CANADIAN INVESTOR PROTECTION FUND
INDUSTRY RISK COMMITTEE APPEAL

B E T W E E N:

THE CLAIMANT

Appellant

- and -

CANADIAN INVESTOR PROTECTION FUND

Respondent

COMPENDIUM OF THE APPELLANT

VOLUME I OF II

October 20, 2014

CASSELS BROCK & BLACKWELL LLP
Suite 2100 Scotia Plaza
40 King Street West
Toronto ON M5H 3C2

R. Shayne Kukulowicz
LSUC No. 30729S
Telephone: 416 860-6463
Facsimile: 416-640-3176
E-mail: skukulowicz@casselsbrock.com

Jane O. Dietrich
LSUC No. 49302U
Telephone: 416 860-5223
Facsimile: 416-640-3144
E-mail: jdietrich@casselsbrock.com

INDEX

CANADIAN INVESTOR PROTECTION FUND
INDUSTRY RISK COMMITTEE APPEAL

B E T W E E N:

THE CLAIMANT

Appellant

- and -

CANADIAN INVESTOR PROTECTION FUND

Respondent

COMPENDIUM OF THE APPELLANT

INDEX

Tab No.	Description
1.	*Affidavit of Gregory MacLeod, Chief Restructuring Officer*, sworn February 22, 2012, Application Record of First Leaside Wealth Management Inc. returnable February 23, 2012, Tab 2, at para 4, no schedules except Schedule B.
2.	Canadian Investor Protection Fund, "Current CIPF Members", (8 October 2014) , online: <http://www.cipf.ca/Public/MemberDirectory/CurrentMembers.aspx>.
3.	First Leaside Securities Inc., *Relationship Disclosure for New Clients of First Leaside Securities Inc.*, Client Copy.
4.	First Leaside Securities Inc., redacted Customer Statement ["*Customer Statement*"].
5.	*First Leaside Securities Inc* (22 February 2012), Toronto, online: <http://www.iiroc.ca/Documents/2012/1df4f681-08be-4e69-aadd-66b9762a4dbe_en.pdf> (Notice of Application in the Matter of An expedited hearing pursuant to Dealer Member Rule 20.42 of the Investment Industry Regulatory Organization of Canada and First Leaside Securities Inc.) ["*IIROC Notice of Application*"].
6.	Barbara Shecter, "First Leaside Victims Fight for Lost Millions but Hopes are Dim", *Financial Post* (22 February 2013) online: <http://business.financialpost.com/2013/02/22/first-leaside-victims-fight-for-lost-millions-but-hopes-are-dim/>, accessed on October 8, 2013.
7.	*First Leaside Securities Inc* (2 October 2012), Toronto, online: <http://www.iiroc.ca/Documents/2012/da08bf0b-f8cd-4b24-be58-58c4df219fc5_en.pdf> (Notice of Hearing in the Matter of The Dealer Member Rules of the Investment Regulatory Organization of Canada and David Charles Phillips & John Russell Wilson) ["*IIROC Notice of Hearing*"].
8.	*In the Matter of the Securities Act R.S.O. 1990, c. S.5, as amended and in the matter of David Charles Phillips and John Russell Wilson*, (4 June 2012) (Ontario Securities Commission) (Statement of Allegations, Staff of the Ontario Securities Commission) ["*OSC Statement of Allegations*"].
9.	Grant Thornton Limited, *Confidential Report of Consultant –Financial Review, First Leaside Group*

Tab No.	Description
	of Companies dated August 19, 2011 ["*Grant Thornton Report*"].
10.	Letter from First Leaside Group to First Leaside Investors (7 November 2011), Application Record of First Leaside Wealth Management Inc. returnable February 23, 2012 ["*November 2011 Letter*"].
11.	*In the matter of the Companies Creditors Arrangement Act plan of Compromise or Arrangement of First Leaside Wealth Management Inc.* (24 February 2012), Toronto, Ont SCJ CV-12-9930-00CL (initial order) ["*CCAA Initial Order*"].
12.	*In the matter of the Companies Creditors Arrangement Act plan of Compromise or Arrangement of First Leaside Wealth Management Inc.* (28 June 2012), Toronto, Ont SCJ CV-12-9617-00CL (order: second extension of stay period); *Receivership of First Leaside Wealth Management Inc.* (7 December 2012), Toronto, Ont SCJ CV12-9930-00CL (receivership order);
13.	*Receivership of First Leaside Wealth Management Inc.* (14 March 2014), Toronto, Ont SCJ CV-12-9930-00CL (order).
14.	Grant Thornton Limited, *Confidential Report to Investors –First Leaside Group of Companies* dated May 1, 2012 ["*May Grant Thornton Report*"].
15.	*Receivership of First Leaside Wealth Management Inc.* (24 July 2013), Toronto, Ont SCJ CV-12-9930, 00CL (interim distribution order) and Third Report of the Receiver, dated July 17, 3013.
16.	*Phillips (Re)* 2013 IIROC 52, LNIIROC 52 ["*Re Phillips*"].
17.	*First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc and FL Securities Inc. v David Phillips, Margaret Davis an 970877 Ontario Inc.* (28 August 2012), Toroton, Ont SCJ CV-12-9821-00CL (statement of claim) ["*Statement of Claim against Phillips et al*"].
18.	First Leaside Group of Companies, "The First Leaside Solution" (2010);
19.	CIPF Information Brochure.
20.	CIPF Notice to Customers of First Leaside dated February 24, 2012.
21.	CIPF Notice to Customers of First Leaside dated August 16, 2012.
22.	*Receivership of First Leaside Wealth Management Inc.* (19 July 2013), Toronto, Ont SCJ CV-12-9617-00CL, (second report to the court of representative counsel to the investors) ["*Second Report*"].
23.	*Receivership of First Leaside Wealth Management Inc.* (25 November 2013), Toronto, Ont SCJ CV-12-9930-00CL (order: CIPF access to client files).
24.	Canadian Investor Protection Fund, "CIPF Mission Statement", online: <http://www.cipf.ca/Public/AboutUs/CIPFMissionStatement.aspx> .
25.	Canadian Investor Protection Fund Coverage Policy as of September 30, 2010 ["*CIPF Coverage Policy*"].
26.	Canadian Investor Protection Fund, redacted sample Investor Rejection Letters ["*Rejection Letters*"].
27.	Rob Carrick, "What protection do you have if your broker goes broke", *Globe and Mail* (25 July, 2014) online: < http://www.theglobeandmail.com/globe-investor/investment-ideas/what-protection-

Tab No.	Description
	do-you-have-if-your-broker-goes-broke/article19783968/> .
28.	Canadian Investor Protection Fund, "CIPF Member Insolvencies", online: <http://www.cipf.ca/Public/AboutUs/HistoryofCIPF/CIPFMemberInsolvencies.aspx>.
29.	*Consolidated Bathurst Export Limited v. Mutual Boiler & Machinery Insurance Co.*, [1980] 1 SCR 888, 112 DLR (3d) 49.
30.	*Manulife Bank of Canada v. Conlin,* [1996] 3 SCR 415, 139 DLR (4th) 426 ["*Manulife Bank of Canada*"].
31.	CED 9th (online) *Contracts,* "Interpretation of Contract: Other Principles Respecting Contract Terminology" at § 612.
32.	Bryan A Garner, ed, *Black's Law Dictionary,* 9th ed (St. Paul, MN, USA: Thomson Reuters 2009) ["*Black's*"].
33.	Craig Brown, *Canadian Insurance Contract Law in a Nutshell* (Toronto: Thomson Carswell, 1995).

TAB 01

Court File No. CV-12-9617-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc., FL Securities Inc., First Leaside Management Inc., First Leaside Accounting and Tax Services Inc., First Leaside Holdings Inc., 2086056 Ontario Inc., First Leaside Realty Inc., First Leaside Capital Inc., First Leaside Realty II Inc., First Leaside Investments Inc., 965010 Ontario Inc., 1045517 Ontario Inc., 1024919 Ontario Inc., 1031628 Ontario Inc., 1056971 Ontario Inc., 1376095 Ontario Inc., 1437290 Ontario Ltd., 1244428 Ontario Ltd., PrestonOne Development (Canada) Inc., PrestonTwo Development (Canada) Inc., PrestonThree Development (Canada) Inc., PrestonFour Development (Canada) Inc., 2088543 Ontario Inc., 2088544 Ontario Inc., 2088545 Ontario Inc., 1331607 Ontario Inc., Queenston Manor General Partner Inc., 1408927 Ontario Ltd., 2107738 Ontario Inc., 1418361 Ontario Ltd., 2128054 Ontario Inc., 2069212 Ontario Inc., 1132413 Ontario Inc., 2067171 Ontario Inc., 2085306 Ontario Inc., 2059035 Ontario Inc., 2086218 Ontario Inc., 2085438 Ontario Inc., First Leaside Visions Management Inc., 1049015 Ontario Inc., 1049016 Ontario Inc., 2007804 Ontario Inc., 2019418 Ontario Inc., FL Research Management Inc., 970877 Ontario Inc., 1031628 Ontario Inc., 1045516 Ontario Inc., 2004516 Ontario Inc., 2192341 Ontario Inc., and First Leaside Fund Management Inc. (collectively, the "Applicant")

AFFIDAVIT OF GREGORY MACLEOD
(sworn February 22, 2012)

I, **GREGORY MACLEOD**, of the City of Burlington, in the Province of Ontario, **MAKE OATH AND SAY**:

1. I am the Chief Restructuring Officer ("**CRO**") of First Leaside Wealth Management Inc. ("**FLWM**"), and the other applicants (collectively, the "**Applicants**") as well as the limited partnerships affiliated with the Applicants which are listed in **Exhibit**

16

"A" hereto (collectively, "**First Leaside**" or the "**Company**"). I have been in the position of CRO since December 6, 2011. As such, I have knowledge of the facts deposed to in this affidavit. To the extent that this affidavit describes events or facts of which I do not have personal knowledge, I have identified the source of the information and, in all cases, believe it to be true.

2. This affidavit is sworn in support of the application by FLWM and the other Applicants for relief under the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the "**CCAA**"). The Applicants also seek to have the court extend the benefit of the initial order (including the stay) to various limited partners in respect of which Applicant corporations are the general partners (subject to a "carve out" of certain limited partnerships noted below).

3. Attached hereto as Exhibit "A" is a list of the Applicants, as well as the corresponding non-Applicant limited partnerships to which the Applicants wish to have CCAA protection extended.

I. OVERVIEW

4. First Leaside, through its various affiliated companies, trusts, and limited partnerships ("**LPs**") (including the LPs which are not part of this filing) runs numerous businesses, including commercial and multi-unit residential properties and retirement residences. In general, First Leaside provides investment and wealth management services to more than 1,200 investors who have invested with the Company. First Leaside also provides its investors with estate planning, insurance, accounting, and tax

services. A simplified organizational chart of the main corporations constituting First Leaside (but without details of the LPs) is attached hereto and marked as **Exhibit "B"**.

5. First Leaside's operations are centred on two primary companies: FLWM and its wholly-owned subsidiary, First Leaside Securities Inc. ("**FLSI**").

6. FLSI is an investment dealer under Ontario securities law and is regulated by both the Ontario Securities Commission ("**OSC**") and the Investment Industry Regulatory Organization of Canada ("**IIROC**"). FLSI acts as a "one-stop" investment organization for First Leaside's clients. Clients use FLSI to manage a portfolio of non-proprietary investment products, typically consisting of more conservative investments such as bonds, treasury bills, and marketable securities (the "**Marketable Securities**") as well as proprietary equity (such as LP units) and debt securities issued by First Leaside (proprietary equity and debt securities shall hereafter be collectively referred to as the "**FL Products**").

7. The Marketable Securities and available cash balances are segregated in accounts held with Penson Financial Services Canada Inc. ("**Penson**"). Penson is a member of IIROC and provides back-office brokerage and custody services to a wide range of investment dealers, including FLSI. This proposed CCAA proceeding <u>does not</u> involve any lost or misappropriated client securities. All of the Marketable Securities which are owned by First Leaside clients are indeed held with Penson and, as I will describe in further detail below, First Leaside is prepared to allow clients to immediately transfer their Marketable Securities and cash to another investment dealer despite the

13.

commencement of these proceedings. If clients wish another investment dealer to hold their FL Products in segregation, they are free to do so, as well.

8. The FL Products are intended to provide First Leaside investors with consistent monthly distributions, potential capital appreciation, and, in the case of equity investments, potential tax deductions. With respect to the FL Products, First Leaside generally operates as a real estate syndicate that purchases real estate and rehabilitates it with a view to leasing to tenants at higher rates or reselling the property at a profit. During the early years of real estate developments, clients are able to benefit from tax losses generated by properties and also receive regular tax-free returns of capital.

9. First Leaside's real estate projects are generally set up as LPs for which First Leaside incorporates a special-purpose corporation to act as a general partner ("**GP**"). The GPs of First Leaside's Canadian LPs (i.e., those that own property in Canada) are part of this CCAA filing and the benefits of the initial order are being requested to extend to the corresponding LPs. The LPs which correspond to the relevant GPs are listed in Exhibit "A".

10. The success of the FL Products depends on a robust real estate market. Thus, the recent economic downturn has had a negative impact on the Company's financial situation: First Leaside has realized lower operating income while simultaneously incurring higher operational costs.

11. Due to this turmoil, and other events described below (including action by securities regulators), in early 2011 First Leaside, through its counsel, Cassels Brock &

Blackwell LLP ("**Cassels**"), engaged an independent consultant, Grant Thornton Limited ("**GTL**"), to review its business operations and assess its overall viability. GTL determined that the Company was facing serious cash flow and operational challenges and concluded that First Leaside's future viability depended on a number of key factors and assumptions, including its ability to raise capital.

12. Despite the Company's efforts to implement GTL's recommendations, First Leaside's financial challenges persisted. In particular, during the course of an investigation by the OSC, First Leaside undertook a voluntary, indefinite cease trade of all FL Products (the "**Cease Trade**"), and later suspended all distributions and interest payments on FL Products. Because First Leaside's business model requires ongoing capital raising to fund capital expenditures and operations, the Cease Trade precluded First Leaside from raising equity to de-leverage properties or to fund business operations. FLWM had also previously relied on revenues from agency fees charged in connection with new capital raises, together with other fee revenue relating to new FL Products, to support corporate operations and to provide working capital to support other entities in the group. The Cease Trade effectively stopped these revenues, thereby threatening FLWM's ability to operate as a going concern.

13. In December 2011, through my corporation, G.S. MacLeod & Associates Inc., I was retained by an independent committee of the board of directors of FLWM (the "**Independent Committee**") to review First Leaside's operations and to provide recommendations of how to deal with various financial and regulatory issues that the Company faced. Attached hereto and marked as **Exhibit "C"** is a copy of my retention agreement. After several weeks of careful consideration of the situation, I concluded

that it was unlikely that First Leaside would be in a position to resolve issues with securities regulators and thereby resume the raising of capital in the near future. On that basis, I concluded that the best course of action for First Leaside was to undertake an orderly wind-down of operations. Further, I concluded that—in light of the complex corporate structure of the Company, the complex web of numerous inter-company debts and contractual relationships among the corporations, trusts, and LPs in the First Leaside group, and the fact that many First Leaside clients have debt and/or equity investments in multiple First Leaside entities—the proper way to deal with First Leaside's assets and liabilities was to bring the Company within a court-supervised process so that all stakeholder interests can be dealt with in one forum, in a consolidated manner, and recoveries can be maximized. That forum is this CCAA proceeding.

14. First Leaside and the LPs are the owners of numerous real properties located in Ontario, British Columbia, and Texas. The properties include retirement residences, rental apartments, industrial facilities, development projects and raw land.

15. First Leaside's U.S. properties are not, for the present time, intended to come within court-supervised insolvency proceedings whether under the CCAA or Chapter 11 of the *U.S. Bankruptcy Code* (the "**USBC**"). First Leaside believes that such properties may be able to continue operations over the anticipated wind-up period using the cash flows that they generate and pay their liabilities as they come due, assuming that revenues can be increased and capital costs contained.

II. FIRST LEASIDE'S BUSINESS

General

16. First Leaside was founded in 1989 by David Phillips, an experienced investment advisor and trader who had worked at major brokerage firms. Mr. Phillips wanted to create financial products that were more favourable to investors than those then available in the market.

17. In 1992, Mr. Phillips oversaw the acquisition of First Leaside's first properties, the Wymberly Pointe and Wymberly Crossing apartment complexes in Grand Prairie, Texas (near Dallas), for $10 million, through a real estate syndication.

18. Since that time, First Leaside has acquired and developed numerous other properties in Texas, expanding to properties in Ontario several years ago, and last year to British Columbia. Apart from straightforward investments in rental real estate projects, First Leaside also has a series of other investments, including ownership of several accounting firms in Alberta and an interest in a brewery/cidery in Ontario. First Leaside also has an interest in seven small start-up technology companies.

Corporate Structure – Operating Companies

19. FLWM is the ultimate parent company of First Leaside. Affiliated with FLWM are six wholly-owned subsidiaries that are operating companies, including FLSI, FL Securities Inc. ("**FL Securities**"), First Leaside Finance Inc. ("**FL Finance**"), First Leaside Management Inc. ("**FL Management**"), First Leaside Insurance Inc. ("**FL Insurance**"), and First Leaside Accounting and Tax Services Inc. ("**FL Services**")

(FLWM and its operating subsidiaries shall hereafter be referred to collectively as the "**Operating Companies**").

FLWM

20. Mr. Phillips owns all of FLWM's common shares. FLWM has also issued preferred shares, with 96.7% of such shares being owned by First Leaside investors and the remaining 3.3% by Mr. Phillips. FLWM's preferred shares are in several series and provide dividends at annual rates of 6%, 8%, or 10%, depending on the series.

21. First Leaside generates revenue to cover expenses and pay dividends by charging fees to First Leaside clients, both in connection with the sale of new investment products (such as LP units), and as ongoing asset administration fees (calculated as a percentage of client investment holdings).

22. FLWM also owns a small pool of assets including:

(a) four small accounting firms;

(b) a 33.3% interest in First Leaside Retirement Residences LP;

(c) a 34.9% interest in First Leaside Beverages Limited Partnership, which operates a brewery/cidery;

(d) marketable securities;

(e) note receivables from investors who borrow short term funds to acquire units in various LPs;

(f) an interest in seven start-up technology companies; and

(g) an art collection.

23. Attached hereto and marked as **Exhibit "D"** is a copy of FLWM's internally-prepared financial statements as at December 31, 2010 for the 12 months ending as of such date.

FLSI

24. FLSI is an investment dealer that is regulated by the OSC and IIROC. It is through FLSI that First Leaside clients invest their money in both the Marketable Securities (held in segregation by Penson) and also the FL Products issued by various First Leaside entities. FLSI is also a member of the Canadian Investor Protection Fund ("**CIPF**"), which provides coverage of up to $1 million per client as a result of securities in client accounts that are lost as a result of the insolvency of a CIPF member. (However, the CIPF does not cover investment losses resulting from the changing value of securities or default by the issuer of securities.)

25. FLSI charges agency fees, business development fees, and acquisition analysis fees for its services. Attached hereto and marked as **Exhibit "E"** are FLSI's unaudited financial statements as at December 31, 2011.

26. Since FLSI became an IIROC dealer, and up to June 30, 2011, it has invested approximately $370 million on behalf of First Leaside clients. Approximately $86 million of funds invested were in publicly-traded securities, including Marketable Securities, which are held by for the benefit of First Leaside clients. Attached hereto and marked as **Exhibit "F"** is a table summarizing the third party marketable securities of First Leaside investors held at Penson as at February 14, 2012.

27. Although First Leaside may be insolvent, its client accounts containing Marketable Securities are all intact and held in segregation by Penson. Clients will therefore suffer no loss of Marketable Securities either now or as a result of the CCAA proceeding. First Leaside specifically requests a term in the CCAA initial order permitting First Leaside clients to immediately transfer the Marketable Securities and cash held with Penson to another investment dealer, thereby allowing clients to sell, trade, or maintain their Marketable Securities despite the CCAA proceeding.

