuant to the guarantee or security so provided.

"Tax" or **"Taxes"** shall mean all taxes, charges, fees, levies, penalties or other assessments of any kind whatsoever imposed by an federal, provincial, local or foreign taxing authority, including, but not limited to, income, excise, property, sales, transfer, franchise, payroll, withholding, social security or other taxes, including any interest, penalties or additions relating thereto.

"Third Party" shall mean any Person or entity, and includes without limitation the Debtors' past and present auditors, but shall exclude only the Subject Parties.

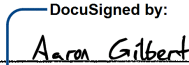
"Third Party Claim Over" means, in the context of an Excluded Claim commenced or continued by the Receiver against a Third Party (except as against the Debtors' past and/or present auditor(s)), any claim or proceeding (whether meritorious or not) by such Third Party for contribution, indemnity or any other relief over against a Bron Party, but excludes any such claim or proceeding, or any part thereof, where the grounds for the relief claimed against any Bron Party is in the nature of allegations of conspiracy, fraud or misrepresentation (excluding negligent misrepresentation).

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IN WITNESS WHEREOF the Buyer has executed this Agreement as of the date first written above.

BRON RELEASING INC.

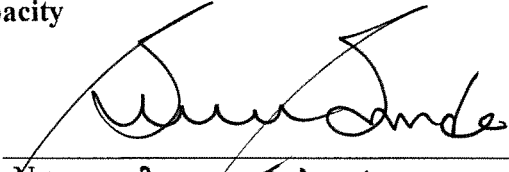
By:  DocuSigned by:
Name: 5E05B98C84DA4EB... Aaron Gilbert
Title: MD

By:  DocuSigned by:
Name: EF747CC77368451... Steven Thibault
Title: Authorized Signatory

I/We have authority to bind the corporation.

AGREED TO AND ACCEPTED by the undersigned as of the date first written above.

GRANT THORNTON LIMITED, in its capacity as Court-appointed receiver of the assets, properties and undertakings of the Debtors listed on Schedule "A" attached hereto, and not in its personal or corporate capacity

By: 
Name: Bruce S. Bando
Title: Vice President

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IN WITNESS WHEREOF the Buyer has executed this Agreement as of the date first written above.

BRON RELEASING INC.

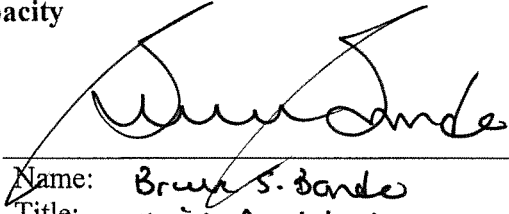
By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

AGREED TO AND ACCEPTED by the undersigned as of the date first written above.

GRANT THORNTON LIMITED, in its capacity as Court-appointed receiver of the assets, properties and undertakings of the Debtors listed on Schedule "A" attached hereto, and not in its personal or corporate capacity

By: 
Name: Bruce S. Bando
Title: vice President

SCHEDULE "A"

- Crystal Wealth Management System Limited
- Crystal Wealth Media Strategy
- Crystal Wealth Mortgage Strategy
- Crystal Enlightened Resource and Precious Metals Fund
- Crystal Wealth Medical Strategy
- Crystal Wealth Enlightened Factoring Strategy
- ACM Growth Fund
- ACM Income Fund
- Crystal Wealth High Yield Mortgage Fund
- Crystal Enlightened Bullion Fund
- Absolute Sustainable Dividend Fund
- Absolute Sustainable Property Fund
- Crystal Wealth Enlightened Hedge Fund
- Crystal Wealth Infrastructure Strategy
- Crystal Wealth Conscious Capital Strategy
- Crystal Wealth Retirement One Fund

SCHEDULE "B"
FORM OF APPROVAL AND VESTING ORDER

See attached.

Court File No. 17-11779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
JUSTICE

WEEKDAY, THE #
DAY OF MONTH, 2018

BETWEEN:

Ontario Securities Commission

Applicant

- and -

Crystal Wealth Management System Limited, Clayton Smith, CLJ Everest Ltd., 1150752 Ontario Limited, Crystal Wealth Media Strategy, Crystal Wealth Mortgage Strategy, Crystal Enlightened Resource and Precious Metals Fund, Crystal Wealth Medical Strategy, Crystal Wealth Enlightened Factoring Strategy, ACM Growth Fund, ACM Income Fund, Crystal Wealth High Yield Mortgage Fund, Crystal Enlightened Bullion Fund, Absolute Sustainable Dividend Fund, Absolute Sustainable Property Fund, Crystal Wealth Enlightened Hedge Fund, Crystal Wealth Infrastructure Strategy, Crystal Wealth Conscious Capital Strategy, Crystal Wealth Retirement One Fund, Chrysalis Yoga Inc.

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Grant Thornton Limited in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of the undertaking, property and assets of certain of the Respondents, including the entities listed in Schedule “A” attached hereto (collectively and individually, the “**Debtor**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Sale Agreement**”) between the Receiver and Bron Releasing Inc. (the “**Purchaser**”) dated February 2, 2018 and appended to the Supplement to the

Second Report of the Receiver dated , 2018 (the “**Supplement to the Second Report**”), and vesting in the Purchaser the right, title and interest in and to the Sale Assets (as defined in the Sale Agreement, and subject to the provisions thereof) (the “**Sale Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Supplement to the Second Report and on hearing the submissions of counsel for the Receiver, and , no one else appearing for any other person on the service list, although properly served as appears from the affidavit of  sworn , filed:

1. **THIS COURT ORDERS AND DECLARES** that, except where otherwise indicated, capitalized terms used but not defined in this Order shall have the meanings ascribed thereto in the Sale Agreement.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized, ratified and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Sale Assets to the Purchaser.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule “B” hereto (the “**Receiver's Certificate**”), all of the right, title and interest in and to the Sale Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Newbould dated April 26, 2017 and any other orders of the Court in these proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule “C” hereto (all of which are collectively referred to as the

“Encumbrances”), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Sale Assets are hereby expunged and discharged as against the Sale Assets.

4. **THIS COURT ORDERS** that, following delivery of the Receiver’s Certificate, the Respondents, the Receiver, any trustee in bankruptcy that may be appointed in respect of any of the Respondents, and all other Persons (except the Purchaser, its successors and assigns) who might claim under or through them (including pursuant to section 38 of the *Bankruptcy and Insolvency Act* (Canada)) be and are hereby restrained from commencing, asserting, continuing or otherwise pursuing any Claims (as defined in the Sale Agreement) against any Subject Party; provided, for certainty, nothing in this Order shall limit or affect the Receiver or any other Person’s (except the Purchaser, its successors and assigns) ongoing right to commence, assert, continue, or pursue Excluded Claims against any Third Party in accordance with the Sale Agreement.

5. **THIS COURT ORDERS AND DECLARES** that, notwithstanding anything to the contrary contained herein, nothing in this Order shall affect the Production Liens, including the relative priority thereof.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims (including without limitation claims of investors or creditors) against the Media Fund and any other Debtor with an interest in the Sale Assets (if any), the net proceeds from the sale of the Sale Assets shall stand in the place and stead of the Sale Assets as an asset of the Media Fund or such other Debtor (if any), as applicable, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances against the Media Fund and such other Debtor (if any) shall attach to the net proceeds from the sale of the Sale Assets with the same priority as they had with respect to the Sale Assets immediately prior to the sale, as if the Sale Assets had not been sold and remained in the possession or control of the Media Fund and such other Debtor (if any), as applicable, immediately prior to the sale.

