Court File No. CV-17-11779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

CRYSTAL WEALTH MANAGEMENT SYSTEM LIMITED, CLAYTON SMITH, CLJ EVEREST LTD., 1150752 ONTARIO LIMITED, CRYSTAL WEALTH MEDIA STRATEGY, CRYSTAL WEALTH MORTGAGE STRATEGY, CRYSTAL ENLIGHTENED RESOURCE & PRECIOUS METALS FUND, CRYSTAL WEALTH MEDICAL STRATEGY, CRYSTAL WEALTH ENLIGHTENED FACTORING STRATEGY, ACM GROWTH FUND, ACM INCOME FUND, CRYSTAL WEALTH HIGH YIELD MORTGAGE STRATEGY, CRYSTAL ENLIGHTENED BULLION FUND, ABSOLUTE SUSTAINABLE DIVIDEND FUND, ABSOLUTE SUSTAINABLE PROPERTY FUND, CRYSTAL WEALTH ENLIGHTENED HEDGE FUND, CRYSTAL WEALTH INFRASTRUCTURE STRATEGY, CRYSTAL WEALTH CONSCIOUS CAPITAL STRATEGY, CRYSTAL WEALTH RETIREMENT ONE FUND, AND CHRYSALIS YOGA INC.

Respondents

APPLICATION UNDER SECTION 129 OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED

FACTUM OF THE APPLICANT, ONTARIO SECURITIES COMMISSION

Date: April 25, 2017

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FACTUM OF THE APPLICANT,
ONTARIO SECURITIES COMMISSION

PART I – OVERVIEW AND FACTS PERTINENT TO THE RELIEF SOUGHT

1. Crystal Wealth Management System Limited ("**Crystal Wealth**") is registered with the Ontario Securities Commission (the "**OSC**" or the "**Commission**"), and manages 15 proprietary investment funds (the "**Crystal Wealth Funds**" or the "**Funds**") with approximately $177,237,747 in assets under management ("**AUM**"). Many of the Funds hold illiquid assets

such as film loans, mortgages, medical receivables or factoring receivables. Investors in Ontario and elsewhere hold units of the Funds. Clayton Smith ("**Smith**") founded Crystal Wealth, and is its president, CEO and sole director. Smith is registered with the OSC as an advisor in the category of portfolio manager ("**PM**") and is listed as the "lead portfolio strategist" for 11 of the Funds. Smith is also the person responsible for Crystal Wealth's compliance with securities legislation.[1]

2. Crystal Wealth Media Strategy (the "**Media Fund**") is the largest of the Funds with approximately $53 million in AUM. Staff of the Commission ("**Staff**") have evidence that Smith paid approximately $9.6 million from the Media Fund (which are investors' monies) to Media House Capital (Canada) Corp. ("**MHC**") and another entity related to it, purportedly to purchase film loans for the Media Fund ("**Film Loans**"), when in fact at least $329,930 was transferred to Smith's personal account, and $2,307,347.50 was transferred to his personal holding company, CLJ Everest Ltd. ("**CLJ Everest**"). Smith used these monies to, among other things, make credit card payments, purchase a $2.7 million residential property, and fund his common-law wife's yoga studio.[2]

3. The principal assets of the Media Fund are 24 film loans (the "**Film Loans**"), which the Media Fund acquired from MHC, a film financing company. Staff have evidence that raises concerns about the existence and validity of the Film Loans owned by the Media Fund, and whether the value of the Film Loans as reflected in the net asset value ("**NAV**") of the Media Fund has been materially overstated. In correspondence, Smith appears to have acknowledged

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[1] Affidavit of Marcel Tillie, sworn April 17, 2017 at Tab A of the Application Record ["**Tillie Affidavit**"], paras. 12-25.

[2] Tillie Affidavit, para. 26; Affidavit of Michael Ho, sworn April 17, 2017 at Tab B of the Application Record ["**Ho Affidavit**"], paras. 17-63.

that the Film Loans should be written down in value, but nevertheless he has not caused that to happen and the NAV of the Media Fund remains substantially unchanged. At a materially overstated NAV, investors who sell their units in the Media Fund would be paid too much, to the detriment of new and existing investors.[3]

4. In light of this conduct, Staff believe that Smith and Crystal Wealth may have: participated in a course of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud, contrary to s. 126.1(1)(b) of the *Securities Act,* R.S.O. 1990, c. S.5, as amended (the "**Act**"); failed to act fairly, honestly and in good faith with clients, contrary to s. 2.1 of Rule 31-505 - *Conditions of Registration* ("**OSC Rule 31-505**"); and failed to comply with the standard of care expected of investment fund managers ("**IFM**") under s. 116 of the Act.[4]

5. The potential breaches of the Act Staff have identified with respect to the Media Fund have an impact on the rest of the Crystal Wealth Funds because there is a significant amount of inter-fund lending and investing among the Funds. Inter-fund lending and investing is particularly prevalent with respect to the Media Fund. An overstatement of the Media Fund's NAV would also affect the NAVs of the other Crystal Wealth Funds invested in it, and therefore, the prices at which investors redeem or purchase units in those other funds. As of April 7, 2017, seven other Funds were directly invested in the Media Fund.[5]

6. Staff are also concerned that Crystal Wealth has insufficient cash or liquid assets to satisfy redemptions. As at January 30, 2017, the Funds had a collective AUM of $177 million

[3] Tillie Affidavit, paras. 32 and 41-57.
[4] Exhibit "1" to the Tillie Affidavit.
[5] Ho Affidavit, paras. 67-70.

but in the bank, brokerage and custodian accounts known to Staff, held cash and other investments of only $49 million, which included $22 million in investments in Crystal Wealth Funds. Moreover, Staff have evidence that a new capital raise in September 2016 of $2.8 million in units of the Media Fund was used to fund approximately $2.1 million in redemptions for three other Funds invested in the Media Fund.[6]