28. With respect to the FL Products, those client investments are also intact in the sense that First Leaside clients do hold legitimate preferred shares, common shares, LP units, notes, and debentures in the various First Leaside entities and First Leaside does have up-to-date records of such client holdings. However, the value of individual FL Products is uncertain at this point in time because of the likelihood of losses in the various FL entities. For example, many First Leaside LPs have an equity deficit because there may be limited or no proceeds left to be paid to unitholders after mortgages and notes are paid.

29. FLSI raises debt through a related entity, First Leaside Wealth Management Fund (a trust), at an interest rate of 7% per annum.. FLSI also raises debt through other entities, such as Special Notes Limited Partnership, and Special U.S. Notes Limited Partnership.

<u>FL Finance</u>

30. Traditionally, various First Leaside LPs and corporations have raised more capital than required for their immediate needs. For example, many LPs sold units to

investors before a specific project was identified or land was purchased, and it was not uncommon for months to pass before a property was acquired. However, since First Leaside promised investors substantial regular distributions (often 6% or 7% per annum) on their LP units or notes, and adequate returns could not be obtained by leaving surplus cash in the bank, the LPs with idle capital required some way to generate income to fund those distributions.

31. Thus, First Leaside facilitated the intercompany financial arrangements, using FL Finance as a conduit to borrow surplus funds from some First Leaside entities, and then lend them to other First Leaside entities that required money (such as to rehabilitate properties). The interest rates paid on these loans were typically in the range of 6% to 7% per annum. All of these inter-company loans which FL Finance has facilitated have been duly recorded in First Leaside's records.

32. FL Finance is not registered under Ontario securities laws because it does not distribute or deal in securities.

33. In addition to its capacity as a "central bank" for First Leaside, from time to time FL Finance also acted as a buyer of client positions in FL Products through FLSI. Prior to the fall of 2011, First Leaside had an informal policy of arranging purchases of otherwise illiquid LP units from investors that wished to exit from their investments. Each unit was initially issued at a price of $1 per unit. As of February 12, 2012, FL Finance held approximately $16.66 million in LP units, based on a price of $1 per unit.

34. Attached hereto and marked as **Exhibit "G"** is a copy of FL Finance's internally-prepared financial statements as at December 31, 2010

FL Securities

35. FL Securities, which is a different corporation than FLSI, is an exempt market dealer ("**EMD**") that is registered with the OSC. FL Securities acts as an asset manager and promoter of real estate assets. For its services, FL Securities charges promotional fees, acquisition analysis fees, property management fees, and advisory fees. Despite its registration as a dealer, FL Securities does not engage in securities trading activities. All securities trading activities within First Leaside are conducted exclusively by FLSI.

FL Management

36. FL Management is the property manager of certain Canadian First Leaside properties. It charges all Canadian properties a services fee equal to 2 to 4% of annual net revenues.

37. FL Management employs one individual who is the senior property manager for Canada and who also has partial responsibility for First Leaside's U.S. property management. The day-to-day management of the U.S. properties is, however, conducted by a third party U.S. firm that reports to FL Management on a weekly and monthly basis.

38. In regard to the retirement residences described below, PrimeTime Living LP manages the day-to-day operations of that portfolio of properties. Finally, for the remaining Canadian properties, including Queenston Manor and Harmony (described below), on-site managers are employed by the entities. Attached hereto and marked as

Exhibit "H" are FL Management's unaudited financial statements as at December 31, 2010.

FL Insurance

39. FL Insurance is licensed as a corporate insurance agency with the Financial Services Commission of Ontario. FL Insurance sells, as agent, a variety of third party insurance policies to First Leaside investors. FL Insurance generates a small amount of commission income annually (approximately $55,000) as a result of its sales of insurance policies.

40. Attached hereto and marked as **Exhibit "I"** are the unaudited financial statements for FL Insurance as at December 31, 2011.

FL Services

41. FL Services provides personal income tax preparation services for Canadian and US investors.

42. Attached hereto and marked as **Exhibit "J"** are the unaudited financial statements for FL Services as at December 31, 2010.

Corporate Structure - LPs

43. First Leaside's investors may invest in the Company's various ventures by purchasing LP units. First Leaside has two types of LPs: individual LPs that acquire and operate a single property or development, and "aggregator" LPs that hold units of multiple LPs.

44. All types of LPs that First Leaside has formed were structured to provide tax advantages to investors as well as regular distributions (typically consisting of tax-free returns of capital in the early years).

45. Generally, First Leaside forms LPs to raise capital in order to locate and acquire real estate that has not been fully or effectively developed. The LPs typically acquire real estate from a third party in an arm's-length transaction. The costs to identify, acquire, and rehabilitate a property usually generate a loss for the LP in the first few years. The LP's investors realize this loss and offset it against their other income, thereby creating short-term tax benefits.

46. Each year a certain percentage of money invested in an LP is distributed by the LP to investors as a return of capital (and, hopefully, in later years, as income from the property), thereby providing investors with a regular cash flow regardless of the stage of the LP's project. Typically, LPs promised a regular annual return to investors in the range of 6% or 7% per annum.

47. Later on, if an LP acquires rental property that is leased after its rehabilitation, the rental payments produce operating income and cash flow that could be distributed to investors on a regular basis. If a property is sold after it is rehabilitated, investors can realize cash proceeds (and generate capital gains). The proceeds from a sale can be withdrawn from First Leaside or "rolled" into new LPs that are subsequently created.

48. Given the level of fees charged to LPs by FLWM to sell LP units, and identify, purchase, and manage properties, as well as the significant returns of capital to investors by way of distributions, investors in longstanding LPs have likely had the cost

base of their investments "ground down" to minimal amounts. In other words, some investors have already received back all or a substantial portion of their initial invested capital through a combination of return of capital and the tax benefits associated with the LP's losses. As a consequence, the properties are often highly leveraged.

49. There are numerous LPs within First Leaside. Certain LPs and their related holdings are listed below.

a. First Leaside Expansion Limited Partnership ("**FLEX**")

i. FLEX is one of First Leaside's Canadian real estate LPs. Attached hereto and marked as **Exhibit "K"** is an organizational chart for FLEX. Because FLEX owns more than one property, it is one of First Leaside's aggregator LPs.

ii. FLEX owns the following properties and LPs:

- First Leaside Entities LP ("**Entities**"): Entities owns two properties in Uxbridge that are adjacent to the Victoria St. Building (which is detailed below). One property is 1.57 acres and is currently being used as a parking lot for construction workers, while the other is 0.59 acres of land with a small commercial building, and is currently not producing income;

- First Leaside Growth LP ("**Growth**"): Growth owns a fully occupied 70,000 sq. ft. industrial building in Brampton, Ontario. The property has been profitable since 2008 and was projected to remain profitable through 2013. The property has been sold pursuant to an agreement for purchase and sale and the sale is scheduled to close in March 2012;

- Queenston Manor LP ("**Queenston**): Queenston owns a 77-unit retirement living apartment complex in St. Catharines, Ontario. The complex is presently 92% occupied. Rooftop solar panels are currently being installed at the property and once installed are expected to generate $53,000 a year. Before capital expenditures, the property has been profitable since 2008, and was expected to remain profitable through 2013. Queenston has been listed for sale and management is currently considering an offer that has been made on the property;

- First Leaside Unity LP ("**Unity**"): Unity owns 2.74 acres of land in Wheatley, Ontario, that is zoned for a residential townhome complex. Unity has already completed and sold three townhomes. FLEX had planned to develop and sell an additional 16 townhomes over a period of six years beginning in 2012; and

- FLEX had intended to build a four floor, 58,182 sq. ft. office building ("**Victoria St. Building**") for First Leaside on 1.04 acres at 4 Victoria St. in Uxbridge, Ontario. This building would have been the new head office of First Leaside. However, construction of the Victoria St. Building was halted in the fall of 2011 due to a lack of funds following the Cease Trade. As a result of this stoppage, eleven construction liens have been placed against the Victoria St. Building and the property owned by Entities. The total amount of these liens is $3,446,276.29. Additional details of these liens are attached hereto and marked as **Exhibit "L"**.

iii. FLEX raises equity and, in the past, paid a 6% distribution. FLEX has raised debt through the Development Notes LP ("**Development Notes**"), and paid a 7.75% interest rate. FLEX also raised debt through the FLEX Fund, paying a 6% interest rate.

iv. FLEX has also raised $3.45 million which was used to fund a syndicated mortgage on the Bramtree property.

b. Wimberly Apartments LP ("**WALP**")

i. WALP is an Ontario limited partnership which, through a series of Texas limited partnerships, holds a variety of properties in the United States (specifically, Texas). Attached hereto and marked as **Exhibit "M"** is an organizational chart for WALP. WALP owns the assets listed below and, as such, is one of First Leaside's aggregator LPs.

- F.L. Master Texas Ltd. ("**Master Texas**"): Master Texas owns six LPs that each own one apartment complex in the Dallas/Ft. Worth area;

(I) Bluffs of Lakewood: The property is a 233-unit rental apartment building located in Dallas, Texas. The building is currently undergoing a rehabilitation program that is scheduled to be completed later this year. The property is expected to reach 95% occupancy by May 2012. The property is expected to be profitable, before capital expenditures, in 2012 and 2013;

(II) Old Mill Ponde Apartments: The property is a 244-unit rental apartment building located in Arlington, Texas. The building is currently undergoing rehabilitation and is not fully occupied. The property has not been profitable for the last several years;

(III) Preston Racquet Club: The property is a 184-unit condominium complex located in Dallas, Texas. Although the property has not been profitable for the past several years, it is nearing the end of a rehabilitation program and is expected to be profitable in 2012 and 2013 before capital expenditures;

(IV) Shores Apartments: The property is a 236-unit rental apartment building located in Arlington, Texas. The building is currently undergoing a rehabilitation program and is not fully occupied. The property has not been profitable for the last several years;

(V) Wymberly Crossing Apartments: a 212-unit rental apartment building in Grand Prairie, Texas. The property is expected to be profitable, before capital expenditures in 2012 and 2013, once the rehabilitation program is completed and rent is increased; and

(VI) Wymberly Pointe Apartments: The property is a 208-unit rental apartment building located in Grand Prairie, Texas. The property is expected to be profitable, before capital expenditures, in 2012 and 2013, once the rehabilitation program is completed.

- F.L. Master Sherman Ltd. ("**Master Sherman**"): Master Sherman owns four LPs that each own an apartment complex in the Sherman, Texas area;

(I) Country Village Apartments: The property is a 148-unit rental apartment building. This property is also currently undergoing a rehabilitation program that is scheduled to be completed later this year. The property has been profitable since 2008, and is projected to remain profitable through 2013;

32

(II) Creekview Apartments: The property is a 144-unit rental apartment building. The apartments are currently undergoing a rehabilitation program that is scheduled to be completed later this year. The property has been profitable, before capital expenditures, since 2008, and is expected to increase its profitability through to 2013 due to an expected increase in occupancy, completion of the rehabilitation program, and a series of rent increases;

(III) Parkview Apartments: The property is a 200-unit rental apartment building that is currently undergoing a rehabilitation program. The program is scheduled to be completed later this year. The property has been profitable since 2008, and is expected to remain profitable, before capital expenditures, through 2013; and

(IV) Raintree Apartments: The property is a 144-unit rental apartment building that is currently undergoing a rehabilitation program. The rehabilitation program is scheduled to be completed later this year. The property has been profitable since 2008, and is expected to remain profitable, before capital expenditures, through 2013.

- F.L. Sedona Creek Ltd. ("**Sedona**"): Sedona owns an apartment complex in the Dallas area. There is currently no scheduled rehabilitation program planned, and the occupancy rate is projected to increase through September 2012. Sedona is expected to be profitable in 2012 and 2013.

ii. WALP has raised debt and equity in several different ways. WALP has raised equity and paid a 4% distribution as return on capital. First Leaside Fund raised debt at bearing 9% annual interest for WALP. Additionally, Wimberly Fund I raised debt at an interest rate of 8%, and Wimberly Fund II raised debt at interest rates of 7% and 8%. Debt raised for the Master Sherman-owned properties has been through First Leaside Properties Fund at an interest rate of 9%. Finally, WALP raised $5.3 million through a syndicated mortgage for Sedona and a church property located near Sedona;

c. First Leaside Retirement Residences LP ("**Retirement**")

i. Retirement owns 50.1% of PrimeTime Living LP. PrimeTime Living LP owns several retirement residences and development properties that are listed below. Retirement's 50.1% interest in PrimeTime Living LP is shared amongst multiple First Leaside entities in the following proportions: 16.67% by First Leaside Wealth Management Holdings Inc., 20% by Progressive (defined below), 30% by Universal (defined below), and 33.3% by FLWM.

- Abby Lane Retirement Residence/Whiterock Medical: This project consists of a medical facility that occupies 40,000 sq. ft., and an 80-unit retirement home occupying 20,000 sq. ft. in Surrey, British Columbia. The medical centre and the retirement residence are located on 2.3 acres of land. The property is currently being developed and is expected to be completed in February 2013;
- The Birkhall Retirement Residence: This property is an 83-unit, 80,000 sq. ft. retirement home in Vernon, British Columbia. The residence is situated on 3 acres. The property is currently being developed and is expected to be completed later this year;
- The Heatherwood Retirement Residence: This property is an 87-unit, 40,000 sq. ft. retirement residence in St. Catharines, Ontario. The residence is situated on 1.5 acres of land; and
- St. Catharines Place Retirement Residence: This property is an 87-unit, 40,000 sq. ft. retirement home in St. Catharines, Ontario. The residence is situated on 1.5 acres of land.

d. First Leaside Realty LP & First Leaside Realty II LP (collectively, "**Realty I & II**")

i. Realty I & II own 3,996,160 equity LP units of WALP. Realty I & II raise equity and previously paid a 4.75% distribution. Attached hereto and marked, collectively, as **Exhibit "N"** are the unaudited financial statements for Realty I as at December 31, 2010 and Realty II as at September 30, 2011.

e. First Leaside Acquisitions LP ("**Acquisitions**")

i. Acquisitions owns three assets:

- 143,680 equity LP units of WALP;
- 625,800 equity LP units of FLEX; and
- 278,880 equity LP units of F.L. Spring Valley LP.

ii. Acquisitions raises equity and paid a 9.5% return of capital distribution. Attached hereto and marked as **Exhibit "O"** are the unaudited financial statements for Acquisitions as at December 31, 2010.

f. First Leaside Investors LP ("**Investors**")

i. Investors owns two LPs:

- Harmony Townhome LP ("**Harmony**"): Harmony is a 50-unit townhome complex in Tilbury, Ontario; and

- Mill Street LP ("**Mill St.**"): Mill St. is a 3.74 acre plot of land in Uxbridge, Ontario with a small heritage home.

ii. Investors raises equity and paid a 6% return of capital distribution. There is also a 6% syndicated mortgage on Mill Street. Attached hereto and marked as **Exhibit "P"** are the unaudited financial statements for Investors as at December 31, 2010.

g. First Leaside Progressive LP ("**Progressive**")

i. Progressive owns two assets:

- a 20% ownership interest in Retirement;

- Uxbridge Development LP ("**Cemetery Road**"), 23 acres of land, only four acres of which are developable, in Uxbridge, Ontario.

ii. Progressive raises equity and paid a 6% distribution. There is also a syndicated mortgage on Cemetery Road bearing interest at 6% per annum. Attached hereto and marked as **Exhibit "Q"** are the draft unaudited financial statements for Progressive as at December 31, 2010.

h. First Leaside Universal LP ("**Universal**")

i. Universal owns a 30% interest in Retirement. Universal raises equity and paid a 6% distribution. Attached hereto and marked as **Exhibit "R"** are the draft unaudited financial statements for Universal as at December 31, 2010.

i. F.L. Spring Valley LP ("**Spring Valley**")

i. Spring Valley owns

- 689,608 LP units of WALP;

- 640,000 trust units in the Wimberly Fund; and
- a shopping mall in the greater Dallas, Texas area.

ii. Spring Valley raises equity and paid an 8% return of capital distribution. Attached hereto and marked as **Exhibit "S"** are the unaudited financial statements for Spring Valley as at December 31, 2010.

j. FLWM Holdings LP ("**FLWM Holdings**")

i. FLWM Holdings owns a 16.67% ownership interest in Retirement and a 10.91% ownership interest in Beverages (defined below). Although equity has been raised, no distributions are paid.

k. First Leaside Global LP ("**Global**")

i. Global does not have any assets, other than an account receivable from FL Finance. Global raises equity and paid a 7% distribution.

ii. Global had previously entered into an agreement of purchase and sale to purchase property in Florida. However, the sale failed to close as a result of funding issues arising as a result of the Cease Trade. Global is currently pursuing legal action in the U.S. to recover its deposit.

l. First Leaside Venture LP ("**Ventures**")

- Ventures owns a 50% interest in the Birkhall Retirement Residence, in addition to the assets listed below.
- 180 Isabella Street (Ottawa) LP: This LP owns The Palisades Club, a 54-unit retirement condominium in Ottawa, Ontario. The residence is situated on 0.49 acres of land;
- 480 Metcalfe Street (Ottawa) LP: This LP owns The Palisades Retirement Residence, a 100-unit retirement residence in Ottawa, Ontario. The residence is situated on 0.68 acres of land;
- The Redwoods Retirement Residence (Ottawa) ("**Redwoods**"): Ventures purchased this property on August 26, 2011, from KingSett Real Estate Growth LP No. 2, along with the Palisades Retirement Residence, for aggregate consideration of $65 million and, as part of the purchase price, Ventures assumed an $40 million mortgage in favour of CIBC;

- Cherry Park Retirement Residence: This property is a 64-unit 61,288 sq. ft. retirement residence that is located in Okanagan, British Columbia. The residence is situated on 0.68 acres of land;

- Orchard Valley Retirement Residence: This property is a 66-unit, 66,597 sq. ft. retirement residence located in Okanagan, British Columbia. The residence is situated on 0.64 acres of land; and

- Shores Retirement Residence: This property is a 66-unit 66,580 sq ft retirement home in Kamloops, British Columbia. The residence is situated on 1.4 acres of land, and has land that has not yet been developed.

ii. Ventures raises equity and paid a 7% distribution.

iii. Attached hereto and marked as **Exhibit "T"** are the unaudited financial statements for Ventures as of July 31, 2011.

m. First Leaside Visions I and First Leaside Visions II LP ("**Visions I & II**")

i. Visions I & II owns seven start-up technology companies in Ontario. Visions I & II was established to take advantage of Ontario Commercialization Investment Fund grants, which constitute up to 30% of the investment. Visions I & II do not pay any distributions. Attached hereto and marked, collectively, as **Exhibit "U"** are the unaudited financial statements for Visions I & II as at December 31, 2011.

n. First Leaside Mortgage Fund ("**Mortgage Fund**")

i. Mortgage Fund holds a $5.3 million syndicated mortgage on Sedona and the Sherman church property in the WALP portfolio. Attached hereto and marked as **Exhibit "V"** are the unaudited financial statements for Mortgage Fund as at June 30, 2011.

o. First Leaside Beverages LP ("**Beverages**")

i. Beverages owns a majority interest in a brewery and cidery and the land and building upon which the cidery is situated. Since Beverages holds a minority portfolio interest in the brewery and cidery, Beverages is not applying for CCAA protection.

ii. Beverages is owned 10.9% by FLWM Holdings, 8.3% by Progressive, and 34.9% by FLWM. The remaining 45.9% of Beverages is held by third party investors.

iii. First Leaside is presently in discussions to sell is collective 54.1% interest in Beverages. If such sale is completed, FLWM Holdings, Progressive, and FLWM will be able to receive proceeds which can then be used to pay creditors in accordance with their priority.

The Blind Pools

50. Although most of First Leaside's LPs hold interests in identifiable properties, there are a small number of LPs where clients provided investment funds without knowing where funds were likely to be invested. Each of these LPs is known as a "blind pool" (a **"Blind Pool LP"**). Some of the funds that the Blind Pool LPs have raised have been lent to FL Finance and then re-lent to WALP to fund its rehabilitation projects and operating losses. The Blind Pool LPs were largely tax-driven investments designed to provide investors with tax savings.