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Media Fund or any other Respondent and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Media Fund or any other Respondent;

the vesting of the Sale Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Respondents and shall not be void or voidable by creditors of any of the Respondents, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule "A"

- Crystal Wealth Management System Limited
- Crystal Wealth Media Strategy
- Crystal Wealth Mortgage Strategy
- Crystal Enlightened Resource and Precious Metals Fund
- Crystal Wealth Medical Strategy
- Crystal Wealth Enlightened Factoring Strategy
- ACM Growth Fund
- ACM Income Fund
- Crystal Wealth High Yield Mortgage Fund
- Crystal Enlightened Bullion Fund
- Absolute Sustainable Dividend Fund
- Absolute Sustainable Property Fund
- Crystal Wealth Enlightened Hedge Fund
- Crystal Wealth Infrastructure Strategy
- Crystal Wealth Conscious Capital Strategy
- Crystal Wealth Retirement One Fund

Schedule "B" - Form of Receiver's Certificate

Court File No. 17-11779-00CL

ONTARIO**SUPERIOR COURT OF JUSTICE****COMMERCIAL LIST**

BETWEEN:

Ontario Securities Commission

Applicant

- and -

Crystal Wealth Management System Limited, Clayton Smith, CLJ Everest Ltd., 1150752 Ontario Limited, Crystal Wealth Media Strategy, Crystal Wealth Mortgage Strategy, Crystal Enlightened Resource and Precious Metals Fund, Crystal Wealth Medical Strategy, Crystal Wealth Enlightened Factoring Strategy, ACM Growth Fund, ACM Income Fund, Crystal Wealth High Yield Mortgage Fund, Crystal Enlightened Bullion Fund, Absolute Sustainable Dividend Fund, Absolute Sustainable Property Fund, Crystal Wealth Enlightened Hedge Fund, Crystal Wealth Infrastructure Strategy, Crystal Wealth Conscious Capital Strategy, Crystal Wealth Retirement One Fund, Chrysalis Yoga Inc.

Respondents

RECEIVER'S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Justice Newbould of the Ontario Superior Court of Justice (the "Court") dated April 26, 2017, Grant Thornton Limited was appointed as the receiver and manager (the "Receiver") of the undertaking, property and assets of certain of the Respondents, including the Respondents listed in Schedule "A" attached hereto (collectively and individually, the "Debtor").

- 2 -

B. Pursuant to an Order of the Court dated [DATE], 2018 (the "Approval Order"), the Court approved the asset purchase agreement made as of February 2, 2018 (the "Sale Agreement") between the Receiver and Bron Releasing Inc. (the "Purchaser") and provided for the vesting in the Purchaser of all of the right, title and interest in and to the Sale Assets, which vesting is to be effective with respect to the Sale Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Sale Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Sale Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**GRANT THORNTON LIMITED, in its
capacity as Receiver of the undertaking,
property and assets of Crystal Wealth
Management System Limited and the other
entities listed in Schedule "A" attached
hereto, and not in its personal capacity**

Per: _____

Name:

Title:

Schedule "A"

- Crystal Wealth Management System Limited
- Crystal Wealth Media Strategy
- Crystal Wealth Mortgage Strategy
- Crystal Enlightened Resource and Precious Metals Fund
- Crystal Wealth Medical Strategy
- Crystal Wealth Enlightened Factoring Strategy
- ACM Growth Fund
- ACM Income Fund
- Crystal Wealth High Yield Mortgage Fund
- Crystal Enlightened Bullion Fund
- Absolute Sustainable Dividend Fund
- Absolute Sustainable Property Fund
- Crystal Wealth Enlightened Hedge Fund
- Crystal Wealth Infrastructure Strategy
- Crystal Wealth Conscious Capital Strategy
- Crystal Wealth Retirement One Fund

SCHEDULE "C"

See attached.

31393529.2
31579350.1
31617689.1

Crystal Wealth Bron Asset Purchase Worksheet - Schedule "C"			
	Name of Film	Name of Borrower(s)	Closing Date
1	Good Day's Work (a/k/a "Willoughbys") - Tax Credit	Willoughbys Productions Inc.	4-Nov-16
2	Henchmen (Tax Credit) - USD	Henchmen Productions Inc.	17-Sep-13
3	Henchmen (Tax Credit) - CDN	Henchmen Productions Inc.	7-Oct-13
4	Hunters of the Stars (Tax Credit)	Star Hunters 1 Productions, Inc.	21-Aug-14
5	Mercy (a/k/a "Parallel")	Mercy Productions Inc.	23-Oct-14
6	Mighty Mighty Monsters (Tax Credits)	Mighty Productions 3 Inc.	16-Oct-14
7	Welcome to Me - Gap Loan	Welcome to Me, LLC	2-Aug-13
8	Welcome to Me - Presales	Welcome to Me, LLC	2-Aug-13
9	Kingdom (a/k/a "Collared")	Kingdom Productions Inc.	23-Oct-14
10	Ginger & Rosa (f/k/a "Bomb")	APB Distribution Ltd	17-Feb-12
11	The Duel (a/k/a "By Way of Helena")	Mississippix Studios, LLC	8-Oct-14
12	The Duel (a/k/a "By Way of Helena") - Bridge Loan	Mississippix Studios, LLC	24-Sep-14

Bron - Offer Purchase Sched "C"

1

13	Childhood of a Leader	COAL Movie Limited FilmTeam Hepp Kft	23-Jan-15
14	Childhood of a Leader - Add'l Disbursement	COAL Movie Limited FilmTeam Hepp Kft	9-Sep-15
15	Decoding Annie Parker - Gap Loan	Decoding Annie Parker, LLC	28-Oct-11
16	Decoding Annie Parker - Tax Credit Loan	Decoding Annie Parker, LLC	28-Oct-11
17	Electric Slide - Gap Loan	Electric Slide Productions, LLC	19-Oct-12
18	Electric Slide - Pre-Sale Loan	Electric Slide Productions, LLC	19-Oct-12
19	Elsa & Fred	Cuatro Plus Films, LLC	28-Nov-12
20	English Teacher, The	Artina Film Fund, LLC	21-Oct-11
21	Foreverland	Foreverland Productions, Inc.	22-Sep-11
22	Foreverland - Producer Loan	Foreverland Productions, Inc.	22-Sep-11

23	Good Ol' Boy (a/k/a "Growing Up Smith")	Ponca City, LLC	15-Dec-14
24	Havana (a/k/a "Rebels")	1894955 Ontario, Inc.	13-Nov-14
25	Kill Me Three Times	KM3T Pty Ltd. and KM3T Productions Pty Ltd.	10-Sep-13
26	Lullaby - Gap	Lullaby Productions, LLC	21-Jun-12
27	Lullaby - Pre-Sale	Lullaby Productions, LLC	21-Jun-12
28	Miss Julie	The Apocalypse Films Company Limited, Miss Julie Limited, Maipo Film AS and Senorita Films SAS	17-Apr-13
29	Phenom	Best Pitcher, LLC	4-Dec-14
30	Pinkertons (Bridge Loan)	Pinker Series, Inc and Pink Productions, Inc.	9-Oct-14
31	Silent Night	Silent Night Productions, LLC	27-Mar-12
32	Single Shot - Gap	A Single Shot Movie, LLLP	13-Mar-12

33	Single Shot - Presale	A Single Shot Movie, LLP	13-Mar-12
34	Son of a Gun - Gap Loan	SOAG Holdings Pty Ltd and SOAG Productions Pty Ltd	28-Mar-13
35	Son of a Gun - Presale Loan	SOAG Holdings Pty Ltd and SOAG Productions Pty Ltd	28-Mar-13
36	Supremacy	Supremacy The Movie, LLC	13-Aug-12
37	Vincent N'Roxxy	VNR LLC	22-Dec-14

31545203.2

Court File No. CV-17-579357-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ANTHONY WHITEHOUSE

Plaintiff

and

BDO CANADA LLP ("BDO")

Defendant

AFFIDAVIT OF BARRY J. MYERS

I, Barry J. Myers, of the City of Toronto, in the Province of Ontario, AFFIRM:

1. I am a retired audit partner and the former Canadian Financial Services Industry Practice Leader and Canadian Investment Management Industry Practice Leader of PricewaterhouseCoopers ("PwC"). Following my retirement from PwC in 2008, I was a Senior Advisor of Borden Ladner Gervais LLP's Securities & Capital Markets Group until December 31, 2015. I am currently a CPA and FCPA, FCA in good standing with CPA Ontario.

2. I have been retained by Plaintiff's counsel in this matter to consider and provide a written report setting out my views on auditing issues raised with respect to BDO's audits of the Crystal Wealth Funds, as defined in the Second Report dated November 24, 2017 of Grant Thornton Limited in its Capacity as Court-Appointed Receiver of the Crystal Wealth Group, as well as the basis for my opinions.