7. Crystal Wealth and the Funds missed the deadline for filing or delivering their annual audited financial statements for 2016, contrary to their obligations in s. 21.10(3) of the Act, ss. 12.10 and 12.14 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**"), and ss. 2.1 and 2.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure* ("**NI 81-106**").[7]

8. The auditors, BDO Canada LLP ("**BDO**"), have advised Staff that the audits for Crystal Wealth and 12 of the 15 Funds have not been completed because Smith has failed or refused to provide information requested from him by BDO. Smith appears to have taken an aggressive tone to pressure the auditors to complete the audits. The absence of audited financial statements for 12 Funds means that the NAVs of those Funds are uncertain, and there is no certainty that ongoing purchases or redemptions of those Funds would be at the correct price.[8]

9. As a result of the conduct outlined above, the Commission issued:

(a) a temporary order under s. 127(1) and 127(5) of the Act to cease all trading, including redemptions and distributions, of units of the funds, and to cease acquisitions of securities by the Funds, among other things (the "**Temporary Order**");[9] and

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[6] Ho Affidavit, paras. 74-77.
[7] Tillie Affidavit, para. 58. The collective AUM for the funds that have delivered audited financial statements is collectively $8,471,428 which is 4.8% of the total AUM of the Funds. See Tillie Affidavit, para. 59
[8] Tillie Affidavit, paras. 57-71.
[9] Exhibit "1" to Tillie Affidavit.

(b) freeze directions under s. 126(1) of the Act with respect to assets of the Funds, Crystal Wealth, Smith, and companies associated with Smith, including CLJ Everest, 1150572 Ontario Limited ("**115**"), and Chrysalis Yoga Inc. ("**Chrysalis Yoga**") (the "**Freeze Directions**").[10]

10. Smith appears to be in breach of the Freeze Directions issued under s. 126(1), in that he has attempted to sell a residential property owned by CLJ Everest, his holding company, for $3,350,000 after the Freeze Directions were issued and served.[11]

11. As a result of the foregoing, the Commission applies for an order (the "**Receivership Order**") under s. 129 of the Act appointing Grant Thornton Limited ("**GTL**") as receiver and manager (in such capacity, the "**Receiver**"), without security, of all the assets, undertakings and properties of the Respondents[12] (collectively, the "**Property**").[13]

12. An application to continue the Temporary Order is returnable before the Commission on Friday, April 28, 2017. A notice of application was issued through the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on April 18, 2017 to continue the Freeze Directions, and the first attendance is scheduled for May 9, 2017.[14] Staff seek to consolidate the application to continue the Freeze Directions with this application given the overlapping parties and issues.

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[10] Exhibit "2" to Tillie Affidavit.

[11] Affidavit of Michael Ho, sworn April 24, 2017 at Tab C of the Application Record ["**Supplementary Ho Affidavit**"], paras. 5, 9-11.

[12] With respect to Chrysalis Yoga Inc., the appointment of the Receiver is only sought in respect of Chrysalis Yoga's account No 187296 00518 10 at the Bank of Nova Scotia and all contents, including funds, contained in the account.

[13] Supplementary Ho Affidavit, para. 55,

[14] Notice of Application to Continue the Commission Freeze Directions issued April 18, 2017 at Tab E of the Application Record.

PART II – ADDITIONAL RELEVANT FACTS

I. THE RESPONDENTS AND OTHER RELEVANT PERSONS

i. *Crystal Wealth*

13. Crystal Wealth is a Burlington-based Ontario corporation, that is registered with the OSC in the categories of Exempt Market Dealer ("**EMD**"), IFM, PM, and Commodity Trading Manager.[15]

14. There are two main components of Crystal Wealth's business – the Crystal Wealth Funds (described below) and private portfolio management on behalf of individual clients. Crystal Wealth has approximately 1,265 portfolio management clients with AUM as at March 31, 2016 in discretionary accounts totalling $139,524,613.77 (the "Managed Accounts"). Approximately 309 of clients with Managed Accounts are located in Ontario. Of the AUM in Managed Accounts, approximately 94% are invested in the Crystal Wealth Funds.[16]

ii. *The 15 Crystal Wealth Funds*

15. Each of the Funds is a proprietary Fund created by Crystal Wealth.[17] The Funds are structured as open-ended mutual fund trusts and are distributed on an exempt basis pursuant to offering memoranda ("**OMs**").[18]

16. As the IFM of the Funds, Crystal Wealth manages the day-to day business of the Funds and oversees the Portfolio Manager function.[19] As PM of the Funds, Crystal Wealth is required

[15] Crystal Wealth is also registered in Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Quebec and Saskatchewan. Tillie Affidavit, para. 12.
[16] Tillie Affidavit, para. 14.
[17] Tillie Affidavit, para. 13.
[18] Tillie Affidavit, para. 13.
[19] Tillie Affidavit, para. 13.

to make suitable investment decisions for the Funds' portfolios consistent with the respective Fund's investment objectives.[20]

17. As at January 30, 2017, the total AUM for all of the Crystal Wealth Funds was $177,237,747, including inter-fund investments.[21] Crystal Wealth's management fees are calculated as a percentage of the NAV of each respective Fund.[22] The higher the NAV of a fund, such as the Media Fund, the greater the management fee Crystal Wealth can charge.

iii. *Smith, CLJ Everest, 115 and Chrysalis Yoga*

18. Smith is the founder, President and sole officer and director of Crystal Wealth.[23] Smith is registered with the Commission as a dealing representative, an advising representative in the categories of PM and Commodity Trading Manager, and as Crystal Wealth's Chief Compliance Officer ("**CCO**") and Ultimate Designated Person ("**UDP**"). As CCO and UDP, Smith is responsible for Crystal Wealth's compliance with Ontario securities laws.[24] Smith is listed as the "lead portfolio strategist" for 11 of the Funds.[25]