51. Details of the Blind Pool LPs existing at the time of the Cease Trade are as follows:

a. First Leaside Select LP ("**Select**")

   i. Select does not have any assets, other than amounts due from FL Finance. The majority of the funds it has raised have been lent to FL Finance. Select paid a 7% distribution. Attached hereto and marked as **Exhibit "W"** are the unaudited financial statements for Select as at December 31, 2010.

b. First Leaside Elite LP ("**Elite**")

   i. Elite is a Blind Pool LP and does not have any assets, other than an account receivable from FL Finance. The majority of the funds that Equity has raised have been lent to FL Finance. Elite paid a 7% distribution. Attached hereto and marked as **Exhibit "X"** are the unaudited financial statements for Elite as of December 31, 2011.

c. First Leaside Premier LP ("**Premier**")

   i. Premier is a Blind Pool LP and does not have any assets, other than an account receivable from FL Finance. The majority of the funds that Premier has raised have been lent to FL Finance. Premier paid a 7% distribution. Attached hereto and marked as **Exhibit "Y"** are the unaudited financial statements for Premier as at December 31, 2010.

d. First Leaside Ultimate LP ("**Ultimate**")

i. Ultimate is a Blind Pool LP and does not have any assets, other than an account receivable from FL Finance. The majority of the funds that Ultimate has raised have been lent to FL Finance. Ultimate paid a 7% distribution. Attached hereto and marked as **Exhibit "Z"** are the unaudited financial statements for Ultimate as at December 31, 2010.

Corporate Structure - Funds

52. A number of investors have invested in units of First Leaside trusts (the "**Funds**"). The Funds were created to generate interest income for investors from the properties already owned within First Leaside through an investment that was eligible for tax deferred plans such as RRSPs. The Funds created access to capital for other First Leaside entities that could be used to fund operations and rehabilitation programs and make additional property acquisitions. Capital raised by selling units of the Funds was, in turn, invested by the Funds in unsecured promissory notes issued by other First Leaside entities that already owned property. By lending to other First Leaside entities at specified rates of interest, the Funds aimed to earn steady income that could be distributed to investors. However, as with any First Leaside entity that made inter-company loans, the Funds bear the risk that such loans will never be repaid.

53. Since the Funds are trusts, and not corporations, they do not form part of the proposed CCAA filing. It is intended that the Funds will remain inactive, except to assert their rights as a creditor of other First Leaside entities.

EVENTS LEADING TO THE CCAA FILING

54. The OSC began investigating First Leaside in the fall of 2009 and the investigation continues to date.

55. First Leaside cooperated with the OSC throughout the investigation and endeavoured to respond to each and every one of the OSC's inquiries. In total, First Leaside provided the OSC with hundreds of binders of information including offering memoranda, subscription agreements, client documents, client account statements, and First Leaside financial records. Mr. Phillips was also examined under oath by the OSC.

56. In connection with this OSC investigation, on March 5, 2011, First Leaside, through its counsel, Cassels, retained GTL as a consultant to review, report, and make recommendations about First Leaside's business, assets, affairs, and operations. GTL is a leading Canadian accounting and business advisory firm that provides audit, tax, and advisory services to private and public organizations.

57. Shortly prior to retaining GTL, First Leaside voluntarily arranged for appraisals of its various properties to be obtained in order to assess the value of the assets held in its various entities. GTL later used such appraisals for the purpose of its analysis.

58. From March to August 2011, GTL met with First Leaside personnel to analyze the business and prepare a report. On August 19, 2011, GTL released a detailed report on First Leaside's operations ("**GTL Report**"). A copy of the GTL Report is attached hereto and marked as **Exhibit "AA"**.

59. The GTL Report disclosed that, as at August 19, 2011, the fair market value ("**FMV**") of First Leaside's real property based, in part, on the third party appraisals of the real property holdings obtained by First Leaside was worth more than the third party mortgages on the respective properties.

60. However, the GTL Report identified numerous issues that threatened First Leaside's future viability and which continue to exist today.

61. After the GTL Report was released, First Leaside took steps to implement the GTL Report's recommendations. It hired four additional employees to improve its accounting resources and financial reporting.

62. On November 3, 2011, First Leaside's board of directors also took steps to strengthen its corporate governance by appointing the Independent Committee to assume all decision-making authority in respect of First Leaside and oversee the Company's operations. As such, since that time, Mr. Phillips has no longer been in charge of the management of First Leaside.

63. The Independent Committee is composed of the following individuals, all of whom have significant business skills and experience:

(a) Leo de Bever: Chief Executive Officer and Chief Investment Officer of Alberta Investment Management Corp. (an Alberta Crown corporation that manages pension, endowment, and other government funds);

(b) Douglas Hyatt: Professor of Business Economics, Rotman School of Management, University of Toronto;

(c) John Cook: President of Tormin Resources Limited and Anton Resources

 41

Corporation, Chairman of Premier Gold Mines Limited, and a director of several mining companies; and

(d) Robert Gauld: a chartered accountant and former controller of A. Schulman Canada Ltd.

Regulatory Issues

64. The GTL Report was provided to the OSC and IIROC immediately upon release. In late October 2011, in response to the GTL Report and other information received from First Leaside, the OSC informed First Leaside that, if satisfactory arrangements were not made to deal with First Leaside's situation, they were almost certainly going to take regulatory action including seeking a cease trade. At the same time, IIROC notified FLSI by letter dated October 28, 2011, that it had been designated as being in discretionary early warning level 2 as a result of the pending regulatory action. In this letter, IIROC advised that, pursuant to its Rules, FLSI was prohibited from

(a) reducing that firm's capital;

(b) repaying subordinated indebtedness without IIROC approval;

(c) making bonus, loan, or capital payments to any director, officer, or affiliate of FLSI; and

(d) reducing the "non-allowable assets" of FLSI.

65. Attached hereto and marked as **Exhibit "BB"** is the October 28, 2011 letter from IIROC to David Phillips on behalf of FLSI.

66. First Leaside advised IIROC and the OSC that it was prepared to put in place appropriate interim protective measures, but with the hope that business affairs could

be restructured within several months. For example, First Leaside agreed to a voluntary Cease Trade, which was implemented on October 31, 2011. Approximately a week later, First Leaside agreed with the OSC that as part of the Cease Trade, the Company would send a letter to its investors in a form approved by both the OSC and IIROC along with a copy of the GTL Report, and to post the letter to investors and the GTL Report on First Leaside's website. This letter to investors (attached as **Exhibit "CC"**) was ultimately sent on November 7, 2011, and provided frank disclosure about the GTL Report, the OSC investigation, and the concerns about First Leaside's viability.

67. On November 4, 2011, First Leaside retained GTL as an independent monitor to, in part, satisfy the OSC and IIROC that the Company was implementing a restructuring plan and establishing rigid reporting requirements. GTL has been providing, and continues to provide, the OSC and IIROC with regular ongoing reports about First Leaside's financial affairs.

68. In mid-November 2011, the Independent Committee engaged a third party financial consultant to conduct a detailed review of the financial state of all material First Leaside entities with a view to creating a restructuring plan pursuant to which First Leaside could emerge from the Cease Trade.

69. First Leaside also recognized at that time that, in order to restructure, it would need to conserve as much cash as possible, especially given its inability to raise further capital (because of the Cease Trade). As such, the Independent Committee decided to cease all distributions to clients indefinitely, including:

(a) distributions to LP unitholders;

(b) interest payments on client notes/debt (including the corresponding distributions made by Funds that hold promissory notes issued by other First Leaside entities); and

(c) dividends on common or preferred shares.

70. On November 28, 2011, First Leaside sent a letter to investors (attached as **Exhibit "DD"**) providing notice of the suspension of distributions. There have been no distributions since that date.

71. In early December 2011, with the input and approval of the OSC, the Independent Committee caused First Leaside to retain my corporation as CRO. The Independent Committee asked me to develop a workout plan for First Leaside. The workout plan was finalized in late January 2012. The goal of the workout plan, which is described below, is to maximize recoveries for First Leaside's stakeholders.

72. Through December 2011 and into January 2012, I considered plans to move forward with the operations of First Leaside as well as plans to wind-up all or parts of the business. I was cognizant of the limited cash reserves available within First Leaside under the Cease Trade and the projected time over which those reserves would be exhausted. In that context, I took careful note of the risks and uncertainties associated with the go-forward proposals given the significant risk of exhausting the cash reserves before completing a successful exit from the Cease Trade. After carefully analyzing the situation, my ultimate conclusion was that it was too risky and uncertain for First Leaside to pursue a resumption of previous operations, including the raising of capital. My recommendation to the Independent Committee was that First Leaside instead undertake an orderly wind-down of operations, involving:

(a) completing any ongoing property development activity which would create value for investors;

(b) realizing upon assets when it is feasible to do so (even where optimal realization might occur over the next 12 to 36 months);

(c) dealing with the significant inter-company debts; and,

(d) distributing proceeds to investors.

73. It is my recommendation to the Independent Committee that an orderly wind-down presents the best opportunity to maximize the recovery by investors.

74. I presented my recommendations to the Independent Committee and it approved my recommendation that First Leaside's affairs be wound down.

75. As I will describe further below, the best way to promote this wind-down is through a filing under the CCAA so that all issues—especially the numerous investor and creditor claims and inter-company claims—can be dealt with in one forum under the supervision of the court.

76. Since last fall, First Leaside has provided other updates to investors. For example, on February 8, 2012, after the decision to wind down operations was made, First Leaside issued an update regarding the outcome of my review of restructuring options (attached as **Exhibit "EE"**). Then, on February 9 and 13, 2012, I held conference calls with investors so that I could answer any questions that the investors had regarding First Leaside's financial position and anticipated CCAA proceeding.

III. FIRST LEASIDE'S FINANCIAL SITUATION

45.

77. First Leaside has over $370 million in assets under management, which includes both Marketable Securities and FL Products. As I have described above, the Marketable Securities are all intact and held by Penson. First Leaside clients will be able to transfer Marketable Securities and cash to another investment dealer during the CCAA process.

78. With respect to the FL Products, it remains to be determined specifically how much value will be realized for investors on the LP units, debt instruments, and shares issued by the various First Leaside entities.

79. First Leaside is currently indebted to its secured creditors in the approximate amount of $176 million, and to its unsecured creditors (including investors holding notes or other debt instruments) in the approximate amount of $131.8 million.

80. However, since GTL reported that the aggregate value of properties in the First Leaside exceeded the value of the properties, there will be net proceeds remaining to provide at least some return to subordinate creditors or equity holders (i.e., LP unit holders and corporation shareholders) in many of the First Leaside entities. The recovery will, of course, vary depending on the entity. At this stage, however, it is fair to conclude that there is a material equity deficit both in individual First Leaside entities and in the overall First Leaside group.

81. Since equity holders are expected to receive some return, that means that, in many First Leaside entities, both third party long term debt (mortgages) and investor debt (notes) will also be paid in full.

46

82. First Leaside's primary stakeholders include mortgagees, unsecured debt holders, equity investors, and employees, all of which are discussed below.

83. A summary of the title searches for each of the Ontario properties, generally current to February 16, 2012, are attached to my affidavit as **Exhibit "FF"**.

Secured Debt

84. First Leaside has secured debt financing from banks, and unsecured debt from related party entities and investors. Attached hereto and marked as **Exhibit "GG"** is a list of First Leaside's mortgages, including the amount of the mortgage, the property it relates to, and the mortgagee. This document contains information to the extent that it is available. The appraised value contained in the chart is based on appraisals obtained for the purposes of the GTL Report.

85. First Leaside's primary secured creditors are banks and investors in syndicated mortgages (collectively "**Mortgages**") that provided First Leaside with funding to acquire and service the properties.

86. First Leaside currently has approximately a total of approximately $175 million in Mortgages. The Mortgages relate to seven First Leaside LPs: FLEX, WALP, Investors, Ventures, Spring Valley, Progressive, Retirement, and Beverages. However, since First Leaside only has a portfolio investment interest in Beverages, and Beverages is not one of the entities in respect of which CCAA protection is sought, the debts of that entity are not discussed below.

87. FLEX has $7.12 million in secured debt and owns four properties, two of which are subject to Mortgages. Queenston Manor has a $3.67 million mortgage with Midland Loan Services, and Growth has a $3.45 million mortgage with Peoples Trust Company Canada.

88. WALP has $53.73 million in secured debt. Most of WALP's bank mortgages are held by Wells Fargo or Keybank except for:

(a) the mortgage on the Shores property, which is held by Midland Loan Services; and

(b) the mortgage on the Sedona property.

89. The Sedona property was mortgaged using a syndicate of non-accredited investors through Mortgage Fund. As a result of the mortgages, no WALP properties are held free and clear of encumbrances.

90. Ventures has $75.5 million in secured debt. Approximately $17.78 million of that debt is held by the Toronto-Dominion Bank (**"TD"**) on three separate properties. Additionally, there are two mortgages on each of two Ottawa properties held by Ventures: $30.04 million in mortgages held by Canadian Imperial Bank of Commerce (**"CIBC"**) and KingSett Capital on the Redwoods property, and $27.18 million in mortgages held by the same two financial institutions on The Palisades Retirement Residences property. Ventures also has a $515,000 syndicated mortgage on the Vernon property. The mortgages were raised through Mortgage Fund.

91. Retirement also has $33.9 million in Mortgages. Retirement's Whiterock property is subject to a $5.4 million mortgage held by Fisgard Capital Corporation. The

Heatherwood property is also mortgaged: $25.5 million in favour of First Ontario Credit Union, and $3 million in favour of Henry E. Hildebrand and Grace Hildebrand.

92. Investors is subject to $2.13 million in Mortgages on two properties. The Harmony property is subject to a $1.23 million mortgage with TD Bank. The Mill St. property has a $900,000 mortgage with Peoples Trust Company Canada.

93. Progressive has a $1.65 million mortgage with Peoples Trust Company Canada on the Cemetery Road development.

94. Spring Valley has a $910,827 mortgage that is held by Wells Fargo.

95. Finally, FL Services has a $831,664.87 secured loan with TD.

Construction Liens

96. As noted above, there are also eleven construction liens filed against four First Leaside entities including FLEX and First Leaside Realty II Inc., and the Victoria St. Building and the Entities' owned property. The total amount of these construction liens is $3,446,276.29. However, one of the liens, in the amount of $13,034, is filed only against one of the Entities' properties, and not against either the Victoria St. Building or the other Entities' property.

Unsecured Creditors

97. The total amount of unsecured creditor debt is $131.8 million. This unsecured debt is owed by FLWM, FLEX, WALP, Investors, Progressive, and Mortgage Fund.

98. FLWM has $18.3 million in investor debt that has been raised through the FLWM Fund, Special Notes Limited Partnership, and Special U.S. Notes Limited Partnership.

99. FLEX has $16.4 million in investor debt that it raised through Development Notes and FLEX Fund. The debt raised through the Development Notes pays an interest rate of 7.75%, and the FLEX Fund debt pays an interest rate of 6%.

100. FL Finance has borrowed $27.9 million from within First Leaside and lent $10.2 million to other LPs. Further, FL Finance has acquired $16.66 million in LP units through investor redemptions at a rate of $1 per LP unit.

101. WALP has raised $68.2 million in debt from First Leaside investors. WALP raises debt at the Master Texas, Master Sherman, and Sedona levels through the First Leaside Fund, First Leaside Properties Fund, and Wimberly Fund. Master Texas has a total of $53.8 million in investor debt: $43.3 million through First Leaside Fund and $10.5 million through Wimberly Fund. Master Sherman has a total of $14.37 million investor debt raised solely through First Leaside Properties Fund. Master Sherman has also issued a $500,000 promissory note.

Equity Investors

102. First Leaside has raised approximately $199.2 million in equity to date through the sale of LP units and common and preferred shares. Set out below is a breakdown of the investor equity investments (based on the purchase price of the equity, but excluding the effect of losses and distributions of capital in the LPs) per First Leaside entity:

(a) FLWM – $30.6 million;

(b) FLEX – $37.8 million;

(c) WALP – $45.3 million;

(d) Realty I & II – $4.5 million;

(e) Acquisitions – $1.8 million;

(f) Investors – $6.7 million;

(g) Progressive – $14.9 million;

(h) Universal – $5.8 million

(i) Ventures – $14.4 million

(j) FLWM Holdings – $3 million

(k) Spring Valley – $2.2 million

(l) Select – $3.6 million

(m) Elite – $6.7 million

(n) Global – $9.2 million

(o) Premier – $5.6 million

(p) Ultimate – $3 million

(q) Visions I & II – $4.2 million

(r) Mortgages - $11.6 million

103. Equity structures vary from one First Leaside entity to another. FLWM, for example, has three series of preferred shares that pay dividends at differing rates.

FLWM also issues common shares. In contrast, FLEX has only one form of equity ownership.

Employees

104. Up until the fall of 2011, First Leaside had approximately 50 employees. However, due to downsizing over the last several months and the decision to wind down operations, approximately 30 employees have been temporarily laid off or terminated. Currently, First Leaside employs 19 salaried employees. First Leaside expects to reduce its workforce to approximately 11 people by month end.

105. First Leaside's current monthly payroll obligation, including CPP and EI contributions, is approximately $70,650. Payroll is due semi-monthly.

106. First Leaside will take steps to ensure that it has only the bare minimum of employees necessary to provide information and to support a restructuring process. In particular, during the CCAA process, it is likely that staffing levels will be reduced further, especially as properties are sold.

IV. FIRST LEASIDE'S FINANCIAL TROUBLES

107. First Leaside's success in developing and rehabilitating real property is predicated on achieving certain levels of rental revenues and not exceeding certain cost thresholds. Unfortunately, due to the recent recession and its negative impact on the real estate markets in Ontario, British Columbia, and Texas, it has become difficult to achieve First Leaside's estimated rental revenues. Additionally, the capital rehabilitation costs have been higher than forecasted.

108. Moreover, the Cease Trade that First Leaside implemented placed severe financial constraints on the Company. Almost every First Leaside business unit depended on the ability of FLWM and its subsidiaries to raise capital from investors. Additionally, FLWM depended on a primary revenue stream of brokerage and other fees from or in connection with new capital and other services provided by First Leaside entities. In turn, the various LP investments in real estate and commercial enterprises relied on ready access to new capital from investors as well as regular operating cash flow from FLWM. The inability to access the capital market had a significant negative effect on the Company.

109. As noted above, First Leaside's inability to raise capital had detrimental effects on almost all of its business units. For example, First Leaside made a series of investments in R&D technology start-up businesses that are owned by Visions I & II. These businesses depended on FLWM's ability to raise working capital. Since the Cease Trade, although one of the businesses has located a third party financing commitment through the next operating cycle, the others are facing a cessation of operations.

110. There are also immediate cash flow crises at FLWM and virtually every LP. An analysis of the current net asset value in FLWM and almost every LP indicates a substantial loss of investor value.

111. FLWM's financial position has decreased substantially since November 2011 when the Cease Trade was implemented. FLWM's cash reserves have fallen from $2.8 million to $1.6 million at the end of January 2012. Absent new cash from asset

disposals, current reserves will be exhausted in April. There are no recurring revenue streams from asset management at present. However, FLWM maintains its $2.0 regulatory capital in FLSI.

112. On December 31, 2011, Ventures defaulted by failing to make a principal mortgage payment of $4.25 million which was owing to KingSett. KingSett has issued a default notice and such default has also caused a default in respect of indebtedness owing to CIBC in respect of the same properties.

113. Investors' Harmony property does not generate sufficient net operating income to service its mortgage. Absent cash flow from FLWM, a default is imminent.

114. In addition to the problems flowing from the recession and other factors set out above, First Leaside has also faced regulatory actions that have proved costly.

115. The two year OSC investigation of First Leaside cost the Company substantial amounts in terms of out of pocket expenses in addition to the internal resources of First Leaside which were diverted away from normal operations. The result of the investigation was an agreement by First Leaside to implement the Cease Trade. The Cease Trade resulted in lost agency and business development fees for FLWM.