-2-

3. Attached hereto as **Exhibit "A"** is a copy of my signed Acknowledgment of Expert's Duty.

4. Attached hereto as **Exhibit "B"** is a copy of my report.

AFFIRMED BEFORE ME at the City of
Toronto, in the Province of Ontario on
April 16th, 2018



Commissioner for Taking Affidavits
(or as may be)


BARRY J. MYERS

This is Exhibit A referred to in the
 affidavit of Barry J. Myers
 sworn before me, this 10th
Exhibit A April 1, 2018
Atchison
 A COMMISSIONER FOR TAKING AFFIDAVITS
 April 16/18

Court File No. CV-17-579357-00CP

**ONTARIO
 SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ANTHONY WHITEHOUSE

Plaintiff

and

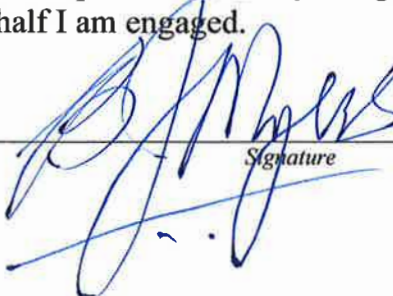
BDO CANADA LLP

Defendant

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Barry J. Myers. I live in Toronto, in the Province of Ontario.
2. I have been engaged by or on behalf of Anthony Whitehouse to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the Court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date April 16, 2016


 Signature

ANTHONY WHITEHOUSE
Plaintiff

-and- **BDO CANADA LLP**
Defendant

Court File No. CV-17-579357-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

ACKNOWLEDGMENT OF EXPERT'S DUTY

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Fax: 647.689.2059

Lawyers for the Plaintiff
Anthony Whitehouse

Barry J. Myers

This is Exhibit **B 6581** referred to in the
affidavit of **Barry J. Myers**
sworn before me, this **Exhibit B**
day of **April 2018**
Barry J. Myers
A COMMISSIONER FOR TAKING AFFIDAVITS

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barrymyersbjm@gmail.com

April 13, 2018

Mr. Simon Bieber
Adair Goldblatt Bieber LLP
95 Wellington Street West,
Suite 1830
Toronto, Ontario, M5J 2N7

Dear Mr. Bieber

Anthony Whitehouse v. BDO Canada LLP ("BDO")

1. Introduction

I have been asked to consider the auditing issues with respect to the above matter and to provide a written report setting out my views on those issues, as well as the basis for such opinions. The auditing issues relate to BDO's audits of the Crystal Wealth Funds (the "Funds"), as defined in the Second Report of Grant Thornton Limited in its Capacity as Court-Appointed Receiver of the Crystal Wealth Group.

2. Background

I am a retired audit partner and the former Canadian Financial Services Industry Practice Leader and Canadian Investment Management Industry Practice Leader of PricewaterhouseCoopers ("PwC").

I joined Coopers & Lybrand, a predecessor firm to PwC, in 1978, and was admitted to the partnership in 1982. I retired from PwC in 2008. While at Coopers & Lybrand. (later PwC), I held the following management positions:

- Audit and Assurance Practice Leader (1990-1998)
- Member of the Partnership Board (1990-1998)

- Canadian Financial Services Industry Practice Leader and Canadian Investment Management Industry Practice Leader (1998-2005)
- Member of the Canadian Leadership Group (1998-2005)

Over the course of 30 years at Coopers & Lybrand and PwC, I developed the firm's audit and full-service practice for the investment and wealth management industry from its infancy, building the largest accounting, auditing and consulting practice serving the investment management industry in Canada. PwC continues to be the dominant player in this sector today, with approximately 55% of the audit of financial statements market share relating to public mutual funds. In addition to my work as an auditor, I worked extensively with the investment and wealth management industry in the areas of regulatory compliance, risk management, mergers & acquisitions and restructuring.

During my career, I audited financial statements and reviewed Simplified Prospectuses, Annual Information Forms, Fund Facts and Management Reports of Fund Performance for tens of thousands of mutual funds. In the course of these audits, I reviewed thousands of agreements between mutual funds and their managers and/or advisors. This work entailed detailed and thorough knowledge of applicable securities laws, the ability to accurately re-perform a given fund's performance calculations, and the review and audit of the existence, title, completeness and valuation of every type of securities instrument.

I have also audited many financial statements of Ontario Securities Commission registrants, such as Portfolio Managers, Investment Fund Managers and Dealers.

Outside of my professional and client work at Coopers & Lybrand/PwC, I have made a number of significant contributions to the investment and wealth management industry over the course of my career. In the early 1980s, representing Coopers & Lybrand, I became the first affiliate member of the Investment Funds Institute of Canada ("IFIC"), and since that time have served on many committees and sub-committees of IFIC, such as the Regulatory Compliance Committee, Accounting Sub-Advisory Committee, Correcting NAV Portfolio Errors Committee and the Personal Rates of Return Committee. In 1994, I was consulted by Ontario Securities Commissioner Glorianne Stromberg during the drafting of her seminal report, "Regulatory Strategies for

the Mid-90s, Recommendations for Regulating Investments Funds in Canada" (the "Stromberg Report"), which triggered the creation of the Mutual Fund Dealers Association of Canada and a host of regulatory changes such as the implementation of National Instruments 81-101, 81-102, 81-105, 81-106 and 81-107. Following the release of the Stromberg Report in January 1995, I was invited by the Canadian Securities Administrators to sit on the Working Committee on Governance, Organization and Management of Investment Funds and Conflicts of Interest, which was responsible for overseeing and managing the response to the various recommendations contained in the Stromberg Report. The resulting Canadian Securities Administrators report provided advice to the regulators on how the regulatory framework governing investment funds should be changed to address the principles underlying the Stromberg Report and the specific recommendations made therein.

In 1997, I served as the chair of the Canadian Institute of Chartered Accountants ("CICA") Task Force on Financial Reporting by Investment Funds and authored the report, "Financial Reporting by Investment Funds". This report became widely used by the industry and served as the model for investment funds financial reporting. I also chaired the CICA Task Force responsible for updating this report and have authored an updated edition of the report released in July 2009.

Subsequent to my retirement from PwC, I have been appointed to the Board of Directors of Fidelity Investments Canada ULC, Guardian Capital Group Limited, Open Access Limited, Portland Investment Counsel Inc. and State Street Trust Company Canada, all of which operate in the investment/wealth management industry. I am also a member of the Independent Review Committee of the Barometer Funds.

Following my retirement from PwC, I joined Borden Ladner Gervais LLP's Securities and Capital Markets Group and Investment Management Group as a Senior Advisor, where I provided among other things, regulatory compliance, restructuring, merger and acquisition, investment fund and registrant accounting and strategic planning services.

As a result of this experience. I have developed expertise in all aspects of the mutual fund industry, including reporting requirements, valuation methods, methods for measuring performance, methods for calculating management fees, and best practices in the investment fund industry. Due to my background and extensive experience, I believe I am qualified to provide the conclusions set out below. A copy of my summarized Curriculum Vitae is attached as Schedule A.

3. Materials Considered

In the course of preparing this report, I have considered the following documents:

- Ontario Securities Commission (“OSC”) Application Record – April 25, 2017 - Volumes 1 to 8;
- Statement of Claim – July 20, 2017;
- Motion Record Volume 1 of 3 – November 24, 2017 (which includes the First Report Submitted to the Court by Grant Thornton Limited in its Capacity as Receiver - June 22, 2017 and the Second Report Submitted to the Court by Grant Thornton Limited in its Capacity as Receiver - November 24, 2017);
- Motion Record Volume 2 of 3 – November 24, 2017; and
- Motion Record Volume 3 of 3 – November 24, 2017.

4. Issues to be Addressed

I have been requested to consider based on the very limited information that I have whether BDO conducted its audits of the financial statements of the Funds in accordance with the Generally Accepted Audit Standards (“GAAS”) that existed in Canada at the applicable times.

I emphasize that I have had no access to BDO, the BDO engagement partner or the BDO staff on the relevant Funds audit engagements. I also have not had access to BDO’s audit files with respect to the audits. Thus any conclusion I reach will be of a preliminary nature and the conclusions I express in this report are therefore based on my initial observations and are preliminary in nature and are not my final opinion. In order to provide a final and definitive opinion, I would be required to perform a thorough review of all of BDO’s relevant audit working paper files and possibly interview relevant BDO partners or staff.