19. Smith is also the sole shareholder, officer, and director of his holding company, CLJ Everest,[26] and is the sole officer and director of 115, which is 100% owned by CLJ Everest.[27] 115 and CLJ Everest have the same registered office: 3385 Harvester Road, Suite 200, in Burlington, Ontario.[28]

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[20] Tillie Affidavit, para. 13.
[21] Tillie Affidavit, para. 13.
[22] Tillie Affidavit, para. 15; Exhibit "6" to Tillie Affidavit, p. 20.
[23] Tillie Affidavit, para. 17; Exhibit "6" to Tillie Affidavit, p. 3; Ho Affidavit, Exhibit "2".
[24] Tillie Affidavit, para. 18.
[25] Exhibit "12" to Tillie Affidavit.
[26] Tillie Affidavit, para. 19.
[27] Tillie Affidavit, para. 20.
[28] Exhibit "16" to Tillie Affidavit.

20. Through CLJ Everest and 115, Smith indirectly owns 91.76% of the outstanding shares of Crystal Wealth.[29]

21. Smith co-founded Chrysalis Yoga in 2009, and provided the company with $2.4 million as of November 2015.[30]

iv. *The Media Fund*

22. The largest of the Crystal Wealth Funds is the Media Fund, which had, as at January 31, 2017, a total AUM of $53,221,497, accounting for approximately 30.03% of the total AUM of the Funds. OMs for the Media Fund state that its objective "is to generate a high level of interest income with minimal volatility and low correlation to most traditional asset classes by investing in asset-backed debt obligations of motion pictures and series television productions."[31]

23. The Media Fund's Offering Memorandum dated August 31, 2012 (the "**August 2012 OM**") states that the Media Fund currently intends to purchase the majority of its loans from MHC, whose role was to source potential investments for the Media Fund, and monitor those investments on an ongoing basis.[32]

24. Based on the August 2012 OM, Staff expected that the business model for investments by the Media Fund would be as follows:

[29] Tillie Affidavit, paras. 19 and 20.
[30] Affidavit of David Adler sworn April 24, 2017 ["**Adler Affidavit**"], Tab D to the Application Record.
[31] Tillie Affidavit, para. 26; Exhibits "4", "8", "14", "15" and "16" to Tillie Affidavit.
[32] Tillie Affidavit, paras. 29; Exhibits "14" at p 4. In a compelled examination with Staff Gilbert advised that MHC no longer does film financing and is essentially inactive apart from administering and collecting on existing film loans. MHC's activities in this regard were wound down by mid 2015. Nevertheless, Offering Memoranda for the Media Fund continue to state that the Media Fund intends to purchase its loans from MHC (formerly, Bron Capital Partners). Supplementary Ho Affidavit, paras. 52-53. Exhibits "15" at p 4, and "16" at p 4 to Tillie Affidavit; Exhibit "93" at p 4 to Ho Affidavit.

(a) MHC enters into agreements with film production companies to lend them money so that they can produce a film. The end borrower is the production company.

(b) MHC then sells those Film Loans to the Media Fund, and receives an up-front 10% fee which is built into the principal of the film loan.[33]

25. As described in greater detail below, Staff obtained evidence that suggests that Crystal Wealth did not adhere to the business model outlined in the August 2012 OM.

v. *MHC, the Bron Companies, Gilbert and Thibault*

26. Smith principally dealt with Aaron Gilbert ("**Gilbert**") and Stephen Thibault ("**Thibault**") of MHC regarding the purchase, monitoring and administration of the Film Loans for the Media Fund.[34]

27. Gilbert is the sole director of MHC.[35] He is a director and President of Bron Studios Inc. (a British Columbia-based production company) ("**Bron Studios**")[36] and a director of Bron Animation Inc. (an affiliated company to Bron Studios) ("**Bron Animation**" and, collectively with Bron Studios, the "**Bron Companies**").[37]

28. Gilbert is listed as a producer or executive producer on 19 of the 25 film productions for which Film Loans have been purchased by the Media Fund and Crystal Wealth Mortgage Strategy (the "**Mortgage Fund**"). For five of the film productions (referred to below as the "**Five Film Projects**"), he is a director or officer of the production company that is listed as the

[33] Ho Affidavit, para 7; Exhibit "1" to Ho Affidavit.
[34] Tillie Affidavit, para. 33.
[35] Tillie Affidavit, para. 34.
[36] Tillie Affidavit, para. 35; Exhibit "21" to Tillie Affidavit.
[37] Tillie Affidavit, para. 36; Exhibit "22" to Tillie Affidavit.

underlying borrower for the Film Loan.[38]

29. Thibault is employed by MHC and is an Executive Vice President for Bron Media Corp, and formerly VP Finance at MHC.[39]

III. PAYMENTS TO SMITH AND HIS COMPANIES USING MEDIA FUND MONIES

30. In documents produced by MHC pursuant to a demand for production, Staff discovered a spreadsheet which sets out the names of the Five Film Projects, but indicates that Smith and others associated with him are the underlying borrowers, rather than production companies (the "**Spreadsheet**").[40]

31. Staff's review of banking documents appears to corroborate that advances reflected on the Spreadsheet totalling $9,634,200 were paid from the Media Fund to an intermediary (Bron Animation or MHC), and, instead of the monies going to film production companies, $329,930 was paid to Smith and $2,307,347.50 was paid to Smith's holding company, CLJ Everest.[41] Staff's investigation of the advances reflected on the Spreadsheet is ongoing. To date, Staff's analysis has focused on three of the Five Film Projects included in the Spreadsheet: the Henchmen, Mercy and Kingdom Film Projects.[42]

32. The total amount outstanding in respect of the Film Loans to the Five Film Projects is $17,817,996.67.[43] The Media Fund has received no payments of principal or interest in respect of

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[38] Tillie Affidavit, para. 37; Exhibit "23" and "24" to Tillie Affidavit; The film A Good Day's Work (a.k.a Willoughby's) was purchased by the Mortgage Fund.
[39] Tillie Affidavit, para. 38.
[40] Ho Affidavit, para. 8; Exhibit "8" to the Ho Affidavit.
[41] Ho Affidavit, paras. 8-9, 14, 19-20 and 24; Exhibit "8" to Ho Affidavit.
[42] Exhibits "26" and "28" to Ho Affidavit.
[43] Exhibit "56" to Ho Affidavit. This calculation excluded the Henchmen USD Loan of $750,000 and used an approximate exchange rate of 1.3. Exhibit

any of the Five Film Projects. All of these loans are overdue.