116. The cumulative effect of the events described above have left First Leaside with a number of properties at various stages of development, but without liquidity or refinancing options to rehabilitate the properties and execute its business plan.

117. Despite these defaults (including the failure to pay for construction work and the resulting construction liens), First Leaside has generally been able to make regular

mortgage payments to its creditors. While the majority of the properties have generated sufficient revenue to carry the corresponding mortgage, given the cash constraints on the Company, it will be difficult for First Leaside entities to make mortgage payments in the near future, especially given the need to expend monies on property development and upgrading activities which are necessary to realize proper value when properties are sold. Although First Leaside has generally been making monthly payments of principal and interest on mortgages when due, it will not be able to do so in the future, given its cash constraints.

V. THE PROPOSED PLAN

Introduction

118. As CRO, I have determined that there is no viable plan to continue First Leaside as a going concern in light of the risks related to the go-forward strategies that I have considered and the limited cash reserves for pursuing those strategies. The largest net debtors are FLWM, WALP, Ventures, and FLEX. These entities are unable to repay their inter-company balances from operating cash flows, thereby affecting investor interests in other entities. There is also insufficient net asset value in these entities to settle the intercompany balances through the immediate liquidation of assets.

119. Thus, the intended plan, which has been approved by the Independent Committee, is to effectuate an orderly wind-down of First Leaside's operations over a period of time and in a manner that will create the opportunity to realize improved net asset value.

120. First Leaside will, in an organized fashion, divest itself of assets, including the accounting firms it owns in Alberta and British Columbia and FLWM's artwork portfolio. First Leaside will also negotiate the sale of the majority interest in Beverages and PrimeTime. This sale is expected to provide working capital to FLWM.

121. Second, as I have noted above, First Leaside clients hold substantial Marketable Securities through FLSI which are in segregation at Penson. Since FLSI will wind down operations, there is no need for clients to continue to hold the Marketable Securities or available cash balances at Penson. Accordingly, as part of the CCAA order being sought, FLSI wishes to allow clients to transfer the Marketable Securities and cash to another investment dealer. FLSI will cooperate in this process. First Leaside is also content to have certificates or other documents at Penson which evidence FL Products to be delivered to a new investment dealer.

122. FLSI also holds approximately $2.0 million in regulatory capital consisting of $1,741,000 of risk adjusted capital plus $250,000 in minimum capital. First Leaside has been in discussions with IIROC concerning the uses to which the regulatory capital can be put, especially after the Marketable Securities are transferred to new investment dealers. First Leaside has agreed to address IIROC concerns by restricting the extent of the application of the proposed Directors' and Officers' Charge to FLSI assets.

Other Possible Asset Sales

123. Queenston Manor has been listed for sale, and First Leaside's management is currently considering an offer that has been made on the property. The sale may

generate approximately $2 million in net proceeds. To the extent that a binding offer of purchase and sale is signed, First Leaside will bring a further motion for sale approval.

124. Further, the Company intends to sell FLWM's ownership interest in PrimeTime Living LP, with the approval of Progressive, FLWM Holdings, and Universal; and FLWM's interest in Beverages, with the approval of FLWM, Progressive, FLWM Holdings, and FL Beverages Group LP. The Applicants will seek court approval of such transactions.

Refinancing of Ventures

125. Many of the properties that Ventures owns were acquired in the summer of 2011. For example, on August 26, 2011, First Leaside completed the purchase of Redwoods and Palisades from KingSett Real Estate Growth LP No. 2 for $65 million, part of which purchase price was satisfied through the assumption of an existing CIBC mortgage. KingSett also holds a second mortgage on the properties.

126. On September 8, 2011, First Leaside purchased The Shores, Cherry Park, and Orchard Valley (retirement residences in British Columbia) for the aggregate amount of $25.4 million, $19.4 million of which was financed by a mortgage from TD.

127. At the time of these purchases, First Leaside had always intended to de-leverage the properties through several means. First, First Leaside had intended to sell further LP units to raise approximately $25 million in additional capital. Those funds could be used to complete development work on some of the properties and also reduce the mortgage debt. First Leaside had also planned to sell a number of condominium units

in these developments to generate additional proceeds. The Cease Trade interrupted this process. Because Ventures has not been able to raise more capital, the KingSett mortgage defaulted (regarding payment of principal) and there are issues of unpaid contractors on some of Ventures properties in British Columbia.

128. Given the Cease Trade, Ventures has been attempting to raise new capital from other sources, under the supervision of the OSC. On February 15, 2012, Ventures and Bridge Gap Konsult Inc. (**"Bridge Gap"**), a German firm, signed a non-binding term sheet to sell further LP units and also obtain bridge financing for Ventures. The transactions contemplated by the term sheet are subject to court approval in this CCAA process as well as consent of the OSC under the Cease Trade. Attached hereto and marked as **Exhibit "HH"** is a copy of the Ventures-Bridge Gap term sheet (the **"Ventures Term Sheet"**).

129. The Ventures Term Sheet contemplates that Bridge Gap will:

(a) in the near future provide a short-term bridge loan of $10 million which will be used as follows:

(i) approximately $4,500,000 will be used to pay down the principal amount of the KingSett mortgages over Ventures' property;

(ii) approximately $5,000,000 will be used to fund working capital and contractor costs; and

(iii) $500,000 will be used for financing fees; and

(b) subsequently make a $25,000,000 investment in Ventures (the **"Bridge Gap Equity Investment"**) by way of LP units.

130. Now that the Ventures Term Sheet has been signed, First Leaside intends to negotiate with Bridge Gap so that a definitive bridge loan agreement can be prepared and signed.

131. The Bridge Gap Equity Investment will likely take further time to conclude, because Bridge Gap needs to obtain funding from investment vehicles in Germany and is first required to obtain approval of German financial regulators.

132. The bridge loan (as subordinate debt) and the Bridge Gap Equity Investment (as equity) are intended to be subordinate to the existing mortgages, including those of CIBC, TD, and KingSett.

133. On February 21, 2012, I (along with other First Leaside representatives, including the proposed Monitor) held meetings with representatives of CIBC, TD, KingSett, and Laurentian Bank and their counsel to discuss the proposed CCAA filing. At the meetings, those creditors expressed concerns about the proposed CCAA proceedings, especially the fact that the proposed Administrative Charge and Directors' and Officers' Charge (collectively, the **"Charges"**) would take priority over those lenders' mortgages. Concerns were also expressed about whether the transactions contemplated by the Ventures Term Sheet would be completed.

134. Following the meeting, First Leaside considered the lenders' objections and received input from the Independent Committee. As such, First Leaside made the decision that the following limited partnerships would not, at this initial stage, be brought within the scope of the CCAA initial order (collectively, the **"Excluded LPs"**):

(a) First Leaside Retirement Residences (Ottawa) Limited Partnership

(b) First Leaside Retirement Residences (Okanagan) Limited Partnership

(c) Cherry Park Retirement Residences Limited Partnership

(d) Orchard Valley Retirement Residences Limited Partnership

(e) The Shores Retirement Residences Limited Partnership

(f) The Redwood Retirement Residences Limited Partnership

(g) 100 Isabella St. (Ottawa) Limited Partnership and

(h) 480 Metcalfe St. (Ottawa) Limited Partnership

135. First Leaside has reserved its right to later bring a motion to extend the CCAA initial order and stay to the Excluded LPs and thereby bring them into the CCAA process.

136. For the near term, however, First Leaside intends to introduce Bridge Gap to these lenders so that the lenders can assess the viability of the transactions contemplated by the Ventures Term Sheet. First Leaside also intends to discuss other options for the property of the Excluded LPs in the event that the Bridge Gap equity investment and bridge loan are not put in place.

WALP

137. The WALP properties have, in the past, needed cash for ongoing renovations. However, after considering matters in depth, First Leaside has determined that it does not need to immediately seek bankruptcy protection for the U.S. LPs under the USBC.

138. First Leaside intends to undertake several short term steps, described below, to improve the financial viability of the LPs which WALP owns, so that they can be self-supporting until the completion of a realization strategy. First, I am closely monitoring WALP's aggressive strategy to increase occupancy of the U.S. properties by the second quarter of 2012, so that revenues will increase.

139. Second, a number of the U.S. properties—including Pointe, Crossing, and Sedona—are currently listed for sale. If necessary, the proceeds received from the sale of a handful of U.S. properties can be used to fund completion of the other U.S. properties. Expressions of interest have been received from 48 potential purchasers. First Leaside has also received a number of offers, which we are currently considering.

140. Third, I have taken steps to conserve the amount of cash in the U.S. properties by deferring capital improvements where feasible.

141. Assuming that increased rental revenues and decreased capital spending can be achieved, I have forecast that the U.S. properties will be self-sustaining in 2012, even without selling any properties.

142. The cash-on-hand in the U.S. properties is largely held at the level of the individual properties (i.e., the Texas LPs), not at the level of WALP. Thus, although the general partner of WALP is one of the parties seeking CCAA protection, the U.S. LPs intend to continue to operate (i.e., paying their mortgages and ongoing expenses) in the normal course despite any CCAA order.

143. In the event that the above-noted measures are not sufficient to maintain the U.S. properties in an adequate financial state, First Leaside may need to consider seeking protection from creditors under the USBC. It may also be necessary to seek such relief in the event that mortgagees on the U.S. properties declare defaults or attempt to enforce their security by reason of cross-defaults caused by the CCAA proceedings.

144. As part of the wind-down, the long-term plan is eventually to sell all of the U.S. properties. However, given the need to conduct capital improvements on some of them as well as the currently weak real estate market in Texas, First Leaside may be required to operate a number of the properties for one or more years before an acceptable sale can be achieved.

VI. PROJECTED CASH FLOWS

145. A copy of the Applicants' consolidated projected weekly cash flows will be appended to the Pre-Filing Report of GTL as proposed Monitor, which report is also being filed in support of the CCAA application.

VII. INITIAL CCAA ORDER SOUGHT

Stay of Proceedings

146. As a result of the financial condition of First Leaside, many creditors will likely commence enforcement proceedings against First Leaside, including lenders and LP investors seeking to recover amounts they have lent to and invested in First Leaside. A stay of proceedings is essential for the protection of First Leaside's business and the

 62

properties. Such a stay would create the necessary environment to allow First Leaside to develop, refine, and implement its wind-down plan. It will also allow First Leaside, with the assistance of GTL as the proposed Monitor in the CCAA proceedings, to develop a claims process for First Leaside investors so that that realizations can be distributed amongst the investors in an equitable manner, with Court approval.

Monitor

147. GTL has consented to act as Monitor in First Leaside's CCAA proceedings, if such relief is granted by this Court. An executed consent of GTL to act as Monitor will be filed with the court at the hearing of this application.

Appointment of a CRO

148. Although I have acted as CRO since December 2011, First Leaside is seeking confirmation and approval of my existing appointment during the pendency of the CCAA proceedings.

149. Given the relationship between First Leaside and its investors, and the potentially strained relationship between management and other stakeholders, First Leaside believes that the appointment of a CRO in these proceedings is critical to ensuring independence and objectivity during the restructuring process.

150. I have over 25 years of experience in providing strategic advice and leadership to business organizations. I was a partner in the Financial Advisory Services practice at Deloitte LLP, where I specialized in corporate restructuring and corporate finance. In 2003, I left Deloitte to set up my own business, G.S. MacLeod & Associates Inc. In this

new role I have continued to provide advice and management leadership on corporate reorganizations and transactions to mid-market companies and their stakeholders. I have significant experience working as a CRO, including in relation to Hunjan Automotive, Bob-Lo Island, Brite Manufacturing, Great Lakes Fish Company, and Seaquest Corp./Seaquest Capital Corp. I am a Chartered Accountant, Chartered Insolvency and Restructuring Professional, and licensed bankruptcy trustee.

151. I was retained by First Leaside as CRO on December 6, 2011, and intend to continue in my capacity as CRO with the approval of this Court.

152. First Leaside is seeking the approval of the appointment of a CRO and an indemnity and charge relating to the fees and expenses of the CRO. Such charge is part of the Administrative Charge that First Leaside is seeking, described below.

Cash Management

153. Traditionally, the various entities constituting First Leaside have used TD as their banker and have maintained multiple current accounts (in excess of 50) at such bank. Many of such accounts have limited activity and balances.

154. On February 21, 2012, counsel for TD advised that the bank will require First Leaside to reduce the number of accounts that it maintains. Although First Leaside is prepared to do so, such consolidation will, in effect, create some version of a centralized cash management system whereby balances from multiple entities are combined in a smaller number of accounts. However, the reduction of the number of accounts will make the control and review of First Leaside's financial affairs easier for both the

Company and the proposed Monitor. For purposes of a CCAA order, First Leaside seeks permission to establish a centralized cash management system.

Payment of Professional Fees and the Administrative Charge

155. I believe it is in the interests of First Leaside and all of its stakeholders that First Leaside's legal advisors, the CRO, the Monitor, and the Monitor's proposed counsel (Blake, Cassels & Graydon LLP) (collectively, the "**Estate Professionals**") assist First Leaside throughout this process to proceed with the proposed wind-down. The process will be complicated. The institutional knowledge that the Estate Professionals currently possess is invaluable given the complicated nature of First Leaside's structure and financing.

156. Further, the Estate Professionals will be working with over 1,200 stakeholders to wind-up First Leaside. This will likely be a time-consuming process that will involve both the institutional knowledge and skills of the Estate Professionals.

157. Consequently, it is necessary for First Leaside to pay the reasonable fees and disbursements of the Estate Professionals and it is appropriate that the Estate Professionals be granted a charge in the total amount of $1 million (the "**Administrative Charge**") on the assets of First Leaside as security for amounts owing by First Leaside to them. It is proposed that the fees of all of the Estate Professionals—except counsel to the Independent Committee (who are proposed to come within the D&O Charge)—be secured under the Administrative Charge.

Allocation of Restructuring Costs

158. The Estate Professionals intend to devise a protocol for allocating among the various Applicants, where possible, their fees and disbursements associated with the restructuring. That will likely require the professionals to open multiple files, each of which relates to work performed on specific First Leaside entities or groups of entities.

D&O Charge

159. Although I am, in essence, instructed only by the four members of the Independent Committee, there are 17 independent directors of First Leaside entities. I, along with the First Leaside directors and officers, have knowledge of the properties, have had ongoing discussions with stakeholders, and have been involved in negotiations with third party investors and developers. There is a significant amount of information and experience in the possession of directors that is necessary to support the restructuring and maximize First Leaside's value.

160. Realistically, it is unlikely that the Independent Committee or other directors would continue their service to First Leaside during CCAA proceedings without an indemnity. In fact, members of the Independent Committee have already advised that they wished to resign from their position in order to minimize their personal liability. First Leaside was able to convince them to remain as directors for the time being, although their long term service is in question, especially if they may be exposed to post-filing liability.

161. First Leaside currently *does not*—and historically has never had—directors' and officers' insurance (**"D&O Insurance"**). Although the Independent Committee tried to secure insurance in 2011, it has not been able to do so until now at reasonable rates

and with a reasonable scope of coverage, given that coverage was sought after First Leaside's problems were already apparent and the regulators' investigation was well underway. Efforts to obtain D&O Insurance continue, although any insurance that is obtained is likely to provide minimal coverage.

162. First Leaside is seeking an order under the CCAA that provides for the indemnification of the directors and officers by First Leaside for any post-CCAA filing liabilities, and that grants to the directors and officers (and their counsel, for fees) a charge on all of First Leaside's assets in the total amount of $250,000 (the "**D&O Charge**") as security for such indemnification. Since the D&O Charge relates to post-filing liabilities, such figure has been established by taking into account the above-noted ongoing liabilities to employees for wages and vacation pay.

163. First Leaside is requesting that the D&O Charge rank second in priority, behind the Administrative Charge.

164. On February 22, 2012, the Company, at the direction of the Independent Committee, took steps to establish a trust called the "First Leaside Independent Committee Trust", in favour of the non-management directors of FLWM and their designates (including the CRO) in the amount of $250,000. The purpose of the trust is to pay legal expenses and claims, settlements or judgements from any legal actions commenced against such directors based on claims for actions taken or failed to be taken before the date of this CCAA filing. The proposed trustee is Arden Cornford.

Representative Counsel

165. First Leaside has over 1,200 investors who have invested their money (loans and equity) in various LPs, trusts, and corporations of the First Leaside group.

166. Given the large number of individual investors in First Leaside and the difficulty that investors would individually have in getting their voice heard in this restructuring, First Leaside seeks the appointment of a well-known and experienced law firm to act as representative counsel to such investors.

167. Appointing representative counsel will enable First Leaside to put in place an efficient and effective communication plan, and will assist in the implementation of the wind-up plan. Further, representative counsel will ensure that those investors who do not opt-out of representation will be adequately represented in the CCAA proceedings.

168. First Leaside is seeking an order under the CCAA that both appoints Fraser Milner Casgrain LLP ("**FMC**") as representative counsel, authorizes an initial maximum amount of $150,000 for legal fees and includes the fees of Representative Counsel in the Administrative Charge.

169. FMC has served as representative counsel on at least one prior occasion when it represented the 26,000 investors in Portus Alternative Asset Management Inc. (and related companies) in bankruptcy proceedings.

170. The Applicants are proposing that Shayne Kukulowicz, a partner at FMC, be the lead lawyer at FMC who acts as representative counsel. FMC has conducted a conflict search and confirmed that it is able to act in this matter. I also believe that Mr.

Kukulowicz is eminently qualified to fill the role of representative counsel and to discharge his responsibilities to investors fully and to act independently of First Leaside.

171. I have already spoken with a number of First Leaside clients about representative counsel. One of these people, Steve Rosenberg, is apparently an investor who has been in contact with dozens of other investors and was (within the last week) seeking potential counsel for investors. Around February 17, 2012, I spoke with Mr. Rosenberg and explained the CCAA process and discussed the possibility of representative counsel. I later sent a follow-up e-mail to him to explain the concept of representative counsel. Mr. Rosenberg also informed me, and I believe, that he spoke with Mr. Kukulowicz on February 18, 2012, and that it was a "good conversation".

172. On February 18, 2012, I also exchanged e-mail messages with two other investors, Keith and Lois Warden, to explain the rationale for, and role of, representative counsel.

173. Mr. Kukulowicz has also advised me, and I believe, that he and other members of FMC have also made contact with a number of investors to explain the possibility of appointing representative counsel. He has also advised me that investors have, in general, been very supportive of the potential appointment of representative counsel.

174. It is not the intention of First Leaside to exclude the participation of other counsel on behalf of individual investors. As such, the proposed CCAA order allows investors to provide representative counsel with written notice if they do not wish to be represented by FMC, thereby creating an "opt-out" process. However, since it would not be

69

economically feasible for First Leaside to fund numerous counsel for individual investors, parties that opt-out would have to bear their own legal fees.

Priority of the Administrative Charge and the D&O Charge (collectively, the "Charges")

175. Since many of First Leaside's real properties have values which exceed the amount of their underlying mortgages, the proposed charges will likely be borne by subordinate creditors (like noteholders) and, in some cases, by equity holders. However, it is these stakeholders who have the most to gain from an orderly liquidation process which maximizes value, thereby creating a potentially greater surplus after mortgages are paid.

176. The cumulative amount of the Administrative Charge and the D&O Charge would be $1.25 million. That amount is about 1% of the gross value of First Leaside's real estate assets according to the appraisals referred to in the GTL Report (on page 66).

177. The restructuring will, admittedly, have a cost. However, I believe that the cost of restructuring is likely to be significantly higher if realization of assets occurs in a piecemeal fashion, especially given the large number of creditors and the extensive inter-company loans.

178. First Leaside needs a coordinated process to:

(a) operate the various properties during the wind-down;

(b) market and sell properties;

(c) accept and adjudicate claims from equity-holders, debt holders, trade creditors, construction lien claimants, and mortgages; and

(d) come to a final reckoning of all assets and liabilities as amongst all entities in the First Leaside group (including payment of inter-company debt).