Accordingly, I may need to update and/or revise my observations as more information becomes available in order to render my final opinion.

The current Canadian Audit Standard 200 sets out the independent auditor's overall responsibilities when conducting an audit of financial statements in accordance with Canadian Audit Standards ("CASs"). Specifically, it sets out the overall objectives of the independent audit and explains the nature and scope of an audit designed to enable the independent auditor to meet those objectives. It also explains the scope, authority and structure of the CASs, and includes requirements establishing the general responsibilities of the independent auditor applicable in all audits, including the obligation to comply with the CASs.

The purpose of an audit is to enhance the degree of confidence of intended users in the financial statements. This is achieved by the expression of an opinion by the auditor on whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework – which, in the Funds' case, is either Generally Accepted Accounting Principles in Canada ("GAAP") or International Financial Reporting Standards ("IFRS"). In the case of most general-purpose frameworks, that opinion is on whether the financial statements are presented fairly, in all material respects, or give a true and fair view in accordance with the framework. An audit conducted in accordance with CASs and relevant ethical requirements enables the auditor to form that opinion.

The financial statements subject to audit are those of the entity, prepared by management of the entity with oversight from those charged with governance. CASs do not impose responsibilities on management or those charged with governance and do not override laws and regulations that govern their responsibilities. However, an audit in accordance with CASs is conducted on the premise that management and, where appropriate, those charged with governance have acknowledged certain responsibilities that are fundamental to the conduct of the audit. The audit of the financial statements does not relieve management or those charged with governance of their responsibilities.

As the basis for the auditor's opinion, CASs require the auditor to obtain reasonable assurance about whether the financial statements as a whole are free

from material misstatement, whether due to fraud or error. Reasonable assurance is a high level of assurance. It is obtained when the auditor has obtained sufficient appropriate audit evidence to reduce audit risk (that is, the risk that the auditor expresses an inappropriate opinion when the financial statements are materially misstated) to an acceptably low level. However, reasonable assurance is not an absolute level of assurance, because there are inherent limitations of an audit which result in most of the audit evidence on which the auditor draws conclusions and bases the auditor's opinion being persuasive rather than conclusive.

Over my career as I have mentioned above I have audited thousands of fund financial statements. In my experience the following are necessary for a properly performed audit of financial statements.

- i. Proper planning of the audit;
- ii. Identification of the role service providers may have with respect to the Funds' recordkeeping;
- iii. The exercise of appropriate and sufficient professional skepticism;
- iv. Appropriate consideration of the risk of misstatement through fraud or error; and
- v. The obtaining of appropriate and sufficient audit evidence to support the valuation, existence, title and completeness of every item on the Statement of Net Assets or Statement of Financial Position.

In the First Report to the Court submitted by Grant Thornton Limited in its Capacity as Court-Appointed Receiver of the Crystal Wealth Group, I noted the following:

- At paragraph 5, "The OSC stated that it believed that Smith and the Company may have:
 - a) participated in a course of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud, contrary to s. 126.1 (1)(b) of the Act;
 - b) failed to act fairly, honestly and in good faith with clients, contrary to s. 2.1 of Rule 31-505 - Conditions of Registration; and
 - c) failed to comply with the standard of care expected of investment fund managers under s. 116 of the Act."

In the Second Report to the Court submitted by Grant Thornton Limited in its Capacity as Court-Appointed Receiver of the Crystal Wealth Group, at paragraph 32, it is stated that “The Receiver draws the following conclusions:

- a) The lack of segregation of duties in performing the day to day operations and governance thereof (e.g. Smith was the controlling mind, sole director, and Chief Compliance Officer, among others) resulted in the Company not having an effective organizational structure to ensure proper oversight and governance of the Crystal Wealth Funds and possibly, compliance with Ontario securities laws, including, without limitation, the Act.”

In addition, the Statement of Claim states the following:

- at paragraph 13 “...Grant Thornton's investigation, subsequent to its appointment as receiver, indicates that Crystal Wealth's record-keeping is seriously deficient such that it is not even possible to identify Crystal Wealth's assets, liabilities or creditors from existing documentation.”;
- at paragraph 39 “...Grant Thornton has been unable to obtain enough information to fully understand and support the value of the loans underlying the Media Fund. The documents simply do not exist.”;
- at paragraph 43 “Grant Thornton has also concluded in its review of Crystal Wealth's records that the documentation supporting the purported value of the funds is seriously deficient, particularly with respect to the Off-Book Assets.”; and
- at paragraph 44 “Indeed, Grant Thornton has been unable to identify all of the creditors of Crystal Wealth or the Funds from existing documentation.”

5. Conclusions

Based on my review of the documents listed in 3 above and the facts listed in 4 above pertaining to BDO and Grant Thornton, BDO, as auditor of the Funds’ financial statements, did not obtain appropriate and sufficient audit evidence, in accordance with GAAS, to obtain reasonable assurance about whether the financial statements of the Funds were free from material misstatement. That is, the Funds’ financial statements that BDO purportedly audited were not in accordance with GAAP or IFRS.

The fact that Crystal Wealth's record-keeping and internal controls were poor would have rendered the financial statements of the Funds very difficult to audit. Without a proper audit plan, the exercise of healthy skepticism and the appropriate consideration of the risk of misstatement through fraud or error, BDO would not have been able to identify whether the net asset values ("NAVs") of the Funds were significantly over-valued or not. NAVs are an exceptionally important, if not the singularly most important, line item in an investment fund's Statement of Net Assets or Statement of Financial Position. In fact, the NAV per security of an investment fund is the price at which securities in the fund trade.

If BDO did not obtain appropriate and sufficient evidence that the assets of the Funds actually existed, in the name of the relevant Fund, and were fairly valued and their liabilities complete, it is not possible that they did in fact conduct a GAAS audit of the Funds' financial statements.

BDO could not have conducted the required review of the underlying documentation associated with the assets of the Funds as according to Grant Thornton, the documentation supporting the purported value of the Funds was seriously deficient in Crystal Wealth's records.

Grant Thornton also submitted that BDO did not appropriately audit the value (or lack thereof) of the Off-Book Assets.

Crystal Wealth Management System Limited ("Crystal Wealth"), the Investment Fund Manager of the Funds, had engaged two outsource providers. The first was AIS Solutions Inc. ("AIS"), which provided fund accounting services for the Funds. These services included the computation of the Funds' NAV, providing the Funds' NAV to various third-party data providers and the Funds' registrar, and also preparing the first draft of the Fund's semi-annual and annual financial statements. The second was International Financial Data Services ("IFDS"), which provided the Funds' transfer agent services.

As a securities commission registrant, Crystal Wealth cannot outsource compliance and its own responsibilities. AIS and IFDS processed information

that originally was given to them by Crystal Wealth and if such information was incorrect, either due to fraud or innocent error, the culpability for the error rests with Crystal Wealth. These facts should have been considered by BDO when planning the audits. From the documentation that I have reviewed I have not seen evidence the BDO did so and if they did not, it would constitute a blatant auditing error.

Furthermore, the Second Report to the Court submitted by Grant Thornton Limited in its Capacity as Court-Appointed Receiver of the Crystal Wealth Group describes a number of related party transactions, which together with the allegations of the OSC leads me to believe that BDO did not exercise healthy skepticism when it conducted audits of the financial statements of the Funds.

Finally, based on the above formation I have concluded that BDO could not have obtained reasonable assurance about whether the financial statements of each of the Funds as a whole were free from material misstatement, whether due to fraud or error. Accordingly, BDO could not have obtained sufficient appropriate audit evidence to reduce audit risk and therefore BDO expressed inappropriate opinions as the financial statements were probably materially misstated and did not present fairly, in all material respects, in accordance with GAAP or IFRS, whichever was applicable.



Barry J. Myers, FCPA, FCA

Schedule A

Barry J Myers FCPA, FCA Summarized Curriculum Vitae

Background

Barry Myers brings nearly three decades of professional senior management experience at PricewaterhouseCoopers to his role as Senior Advisor in Borden Ladner Gervais LLP, Securities & Capital Markets Group, where he worked in the Toronto office.