Smith's Use of Media Fund Monies

33. Staff's analysis of bank documents indicates that Bron Animation transferred $329,930 using, at least in part, monies Bron Animation received from the Media Fund in respect of the Henchmen Film Project. An analysis of Smith's bank account indicates that Smith disbursed the $329,930 received from Bron Animation to:

(a) make credit card payments totalling $118,300;

(b) transfer $13,000 to a joint account in the name of Smith and Lee Ann Smith;

(c) transfer $87,000 to Chrysalis Yoga;

(d) make an $80,000 RSP contribution;

(e) transfer $17,500 to 115; and

(f) transfer $30,000 to Crystal Wealth.[44]

34. Staff's analysis of bank documents indicates that in respect of the Mercy and Kingdom Film Projects included in the Spreadsheet, MHC transferred $2,307,347.50 to Smith's holding company, CLJ Everest in three advances.[45] Smith used $1,455,585.13 of the monies transferred to CLJ Everest towards the acquisition of a $2.7 million residential property at 5043 Mount Nemo Crescent in Burlington, Ontario (the "**Mount Nemo Property**").[46] The remainder of the purchase price was financed with a mortgage for approximately $1.3 million.[47]

[44] Ho Affidavit, para 25.
[45] Ho Affidavit, paras. 46 and 58.
[46] Ho Affidavit, paras. 58, 60-63 and 65-68; Exhibit "64" to Ho Affidavit.
[47] Ho Affidavit, para 57.

Sale of the Mount Nemo Property

35. The Mount Nemo Property was listed for sale for $3,450,000.[48] On April 13, 2017, Staff obtained a Certificate of Direction from the Commission pursuant to ss. 126(1)(a) and 126(4) of the Act and registered the Certificate thereafter on the title to the Mount Nemo Property.[49]

36. Despite the April 6, 2017 Freeze Directions, which preclude Smith and CLJ Everest from disposing of or transferring any funds, securities or property, and service of the Certificate of Direction on April 13, 2017,[50] CLJ Everest nevertheless entered into an agreement of purchase and sale on April 13, 2017 to sell the Mount Nemo Property to a purchaser named Martin McCready for the sum of $3,350,000.[51] The closing date for the transaction is April 28, 2017. Smith's sister, Jo-Anne Smith, stands to receive a commission of 4% or $134,000 if the deal closes.[52]

37. Staff are concerned that the sale of the Mount Nemo Property may be an attempt by Smith and CLJ Everest to dissipate assets and submit that before any sale occurs, the Court should ensure that no proceeds of the sale whatsoever will benefit Smith. The appointment of a receiver over CLJ Everest, which is the registered owner of the property, will assist in this objective.

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[48] Ho Affidavit, para 55.
[49] Tillie Affidavit, para. 10; Exhibit "2" to Tillie Affidavit.
[50] Supplementary Ho Affidavit, paras 5-9.
[51] Supplementary Ho Affidavit, paras 15-17.
[52] Supplementary Ho Affidavit, paras 9, 15-17.

Use of Media Fund Monies to Buy Mortgages from the Mortgage Fund

38. Among the borrowers listed on the Spreadsheet is the Mortgage Fund. Staff have reason to believe that at least $500,000 of the Media Fund advances for the Henchmen Film Project was used to buy out a mortgage from the Mortgage Fund.[53]

39. Staff's analysis of advances connected to the Mercy and Kingdom Film Projects included in the Spreadsheet indicates that in relation to these projects, $7,244,200 was transferred from the Media Fund to MHC and, of that amount, $3,609,731.83 was transferred from MHC to Spectrum Canada Mortgage Services Inc. ("**Spectrum**"), a service provider for the Mortgage Fund.[54] Email correspondence between Smith and Thibault supports the bank documents which show Media Fund monies flowing to Spectrum.[55] In an email dated October 30, 2014, Smith directed Thibault to wire $2,430,207.83 to Spectrum and under the heading "Tracking" Smith wrote "$2,632,000 Mercy Loan".[56]

40. The use of Media Fund monies to buy mortgages from the Mortgage Fund is inconsistent with the stated investment objective in the Media Fund OMs, including the August 2012 OM.[57] These transactions also call into question the NAVs of both the Media and the Mortgage Funds.

IV. MATERIAL OVERSTATEMENT OF MEDIA FUND NAV

41. To date, Staff's investigation has largely focussed on the activities of the Media Fund, being the largest of the Crystal Wealth Funds. As at June 30, 2016, the Media Fund reported investments in Film Loans at fair value of $50,557,162, representing 91.2% of the total assets of

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[53] Ho Affidavit, paras. 36-44; Exhibits "8", "42" and "46" to Ho Affidavit.
[54] Ho Affidavit, paras. 46 and 49.
[55] Ho Affidavit, para. 49; Exhibit "53" to Ho Affidavit.
[56] Ho Affidavit, para. 49; Exhibit "53" to Ho Affidavit.
[57] Exhibit "14" to Tillie Affidavit, page 2.