179. I believe that the most efficient and least expensive way of dealing with these matters is through a coordinated CCAA process.

180. Should the Administrative Charge and D&O Charge not be approved, First Leaside would be unable to proceed under the CCAA and First Leaside's other stakeholders would be significantly prejudiced.

VIII. CONCLUSION

181. If First Leaside is provided with a reasonable period of protection, First Leaside's goal is to refine and implement a wind-down plan that would maximize value for its stakeholders. The granting of the relief requested also provides a single forum for the numerous stakeholders of First Leaside.

71.

182. If CCAA protection is not granted, First Leaside would likely be faced with the unpalatable requirement of abandoning multiple properties (i.e., those without immediate access to funds). Given the numerous and diverse nature of the stakeholders of First Leaside, it is foreseeable that numerous parties would take individual remedies and there would be layers of costly litigation and an overall diminution of stakeholder recoveries. I believe that such a meltdown would result in the loss of significant value for all stakeholders.

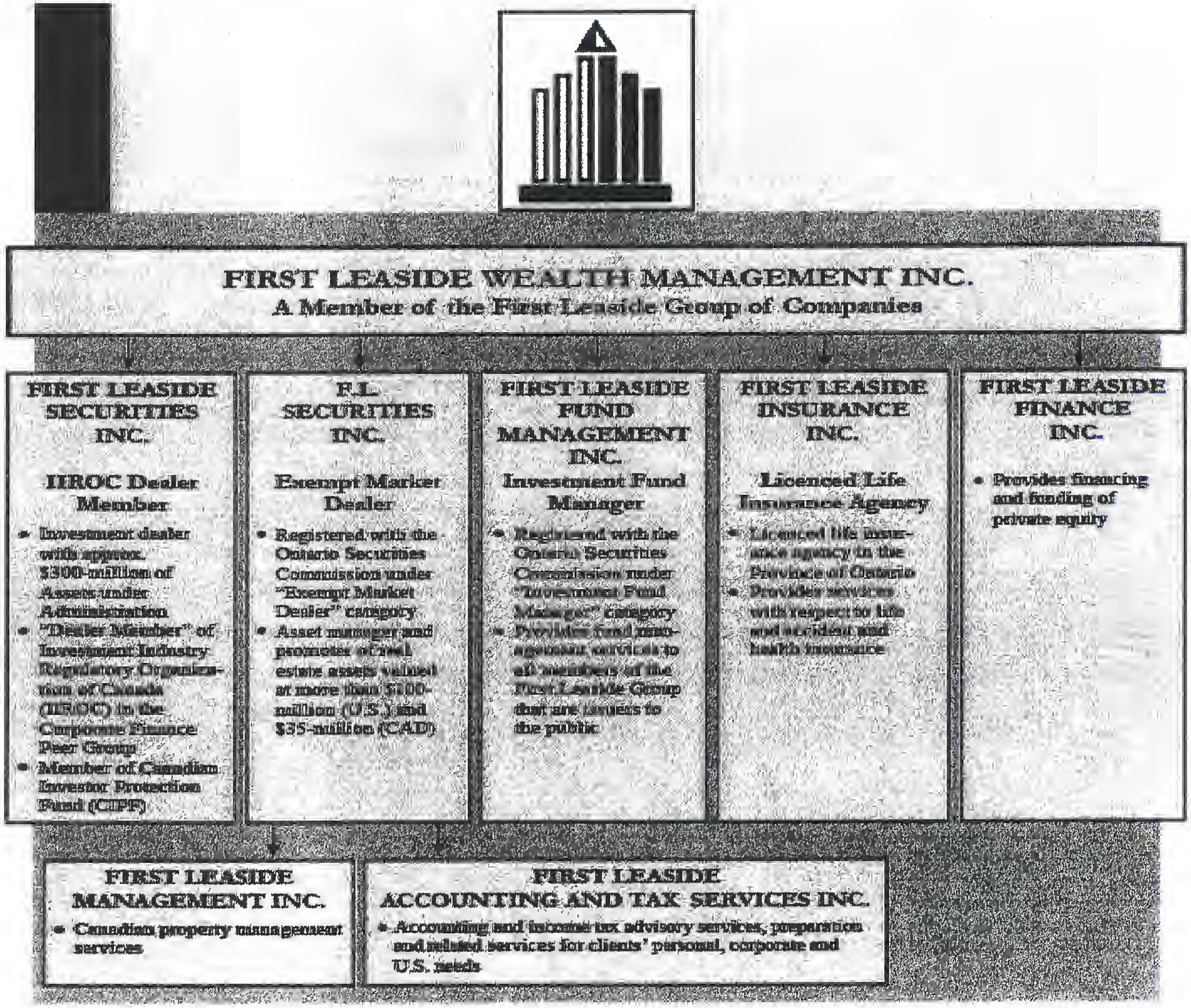
SWORN before me at the City of Toronto In the Province of Ontario, this 22nd day of February, 2012	))))))	
A Commissioner, etc.		Gregory MacLeod

This is **Exhibit "B"** referred to in the affidavit of **Gregory MacLeod** sworn before me in the City of Toronto, in the Province of Ontario, this **22nd** day of **February, 2012**.

....

A Commissioner For Taking Affidavits

B. FLWM Organizational Chart



76.

TAB 02

CIPF
Canadian Investor Protection Fund

Member Directory >

Current CIPF Members

You must have a customer account at a CIPF Member in order to be eligible for CIPF protection. Review the list below to see if you are dealing with a CIPF Member.

Can't find your investment dealer? Our Members sometimes use marketing names that differ from the legal entity names. For more information see the FAQ - "Confirming you have CIPF coverage"

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z All

Member Name	
F	Top of page
Fidelity Clearing Canada ULC	
FIN-XO Securities Inc.	
First Leaside Securities Inc. - Suspended	
FirstEnergy Capital Corp.	
Foster & Associates Financial Services Inc.	
Friedberg Mercantile Group Ltd.	

TAB 03

FIRST LEASIDE
Securities Inc.

Client Copy

Welcome to First Leaside Securities Inc.

RELATIONSHIP DISCLOSURE FOR NEW CLIENTS OF FIRST LEASIDE SECURITIES INC.

As a new member of the First Leaside Family, we would like to provide you with some important information about your account(s) with us and the services we provide. Please read this document in its entirety.

Client Accounts

We offer a number of account types to meet your needs, including Canadian and U.S. dollar cash accounts and such registered accounts as RRSP, TFSA, RESP, RRIF, LIRA and LIF accounts.

Account Set-up

First Leaside Securities Inc. is an Introducing Broker, accounts are held through our Carrying Broker, Penson Financial Services Canada Inc. ("Penson"). For accounting and regulatory purposes, clients of First Leaside Securities Inc. will be considered as clients of Penson. With respect to any transactions that First Leaside Securities Inc. may enter into on your behalf, Penson will be responsible for: trade (execution) and settlement, custody of cash and securities, the preparation of confirmations and account statements and the financing of any account positions. First Leaside Securities Inc. will be responsible for determining suitability and ensuring appropriate supervision is performed for all trading activity in client accounts.

Your account opening package includes a brief statement from Penson with respect to the Introducing/Carrying Broker Relationship.

New account opening forms are included in this package. Please ensure that the areas where we have inserted your information are accurate and that you enter the requested information in those sections which we have specifically indicated you must complete:

- Contact information
- Social Insurance No.
- Employer information
- Investment Knowledge
- Annual income figure
- Birth date
- Corporate Business No. (if applicable)
- Family status information
- Financial information
- 'Other Information'

You will receive a copy of the information provided to us at account opening.

It is important that we have up-to-date information about you in order for us to provide you with the best possible service and advice. Please inform us of any significant changes in the information on the form as soon as possible. We will also confirm in writing any such changes.

Verification of Your Identity

Canada's anti-money laundering regulations require us to verify your identity before we can execute any transactions on your behalf, other than opening your account and accepting deposits of funds or securities. The methods of identity verification are prescribed in the regulations of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).*

Our preferred method is to have you meet with a First Leaside representative or an agent appointed by First Leaside, who will review and take a photocopy of any valid, government-issued identification document such as a passport or driver's licence. If this is not possible, you must provide us with the following document:

- A photocopy of a valid, government-issued identification document attested to by a dentist, medical doctor, chiropractor, judge, magistrate, lawyer, notary (in Quebec), notary public, optometrist, pharmacist, professional accountant (APA, CA, CGA, CMA, PA, or RPA), professional engineer (Eng. in Quebec or P.Eng. elsewhere) or veterinarian licensed in Canada. The copy must show:
  - The name, profession and address of the person providing the attestation;
  - The signature of the person providing the attestation; and
  - The type and number of the identifying document.

Additionally, we require a clearable personal cheque for $1.00 payable to "First Leaside Securities Inc.", drawn on an account in your name at a Canadian bank, trust company, credit union or caisse populaire, which will be deposited into your Canadian cash account once it has been opened. If you have any questions before returning the completed New Account Application Form, please contact your Advisor or your Client Services Representative at 905-852-2500 or 1-866-681-9247.

Privacy

We respect your privacy and that of your personal information. Please review and sign the enclosed document *"FIRST LEASIDE SECURITIES POLICY STATEMENT REGARDING DISCLOSURE OF CONFIDENTIAL CLIENT INFORMATION". **Please note that we do not sell or trade our client lists to third parties.***

Client Investment Reporting

Whenever a trade is done for your account, Penson will send you a written confirmation showing the security purchased, the amount, the price, the transaction fee and the total cost.

Initials:/ ______

TAB 04

FIRST LEASIDE
Securities Inc.
430 Durham Road [illegible], Uxbridge, Ontario, Canada L9P 1R1
Telephone: [illegible] • Fax [illegible]
Toll Free: [illegible]

Client Statement

For the Period Ending
December 31, 2012

Client#:

Serviced By:
JOHN R. WILSON

001885 PENCNDA1 005568 0000000000 C053_XXXXX_E_0_BATC 20130101122_MTH_01.afp

[redacted]

		Value as of last statement	Value as of December 31, 2012		
Account Number	**Account Type**	**Total Value of Account**	**Cash**	**Securities**	**Total Value of Account**
	Registered Retirement Income Fund (RRIF) CAD	0.00	0.00	0.00	0.00

[redacted]

Trade Date	Settlement Date	Activity	Quantity	Description	Price	Debited To Account	Credited To Account
RRIF				**Total Opening Balance**			
RRIF				**Opening Balance**			
12/19	12/15	Conversion In	(200,000)	FLEX FUND CLASS B T/U AS OF 12/15/12 FLES-LEGACY-FIDELITY			
RRIF				**Closing Balance**			
				Total Closing Balance			**0.00**

[redacted]

Account Type	Shares/ Par Value	Security Description	Symbol	Book Value	Market Price	Market Value	% of Portfolio	Asset Location
Cash Equivalents								
RRIF		Opening Balance		0.00	N/A			

% of Portfolio may be rounded

CIPF
Canadian Investor Protection Fund
MEMBER

IIROC

FIRST LEASIDE
Securities Inc.
430 Durham Road [illegible], Uxbridge, Ontario, Canada L9P 1R1
Telephone: [illegible] • Fax [illegible]
Toll Free: [illegible]

Continued

[redacted]

Investment Income	**Current Month**	**Y-T-D**	**Expenses & Fees**	**Current Month**	**Y-T-D**
Interest Earned on Cash Balance	0.00	0.00	**Interest Charged on Margin Balance**	0.00	0.00
Interest Earned on Fixed Income	0.00	593.75	**Interest Charged on Fixed Income**	0.00	0.00
Accrued Interest Earned	0.00	0.00	**Accrued Interest Charged**	0.00	0.00
Dividends Earned	0.00	0.00	**Dividends Charged**	0.00	0.00
Total	**0.00**	**593.75**	**Total**	**0.00**	**0.00**

[redacted]

Designated Beneficiary

Of your RRIF

RRIF Payment Profile

Required Annual RRIF Minimum Payment	4,065.14
Elected Minimum Payment	4,065.14
Elected Frequency of Payment	Monthly
Payment Made to Date	4,065.14

[redacted]

Introducing Broker / Carrying Broker Disclosure
Your introducing Broker has appointed Penson Financial Services Canada, Inc. ("Penson") as its carrying broker for your account. Your introducing broker is solely responsible for determining the suitability of your trading activity and the nature of securities purchased as well as ensuring appropriate supervision is performed for all trading activity in your accounts. As carrying broker for your account, Penson will act as the introducing Broker's agent for clearing and settlement of trades, the custody of cash and securities, and the preparation of confirmations and account statements.

Account Statements
A monthly statement of account is issued to you whenever there has been activity in your account during the previous month (other than non-material activity such as regular interest and dividend payments). A statement of account will be issued to you on a quarterly basis for any accounts holding positions and/or cash balances at the end of a quarter, regardless of whether there has been any activity in the account.

Errors and Omissions
If this statement of account does not correspond to your records or contains errors or omissions, please contact your Introducing Broker in writing. Any errors or omissions or unauthorized transactions must be reported in writing within 30 days of the date of this statement of account.

Information
While the information contained in your statement of account ("Information"), including prices, book values or market values was received from third party sources that are deemed to be reliable and accurate, the Information has not been validated by Penson and Penson does not represent or warrant as to the accuracy or fitness for any particular purpose of the Information. You accept sole and entire responsibility with regard to its use.

FIRST LEASIDE
Securities Inc.
430 Durham Road 69, Uxbridge, Ontario, Canada L9P 1R1
Telephone: 905-852-3600 • Fax 905-852-4633
Toll Free: 1-800-881-6847

Client Statement

For the Period Ending
December 31, 2012

Client#:

Continued

Should "N/A" appear as the price for an investment, you should contact your introducing broker to establish whether; (i) the price available was stale, (ii) we were unable to obtain a reliable price or (iii) the value of the investments is $0.00.

Cash Balances
Cash balances in your account are not segregated from other funds and may be used by us for the general conduct of our business. Cash balances in registered accounts are held in trust by the trustee for your account.

Leverage/Margin Risk Disclosure Statement
The use of leverage may not be suitable for all investors. Using borrowed money to finance the purchase of securities involves greater risk than using cash resources only. If you borrow money to purchase securities, your responsibility to repay the loan and pay interest as required by its terms remains the same even if the value of securities purchased declines.

Member CIPF
Customers' accounts are protected by the Canadian Investor Protection Fund within specified limits. A brochure describing the nature and limits of coverage is available upon request.

Segregation
Applicable regulatory requirements require that all fully paid and excess margin securities must be promptly segregated and are not available for use in the general conduct of our business. All security positions displayed under the account holdings section are segregated unless otherwise indicated under the security description column. Securities registered in your name are also indicated under the security description column.

RRSP Trustee
Computershare Trust Company of Canada Inc. acts as trustee for all registered accounts. All plan accounts are registered with the Canada Revenue Agency for Penson Financial Services Canada Inc., agent for Computershare Trust Company of Canada Inc.

Additional disclosures
Our statement of Financial Condition as of our most recent financial year and a list of our directors and senior officers is available upon request. Our clients in British Columbia are entitled to certain additional information about us, including information about commissions and fees that we charge, and about any administrative proceedings that may relate to the firm or our staff.

Shareholders communications (CSA National Instrument 54-101)
Your instructions in connection with Shareholder Communication may be modified at any time by providing us with written notice.

Tax Information
We are required to provide information to the Canada Revenue Agency about security transactions made by our clients. You must report the income or capital gains from these transactions on your annual income tax return. Please keep all your statements we send you for your records.

Abbreviations
The following abbreviations may appear on your account statement:

DSC: DEFERRED SALES CHARGE	RTS: RIGHTS
NCI: NON-CERTIFICATE ISSUE (GIC/MUTUAL FUNDS)	RVS: RESTRICTED VOTING SHARES
NVS: NON-VOTING SHARES	SVS: SUBORDINATE VOTING SHARES
RS: RESTRICTED SHARES	WTS: WARRANTS

TAB 05

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

AN EXPEDITED HEARING PURSUANT TO *DEALER MEMBER RULE 20.42* OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

FIRST LEASIDE SECURITIES INC.

NOTICE OF APPLICATION

TAKE NOTICE that on Friday, February 24, 2012, at Legal Transcript Services, 350 Bay St., 7th floor, in Toronto, Ontario, at 11:00 am or as soon thereafter as the application can be heard, Staff of the Investment Industry Regulatory Organization of Canada ("IIROC") will make application to a Hearing Panel for an Expedited Hearing, **WITH NOTICE,** to First Leaside Securities Inc. ("First Leaside") pursuant to Dealer Member Rules 20.41, 20.42, 20.45 and Rule 16 of the Rules of Practice and Procedure.

THE RELIEF SOUGHT IS:

An Order granting the following relief:

1) Pursuant to Dealer Member Rule 20.42(1) (d), 20.45(1)(a), First Leaside Securities Inc.'s membership is hereby suspended;

2) Pursuant to Dealer Member Rule 20.45(1)(d), First Leaside Securities Inc. shall immediately cease dealing with the public, including the removal of its website;

3) Pursuant to Dealer Member Rule 20.45(1)(b), clients of First Leaside will be permitted to transfer client accounts at Penson Financial Services Canada Inc., including liquidating trades except those trades involving securities which are subject to the Cease Trade Agreement with Staff of the Ontario Securities Commission;

4) FLSI shall report to IIROC Staff as directed every 30 days regarding any action taken pursuant to this Order, until such time as all FLSI client accounts have been transferred to third party Member Firms;

5) The risk adjusted capital and minimum capital requirement (together, the "Regulatory Capital") shall be dealt with in accordance with the terms of the Initial Order of the Ontario Superior Court of Justice *In the Matter of the Companies' Creditors Arrangement Act* of which FLSI was an applicant, dated February 23, 2012 (the "CCAA Order");

6) In the event that FLSI shall desire the Regulatory Capital to be dealt with otherwise than in accordance with the CCAA Order, such other dealing shall only be effected by further Order of the Court in the CCAA proceedings, and FLSI shall consult with IIROC Staff and attempt to seek agreement on the terms of such use of the Regulatory Capital before any motion is brought to (i) amend or vary the CCAA Order in that regard or (ii) seek a further Order in that regard;

7) Upon completion of the transfer of client accounts, and determination of any claims against FLSI, to the satisfaction of IIROC Staff, IIROC Staff may move, without notice to FLSI, for an order terminating the membership of FLSI;

8) This Order will come into effect immediately; and

9) Such further and other relief that counsel may request and that the Hearing Panel may permit.

THE GROUNDS FOR THE APPLICATION ARE:

Overview

1) First Leaside Securities Inc. ("FLSI") is currently a Dealer Member. However, several factors have caused it to be in such financial or operating difficulty that it cannot be permitted to continue to operate without risk of imminent harm to the public, other Dealer Members or the Corporation. Those factors include:

   i. A substantial portion of its business is subject to a Cease Trade Agreement with Ontario Securities Commission Staff;
   ii. It is undertaking the transfer of client accounts to other Dealer Members;
   iii. It is terminating employees;
   iv. It has made application to the Ontario Superior Court of Justice under the *Companies' Creditors Arrangement Act* (CCAA), in which it has expressed an intention to wind down its operations; and
   v. IIROC's ability to govern the Dealer Member is severely restrained if not lost altogether as a result of the CCAA proceeding.

Recent Events

2) FLSI is among a group of entities within the First Leaside Group of Companies (the "FL Group") which has made an application to the Ontario Superior Court of Justice under the *Companies' Creditors Arrangement Act* (the "Application").

3) The purpose of the Application is to permit the First Leaside Group of Companies to undertake an orderly wind-down of operations within a court-supervised process.

4) If granted, the Applicant (which includes FLSI) shall have the right to:

i. Permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding $50,000 in any one transaction or $250,000 in the aggregate;
ii. Terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
iii. Pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
iv. Pursue all avenues for the potential sale of the Business or Property, in whole or part, subject to further approval of such sale by this Court.

Background

5) In 2011, Grant Thornton Limited conducted a viability review of the entire FL Group (not including dormant or inactive companies) and produced a report on August 19, 2011. Grant Thornton was retained by lawyers for First Leaside. Ontario Securities Commission (OSC) and IIROC Staff received the report shortly after it was produced.