Barry is a Chartered Professional Accountant in both Canada and South Africa and was elected as a Fellow of the Chartered Professional Accountants of Ontario in 2000.

Areas of Expertise

As leader of PricewaterhouseCoopers' Financial Services as well as its Canadian Investment/Wealth Management practices, Barry developed extensive and specialized knowledge of Canadian and U.S. securities legislation. His areas of expertise include mutual funds, alternative products, labour-sponsored venture capital funds and the U.S. Securities and Exchange Commission's mutual fund accounting and regulatory requirements.

Barry is also extremely familiar with the workings of the Ontario Securities Commission where he served on its special Investment Funds Steering Group on Fund Management, Governance and Conflicts of Interest.

As a Chartered Professional Accountant, Barry clearly has considerable expertise in financial reporting. He served as practice leader of PricewaterhouseCoopers' Audit and Assurance Group. He also gained additional knowledge as chair of two Canadian Institute of Chartered Accountants task forces on Financial Reporting by Investment Funds.

Professional and Community Activities

- Member of various boards and committees of the Investment Funds Institute of Canada (1980 to 2015)
- Chairman of the Canadian Institute of Chartered Accountants Task Force on Financial Reporting by Investment Funds (1997 and 2007).

- Member of the Ontario Securities Commission Working Committee on Fund Management, Governance and Conflicts of Interest. (1995).
- Member of the Board of Directors of:
 - ✦ Fidelity Investments Canada ULC also chair of the Audit Committee;
 - ✦ Guardian Capital Group Limited also chair of the Audit Committee;
 - ✦ Open Access Limited;
 - ✦ Portland Investment Counsel Inc.; and
 - ✦ State Street Trust Company Canada also chair of the Audit Committee.
- Member of the Independent Review Committee of the Barometer Funds.
- Former member of the Board of Directors of the Invest in Kids Foundation.
- Former member of the Board of Directors of Lyndhurst Hospital.

ANTHONY WHITEHOUSE
Plaintiff

-and- **BDO CANADA LLP**
Defendant

Court File No. CV-17-579357-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF BARRY J. MYERS

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Lawyers for the Plaintiff
Anthony Whitehouse

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ANTHONY WHITEHOUSE

Plaintiff

and

BDO CANADA LLP

Defendant

SUPPLEMENTARY AFFIDAVIT

I, Marlie Patterson-Earle, of the City of Brampton, in the Regional Municipality of Peel, MAKE
OATH AND SAY:

1. I am a legal assistant with the law firm of Adair Goldblatt Bieber LLP, the lawyers for the Plaintiff, and, as such, have knowledge of the matters contained in this affidavit. Where my knowledge is based on information and belief, I have stated the source of such knowledge and verily believe it to be true.
2. Attached hereto as **Exhibit "A"** is a copy of a settlement agreement, dated May 28, 2018, between the Ontario Securities Commission and Clayton Smith.
3. Attached hereto as **Exhibit "B"** is a copy of the Ontario Securities Commission's order, dated June 14, 2018, in *In the Matter of Clayton Smith*, File No. 2018-35.

SWORN BEFORE ME at the City of Toronto, in
the Province of Ontario on June 15, 2018



Commissioner for Taking Affidavits

IRIS GRAHAM



MARLIE PATTERSON-EARLE

This is Exhibit "A" referred to in the
Affidavit of Marlie Patterson-Earle sworn before
me, this 15th day of June, 2018


.....
A COMMISSIONER FOR TAKING AFFIDAVITS

Iris Graham



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

**IN THE MATTER OF
CLAYTON SMITH**

SETTLEMENT AGREEMENT

PART I - REGULATORY MESSAGE AND INTRODUCTION

1. For there to be fairness and confidence in Ontario's capital markets, it is critical that investment fund managers ("IFMs") and the individuals who control them faithfully and diligently fulfill their fiduciary duty to act in the best interests of their funds and the investors in those funds. Investors must be in a position to believe that their investments will be treated with the utmost care by those in whose trust they are placed. This matter concerns the conduct of Clayton Smith ("Smith" or the "Respondent") who engaged in fraud, and breached his duty to act fairly, honestly and in good faith with clients, while directing the affairs, and being the registered Ultimate Designated Person ("UDP") and Chief Compliance Officer ("CCO"), of a registered firm, Crystal Wealth Management System Limited ("Crystal Wealth").

2. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing (the "Notice of Hearing") to announce that it will hold a hearing to consider whether, pursuant to subsections 127(1) and 127.1(1) of the *Securities Act*, RSO 1990, c S.5 (the "Act"), it is in the public interest for the Commission to make certain orders in respect of the conduct described herein.

PART II - JOINT SETTLEMENT RECOMMENDATION

3. Staff of the Commission ("Staff") recommend settlement of the proceeding (the "Proceeding") against the Respondent commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part VI of this Agreement. The Respondent consents to the

making of an order (the “Order”) in the form attached as Schedule A to this Agreement based on the facts set out herein.

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

PART III - AGREED FACTS

A. OVERVIEW

5. The conduct at issue in this case occurred during the period April 2012 to April 2017 (the “Material Time”).

6. Smith was an experienced market participant and registered with the Commission during the Material Time. Crystal Wealth was the IFM, portfolio manager (“PM”) and trustee for a suite of 15 proprietary investment funds (“Crystal Wealth Funds”). Smith was the directing mind of Crystal Wealth, its sole officer and director as well as the firm’s UDP and CCO.

7. Smith, Crystal Wealth and Smith’s holding companies engaged in fraud involving two Crystal Wealth Funds – Crystal Wealth Mortgage Strategy (formerly, Crystal Enhanced Mortgage Fund, the “Mortgage Fund”) and Crystal Wealth Media Strategy (formerly, Crystal Wealth Strategic Yield Media Fund, the “Media Fund”). Smith caused monies to be advanced from the Mortgage and Media Funds, purportedly in connection with the purchase of investments for the funds. In fact, at Smith’s direction, certain of the monies were transferred directly to Smith’s holding company, as described in paragraph 22. With respect to other monies, Smith instructed the third-party recipients to transfer the funds to Smith, his holding company or a related company.

8. Smith also arranged to personally receive payments from an entity that sold investments to the Media Fund, creating a material conflict of interest that Crystal Wealth neither responded to nor disclosed.

9. By engaging in fraud and failing to respond to or disclose a material conflict, Crystal Wealth breached its obligation to discharge its duties honestly, in good faith and in the best

interests of the Mortgage and Media Funds. Smith and Crystal Wealth continued to cause Crystal Wealth clients to be invested in the Mortgage and Media Funds and in so doing, they failed to deal fairly, honestly and in good faith with clients.

10. As Crystal Wealth's CCO and UDP, Smith failed to discharge his obligations to ensure, promote and monitor compliance with securities legislation by Crystal Wealth and individuals acting on its behalf. He also misled Staff during his examination under oath about his relationship to one of the corporate entities involved in the fraud.

B. DETAILED FACTS

(1) Crystal Wealth, Clayton Smith and Smith's Holding Companies

11. Crystal Wealth is a Burlington-based Ontario corporation that was registered with the Commission in several categories, including as an IFM and PM.

12. Crystal Wealth created and managed the Crystal Wealth Funds, which were structured as open-ended mutual fund trusts and distributed on a prospectus-exempt basis, pursuant to offering memoranda ("OMs").

13. Crystal Wealth performed the roles of trustee, IFM, PM and promoter for the Crystal Wealth Funds. As the IFM, Crystal Wealth managed the day-to-day business of the Crystal Wealth Funds and oversaw the PM function. As PM, Crystal Wealth was required to make suitable investment decisions for the Crystal Wealth Funds' portfolios consistent with the respective fund's investment objectives.

14. As at April 20, 2017, Crystal Wealth recorded a value for the assets under management ("AUM") of all of the Crystal Wealth Funds of approximately \$193,198,912.

15. There were approximately 1,250 Crystal Wealth clients that had discretionary managed accounts for which Crystal Wealth was the PM. Many of these clients were invested in various of the Crystal Wealth Funds. Smith was the advising representative for a number of clients with managed accounts.