Media Fund.[58] However, Staff have concerns with the existence and valuation of the Film Loans, and it appears to Staff that the NAV of the Media Fund may have been materially overstated.[59]

42. Based on Staff's review of the 2015 audit file for the Media Fund alone, approximately $4.5 million in NAV appears to have been unsupported by the audit conducted by BDO, the auditor for the Funds and Crystal Wealth.[60]

43. Based on Staff's concerns regarding the Five Film Projects identified above, and Staff's concerns with the existence and valuation of the Film Loans as described in this section, the overstatement of the Media Fund's NAV may be far greater than $4.5 million.

44. Crystal Wealth's auditor, BDO, relied on MHC as an objective expert for independent confirmation regarding the existence, collectability and valuation of the Film Loans.[61] Smith advised BDO that there was no reason to doubt MHC's objectivity.[62] However, emails between Smith and MHC appear to show that they coordinated responses to BDO inquiries for the 2013, 2014, and 2015 Media Fund audits.[63]

45. To confirm the existence of the Film Loans, BDO relied only on a confirmation by email dated April 2, 2016 sent by MHC regarding the outstanding principal and interest of the loans, rather than confirmations from the entities which are actually named in the underlying records

[58] Tillie Affidavit, para. 39.
[59] Tillie Affidavit, paras. 41-57; Exhibit "17" to Tillie Affidavit.
[60] Tillie Affidavit, para 44.
[61] Tillie Affidavit, para. 45; Exhibit "33" to Tillie Affidavit.
[62] Exhibit "33" to Tillie Affidavit, item 7(a).
[63] Tillie Affidavit, paras. 48-51; Exhibits "35", "36", "37", and "38" to Tillie Affidavit.

and loan documentation as being the borrowers of the Film Loans.[64]

46. Furthermore, in determining the fair value of the Film Loans, Crystal Wealth relied on expected future sales of the underlying films received from MHC. However, BDO tested the accuracy of forecasted 2015 Film Loan receipts of $31.8 million at December 31, 2014 by comparing them to the actual 2015 Film Loan receipts of $6.6 million, and found that actual receipts were $25.2 million less than originally forecasted.[65]

47. In emails exchanged between Smith and MHC representatives in the summer and fall of 2016, they appear to acknowledge significant valuation issues with respect to certain Film Loans.[66] Furthermore, records produced by MHC and Crystal Wealth to Staff contain inconsistent information with respect to the status of production on four of the Five Film Projects.[67]

48. If the NAV of the Media Fund has been materially overstated given the serious valuation concerns with respect to the Film Loans, as appears to be the case, this would mean that investors' purchases and redemptions of the Media Fund's units have been executed at incorrect, inflated prices.[68] In other words, those investors who redeemed their Media Fund units may have received excess proceeds to the detriment of remaining and new investors.[69]

49. Furthermore, if the Media Fund's NAV is overstated, it would similarly impact Crystal Wealth Funds that were invested in the Media Fund, and potentially the NAVs of each of those Funds. As at April 13, 2017, seven Crystal Wealth Funds are invested in the Media Fund in the

[64] Tillie Affidavit, para. 42; Exhibits "28" and "29" to Tillie Affidavit.
[65] Tillie Affidavit, para. 43.
[66] Tillie Affidavit, paras. 52-55; Exhibits "39", "40", and "41" to Tillie Affidavit.
[67] Ho Affidavit, paras. 52 and 53.
[68] Tillie Affidavit, para. 57.
[69] Tillie Affidavit, para. 57.

aggregate amount of $11,218,727.32.[70] The extent and amount of inter-fund investments amongst the Crystal Wealth Funds is dynamic.[71]

50. Notwithstanding concerns about the collectability and valuation of the Film Loans, the NAV per unit of the Media Fund has remained relatively stable for each of series A and F units since their respective launches in 2011 and 2016, staying within the range of $10 to 10.26 per unit for the entire period between September 3, 2011 and March 11, 2017.[72]

V. ADDITIONAL EVIDENCE

51. Since the filing of the affidavits of Michael Ho and Marcel Tillie sworn April 17, 2017 as part of Staff's materials, Staff have conducted compelled examinations of Gilbert, Thibault and Shanine Dennill ("Dennill"), the owner of Chrysalis Yoga. This evidence is set out in the supplementary affidavit of Michael Ho sworn April 24, 2017 and the affidavit of David Adler sworn April 24, 2017.

52. The supplementary affidavit of Michael Ho addresses the sale of the Mount Nemo Property.[73] It also sets out the evidence of Thibault and Gilbert relating to the following topics: (i) the flow of funds for the purchase of film loans by the Media Fund; (ii) Thibault's and Gilbert's involvement in the sales estimates and valuation; (iii) "corporate personal loans" made to Smith; (iv) the Spreadsheet; (v) payments using Media Fund monies to purchase mortgages from the Mortgage Fund; and (vi) the current status of MHC.[74]

53. The affidavit of David Adler, sworn April 24, 2017 sets out the evidence relevant to this

[70] Ho Affidavit, para. 67; Exhibit "70" of the Ho Affidavit.
[71] Ho Affidavit, para. 67.
[72] Tillie Affidavit, para. 56.
[73] Supplementary Ho Affidavit, paras 4-23.
[74] Supplementary Ho Affidavit, paras 24 - 53.

application that was obtained from Dennill who was a receptionist at Crystal Wealth for two years and in a relationship with Smith from 2009 to 2015.[75]