6) One of Grant Thornton's key findings was that the future viability of the FL Group was contingent on their ability to raise new capital. It found that one of the largest sources of revenue in the FL Group was the fees it generated in one of its operating entities, First Leaside Wealth Management ("FLWM"), on the raising of new capital. If the FL Group was restricted from raising new capital, it would likely be unable to continue its operations in the ordinary course, as it would have insufficient revenue to support its infrastructure, staffing costs, distributions, and to meet their funding requirements for existing projects.

7) On October 28, 2011, IIROC Staff placed FLSI into discretionary Early Warning Level 2 (EW2). As a result, FLSI was prohibited from:

i. Reducing its capital;
ii. Repaying subordinated indebtedness without IIROC approval;

iii. Making bonus, loan or capital payments to any director, officer, or affiliate of FLSI; and
iv. Reducing the "non-allowable assets" of FLSI.

8) FLSI remains under discretionary EW2.

9) On October 31, 2011, the FL Group entered into a Cease Trade Agreement ("CTA") with OSC Staff regarding the units of limited partnerships and funds formed or established by the FL Group. (the "FL Products");

The Business of FLSI

10) FLSI acted as agent for the offerings of the FL Products;

11) FLSI clients who purchased the FL Products hold them in their accounts at FLSI (carried by Penson Financial Services Canada Inc.) or in certificate form outside of FLSI.

12) FLSI also provides advisory services to companies within the FL Group in the structuring of limited partnerships for real estate properties. Revenue is generated from both advisory services and primary distribution fees for limited partnership units (LPUs) sold to accredited investors through private placements.

13) FLSI's main sources of revenue are as follows:

i. advisory fees paid to it by F.L. Securities Inc., the EMD;
ii. agency fees for distributing the LPUs;
iii. administrative fees from high net worth retail clients with investments mainly in fixed income products.

Finances

14) FLSI's last MFR filing was for December 2011. Statement E reveals the following income for that month:

	Dec ($)
Corp Finance Revenue/New Issues - equity	0
Corp Finance Revenue/Corporate Advisory Fees	0
Interest	2,000
Fees	(257,000)
Total Income	**(255,000)**

15) There is currently risk adjusted capital in the amount of approximately \$1,741,000, together with a minimum capital requirement of \$250,000.

16) However, the Application and Order sought make provision for the use of that capital to pay certain costs associated with the Application.

Management

17) In November 2011, the FL Group appointed an Independent Committee to assume all decision-making authority in respect of the FL Group and oversee its operations.

18) None of the Independent Committee members are IIROC registrants.

19) FLSI is a wholly-owned subsidiary of FLWM.

20) Although David Phillips is the President and UDP of FLSI, as well as its majority common-shareholder, the Application indicates that since the appointment of the Independent Committee, Phillips has no longer been in charge of the management of the FL Group (and presumably, FLSI).

21) In December 2011, the Independent Committee retained a Chief Restructuring Officer ("CRO"). The CRO has made the Application on behalf of the FL Group.

Employees

22) The materials filed in support of the Application indicate that due to downsizing over the last several months and the decision to wind down operations, approximately 30 FL Group employees have been temporarily laid off or terminated. 5 IIROC registrants were terminated by FLSI in November 2011.

23) Currently, the FL Group employs 19 salaried employees. According to its Application, the FL Group expects to reduce its workforce to approximately 11 people by month end. It is unclear what proportion of these employees are employed by FLSI.

24) However, very recently Notices of Termination were filed in respect of two Registered Representatives. This leaves 13 IIROC registrants employed with FLSI.

25) The Application further states that during the CCAA process it is likely that staffing levels will be reduced further.

Intention to Wind Down FLSI

26) The Application states that FLSI will wind down operations. It further states that as a result, there is no need for clients to continue to hold non-FL Proprietary Products through FLSI.

27) The Application further states that as part of the CCAA order sought, FLSI wishes to allow clients to transfer non-FL Proprietary Products and cash to another investment dealer and that FLSI will cooperate in that process.

28) Such further and other grounds as counsel may advise and the Hearing Panel may permit.

IIROC STAFF WILL RELY UPON THE FOLLOWING EVIDENCE:

1) Affidavit of Brian Connell-Tombs; and

2) Such further and other evidence as counsel may advise and the Hearing Panel may permit.

DATED at Toronto, Ontario, this 22nd day of February, 2012.

JEFFREY KEHOE
VICE-PRESIDENT, ENFORCEMENT
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA
Suite 1600, 121 King Street West
Toronto, Ontario M5H 3T9

EXPEDITED HEARINGS

20.41 Expedited Hearings

(1) Expedited hearings are held upon application by Corporation Staff and without notice to the Respondent in the circumstances prescribed in Rule 20.42 and Rule 20.43.

20.42 Types of Expedited Hearings- Members

(1) A Hearing Panel may impose any of the penalties prescribed by Rule 20.45 upon a Dealer Member in any of the following circumstances:

Bankruptcy

(a) a Dealer Member makes a general assignment for the benefit of its creditors, makes an authorized assignment or a proposal to its creditors; is declared bankrupt, or a winding-up order is made in respect of a Dealer Member or a receiver or other officer with similar powers is appointed in respect of all or any part of the undertaking and property of the Dealer Member.

Suspension or Cancellation of Registration or Membership

(b) the registration of a Dealer Member as a dealer in securities or commodities under any statute respecting trading or advising in respect of securities or commodities or as an underwriter in any statute in respect of securities or commodities has lapsed or is suspended or cancelled;

(c) a recognized stock exchange, securities commission, securities regulatory authority, self-regulatory organization or any recognized trading or quotation system suspends the Membership or privileges of a Dealer Member;

Financial or Operating Difficulty

(d) where a Dealer Member is in such financial or operating difficulty that the Hearing Panel determines the Dealer Member cannot be permitted to continue to operate without risk of imminent harm to the public, other Dealer Members or the Corporation;

Failure to Cooperate With Corporation Compliance Examinations or Investigations

(e) where a Dealer Member fails to cooperate with Corporation compliance examinations or investigations pursuant to Rule 19 and the Hearing Panel determines that the Dealer Member cannot be permitted to continue to operate without risk of imminent harm to the public, other Dealer Members or the Corporation;

Criminal Charges

(f) where a Dealer Member has been charged with a criminal offence relating to theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation or unauthorized trading, and such criminal charge likely brings the capital markets into disrepute.

Non-Compliance With Conditions

(g) where a Dealer Member fails to comply with terms or conditions imposed pursuant to Rule 20.33, Rule 20.34 or Rule 20.38 or Rule 20.29.

TAB 06

2/22/13 Postmedia News (Can.) 00:00:00

Loaded Date: 02/22/2013

Postmedia News (Canada)
Copyright 2013 CanWest Interactive

February 22, 2013

Section: FP Street

First Leaside victims fight for lost millions but hopes are dim

Barbara Shecter

TORONTO - Tim Morris was 64 and thought he was set for a comfortable retirement after selling his family's photo business and handing the proceeds of nearly $2-million to an investment firm specializing in real estate and tax breaks.

He was so confident in the firm that boasted oversight by the country's largest capital markets and investment industry watchdogs - and added protection against financial disaster through the Canadian Investor Protection Fund - that he invested a further $100,000 a couple of months later, in September 2011. But before the year was out, he, along with more than 1,000 other investors in the **First Leaside** Group of Companies, was hit with a bombshell. Regulators were concerned about how funds were being used at the firm, which by then had $370-million in assets under management, and **First Leaside** had agreed to a cease-trade while it attempted to satisfy regulatory concerns.

Within weeks, however, all distributions to investors were suspended and, by February of last year, the firm had entered court-monitored protection from creditors and was selling off the assets under the direction of a chief restructuring officer.

At the end of last year, First Leaside was put into receivership.

Almost all the real estate and other assets under a court-monitored wind-down have been sold, and a receiver, Grant Thornton Ltd., is now sifting through claims to determine how to distribute what little is left after costs.

Related

Regulator claims marketing materials served to mislead First Leaside investors

First Leaside accused to face IIROC in September

Suit against First Leaside founder a 'misconceived attempt' to 'second guess' legitimate decisions, lawyers say

"I do not have high hopes for receiving anything substantial from the receivership process," says Mr. Morris, a fairly typical First Leaside investor. He had the bulk of his savings tied up in the firm, feels he has let his loved ones down, and is making arrangements to sell off valued possessions to make ends meet.

"I will run out of money if I continue retirement," says Mr. Morris, who is now 65 and preparing to sell his cottage.

Sources close to the dismantling of First Leaside, meanwhile, say there are gross proceeds of about $25-million, before accounting for the costs of the year-long wind-down of the Uxbridge, Ont., firm.

Documents filed with the Ontario Superior Court of Justice show that the firm's assets fetched about $125-million, but some $100-million went to pay off mortgages and other debts, according to the sources close to the process.

Investors have until the end of this month to confirm their claims, and it will take at least a few more months for the receiver to work out the final tally and how to distribute it to investors. First Leaside had a complex corporate structure involving a series of loans and other obligations between funds and limited partnerships within the group.

"The receiver anticipates seeking the court's approval of a manner of distribution as soon as practicable, likely towards the summer of 2013," Grant Thornton said in a statement to the Financial Post.

For Mr. Morris, as for many other First Leaside clients, the first inkling that all was not well with his nest egg was when he read a letter dated Nov. 7, 2011 that was sent to investors and posted on the firm's website.

The letter was signed by First Leaside's founder David C. Phillips; chairman of parent company First Leaside Wealth Management, Douglas Hyatt; and director Leo de Bever. It explained that staff of the Ontario Securities Commission had, after requiring an independent review of the company's assets and operations, advised that it was "not appropriate to use money raised from new investors to fund the operating losses, rehabilitation costs and distributions of existing limited partnerships."

Not surprisingly, Mr. Morris is still upset with the way First Leaside was managed, and is frustrated by what he sees as a "lack of organization" within the firm that dragged out the completion of the "viability" report until August of 2011, a couple of months after he made his largest investment. The viability study by the outside audit firm, a division of Grant Thornton Ltd., took about six months.

"Had Grant Thornton been able to prepare the report in a timely manner and had that report been released to investors, I would not have invested in July 2011," Mr. Morris says.

But he says he is also frustrated by the actions of the Ontario Securities Commission, which had been looking into First Leaside's operations since 2009.

"The OSC was very slow to enforce their will," Mr. Morris says. "They had a case, but it took them two years to find it."

The viability report was completed and given to First Leaside and the OSC in August 2011, but investors were not told about the report or its conclusions until the OSC stepped up pressure on the firm in November.

Like some other investors, Mr. Morris was still putting money into First Leaside in the window between the delivery of the Grant Thornton report and the regulatory crackdown, investing just over $100,000 in September 2011.

"It's like the last hurrah as the carpet's coming out from under you," Mr. Morris says now.

Regulators ultimately took action against First Leaside's founder Mr. Phillips and the firm's senior salesman John Wilson last summer, accusing them of securities fraud as a result of those later sales.

The OSC is specifically targeting the months between the completion of the viability report in August, and the cease-trade agreed to by First Leaside under regulatory pressure in November.

In a separate action, the Investment Industry Regulatory Organization of Canada has accused Mr. Phillips and Mr. Wilson of a broader set of allegations, including misleading marketing, misrepresentation of risk, and putting their own interests ahead of those of their clients.

But even if the allegations are proven, investors are not expecting any financial reimbursement or compensation to result from a three-week hearing set to begin this June, or a separate enforcement hearing to be held in the fall by Canada's investment industry regulator.

The pair of regulatory hearings could result in fines or other sanctions if the allegations are proven, but, as is common in such cases, money is not expected to go directly to affected investors.

Mr. Morris thinks the best hope for investors is the Canadian Investor Protection Fund (CIPF), which provides up to $1-million of coverage for financial losses in an insolvency.

However, it remains to be seen whether First Leaside investors qualify under the investor protection fund's strict terms.

"I do have some faith that the CIPF will step in and cover some of the losses," Mr. Morris says.

Court-appointed lawyers representing First Leaside investors in the wind-up and receivership told them in a December 21, 2012, letter that there has been "no commitment to date on any claims coverage" during a number of meetings with CIPF.

Investors could potentially see some cash recovery as a result of a lawsuit filed on their behalf against the founder Mr. Phillips and his wife over a series of contracts and business dealings, which is now under the stewardship of the receiver.

However, the couple has contested the allegations and is fighting the lawsuit.

While First Leaside had $370-million in assets under management at its peak, sources close to the court-monitored unwinding of First Leaside say the $25-million in gross proceeds from the wind-down should be measured against a top-line of about $180-million. This would exclude about $90-million that was not invested in proprietary First Leaside debt and equity securities and was returned to investors. Some investors who held mortgages directly were also able to recover cash in the wind-down.

But another large exclusion from the tally earmarked for distribution to First Leaside investors is a collection of properties in the United States that were the biggest cash drain on First Leaside when it was an operating business.

In a surprising development last August, the chief restructuring officer of First Leaside - with the court's blessing - gave up rights to those properties in Texas when it was determined that they were controlled by Mr. Phillips, rather than First Leaside, and it was likely to cost more to try to lay claim to them than could be recovered for investors.

Some investors who have direct investments in those U.S. properties, including Mr. Morris, are hoping some money can be recovered in the next three to five years - even if it means Mr. Phillips continues to be involved.

A plan put forward for one of his investments in the U.S. immediately reduced his $1 units to less than one-tenth of their value.

"Can I afford to have an issue with it? That's the way I look at it," Mr. Morris shrugs, conceding his willingness to accept that minscule return. "At 7¢, I said, 'well, bite your tongue and go with it.'"

---- INDEX REFERENCES ---

COMPANY: GRANT THORNTON LTD; HYATT HOTELS CORP; FIRST LEASIDE PROPERTIES FUND

NEWS SUBJECT: (Corporate Events (1CR05); Crime (1CR87); Bankruptcies (1BA08); Business Management (1BU42); Social Issues (1SO05); Fraud (1FR30); Regulatory Affairs (1RE51); Financial Fraud (1FI18))

INDUSTRY: (Accounting (1AC78); Accounting, Consulting & Legal Services (1AC73); Accounting Regulatory (1AC62))

REGION: (Americas (1AM92); Canada (1CA33); North America (1NO39))

Language: EN

OTHER INDEXING: (FIRST LEASIDE WEALTH MANAGEMENT) (August; Tim Morris; David Phillips; John Wilson; Leo de Bever; Douglas Hyatt)

Word Count: 1489
2/22/13 POSTMEDCAN 00:00:00
END OF DOCUMENT

TAB 07

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

THE DEALER MEMBER RULES OF THE
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

DAVID CHARLES PHILLIPS & JOHN RUSSELL WILSON

NOTICE OF HEARING

TAKE NOTICE that pursuant to Part 10 of Dealer Member Rule 20 and Section 1.9 of Schedule C.1 to Transition Rule No.1 of the Investment Industry Regulatory Organization of Canada ("IIROC"), a set-date hearing will be held before a hearing panel of IIROC ("Hearing Panel") on Wednesday, October 17, 2012 at the offices of IIROC, in the British Columbia Room, 121 King St. West, Suite 2000, Toronto, at 10 a.m., or as soon thereafter as this matter can be heard.

TAKE FURTHER NOTICE that, pursuant to Rule 6.2 of IIROC's Dealer Member Rules of Practice and Procedure ("Rules of Practice and Procedure"), the hearing shall be designated on the:

☐ The Standard Track

☒ The Complex Track

THE PURPOSE OF THE HEARING is to determine whether David Charles Phillips and John Russell Wilson (together, the "Respondents") committed the following contraventions that are alleged by the staff of IIROC ("Staff") on behalf of IIROC:

<u>Misrepresentation of Fund Products</u>

i. Between January 2009 and October 2011, David Charles Phillips ("Phillips") misrepresented, and allowed First Leaside Securities Inc. ("FLSI") sales staff to misrepresent to clients, that the proprietary fund products recommended and sold by the firm were low or medium risk, when, in fact, they were high risk, contrary to Dealer Member Rule 29.1;

ii. Between January 2009 and October 2011, John Russell Wilson ("Wilson") misrepresented to clients that the proprietary fund products which he recommended and sold were low or medium risk, when, in fact, they were high risk, contrary to Dealer Member Rule 29.1;

Marketing Materials

iii. Between November 2009 and September 2011, Phillips authorized the preparation and issuance of marketing materials for investment products sold at FLSI, which included statements which were misleading and failed to fairly present the potential risks of those products to the client, and provided these marketing materials to his clients, contrary to Dealer Member Rule 29.7(1);

iv. Between November 2009 and September 2011, Wilson provided marketing materials for investment products sold at FLSI to his clients and potential clients, which included statements which were misleading and failed to fairly present the potential risks of those products to the client, contrary to Dealer Member Rule 29.7(1);

Risk Tolerance on NAAF

v. In and throughout 2009, 2010 and 2011, Phillips and Wilson failed to ensure that the recommendations which were made and orders which were accepted were in accordance with the risk tolerance stated on clients' New Account Application Form ("NAAF"), contrary to Dealer Member Rules 1300.1(o), (p) and/or (q);

Sales of Properties Fund

vi. Between January 1, 2010 and May 1, 2011, Phillips and Wilson solicited sales of First Leaside Properties Fund from clients, while failing to ensure that those transactions were suitable for the clients or within the bounds of good business practice, and preferred their own interests ahead of the clients, contrary to Dealer Member Rules 1300.1(o) and (q) and 29.1; and

Conflict of Interest

vii. Between January 2007 and October 2011, Phillips as the General Partner ("GP") of certain First Leaside Limited Partnerships ("LPs") was in a conflict of interest with clients who invested in those LPs, which was not addressed in a fair and equitable manner and in a manner that considered the best interests of the clients, contrary to Dealer Member Rule 29.1 and NI 31-103.

PARTICULARS

TAKE FURTHER NOTICE that the following is a summary of the facts alleged and to be relied upon by the Staff at the hearing:

A. OVERVIEW

1) David Phillips and John Wilson told clients they wanted to protect their clients' invested capital and maximize their returns and in so doing earned their clients' trust. They then proceeded to abuse that trust, and repeatedly and consistently placed their own interests ahead of those of their trusting clients. Contrary to their obligations to their clients and the industry, they misrepresented their products and failed to consider the suitability of their products for their clients. Phillips also acted in a direct conflict of interest in connection with some of his products.

2) Phillips owned and controlled a corporate enterprise called the First Leaside Group ("FL Group"). In 2010 and 2011, the FL Group was losing money. In order to ensure the ongoing viability of the FL Group, new investor funds were continuously required. During this time, Phillips solicited investment funds from clients without regard for the industry rules and regulations which exist to protect investors.

3) FLSI, an IIROC Dealer Member, was part of the FL Group. Phillips was the President and Ultimate Designated Person ("UDP") of FLSI. He approved all trades made by clients through FLSI. He was also an RR at FLSI and, as such, was directly involved in the sale of securities, as described more fully below, to his own clients.

4) Wilson was an RR at FLSI. However, he was not just an RR. Wilson had been an investor with the FL Group since 1991. He was Director, Investor Relations, for FLSI. He was also a part of the management of the FL Group and was a Director or a Trustee for several other FL Group entities which his clients invested in.

5) FLSI's main business was the sale of proprietary products manufactured by the FL Group. There were two main types of products – LPs and fund products ("Funds").

6) Consequently, FLSI's client accounts were principally invested in FL Group products.

7) Phillips, as UDP and an RR at FLSI, oversaw and was involved, as was Wilson, in the making of trade recommendations and the sales of the Funds to clients, all of which

were characterized as medium risk or low risk products when in fact, they were speculative and/or high risk.

8) Consequently, clients who had no tolerance for high-risk investments had a portion or all of their registered account(s) invested in the high risk Funds, which were unsuitable for them.

9) In addition, although the LPs were high risk investments, Phillips acting as both FLSI's UDP and an RR, and Wilson, acting as an RR, failed to ensure that only clients who had tolerance for high risk as recorded on their NAAF invested in these products.