16. Smith, an Ontario resident, founded Crystal Wealth in 1998 and was the firm's directing mind. From 1998 onward, Smith was Crystal Wealth's President, Chief Executive Officer and

Chief Financial Officer. During the Material Time, Smith beneficially owned a controlling interest in Crystal Wealth and was its sole officer and director.

17. Smith was registered with the Commission in a number of capacities, including as an advising representative in the category of PM, and as Crystal Wealth's CCO and UDP. As CCO and UDP, Smith bore responsibility for supervising, promoting and monitoring Crystal Wealth's compliance with Ontario securities law.

18. Smith was also the directing mind of CLJ Everest Ltd. ("CLJ Everest") and 1150752 Ontario Limited ("115 Limited"), Ontario holding companies for which Smith was the sole officer and director. Smith owned 100% of CLJ Everest which, in turn, owned 100% of 115 Limited's voting shares. 115 Limited owned the majority of Crystal Wealth's outstanding shares. 115 Limited's registered business name was MBS Partners.

19. Crystal Wealth Marketing Inc. ("CWMI") is an Ontario company that was owned by Smith and Scott Whale ("Whale"), a shareholder and advising representative of Crystal Wealth. Smith acted as a director and officer of CWMI between August 2014 and February 2015, when the conduct described in Part III.B(5) occurred.

20. Chrysalis Yoga Inc. ("Chrysalis") is a yoga studio owned by Smith's former common law wife, at which Smith taught yoga and meditation part-time. Smith was initially a 50% owner and a director and officer of Chrysalis. During much of the Material Time, Smith dealt with Chrysalis' finances and bookkeeping and had signing authority over its bank account.

(2) Misappropriation of Investor Monies from the Mortgage Fund involving 115 Limited

21. The April 12, 2007 and August 31, 2012 Offering Memoranda for the Mortgage Fund (the "Mortgage Fund OMs") stated that the Mortgage Fund's investment objective was to "generate a consistently high level of interest income while focusing on preservation of capital by investing primarily in residential mortgages in Canada." The Mortgage Fund OMs also stated that Crystal Wealth would enter into agreements with independent companies to procure and service mortgage loans and that Crystal Wealth would rely on the expertise of licensed mortgage brokers to service and monitor the mortgages in which the Mortgage Fund invested.

22. Despite these representations, during the period of April 2012 to September 2013, Smith caused the Mortgage Fund to make six payments, totaling approximately \$894,932, to his holding company, 115 Limited. 115 Limited was neither independent nor a registered mortgage broker and the six payments were not used to acquire mortgages from 115 Limited. Instead, shortly after each payment from the Mortgage Fund, Smith caused 115 Limited to pay all, or a significant portion, of the funds to Chrysalis, CLJ Everest (Smith's holding company), or himself. In total, Smith caused 115 Limited to pay \$511,000 to Chrysalis, \$389,000 to CLJ Everest and \$10,000 to himself, substantially with funds received from the Mortgage Fund.

23. Subsequently, in respect of these transactions, Smith advised the Mortgage Fund's auditors, BDO Canada LLP ("BDO") that the Mortgage Fund held interests in mortgages obtained through an entity known as MBS Partners (the "Purported Mortgage Investments"). The amounts of the advances from the Mortgage Fund to 115 Limited correspond approximately to the principal amounts for six Purported Mortgage Investments reflected in the correspondence provided to BDO.

(3) Misappropriation of Investor Monies from the Media and Mortgage Funds

24. The Media Fund was the largest of the Crystal Wealth Funds, with a recorded AUM of approximately \$54,466,843 as at April 20, 2017. The April 30, 2013 and August 30, 2014 Offering Memoranda for the Media Fund (the "Media Fund OMs") stated that the Media Fund's investment objective was "to generate a high level of interest income with minimum volatility and low correlation to most traditional asset classes by investing in asset-backed debt obligations of motion pictures and series television productions."

25. According to the Media Fund OMs, Media House Capital (Canada) Corp. ("Media House") was to source, advise in connection with the procurement of and service investments in film loans for the Media Fund. On behalf of the Media Fund, Smith dealt principally with Aaron Gilbert ("Gilbert"), Media House's majority shareholder and sole director, and Steven Thibault ("Thibault"), Media House's Vice President, Finance. After the purchase of a film loan by the Media Fund, Media House was to monitor and report on the performance of the investment, including the actual sales performance of the related production compared with target projections on an ongoing basis.

26. The Media Fund OMs described the film loans it intended to purchase as short to medium term loans of 12 to 30 months that have been made “to independent producers used to fund a portion of the production costs to complete motion pictures and series television productions.” Once a potential debt investment was sourced for the Media Fund by Media House, which was to have evaluated it and reported on whether it complied with due diligence guidelines, Crystal Wealth was to perform its due diligence and examine how the new debt fit into the overall investment portfolio from a diversification point of view.

27. Among the film loans recorded in the Media Fund’s financial statements were six film loans acquired from Media House during the period October 2013 to July 2015 (the “Bron Film Loans”) that were for film productions produced by Gilbert’s company, Bron Studios Inc. (“Bron Studios”). Gilbert and Thibault had a role with the borrower film production companies on the Bron Film Loans, and signed loan documents on behalf of both Media House as lender, and the production companies as borrower. The Media Fund acquired four of the Bron Film Loans from Media House. Two of the Bron Film Loans were initially purchased by the Mortgage Fund and subsequently sold to the Media Fund. The monies for the Bron Film Loans flowed largely from the Media Fund or the Mortgage Fund to Media House, Bron Animation Inc. (“Bron Animation”) or BSI Developments Inc. (“BSI Developments”), other companies related to Gilbert.

28. With respect to three of the Bron Film Loans (*Henchmen*, *Mercy* and *Kingdom*), Smith caused the Media Fund to advance investor monies to Media House or Bron Animation in tranches, and then directed Gilbert and/or Thibault to:

- (a) transfer a portion of the funds advanced from the Media Fund to Smith, CLJ Everest and Chrysalis, which resulted in transfers totaling approximately \$465,000 to Smith, \$2.3 million to CLJ Everest and \$125,000 to Chrysalis; and
- (b) transfer approximately \$4.1 million of the funds advanced from the Media Fund to Spectrum-Canada Mortgage Services Inc. (“Spectrum”), a service provider for the Mortgage Fund, to buy from the Mortgage Fund:
 - (i) certain mortgages in arrears involving third parties; and

(ii) the Purported Mortgage Investments;

on behalf of Media House or BSI Developments, removing these mortgages and the Purported Mortgage Investments from the Mortgage Fund's books.

29. With respect to the purchase of another Bron Film Loan (*A Good Day's Work*) by the Mortgage Fund, Smith directed Spectrum to advance \$1.25 million from funds held in trust for the Mortgage Fund to BSI Developments. Smith then directed Gilbert and Thibault to, on receiving the funds advanced, transfer approximately \$1 million of the funds to a law firm representing Smith, which funds were then used for the purchase of a residential property for Smith in Burlington, Ontario, and approximately \$200,000 to CLJ Everest. Smith later caused the Mortgage Fund to advance additional monies to BSI Developments as additional loan advances for *A Good Day's Work*. These monies were substantially used by Gilbert and/or Thibault to transfer \$375,000 to CLJ Everest.

30. Smith used the monies that had been transferred to him and to CLJ Everest, as described in subparagraph 28(a) and paragraph 29, substantially for personal purposes, including the purchase of another residential property at which Smith resided in Burlington, Ontario. Some of the funds were transferred to Crystal Wealth.

(4) Misappropriation of Investor Monies from the Mortgage Fund involving CLJ Everest

31. Smith caused Crystal Wealth to enter into an agreement (the "Master Financing Agreement") dated July 6, 2016 with Magnitude CS Energy Inc. ("MCS"), which was described as being in the business of installing power and heat co-generating equipment for large energy users ("MCS Energy Projects"). Craig Clydesdale ("Clydesdale"), an Ontario resident, is a director and officer of MCS. The Master Financing Agreement contemplated that the Crystal Wealth Funds could provide financing for MCS Energy Projects, and that separate project specific financing agreements would be entered into. In addition, CLJ Everest entered into an agreement dated July 6, 2016 with MCS, pursuant to which CLJ Everest would be paid a monthly consulting fee of "15% of the Net Free Cash Flow from all Energy Projects" for its assistance with any aspect of MCS's business operations.