VI. ASSETS UNDER MANAGEMENT OF CRYSTAL WEALTH

i. *Assets of Managed Account Clients*

54. As at March 31, 2016, Crystal Wealth represented that it had 1,265 portfolio management clients with AUM totalling $139,524,614,[76] approximately 94% ($131,660,119.84[77]) of which were invested in the Funds.[78]

ii. *Assets of the Crystal Wealth Funds*

55. As at January 31, 2017, the total AUM for all of the Funds was $177,237,747.[79]

56. As at April 7, 2017, the assets held in the Funds' bank, brokerage, and custodian accounts are comprised of $5,156,052 in cash and $44,765,052 in investments.[80] Of those investments, 50.7%, or $22,694,777.01, are inter-fund investments amongst the Crystal Wealth Funds. The balance of the AUM is comprised of illiquid, non-traditional asset classes which do not appear in these accounts, such as the Film Loans, mortgages, medical receivables, and factoring receivables.[81]

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[75] Adler Affidavit.
[76] Tillie Affidavit, para. 14; Exhibit "5" to Tillie Affidavit, p. 22.
[77] Tillie Affidavit, para. 14; Exhibit "5" to Tillie Affidavit, p. 9.
[78] Tillie Affidavit, para. 14; Exhibit "5" to Tillie Affidavit,p. 42.
[79] Tillie Affidavit, para. 13; Exhibit "4" to Tillie Affidavit.
[80] Ho Affidavit, para. 71; Exhibit "84" to Ho Affidavit.
[81] Tillie Affidavit, para. 14; Exhibit "12" to Tillie Affidavit.

PART III – THE ISSUE

57. The issue for this Honourable Court to consider is whether the requirements for the appointment of a Receiver under s. 129 of the Act have been met.

PART IV – LAW AND ARGUMENT

58. Section 129 of the Act permits the Commission to apply to the Court for an order appointing, among other things, a receiver and manager of all of the property, assets and undertakings of a person or company. Such an order shall be made where the Court is satisfied that such an appointment is:

(a) in the best interests of the company's creditors or the security holders of or subscribers to the company; or

(b) it is appropriate for the due administration of Ontario securities law.[82]

59. Although either one of these conditions is sufficient to permit the Court to appoint a receiver and manager, the Commission submits that both conditions are met in this case.

I. APPOINTING A RECEIVER IS IN THE BEST INTEREST OF SECURITY HOLDERS AND SUBSCRIBERS

60. The criteria for determining the best interests of security holders or subscribers for the purpose of the appointment of a receiver under securities legislation are broader than a solvency test. The criteria should take into consideration all the circumstances and whether, in the context of those circumstances, it is in the best interests of security holders that a receiver be appointed.

[82] *Act*, s. 129, Schedule B.

The analysis should also take into account the interests of all stakeholders.[83]

61. Where there is a history of mismanagement, no evidence of a tangible alternative resolution, evidence that investors' interests will not be served by maintaining the *status quo* and evidence that the debtor is not in a better position than a receiver to protect investors' interests, appointing a receiver is appropriate.[84]

62. Where there is evidence of regulatory breaches and evidence that the value and integrity of assets purchased with investor funds has been compromised, the Honourable Justice Morawetz in *Sextant* held that it is in investors' best interests to appoint a receiver so that such investors are provided with independent, verifiable review and analysis. Investors deserve to receive "*treatment they can rely upon.*"[85]

63. In *OSC v Portus Alternative Asset Management Inc.*, a receiver was appointed over the assets and undertakings of an investment fund and its management where there was: (i) significant regulatory non-compliance; (ii) a failure of reporting to the Commission and to investors; (iii) likely financial impairment of assets; and (iv) it was apparent that significant investigation would be required to unravel various transactions and understand the true state of affairs of the group.[86]

64. Each of these factors is present in this case. The evidence obtained by Staff shows that:

(i) it appears significant breaches of the Act have occurred;

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[83] *Ontario (Securities Commission) v. Factorcorp Inc.*, [2007] O.J. No. 4496, , 2007 CarswellOnt 7575, paras. 47 and 48 [*Factorcorp*] (S.C.J. [Comm. List]), Tab 1 of Brief of Authorities; *Ontario Securities Commission v. Sextant Strategic Opportunities Hedge Fund L.P. et al.*, [2009] O.J. No. 3063, 2009 CarswellOnt 4241, paras. 54 (S.C.J. [Comm. List]) [*Sextant*], Tab 2 of Brief of Authorities.
[84] *Factorcorp*, paras. 41-47; *Sextant*, para. 55.
[85] *Sextant*, paras. 55-56.
[86] *Ontario (Securities Commission) v Portus Alternative Asset Management Inc.*, [2006] O.J. No. 1121 (S.C.J. [Comm. List]), paras. 57-58 [*Portus*], Tab 3 of Brief of Authorities.

(ii) Crystal Wealth and 12 Funds have failed to deliver required annual financial statements to the Commission and investors;

(iii) Smith's appropriation of Media Fund monies purportedly advanced to purchase Film Loans, and Staff's concern that NAV of the Media Fund is materially overstated, suggest that the value and integrity of the Film Loans purchased with Investor funds may have been impaired or compromised, and suggest that Smith's credibility as the CCO and UDP of Crystal Wealth is compromised; and

(iv) significant investigation will be required to, among other things, understand the assets held in the various Funds' portfolios and to unravel the various inter-fund investments and loans that have occurred and their impact on the prices at which sales and redemptions of units of the Funds have occurred.

65. In these circumstances, it cannot be in the best interests of the Funds' security holders and investor clients of Crystal Wealth, generally, to allow Smith and Crystal Wealth to continue to manage the Funds. It is appropriate that the Receiver be appointed over the Respondents' Property to ensure that investors' interests are protected, and so that they can rely on a transparent, non-conflicted orderly administration of the Funds' assets.

II. APPOINTING A RECEIVER SUPPORTS THE DUE ADMINISTRATION OF ONTARIO SECURITIES LAW

66. The goal of securities legislation is to protect the investing public and to protect the integrity of the capital markets. More particularly, s. 1.1 of the Act provides that the purposes of the Act are: (a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets.[87] An assessment of whether the appointment of a receiver is appropriate for the "due administration of Ontario securities law" must therefore be animated by, and consistent with, these purposes.