10) Consequently, on the whole, client funds were invested in LPs and Funds in a manner that was inconsistent with the risk tolerances identified on the clients' NAAFs.

11) In connection with the sales of these high risk investments, Phillips and FLSI sales staff, including Wilson, also distributed marketing material to clients and the public which failed to fairly present the potential (or any) risks of those investments to clients. The marketing materials were also misleading with respect to their statements regarding the alleged success of Wimberly Apartments Limited Partnership ("WALP"), a First Leaside investment.

12) Phillips and other FLSI sales staff, for whom he was responsible, including Wilson, advised certain clients to sell a particular FL Group product for the sole purpose of allowing new clients to invest their funds with the FL Group.

13) Lastly, because of his many roles within the FL Group, Phillips had multiple conflicts, the most notable of which was with respect to fees which were paid from investors' funds. Phillips' conflict of interest with respect to fees he earned from the LPs, despite being disclosed to clients, were not addressed in a fair and equitable manner and was not in the clients' best interest. As such, that conflict ought to have been avoided by Phillips.

B. <u>Membership in IIROC</u>

FLSI

14) FLSI was admitted to membership in IIROC effective March 1, 2004, as a Dealer Member.

15) FLSI was an Introducing Broker with Penson Financial Services Canada Inc. as its Carrying Broker.

16) FLSI's head (and only) office was in Uxbridge, Ontario.

17) On February 23, 2012, a judge of the Ontario Superior Court of Justice granted an Order declaring that certain of the FL Group entities (including FLSI) were companies to which the *Companies' Creditors Arrangement Act* ("CCAA") applied and were insolvent. As a result, these entities are currently undergoing a court-supervised orderly wind-down of operations, under the direction of a court approved Chief Restructuring Officer ("CRO").

18) On February 24, 2012, IIROC Staff made an application to an IIROC Hearing Panel and was granted an order suspending FLSI's membership on the basis that it was in such financial or operating difficulty that it could not be permitted to continue to operate without risk of imminent harm to the public, other Dealer Members or the Corporation.

19) FLSI remains under suspension. It has limited staff remaining, and is not conducting any business. Under the terms of the suspension order, upon completion of the transfer of client accounts, and determination of any claims against FLSI, IIROC Staff may move, without notice to FLSI, for an order terminating the membership of FLSI.

Phillips

20) During the material time, Phillips was the directing mind of the FL Group and all of the entities within it, including FLSI.

21) He was the President and a director of the parent company of FLSI, First Leaside Wealth Management Inc. ("FLWM"). Phillips also owned FLWM.

22) As of the date of FLSI's suspension, Phillips was registered as the President and UDP of FLSI. He was also registered as an RR.

23) Phillips' registration history is as follows:

Marchment & MacKay	November 1981-October 1984	RR
Midland Doherty Limited	October 1984-May 1985	RR

Moss Lawson & Co. Limited	May 1985-May 1987	RR
Richardson Greenshields of Canada	June 1987 – November 1988	RR
McConnell & Company Limited	November 1988 – December 1989	RR
McDermid St. Lawrence Limited	February 1990-October 1990	RR
F.L. Securities Inc.	February 1988 – February 2004	OSC Registration as LMD (RR)
First Leaside Securities Inc.	March 2004 – February 2012	UDP, RR

24) Phillips' registration with IIROC ceased on February 29, 2012 when his employment was terminated by FLSI (through the CRO).

Wilson

25) Wilson had been employed with FLSI since it became an IIROC Dealer Member in December 2004. During his employment with FLSI, Wilson was registered with IIROC as an RR.

26) During the material time, Wilson also held the title of "Director, Investor Relations" at FLSI. He was described by FLSI to clients as being "one of First Leaside's founding partners and a long-serving member of the Board".

27) Wilson was also considered a mentor within the entire FL organization.

28) Wilson had one of the largest books of business at FLSI. For the year ending 2010, in addition to his salary, he earned a bonus of almost $800,000, while the next highest bonus paid to an RR was in the amount of $177,000.

29) Wilson held the following positions within the FL Group:

i. Director, Investor Relations at FLSI;
ii. Director of FLSI;
iii. Director of First Leaside Wealth Management Inc. (FLWM);
iv. Director of the General Partner of Wimberly Apartments Limited Partnership (WALP);
v. Trustee of FLEX Fund;
vi. Trustee of FLWM Fund;
vii. Trustee of FL Mortgage Fund; and

viii. Director of First Leaside Realty II, which is the General Partner for several FL LPs.

30) Prior to being registered with IIROC, Wilson was employed with F.L. Securities Inc. ("FL Securities") an exempt market dealer, from November 2002. FL Securities was also part of the FL Group.

31) Wilson has no other securities industry experience.

32) Wilson's registration with IIROC ceased on February 29, 2012, when his employment was terminated by FLSI (through the CRO).

C. The FL Group of Companies

33) There are over 100 entities within the FL Group; the relevant entities for this proceeding are:

i. FLSI, the Dealer Member;
ii. F.L. Securities Inc., the exempt market dealer;
iii. FLWM, the parent company; and
iv. FL Finance, the banking arm.

Attached as Appendix "A", is a listing of the companies which were included in the CCAA application and a listing of the associated LPs.

34) Although clients purchased securities through FLSI, they were referred to by Phillips, Wilson, and other FLSI sales staff, and in marketing material as being clients or "partners" of the FL Group. There was no clear distinction made to clients between the role of FLSI and the role of the other entities within the FL Group with respect to client investments.

D. The Business of the First Leaside Group

The Products

35) The FL Group manufactured, marketed and sold the LPs and Funds primarily for real estate property investments (together, the "FL Products"). Each year, new LPs were formed and sold to clients.

36) With one exception, the FL Products were sold by Offering Memorandum ("OM") as exempt securities.

37) All investors who purchased FL Products did so through client accounts at FLSI, and Phillips approved every trade.

38) There was no market/liquidity for the FL Products. In circumstances where a client wanted to sell his units, Phillips created a secondary market by using FL entities or other FL clients to buy those units. Except for WALP, these transactions always took place with the units priced at $1.

FLSI – The Dealer Member

39) FLSI's main source of revenue was from its sale of FL Products. Specifically, FL Securities paid FLSI 'advisory fees' for each new FL Product that was sold, and FLSI received an 'agency fee' for each FL Product. The money to pay these fees came from the funds raised from investors.

40) Clients of FLSI generally held two types of securities: FL Products, and non-FL fixed income securities such as real return bonds, government bonds and treasury bills.

41) Generally, FLSI only recommended securities from the two categories described above. No other equities, mutual funds or other securities were solicited for purchase.

42) In the majority of cases, client holdings of FL Products were shown at $1.00 per unit on their statements.

WALP – The Cornerstone of the FL Group

43) WALP was the cornerstone of the FL Group. It was the largest and oldest LP and figured prominently in all FL Group promotional material. WALP indirectly owns real estate properties in Texas, USA.

44) Since its formation in 1992, WALP has raised over $100 million from investors.

45) Phillips was the President and a Director of the General Partner of WALP. Wilson was also a Director of the General Partner of WALP.

E. The High Risk Funds Were Misrepresented as Medium Risk or Low Risk

46) During the material time, Phillips, Wilson and FLSI misrepresented the risk assessment of the FL Funds as medium risk, when, in fact, they were all clearly speculative and/or high risk investments. The one exception was Mortgage Fund, which was misrepresented as low risk, when it was also high risk.

47) During the material time, FLSI sold units of the following Funds:

i. First Leaside Wealth Management Fund ("FLWM Fund");
ii. First Leaside Expansion Fund ("FLEX Fund");
iii. Mortgage Fund;
iv. First Leaside Fund;
v. Wimberly Fund; and
vi. First Leaside Properties Fund.

48) As a result of the misrepresentations and recommendations made by Phillips, Wilson and FLSI, FL Funds were purchased by clients who had no tolerance for high risk products, as evidenced by the information recorded on their respective NAAFs.

a) *Representation of the Funds as "Medium Risk" or "Low Risk"*

49) The FLSI NAAF contained four risk categories:

i. Conservative Income/Low Risk;
ii. Income/Low Risk;
iii. Balanced/Medium Risk; and
iv. Growth/High Risk.

50) The FLSI NAAF stated that "Balanced/Medium Risk" included (but was not limited to) First Leaside Fund products or their equivalent. The LPs were referenced in the "Growth/High Risk" category.

51) Some FLSI clients also received detailed proposals outlining their assets (non-FL) and proposed investments to be made in FL Products. These proposals were in spreadsheet form and contained a heading for "Medium Risk". Wilson created this spreadsheet template and prepared such a detailed proposal for some of his own clients. Other FLSI RRs also provided this spreadsheet to their own clients.

52) Where a Fund product was part of the proposal, it was included in the column for "MEDIUM RISK – Income". The only exception was Mortgage Fund which was listed as "Low Risk".

53) None of the OMs or prospectus for the Funds (except for Mortgage Fund) contain a specific categorization as to the risk of the investment. The OM for Mortgage Fund indicates that it is a "speculative investment".

54) Similarly, there is no indication of the risk rating of the investment and no discussion of risk factors in any of the marketing material for the Funds.

b) Factors Which Make All the Funds High Risk

55) The Funds, except for Mortgage Fund, shared the following factors which made them speculative and/or high risk:

i. Their only assets were unsecured promissory notes from another FL entity;
ii. Payment of the interest was not guaranteed;
iii. The debtor company, at its discretion, could forego the interest payment and add the interest payable to the principal amount of the notes;
iv. There was no secondary market for the units; and
v. There was a credit risk that other FL Group members who have received or may receive loans from the Fund and the debtor company may not be able to repay those loans when due.

56) The OM for Mortgage Fund stated that it *intends* to acquire secured first mortgages. Although the OM describes Mortgage Fund as a speculative offering, Wilson and other FLSI sales staff advised clients it was a low risk investment.

57) As at December 31, 2011, $11M had been invested in Mortgage Fund. However, only half of that amount had in fact been invested in mortgages, with the balance being loaned to "related parties" – i.e., another FL entity.

c) *Additional High Risk Factors for the WALP Funds*

58) FL Fund, Wimberly Fund and Properties Fund (together, the "WALP Funds") had additional risks which contributed to their high risk profile, as a result of their associations with WALP.

59) The WALP Funds were debt vehicles for WALP, and each Fund lent monies to an entity within WALP.

60) Each of the financial statements for WALP for the years ended December 31, 2006 - 2010, all contained a "going concern note" disclosure which stated that WALP did

not have sufficient cash on hand to meet its obligations, including, among others, regular principal repayments of mortgages payable, redemptions of promissory notes (including those held by the WALP Funds) and other current liabilities and funding of future operating losses.

61) The "going concern note" also stated:

The Partnership has been experiencing significant negative cash flow from operations over a number of years and such negative cash flows are expected to continue as it proceeds with its plan to rehabilitate its properties.

62) Furthermore, the 2009 and 2010 Auditors' Report contains the "Emphasis of Matter" paragraph to highlight the going concern issue:

Without qualifying our opinion, we draw attention to Note 1(a) in the consolidated financial statements which indicates the existence of material uncertainties that may cast significant doubt about the ability of Wimberly Apartments Limited Partnership to continue as a going concern.

63) The financial statements also contained the following information:

Year Ended	**Partners Deficiency**	**Overall Loss For The Year**
December 31, 2007 audited	$32M	$8M
December 31, 2008 audited	$41M	$7M
December 31, 2009 (draft as at September 2010)	$61M	$10M
December 31, 2009 audited	$61M	$18M
December 31, 2010 audited	$77M	$17M

64) For the WALP Fund purchasers, the financial health of WALP, and the fact that the going concern note specifically questioned WALP's ability to fund redemptions of the promissory notes held by the WALP Funds, were particularly relevant and significantly increased the risk associated with these products.

d) Conclusion – Count 1

65) All of the Funds were speculative and/or high risk. However,

i. The NAAF indicated the Funds were "balanced/medium risk";
ii. The proposal spreadsheets indicated the Funds were "medium risk" or "low risk"; and
iii. Phillips, Wilson and the rest of the FLSI sales staff advised clients that the Funds were low, medium or moderate to high risk.

66) Phillips and Wilson knew or ought to have known that the Funds were high risk and/or speculative investments. Nonetheless:

i. Phillips as UDP allowed the NAAFs and spreadsheets to be provided to clients which clearly indicated that the Funds were less than high risk;

ii. Wilson created the spreadsheet template and provided spreadsheets to his clients which clearly indicated that the Funds were less than high risk;

iii. Phillips and Wilson failed to advise his clients who purchased the Funds that they were high risk investments; and

iv. Phillips failed to ensure that the sales staff knew and understood the product they were selling and that it was high risk.

67) Consequently, during the material time, clients were not informed that the Funds were high risk, and almost 100 FLSI clients, including clients of Wilson, who had no indication at all of high risk on their NAAF purchased Funds. Many other clients had some high risk tolerance (including clients of Wilson) but had that amount exceeded by purchases of the Funds.

e) Examples of Clients Impacted by Count 1

68) Clients Mr. and Mrs. A opened accounts with FLSI in 2008. Mrs. A advised Wilson that she did not want any risk in her account. Wilson advised her that her account was guaranteed by CIPF and that FLSI was "safer than the banks". As a result, and on Wilson's recommendation, Mrs. A commuted her Ontario university pension and invested the entire proceeds with FLSI.

69) The pension proceeds were transferred to her LIRA account at FLSI, where she initially purchased exclusively Canadian Treasury Bills ("T Bills"). Subsequently, in the summer of 2010, she sold the T Bills and used the proceeds to purchase two FL

Products, including Mortgage Fund. Consequently, the risk profile of that account rose to 100% high risk.

70) Mr. B opened an account at FLSI in 2007 when he was 45 years old. Mr. B had a medical condition which rendered him legally blind. Both Phillips and Wilson were aware of his condition. Although he was able to continue to work, he advised Wilson that his prognosis was unknown, and at any time he may become completely blind and unable to work. Consequently, his expectation was for safe and secure investments which may ultimately be required to support him and his young family.

71) Mr. B's risk tolerance as recorded on his NAAF was 15% high risk, 20% medium risk and 65% low risk for his registered accounts.

72) Mr. B purchased various FL Funds in his registered accounts. As at September 2011, 59% of the monies invested in his registered accounts (approximately $150,000) were in FL Funds, thereby causing the accounts to be 59% high risk.

73) Mr. B's wife also opened her accounts at the same time with the same risk tolerances. Wilson was also RR responsible for her account. As at September 2011, 58% of her Spousal RSP ($107,000) was invested in high risk FL Funds, and 100% of her TFSA was invested in high risk FL Funds.

F. Marketing Material Was Misleading

74) Various forms of marketing material were made available to FLSI clients, including:

i. One page marketing sheets specific to individual FL products (the "One-Pagers");
ii. A brochure for FLWM and the First Leaside Group of Companies; and
iii. Brochures specific to individual FL products (including WALP).

75) The One-Pagers were in multi-colour and showed the rate of return in very large font (the largest font used on the page). The One-Pagers were also available on the FL Group's website.

a) Misleading with respect to WALP

76) Much of the FL Group marketing material that was made available to existing and prospective investors during the material time emphasized the historical success of WALP.

77) Despite the fact that the financial statements showed major losses for WALP, and demonstrated that WALP was not funding its distributions during the material time through its revenues, marketing material continued to tout the alleged success of WALP.

78) Marketing material dated 2010 stated:

> *Wimberly Partners, as well as participants in subsequent First Leaside partnerships, have enjoyed some of the highest investment returns generated by our industry. Since 1992, an original Wimberly Partner has received a rate of return of more than 9%,* net of tax, *per annum.*

79) Marketing material for First Leaside Fund dated 2009 stated:

> *First Leaside's Wimberly Apartments Limited Partnership (WALP) has a proven **16-year** track record and more than a **9% after-tax** annualized return. Since inception, Wimberly has produced more than **190 consecutive monthly cash distributions.***

80) Marketing material for Wimberly Fund, dated 2010 contained similar content:

> *Wimberly Fund is a RRSP/RRIF/RESP/TFSA-eligible investment that participates in the performance of a large apartment portfolio in the Dallas-Fort Worth Metroplex: Wimberly Apartments Limited Partnership (WALP). As First Leaside's original real estate partnership, WALP owns and manages approximately 2,200 apartments, with a proven **18-year** track record of success in the real estate industry. Since inception, this partnership has produced more than **200 consecutive monthly cash distributions**.*

81) Marketing material for First Leaside Universal Limited Partnership and First Leaside Ultimate Limited Partnership, dated 2010, and for First Leaside Global Limited Partnership dated 2011, state:

> *... Wimberly Apartments Limited Partnership still generates – after 18 years – continuous monthly cash distributions for hundreds of investing partners.*

82) However, from 2007-2010, WALP was not generating adequate cash flow from operations to pay the distributions to clients in those years, including payment of the interest to the WALP Funds.

83) Despite these losses, WALP continued to pay the following amounts in distributions and interest to unitholders of WALP and the WALP Funds:

Year	Overall Loss	Distributions Paid	Interest Paid
2007	$8M	$1.1M	$1.3M
2008	$7M	$1.2M	$1.5M
2009	$18M	$2.7M	$3.2M
2010	$17M	$2M	$4.9M

84) These distributions and interest payments were not funded by revenue from operations in WALP. In fact, the source of these payments was partly monies borrowed from other FL Group entities, which received funds from other investors.

85) Investors were unaware that the distributions and interest payments they were receiving were funded in this manner.

86) The references to WALP having “investment returns”, “generating” or “producing” distributions is misleading given WALP’s financial state during the material time, and the fact that it relied on money borrowed from other FL Group entities to pay those distributions.

b) Rate of Return and No Mention of Risk

87) Furthermore, each “One-Pager” contains a reference to the annual distribution or interest rate of the product, with no indication that this is not a guaranteed rate of payment to clients.

88) While the OMs for the FL Products (which were anywhere from 87 to 168 pages long) contained discussions of the risks associated with those Products, there was no mention of those risks in the more accessible, easier to read One-Pagers.

89) There is no indication in the marketing materials as to the risk (or any risk) associated with these investments. The marketing materials fail to fairly present the potential risks to the client.

90) While the marketing materials describe the alleged success of WALP and the years of paying distributions, none of the marketing material made available to clients contains any discussion of the potential risks associated with the various investments, nor of the actual financial situation of WALP and the risks associated therewith.

G. Lack of Consideration Given to Risk Tolerances Recorded on NAAF

91) FLSI RRs, including Phillips and Wilson, completed a NAAF for each client who opened a registered and/or non-registered account.

92) As set out above, there were four risk categories on the NAAF. The NAAF stated that "*All First Leaside account holdings will be compared to the RISK and OBJECTIVES percentages indicated in this table*".

93) The NAAF required that a percentage figure be entered for each risk category and for each type of account (i.e., registered and non-registered). For each account, the percentages were required to total 100%.

94) As set out above, the NAAF made specific reference to "First Leaside limited partnerships" in the High Risk category.

95) However, based on a sampling of 70 client accounts, 84% of client accounts were found to have purchased securities that exceeded the client's risk tolerance documented in their NAAFs as at October 2011.

96) Based on the same sample, over 75% of Wilson's client accounts were found to have purchased securities that exceeded the client's risk tolerance documented in their NAAFs as at October 2011.

97) Within the sample some clients had no high risk tolerance recorded on the NAAF yet had purchased only FL LPs which caused their account and their holdings to be 100% high risk.

98) The accounts in the sample included those for which Phillips, Wilson and 8 other FLSI RRs were responsible.

99) Phillips and Wilson and other FLSI sales staff repeatedly recommended and solicited the purchase of FL LPs or Funds which would cause and did cause the client's risk tolerance, as identified on the NAAF to be exceeded.

100) Phillips and Wilson and the FLSI sales staff, for which Phillips was ultimately responsible, failed to give due consideration to the risk tolerances of clients as recorded on the NAAF.