32. Smith also caused Crystal Wealth and CLJ Everest to enter into a share purchase agreement (the “Share Purchase Agreement”) dated October 21, 2016 with Whale. The Share Purchase Agreement provided that CLJ Everest would acquire all of Whale’s shares in Crystal Wealth for a purchase price of \$1,586,277, with a closing date of November 7, 2016.

33. On November 2, 2016, Smith caused the Mortgage Fund to advance \$2 million to MCSNoxrecovery (“MCSNox”), another Clydesdale company, which was recorded as a loan in the Mortgage Fund’s financial statements. On November 7, 2016, MCSNox advanced \$1.75 million to CLJ Everest, substantially funded with the monies received from the Mortgage Fund. The day after MCSNox advanced the \$1.75 million to CLJ Everest, Smith caused CLJ Everest to use \$1,586,277 of it to buy the Crystal Wealth shares held by Whale.

34. The course of conduct Smith and Crystal Wealth engaged in with respect to the Mortgage and Media Funds as described in sections (2) and (3) above and this section (4), was deceptive and placed the pecuniary interests of Mortgage and Media Funds’ investors at risk. By engaging in this conduct, Smith, Crystal Wealth, CLJ Everest and 115 Limited engaged or participated in acts, practices or courses of conduct relating to the Mortgage and Media Funds that Smith, Crystal Wealth, CLJ Everest and 115 Limited, knew or reasonably ought to have known perpetrated a fraud on investors, in breach of subsection 126.1(1)(b) of the Act.

(5) Failure to Respond to or Disclose Material Conflict of Interest

35. Between August 2014 and February 2015, Smith received a substantial financial benefit from the purchase of certain film loans by the Media Fund from Media House. At the time, Smith was the directing mind of Crystal Wealth, and on behalf of Crystal Wealth, served as the lead PM for the Media Fund. The benefit obtained by Smith created a material conflict of interest that Crystal Wealth neither responded to nor disclosed to investors.

36. According to the Media Fund OMs, Media House was to receive compensation for sourcing and administering the film loans in the form of a loan facilitation fee of up to 10% of the face value of any loans the Media Fund purchased from Media House (the “Loan Facilitation Fee”). Crystal Wealth was to receive a management fee at an annual rate of 2% of the AUM of the Media Fund.

37. The Media Fund OMs did not disclose that for several of the film loans, a portion of the Loan Facilitation Fee was paid to CWMI, a company for which Smith was a 50% shareholder, and an officer and director. From August 2014 to February 2015, Media House and Bron Management Ltd., another company associated with Gilbert, paid CWMI approximately 30% of the Loan Facilitation Fee on film loans acquired by the Media Fund during that period. The Loan Facilitation Fee payments to CWMI totaled approximately \$622,780. CWMI used substantially all of the monies to make payments to its two shareholders, Whale and Smith. Smith received \$323,000, funded substantially from those Loan Facilitation Fee payments.

38. Causing the Media Fund to purchase film loans for which Smith received a substantial personal payment created a material conflict of interest that Crystal Wealth had an obligation to respond to and that reasonable investors would be expected to be informed about. Crystal Wealth failed to respond to or disclose the conflict to investors, contrary to subsections 13.4(2) and (3) of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI 31-103”).

(6) Failure to Deal Fairly, Honestly, and in Good Faith with Clients

39. As registered advisers, Crystal Wealth and Smith had an obligation to deal honestly, fairly and in good faith with their clients. While Smith and Crystal Wealth engaged in the conduct described in sections (2) to (5) above, Smith and Crystal Wealth caused clients to be invested in the Mortgage and Media Funds. In so doing, Smith and Crystal Wealth breached their obligation to deal fairly, honestly and in good faith with clients, contrary to section 2.1 of OSC Rule 31-505 – *Conditions of Registration* (“OSC Rule 31-505”).

(7) Failure to Discharge Duties as an IFM Honestly, in Good Faith, and in the Best Interests of the Investment Fund

40. Crystal Wealth was the IFM for the Mortgage and Media Funds, and as such, had the obligation to discharge its duties honestly, in good faith, and in the best interests of the Mortgage and Media Funds. Crystal Wealth, as trustee for the Crystal Wealth Funds, had an express fiduciary obligation under the master declaration of trust for the funds, to act in good faith and in the best interests of the unitholders or investors, who were the beneficiaries of the trusts and whose monies were entrusted to Crystal Wealth.

41. By engaging in the conduct described in sections (2) to (5) above, Crystal Wealth breached its fiduciary duty and failed to discharge its duties honestly, in good faith and in the best interests of the Mortgage and Media Funds, contrary to subsection 116(a) of the Act.

(8) Failure to Discharge Duties of CCO and UDP

42. As Crystal Wealth's CCO, Smith had an obligation pursuant to section 5.2 of NI 31-103 to establish policies and procedures directed towards assessing compliance by Crystal Wealth with securities legislation and to monitor and assess compliance with securities legislation by Crystal Wealth and individuals acting on its behalf.

43. As Crystal Wealth's UDP, Smith had an obligation pursuant to section 5.1 of NI 31-103 to supervise the activities of Crystal Wealth that were directed towards ensuring compliance with securities legislation and to promote compliance with securities legislation by Crystal Wealth and the individuals acting on its behalf.

44. In light of the conduct that Smith and Crystal Wealth engaged in described in sections (2) to (7) above, Smith failed to fulfil his obligation as CCO and UDP of Crystal Wealth to ensure, promote and monitor compliance with securities legislation by Crystal Wealth and individuals acting on its behalf, contrary to sections 5.1 and 5.2 of NI 31-103.

(9) Misleading Staff

45. Smith was examined under oath by Staff on September 26 and 27, 2017 pursuant to subsection 13(1) of the Act. During this examination, Staff asked questions about various entities Smith dealt with on behalf of the Mortgage Fund, including MBS Partners, the entity through which Smith and Crystal Wealth perpetrated a fraud as described in section (2), above. During the examination, Smith misled Staff by:

- (a) falsely stating that neither he nor Crystal Wealth had an interest in MBS Partners, when in fact Smith beneficially owned 100% of the voting shares of MBS Partners, which was the business name that was registered for Smith's company, 115 Limited, and Smith was the director, officer and directing mind of 115 Limited; and

- (b) falsely stating that MBS Partners had no interest in Crystal Wealth, when in fact 115 Limited owned the majority of Crystal Wealth's outstanding shares throughout the Material Time.

46. Smith thereby breached subsection 122(1)(a) of the Act because he made statements that, in a material respect, and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading.

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

47. The Respondent acknowledges and admits that, during the Material Time:

- (a) the Respondent engaged in or participated in acts, practices and courses of conduct relating to securities that the Respondent knew or reasonably ought to have known perpetrated a fraud on the Mortgage and Media Funds and their investors, contrary to subsection 126.1(1)(b) of the Act;
- (b) the Respondent did not deal fairly, honestly and in good faith with the Respondent's clients, contrary to subsection 2.1(2) of OSC Rule 31-505;
- (c) the Respondent did not comply with the Respondent's obligations as the UDP and CCO of Crystal Wealth, contrary to sections 5.1 and 5.2 of NI 31-103;
- (d) the Respondent made statements in evidence submitted to Staff that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state facts that were required to be stated or that were necessary to make the statements not misleading, contrary to subsection 122(1)(a) of the Act;
- (e) the Respondent, a director and officer of Crystal Wealth, CLJ Everest and 115 Limited, authorized, permitted or acquiesced in each company's non-compliance with Ontario securities law, and is deemed not to have complied with Ontario securities law under section 129.2 of the Act; and

- (f) as set out in subparagraphs (a) through (e) above, the Respondent engaged in conduct contrary to the public interest.