67. In an application under s. 129 of the Act, the Commission does not have to prove a

[87] *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 at 592 and 595, Tab 4 of Brief of Authorities; Act, s. 1.1, Schedule "B".

breach of the Act. Rather, it is sufficient for the Commission to raise serious concerns with respect to possible breaches of the Act.[88] As set out below, Staff of the Commission have raised the following serious concerns regarding possible breaches of the Act.

i. ***Breach of s. 126.1(1)(b) of the Act –Fraud***

68. Any misappropriation of investor funds by Smith, Crystal Wealth, 115 and CLJ Everest, and the manipulation or overvaluation of unit prices and underlying asset values of the Media Fund, would contravene s. 126.1(1)(b) of the Act, which provides that:

> 126.1 (1) A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities, derivatives, or the underlying interest of a derivative that the person or company knows or reasonably ought to know,
>
> …
>
> (b) perpetrates a fraud on any person or company.

69. The use of investor funds for personal benefit constitutes fraud pursuant to s. 126.1(1)(b) of the Act.[89] Staff have obtained evidence that Smith, CLJ Everest, 115, and Crystal Wealth were the ultimate recipients of funds which Crystal Wealth and Smith caused the Media Fund to pay to MHC to purportedly purchase film loans relating to certain of the Five Film Projects.[90]

70. Knowingly selling and redeeming Media Fund units (and possibly the units of other Funds invested in the Media Fund) at a materially overstated NAV may also constitute fraud contrary to s. 126.1(1)(b) of the Act. As the Commission found in its decision on the merits in *Sextant Capital Management Inc.*, knowingly increasing asset values in an unreasonable manner

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[88] *Ontario Securities Commission v. Sbaraglia* (23 December 2010), Toronto, Ont., Court File No. CV-10-883-00CL (unreported) at p. 24-25 [*Sbaraglia*], Tab 5 of Brief of Authorities
[89] *Sbaraglia*, p. 24.
[90] Ho Affidavit, paras. 18 to 53.

and without formal independent valuations, and then using those values to calculate the NAV of an investment fund constitutes fraud.[91]

ii. ***The Failure to deal Fairly, Honestly and in Good Faith with Clients and the Failure to meet the standard of care of an Investment Fund Manager***

71. Section 2.1 of OSC Rule 31-505 states that a registered dealer, such as Crystal Wealth, shall deal fairly, honestly and in good faith with its clients, and that a representative of a registered dealer shall deal fairly, honestly and in good faith with his or her clients.

72. Section 116 of the Act states that:

> Every investment fund manager,
> (a) Shall exercise the powers and discharge the duties of their office, honestly, in good faith and in the best interests of the investment fund; and
>
> (b) Shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

73. The Commission has found that the nature of the duties under Rule 31-505 are essentially similar or substantially overlap with the duties under s. 116 of the Act.[92]

74. Staff submit that Smith has failed to deal fairly, honestly and in good faith with his clients and has failed to act in the best interests of the Funds, contrary to s. 116(a) of the Act. Crystal Wealth's Managed Account Clients were heavily invested in the Media Fund, or in other Crystal Wealth Funds with inter-fund investments in the Media Fund. Smith caused Media Fund monies to be transferred to MHC and Bron Animation, purportedly for the purpose of purchasing Film Loans, and then days later, accepted payments into his personal bank account and the

[91] *Sextant Capital Management Inc (Re)* (2011), 34 O.S.C.B. 5863, paras. 233-234 [*Sextant - Merits*], Tab 6 of Brief of Authorities.
[92] *Sextant – Merits*, paras. 248-251.

account of his holding company, CLJ Everest.

75. Smith's use of Media Fund monies to purchase mortgages from the Mortgage Fund would also prejudice Media Fund investors to the benefit of Mortgage Fund investors. Presumably, those dealings were also less than fair, honest and in good faith.

76. Further, permitting the continued sales and redemptions of units in the Media Fund at a materially overstated NAV and the failure to deliver audited financial statements for 12 of the 15 Funds do not show that Crystal Wealth or Smith were exercising the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, contrary to s. 116(1)(b).

iii. *Failure to Deliver Audited Financial Statements*

77. Crystal Wealth was required to file audited annual financial statements by March 31, 2017.[93] The Funds were required to deliver their audited annual financial statements to security holders by the same deadline.[94] Crystal Wealth and all but three of the Funds have failed to do so.[95] Thus, Crystal Wealth is in violation of s. 21.10(3) of the Act and ss. 12.10 and 12.14 of NI 31-103 and 12 Funds are in violation of ss. 2.1 and 2.2 of NI 81-106.

78. Audited statements were unavailable because Smith and Crystal Wealth have not provided information requested by Crystal Wealth's auditor.[96]

79. Without appropriate financial disclosure, the investing public and current investors

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[93] Tillie Affidavit, para. 58; Act, s. 21.10(3); National Instrument 31-103 – *Registration Requirements, Exemptions, and Ongoing Registrant Obligations,* ss 12.10, 12.12, 12.3 and 12.14.
[94] National Instrument 81-106 – *Investment Fund Continuous Disclosure*, ss. 2.1 and 2.2.
[95] The three Funds for which Financial Statements were filed are the Sustainable Dividend Fund, the Conscious Capital Fund and the Enlightened Resource fund. Tillie Affidavit, para 59.
[96] Tillie Affidavit, para. 58; Exhibit 44 to Tillie Affidavit.

cannot ascertain the actual value of Crystal Wealth Funds' units and the units cannot be sold or redeemed at prices in which investors can have confidence. This threatens market integrity.

iv. Protection of the Public Interest

80. The interests of existing investors will not be served by maintaining the status quo. A Receiver is necessary to ensure that all investors' assets are dealt with appropriately and fairly in the circumstances.