Example of Clients Impacted by Count 3

101) Mr. B (referenced above in paragraphs 61-63), also opened a cash account with FLSI. His risk tolerance for that account, as recorded on his NAAF was 50% medium risk and 50% high risk.

102) Mr. B purchased LPs and First Leaside Wealth Management Preferred Shares, all of which were high risk investments. As at October 2011, 100% of the monies ($460,000) which had been invested in Mr. B's cash account were invested in high risk products.

H. Solicited Sales of Properties Fund With No Consideration of the Best Interests of the Client

103) First Leaside Properties Fund ("Properties Fund") was the only First Leaside product sold by prospectus. Accordingly, Properties Fund was the only First Leaside product which non-accredited investors could purchase.

104) Properties Fund held unsecured promissory notes from another FL entity, FL Master Sherman Ltd.

105) The prospectus for Properties Fund was dated March 16, 2009. According to the prospectus, the initial closing date was March 26, 2009. The final closing was on or about June 3, 2009.

106) In 2010 and 2011, there were no units of Properties Fund available for sale from the initial offering, and there was no other FL Product available for purchase by FLSI clients who did not meet the accredited investor requirements.

107) FL had non-accredited investors holding cash in their RRSP and TFSA accounts at FLSI. As it was not invested, this cash was not available to Phillips and the FL Group.

108) Rather than develop a new FL product which would require a prospectus, Phillips and Wilson decided to arrange for the sales of units of Properties Fund from existing clients.

109) As a result, Phillips and Wilson began to solicit sales of Properties Fund from clients who were already accredited investors and could purchase any other FL Product (the "Selling Clients").

110) This then allowed other FL clients who were not accredited to purchase Properties Fund. This was the basis for the solicitations and recommendations to sell. Phillips discussed this with Wilson and was aware that Wilson was also soliciting the sales.

111) Generally, the Selling Clients had their units purchased by FL Finance or F.L. Securities Inc. Those units were in turn sold by FL Finance or F.L. Securities to the non-accredited clients.

112) Phillips and Wilson then recommended to the Selling Clients that they purchase another FL product with the proceeds from the sale.

113) All of these transactions took place with the units priced at $1.

114) In 2010 and 2011, 65 clients sold units of Properties Fund.

115) Phillips and Wilson contacted clients who held units of Properties Fund and recommended that they sell their units without any consideration of whether such a trade was in the Selling Client's best interests, and whether such a trade was suitable for the client. In so doing, Phillips and Wilson placed their own interests and those of FLSI and the FL Group ahead of the interests of their clients, and/or preferred one client's interest over another.

I. Fees Paid to Phillips and FL Entities Created A Conflict

116) Several of the LPs offered for sale during the material time were what are known as 'blind pool' investments, for which there was no specific use to which the investment funds would be put at the time the capital was raised. These included, but are not limited to:

i. First Leaside Select LP ("FL Select");
ii. First Leaside Investors LP ("FL Investors");
iii. First Leaside Progressive LP ("FL Progressive"); and
iv. First Leaside Premier LP ("FL Premier").

117) Phillips was the President and controlling shareholder of the General Partner for each of these LPs.

118) The OMs for these LPs indicated that certain fees would be paid to FL entities for business development and project evaluation.

119) Although the OM did not contain a set limit as to the percentage of the monies raised that would be used for the payment of FL-related fees, in describing the use of net proceeds an estimate of 35% in fees was used as an illustration. That illustrative percentage was frequently exceeded and in one case, described below, it was exceeded by over 25%.

120) The working capital available for these LPs was immediately reduced by the amount of fees described above.

121) The fees were typically paid to FLSI and FL Securities.

122) The fees charged were as follows:

i. 5% to FLSI as agent;
ii. estimated 15% to related parties for "Business Development Fees"; and
iii. estimated 15% to FLSI or FL Securities for promotion and project evaluation.

123) The "Business Development Fees" included payment to FLSI or FL Securities of $75,000 per project for "evaluating" each project.

124) The "promotion and project evaluation" fees, included payment to FLSI or FL Securities of $50,000 per market for evaluating each potential market.

125) As directing mind of these FL entities, Phillips would decide when, how and in what amount these fees would be billed to the LPs.

126) As the GP of the LPs, Phillips would decide when, how and in what amount these fees would be paid.

127) For example, for the following 4 LPs, as at December 31, 2010, fees of over 45% of the total capital raised had been paid to FL entities:

FL LP	**Fees Paid** (as percentage of capital raised)
FL Select (2007)	61.6%
FL Investors (2008)	54.2%
FL Progressive (2009)	46.0%
FL Premier (2009)	47.1%

128) As at December 31, 2010, the only assets owned by FL Select and FL Premier were cash plus promissory notes from another FL Group entity.

129) As at December 31, 2010, FL Investors' primary assets were revenue producing properties and cash. However, the revenue producing properties represented only 42% of the total capital raised from investors and debt.

130) As at December 31, 2010, the only assets owned by FL Progressive were cash, monies due from other FL entities and investments in other FL LPs.

131) In addition, distributions were paid to unitholders in those LPs, also from the total capital raised. Ultimately, the working capital available for each of these entities was considerably reduced.

132) In causing in excess of 50% of the capital raised to be paid in fees to companies he controlled, Phillips preferred his own interests ahead of his clients.

133) There existed an inherent conflict between Phillips and FLSI clients who purchased these LPs. Phillips, as RR and UDP, was required to act in the best interests of his clients.

134) However, as GP, he had the ability and opportunity to determine how much of investor funds would be paid to himself, through companies which he owned and/or controlled.

135) This was a conflict which Phillips failed to address in a fair, equitable and transparent manner and consistent with the best interest of the client and, as such, ought to have been avoided by Phillips.

J. The Voluntary Cease Trade and Grant Thornton Report

136) On November 7, 2011, Phillips advised FLSI clients that the FL Group had agreed to voluntarily stop trading units in all LPs and Funds. No payments have been made since that date.

137) On November 28, 2011, Phillips advised FLSI clients that all payments to investors (including interest payments and distributions) would be stopped immediately.

138) Phillips also advised FLSI clients that as at December 31, 2010, it appeared that WALP's liabilities exceeded the appraised value of its assets. Phillips also advised clients that WALP had been a significant drain on the resources of the FL Group.

139) As at June 2011, there were approximately 1200 FLSI clients, who had invested a total of $284M in FL Products since 2004.

GENERAL PROCEDURAL MATTERS

TAKE FURTHER NOTICE that the hearing and related proceedings shall be subject to IIROC's Rules of Practice and Procedure.

TAKE FURTHER NOTICE that, pursuant to Rule 13.1 of the Rules of Practice and Procedure, the Respondents are entitled to attend and be heard, be represented by counsel or an agent, call, examine and cross-examine witnesses, and make submissions to the Hearing Panel at the hearing.

RESPONSE TO NOTICE OF HEARING

TAKE FURTHER NOTICE that the Respondents must serve upon Staff a Response to the Notice of Hearing in accordance with Rule 7 of the Rules of Practice and Procedure within twenty (20) days (for a Standard Track disciplinary proceeding) or within thirty (30) days (for a Complex Track disciplinary proceeding) from the effective date of service of the Notice of Hearing.

FAILURE TO RESPOND OR ATTEND HEARING

TAKE FURTHER NOTICE that if the Respondents fail to serve a Response or attend the hearing, the Hearing Panel may, pursuant to Rules 7.2 and 13.5 of the Rules of Practice and Procedure:

(a) proceed with the hearing as set out in the Notice of Hearing, without further notice to the Respondents;

(b) accept as proven the facts and contraventions alleged by the Staff in the Notice of Hearing; and

(c) order penalties and costs against the Respondents pursuant to IDA By-laws 20.33, 20.34 and 20.49 and/or IIROC Dealer Member Rules 20.33, 20.34 and 20.49.

PENALTIES & COSTS

TAKE FURTHER NOTICE that if the Hearing Panel concludes that the Respondents or any of them did commit any or all of the contraventions alleged by the Staff in the Notice of Hearing, the Hearing Panel may, pursuant to IDA By-laws 20.33 and 20.34 and/or IIROC Dealer Member Rules 20.33 and 20.34, impose any one or more of the following penalties:

Where the Respondent is/was an Approved Person:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $1,000,000 per contravention; and

(ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention.

(c) suspension of approval for any period of time and upon any conditions or terms;

(d) terms and conditions of continued approval;

(e) prohibition of approval in any capacity for any period of time;

(f) termination of the rights and privileges of approval;

(g) revocation of approval;

(h) a permanent bar from approval of the IIROC; or

(i) any other fit remedy or penalty.

Where the Respondent is/was a Member firm:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $5,000,000 per contravention; and

(ii) an amount equal to three times the profit made or loss avoided by the Member by reason of the contravention;

(c) suspension of the rights and privileges of the Member (and such suspension may include a direction to the Member to cease dealing with the public) for any period of time and upon any conditions or terms;

(d) terms and conditions of continued Membership;

(e) termination of the rights and privileges of Membership;

(f) expulsion of the Member from membership in the IIROC; or

(g) any other fit remedy or penalty.

TAKE FURTHER NOTICE that if the Hearing Panel concludes that the Respondents or any of them did commit any or all of the contraventions alleged by the Staff in the Notice of Hearing, the Hearing Panel may pursuant to IDA By-law 20.49 and/or IIROC Dealer Member Rule 20.49 assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

DATED at Toronto, this 2nd day of October, 2012.

JEFFREY KEHOE
VICE-PRESIDENT, ENFORCEMENT
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA
Suite 2000, 121 King Street West
Toronto, Ontario M5H 3T9

TAB 08

Ontario

Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | P.O. Box 55, 19th Floor 20 Queen Street West Toronto ON M5H 3S8 | CP 55, 19e étage 20, rue queen ouest Toronto ON M5H 3S8

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

- AND -

IN THE MATTER OF
DAVID CHARLES PHILLIPS and JOHN RUSSELL WILSON

STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION

1. This case revolves around David Charles Phillips, a founder and the directing mind of the First Leaside Group, who intentionally deceived investors by selling and overseeing the sales of almost $19 million in securities while withholding important information.

Overview

2. David Charles Phillips ("Phillips") was a founder and the directing mind of a group of at least 161 companies (the "First Leaside Group"). Phillips directed all significant aspects of the business and growth of the First Leaside Group from its inception in the late 1980s until at least November 2011. John Russell Wilson ("Wilson") was a senior salesperson employed by First Leaside Securities Inc. ("FLSI"), an investment dealer and one of the companies in the First Leaside Group. Wilson worked closely with and reported directly to Phillips.

3. Between August 22 and October 28, 2011 (the "Sales Period"), Phillips directed and oversaw sales of First Leaside Group equity and debt offerings which raised about $18.89 million from investors. Phillips and Wilson were directly responsible for about 65% of the sales. Phillips sold about $3.45 million directly to investors, and Wilson sold about $8.95 million directly to investors.

4. Phillips and Wilson effected these sales knowing that an independent accounting firm, Grant Thornton Limited ("Grant Thornton"), had conducted an extensive six month review of the First Leaside Group and had delivered a report on August 19, 2011 (the "Grant Thornton Report"). The Grant Thornton Report included findings that the future viability of the First Leaside Group was contingent on its ability to raise new capital and that there was a significant equity deficit.

5. The fact that Grant Thornton was reviewing the First Leaside Group, the existence of the Grant Thornton Report and the Grant Thornton Report were important facts investors should have known. During the Sales Period, Phillips did not disclose these important facts to the First Leaside Group salespeople, nor did Phillips and Wilson disclose them to investors to whom they sold directly. By concealing these facts while selling to investors, and in Phillips' case, supervising the entire sales effort, Phillips and Wilson dishonestly placed investors' pecuniary interests at risk.

6. Each of Phillips and Wilson breached subsection 126.1(b) of the *Securities Act,* R.S.O. 1990, c. S.5, as amended (the "*Securities Act*") by directly or indirectly engaging or participating in an act, practice or course of conduct relating to securities which they each knew, or reasonably ought to have known, would perpetrate a fraud on investors. Each of Phillips and Wilson also breached subsection 44(2) of the *Securities Act*, section 2.1 of Ontario Securities Commission (the "Commission") Rule 31-505, and acted contrary to the public interest.

The First Leaside Group

7. The First Leaside Group included First Leaside Wealth Management Inc. ("FLWM"), which owned FLSI and an exempt market dealer, F.L. Securities Inc. ("F.L. Securities"). FLWM has never been registered under the *Securities Act.*

8. FLSI was registered with the Commission as an investment dealer from March 1, 2004 until February 24, 2012, when its registration was suspended. FLSI was also registered as a dealer member with the Investment Industry Regulatory Organization of Canada ("IIROC"). FLSI's IIROC membership was suspended on February 24, 2012.

9. F.L. Securities was registered with the Commission as a limited market dealer from March 1, 1991 until September 28, 2009, and as an exempt market dealer from September 28, 2009 until February 28, 2012, when its registration was suspended.

The Respondents

Phillips

10. Phillips is an Ontario resident, and has been registered with the Commission in various capacities since 1981. Phillips was the Chief Executive Officer, President, Secretary and a director of the investment dealer FLSI, and the President and a director of FLWM. Phillips owned 100% of the common shares of FLWM.

11. In respect of FLSI, Phillips was registered with the Commission in various capacities from March 1, 2004 to February 24, 2012, and was registered as the ultimate designated person from January 11, 2010 to February 24, 2012. In respect of F.L. Securities, Phillips was registered with the Commission in various capacities from April 14, 2000 to February 27, 2004, and was approved as a shareholder from March 17, 2004 to February 28, 2012.

12. Phillips' registration with FLSI and F.L. Securities was suspended on February 24 and 28, 2012, respectively, pursuant to subsection 29(2) of the *Securities Act*.

Wilson

13. Wilson is an Ontario resident, and has been registered with the Commission in various capacities since 2003. Wilson was a director of FLWM. Wilson commenced employment with FLSI in 2005 and was employed with FLSI until February 2012.

14. In respect of FLSI, Wilson was registered as a salesperson from April 12, 2005 to February 24, 2012 and approved as an officer and director from March 29, 2011 to February 24, 2012.

15. Wilson's registration with FLSI was suspended on February 24, 2012, pursuant to subsection 29(2) of the *Securities Act*.

First Leaside Group's Clients and Business

16. On or about August 19, 2011, the First Leaside Group had at least 1,000 clients, most of whom were residents of Ontario. The First Leaside Group sold proprietary equity and debt offerings that were invested directly or indirectly within the First Leaside Group, and offered full brokerage and financial planning services administered by a carrying broker.

17. The First Leaside Group's proprietary equity and debt offerings typically consisted of units in limited partnerships ("LPs") and funds ("Funds"). The LPs primarily held real estate, including multi-unit residential properties in Canada and Texas. The Funds primarily held promissory notes in LPs which, in turn, held real estate. The real estate included 10 properties held by a member of the First Leaside Group, the Wimberly Apartments LP ("WALP"), through its subsidiaries.

18. At all times during the Sales Period, Phillips continued to be the directing mind of the First Leaside Group. Until at least November 3, 2011, Phillips was responsible for all aspects of the First Leaside Group, including capital raises, deal origination, deal negotiation and structuring and internal administration.

The Grant Thornton Report

19. In the months leading up to the Sales Period, significant real estate assets were being appraised and the business and operations of the First Leaside Group were under review by independent third parties.

20. In November 2010, Staff of the Commission ("Staff") sought an accurate, third party market valuation for the WALP properties in Texas and an additional property held by First Leaside Partners LP. The First Leaside Group engaged CB Richard Ellis and Joseph J. Blake and Associates Inc., which delivered their valuation reports to the First Leaside Group by January 2011.

21. In February 2011, due to concerns stemming from the valuation reports, Staff urged the First Leaside Group to retain an independent accounting firm with recognized expertise

in restructuring and insolvency matters to conduct a viability study of the First Leaside Group.

22. In March 2011, Grant Thornton was retained by Cassels Brock & Blackwell LLP ("Cassels Brock") to review, report on and make recommendations in respect of the business, assets, affairs and operations of the First Leaside Group. Cassels Brock was counsel to Phillips and to the First Leaside Group.

23. Between March and August 2011, Grant Thornton performed its review of the First Leaside Group, and on August 19, 2011, delivered its report. The Grant Thornton Report included the following findings:

> The future viability of the [First Leaside] Group is contingent on their ability to raise new capital. One of the largest sources of revenue in the [First Leaside] Group is the fees it generates in FLWM on the raising of new capital. If the [First Leaside] Group was restricted from raising new capital, it would likely be unable to continue its operations in the ordinary course, as it would have insufficient revenue to support its infrastructure, staffing costs, distributions, and to meet their funding requirements for existing projects.
>
> [...]
>
> We have also reviewed the Asset Valuation of the [First Leaside] Group, using the highest third party valuation figures available for the WALP properties. In this regard, we have calculated an aggregate equity surplus (represented as asset FMV, less third party mortgages and investor debt) of approximately $67M, while there is raised equity in the [First Leaside] Group of approximately $200M. In this regard, there is a significant equity deficit based on the Asset Valuation.

24. Phillips and Wilson were aware that Grant Thornton had been retained to review the First Leaside Group, and each received the Grant Thornton Report on or shortly after August 19, 2011.

25. Despite knowing about the engagement of Grant Thornton, the existence of the Grant Thornton Report and having received the Grant Thornton Report, Phillips directed and oversaw a sales effort, and he and Wilson each sold securities directly to investors while concealing these important facts.

Phillips' and Wilson's Conduct During the Sales Period

26. During the Sales Period, about $18.89 million was raised from investors through sales of units in the following offerings:

Entity	Cost of Units Sold
Special Notes LP	$8,077,328
First Leaside Expansion LP	3,927,102
Flex Fund - Class B and C	3,039,052
First Leaside Venture LP	1,921,359
FLWM Fund	1,265,931
First Leaside Primetime Living LP	335,000
First Leaside Beverages Group LP	130,010
FLWM Series II Preferred Shares	119,841
Wimberly Apartments LP	78,448
Total	**$18,894,071**

27. During the Sales Period, Phillips sold units and shares directly to investors, supervised all of the salespeople and approved each sale, and Wilson sold units and shares directly to investors. Phillips' direct sales totalled about $3,450,923, and Wilson's direct sales totalled about $8,954,927, for a combined total of $12,405,850 or about 65% of sales.

28. Phillips and Wilson each sold units in the Special Notes LP, First Leaside Expansion LP, Flex Fund Class B and C, First Leaside Venture LP, FLWM Fund and WALP and FLWM Series II Preferred Shares directly to investors. Wilson also sold units in First Leaside Primetime Living LP and First Leaside Beverages Group LP directly to investors.

29. Phillips did not disclose to the First Leaside Group salespeople, and Phillips and Wilson did not disclose to investors the fact that Grant Thornton had reviewed the First Leaside Group, the existence of the Grant Thornton Report or the Grant Thornton Report.

30. As registrants, each of Phillips and Wilson had an obligation to deal honestly, fairly and in good faith with their clients. In supervising and conducting sales in the circumstances described, Phillips failed to discharge this obligation. In conducting sales in the circumstances described, Wilson failed to discharge this obligation.

***Companies' Creditors Arrangement Act* Proceeding**

31. On February 23, 2012, less than 4 months after the end of the Sales Period, FLWM, FLSI, F.L. Securities and other members of the First Leaside Group obtained an order from the Ontario Superior Court of Justice that the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 applies to them and they are now subject to a court-supervised wind-up.

Breaches of the *Securities Act* and Conduct Contrary to the Public Interest

32. Phillips and Wilson each directly or indirectly engaged or participated in an act, practice or course of conduct relating to securities which he knew, or reasonably ought to have known, would perpetrate a fraud on investors, contrary to subsection 126.1(b) of the *Securities Act*.

33. Phillips and Wilson each made statements a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the *Securities Act*.

34. Phillips and Wilson each failed to deal fairly, honestly and in good faith with their clients, contrary to section 2.1 of Commission Rule 31-505.

35. Phillips and Wilson each engaged in conduct contrary to the public interest and harmful to the integrity of the capital markets.

36. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto this 4th day of June, 2012.