PART V – STAFF’S POSITION

48. On April 26, 2017, on application by the Commission under subsection 129(1) of the Act, the Ontario Superior Court of Justice made an order appointing Grant Thornton Limited (the “Receiver”) receiver and manager of the assets of Smith, personally, and the assets of Crystal Wealth, the Crystal Wealth Funds, CLJ Everest, 115 Limited and receiver of a bank account owned by Chrysalis. Through the receivership proceeding (the “Receivership”), the Receiver has begun and continues to liquidate and distribute assets.

49. As of May 1, 2018, approximately \$30,817,199 has been returned to investors through the Receivership.

50. But for the appointment of the Receiver over Smith’s assets for the benefit of investors and other creditors, Staff would seek monetary sanctions against Smith significantly greater than the \$250,000 administrative penalty and \$50,000 in costs set forth in subparagraphs 52(j) and 52(k) below.

PART VI – TERMS OF SETTLEMENT

51. The Respondent agrees to the terms of settlement set forth below.

52. The Respondent consents to the Order, pursuant to which it is ordered that:

- (a) this Agreement be approved;
- (b) the registrations granted to the Respondent under Ontario securities law be terminated, pursuant to paragraph 1 of subsection 127(1) of the Act;
- (c) trading in any securities or derivatives by the Respondent cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;
- (d) the acquisition of any securities by the Respondent be prohibited permanently, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

- (e) any exemptions contained in Ontario securities law not apply to the Respondent permanently, pursuant to paragraph 3 of subsection 127(1) of the Act;
- (f) the Respondent be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
- (g) the Respondent immediately resign any position that the Respondent holds as a director or officer of an issuer, a registrant or an investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;
- (h) the Respondent be permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act;
- (i) the Respondent be permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
- (j) the Respondent pay an administrative penalty in the amount of \$250,000 pursuant to paragraph 9 of subsection 127(1) of the Act, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and
- (k) the Respondent pay costs in the amount of \$50,000, pursuant to subsection 127.1(1) of the Act.

53. The Respondent acknowledges that, in addition to any proceedings referred to in paragraph 56, failure to pay in full any monetary sanctions and/or costs ordered will result in the Respondent's name being added to the list of "Respondents Delinquent in Payment of Commission Orders" published on the Commission's website.

54. The Respondent consents to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in paragraph 52, other than subparagraphs 52(a), 52(j) and 52(k). These sanctions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

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

PART VII - FURTHER PROCEEDINGS

56. If the Commission approves this Agreement, Staff will not commence or continue any proceeding against the Respondent under Ontario securities law based on the misconduct described in Part III of this Agreement, unless the Respondent fails to comply with any term in this Agreement, other than subparagraphs 52(j) and 52(k) (a “Breach”). If a Breach occurs, Staff may bring proceedings under Ontario securities law against the Respondent that may be based on, among other things, the facts set out in Part III of this Agreement, as well as the Breach.

57. The Respondent waives any defences to a proceeding referenced in paragraph 56 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Agreement.

PART VIII - PROCEDURE FOR APPROVAL OF SETTLEMENT

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

59. The Respondent will attend the Settlement Hearing in person.

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

61. If the Commission approves this Agreement:

- (a) the Respondent irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and
- (b) neither party will make any public statement that is inconsistent with this Agreement or with any additional agreed facts submitted at the Settlement Hearing.

62. Whether or not the Commission approves this Agreement, the Respondent will not use, in any proceeding, this Agreement or the negotiation or process of approval of this Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART IX - DISCLOSURE OF AGREEMENT

63. If the Commission does not make the Order:

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

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

PART X - EXECUTION OF AGREEMENT

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

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

[The remainder of this page is intentionally left blank.]

DATED at Burlington, Ontario as of the 28th day of May, 2018.

“Jillian Van Osch”

Witness: Jillian Van Osch

“Clayton Smith”

CLAYTON SMITH

DATED at Toronto, Ontario, as of the 28th day of May, 2018.

ONTARIO SECURITIES COMMISSION

By: ***“Jeff Kehoe”***

Jeff Kehoe
Director, Enforcement Branch

SCHEDULE A
FORM OF ORDER



Commission

Ontario
Securities

de l'Ontario

Commission des
22e étage
valeurs mobilières
20, rue queen ouest

Toronto ON M5H 3S8

22nd Floor

20 Queen Street West

Toronto ON M5H 3S8

File No. [#]

IN THE MATTER OF
CLAYTON SMITH

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

[Day and date Order made]

ORDER
(Subsections 127(1) and 127.1(1) of the
***Securities Act*, RSO 1990, c S.5)**

WHEREAS on **[date]**, the Ontario Securities Commission (the “Commission”) held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider an application made jointly by Clayton Smith (the “Respondent”) and Staff (“Staff”) of the Commission for approval of a settlement agreement dated as of **[date]** (the “Agreement”);

ON READING the Statement of Allegations dated **[date]** and the Joint Application Record for a Settlement Hearing dated **[date]**, including the Agreement;

AND ON HEARING the submissions of the Respondent and Staff;

IT IS ORDERED THAT:

1. the Agreement be approved;
2. the registrations granted to the Respondent under Ontario securities law be terminated, pursuant to paragraph 1 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the “Act”);
3. trading in any securities or derivatives by the Respondent cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;
4. the acquisition of any securities by the Respondent be prohibited permanently, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
5. any exemptions contained in Ontario securities law not apply to the Respondent permanently, pursuant to paragraph 3 of subsection 127(1) of the Act;
6. the Respondent be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
7. the Respondent immediately resign any position that the Respondent holds as a director or officer of an issuer, a registrant or an investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;
8. the Respondent be permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act;
9. the Respondent be permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
10. the Respondent pay an administrative penalty in the amount of \$250,000 pursuant to paragraph 9 of subsection 127(1) of the Act, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and
11. the Respondent pay costs in the amount of \$50,000, pursuant to subsection 127.1(1) of the Act.

•

[Name of Chair of Panel]

•

[Name of Commissioner]

•

[Name of Commissioner]

This is Exhibit "B" referred to in the
Affidavit of Marlie Patterson-Earle sworn before
me, this 15th day of June, 2018


.....
A COMMISSIONER FOR TAKING AFFIDAVITS
IRIS GRAHAM



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

FILE NO.: 2018-35

**IN THE MATTER OF
CLAYTON SMITH**

Janet Leiper, Commissioner and Chair of the Panel
Philip Anisman, Commissioner
Frances Kordyback, Commissioner

June 14, 2018

ORDER

(Subsections 127(1) and 127.1(1) of the
Securities Act, RSO 1990, c S.5)

WHEREAS on June 13, 2018, the Ontario Securities Commission (the **Commission**) held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider an application made jointly by Clayton Smith (the **Respondent**) and staff of the Commission (**Staff**) for approval of a settlement agreement dated as of May 28, 2018 (the **Settlement Agreement**);

ON READING the Joint Application for a Settlement Hearing dated June 8, 2018, including the Statement of Allegations, the Settlement Agreement and the Consent of the parties, and on hearing the submissions of the Respondent, appearing in person, and of the representative for Staff;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;
2. the registrations granted to the Respondent under Ontario securities law are terminated;
3. trading in any securities or derivatives by the Respondent cease permanently;
4. the acquisition of any securities by the Respondent is prohibited permanently;
5. any exemptions contained in Ontario securities law not apply to the Respondent permanently;
6. the Respondent is reprimanded;
7. the Respondent immediately resign any position that he holds as a director or officer of an issuer or a registrant, including an investment fund manager;
8. the Respondent is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant, including an investment fund manager;

9. the Respondent is permanently prohibited from becoming or acting as a registrant, including an investment fund manager, or a promoter;
10. the Respondent pay an administrative penalty in the amount of \$250,000, which amount is designated for allocation or use by the Commission in accordance with paragraph 3.4(2)(b) of the *Securities Act*, RSO 1990, c S.5; and
11. the Respondent pay costs in the amount of \$50,000.

"Janet Leiper"

Janet Leiper

"Philip Anisman"

Philip Anisman

"Frances Kordyback"

Frances Kordyback

ANTHONY WHITEHOUSE
Plaintiff

-and-

BDO CANADA LLP
Defendant

Court File No. CV-17-579357-00CP

ONTARIO
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TORONTO

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ANTHONY WHITEHOUSE
Plaintiff

-and-

BDO CANADA LLP
Defendant

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VOLUME 20 OF 20

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