81. The gravity of the breaches of the Act suggested by the evidence put forward by Staff means that there are serious concerns about the ability of Smith and Crystal Wealth to operate in the capital markets in a manner that complies with securities law. The interests of existing investors and the integrity of the capital markets would be better served if they were not to continue in positions of trust with respect to the assets of the Funds or the monies of investors.

82. The proposed Receivership Order will ensure that investors' interests are protected while Staff's investigation and enforcement efforts continue, and that the Funds and their assets are properly administered by the Receiver in compliance with Ontario securities law and in the best interests of all stakeholders. In the circumstances, anything less than the appointment of a receiver would not provide the necessary oversight or control over the financial affairs of the Respondents, and would threaten the public's confidence in the capital markets.

PART IV – CONCLUSION AND RELIEF REQUESTED

83. It is respectfully submitted that it is in the interest of investors and appropriate for the due administration of Ontario securities law that this Honourable Court grant the relief sought by the

Commission and appoint GTL as Receiver over the Respondents' Property.[97]

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of April, 2017.

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Lawyers for the Applicant,
Ontario Securities Commission

[97] Consent of Grant Thornton Limited dated April 24, 2017, Exhibit "38" to Supplementary Ho Affidavit.

Tab A

SCHEDULE "A"

AUTHORITIES CITED

Jurisprudence

1. *Ontario (Securities Commission) v. Factorcorp Inc.*, [2007] O.J. No. 4496, 2007 CarswellOnt 7515 (S.C.J. [Comm. List])

2. *Ontario Securities Commission v. Sextant Strategic Opportunities Hedge Fund L.P. et al.*, [2009] O.J. No. 3063, 2009 CarswellOnt 4241 (S.C.J. [Comm. List])

3. *Ontario (Securities Commission) v Portus Alternative Asset Management Inc.*, [2006] O.J. No. 1121 (S.C.J. [Comm. List])

4. *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 (S.C.C.)

5. *Ontario Securities Commission v. Sbaraglia* (23 December 2010), Toronto, Ont., Court File No. CV-10-883-00CL (unreported) (S.C.J. [Comm. List])

6. *Sextant Capital Management Inc (Re)* (2011), 34 O.S.C.B. 5863 (Ont. Sec. Comm.)

Tab B

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

***Securities Act*, R.S.O. 1990, c. S.5, as amended**

1.1 The purposes of this Act are,

(a) to provide protection to investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in capital markets.

...

21.10 (1) Every registrant that is not subject to section 21.9 shall appoint an auditor who satisfies such requirements as may be established by the Commission. 1994, c. 11, s. 358.

(2) The auditor of a registrant that is not subject to section 21.9 shall make an examination of the annual financial statements and other regulatory filings of the registrant, in accordance with generally accepted auditing standards, and shall prepare a report on the financial affairs of the registrant in accordance with professional reporting standards. 1994, c. 11, s. 358.

(3) The registrant shall file the report with the Commission together with its annual financial statements and other regulatory filings.

...

116 Every investment fund manager,

(a) shall exercise the powers and discharge the duties of their office honestly, in good faith and in the best interests of the investment fund; and

(b) shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. 2006, c. 33, Sched. Z.5, s. 11.

...

126.1 (1) A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities, derivatives or the underlying interest of a derivative that the person or company knows or reasonably ought to know,
(a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security, derivative or underlying interest of a derivative; or
(b) perpetrates a fraud on any person or company. 2010, c. 26, Sched. 18, s. 33.

...

126 (1) If the Commission considers it expedient for the due administration of Ontario securities law or the regulation of the capital markets in Ontario or expedient to assist in the due administration of the securities laws or the regulation of the capital markets in another jurisdiction, the Commission may,

(a) direct a person or company having on deposit or under its control or for safekeeping any funds, securities or property of any person or company to retain those funds, securities or property;

(b) direct a person or company to refrain from withdrawing any funds, securities or property from another person or company who has them on deposit, under control or for safekeeping; or

(c) direct a person or company to maintain funds, securities or property, and to refrain from disposing of, transferring, dissipating or otherwise dealing with or diminishing the value of those funds, securities or property. 2014, c. 7, Sched. 28, s. 13 (1).

(1.1) A direction under subsection (1) applies until the Commission in writing revokes the direction or consents to release funds, securities or property from the direction, or until the Superior Court of Justice orders otherwise. 2014, c. 7, Sched. 28, s. 13 (1).

(2) A direction under subsection (1) that names a bank or other financial institution shall apply only to the branches of the bank or other financial institution identified in the direction. 1994, c. 11, s. 375.

(3) A direction under subsection (1) shall not apply to funds, securities or property in a recognized clearing agency or to securities in process of transfer by a transfer agent unless the direction so states. 1994, c. 11, s. 375.

(4) The Commission may order that a direction under subsection (1) be certified to a land registrar or mining recorder and that it be registered or recorded against the lands or claims identified in the direction, and on registration or recording of the certificate it shall have the same effect as a certificate of pending litigation. 1994, c. 11, s. 375.

(5) As soon as practicable, but not later than 10 days after a direction is issued under subsection (1), the Commission shall serve and file a notice of application in the Superior Court of Justice to continue the direction or for such other order as the court considers appropriate. 2010, c. 26, Sched. 18, s. 32.

(5.1) An order may be made under subsection (5) if the court is satisfied that the order would be reasonable and expedient in the circumstances, having due regard to the public interest and,

(a) the due administration of Ontario securities law or the securities laws of another jurisdiction; or

(b) the regulation of capital markets in Ontario or another jurisdiction. 2014, c. 7, Sched. 28, s. 13 (2).

(6) A direction under subsection (1) may be made without notice but, in that event, copies of the direction shall be sent forthwith by such means as the Commission may determine to all persons and companies named in the direction. 1994, c. 11, s. 375.

(7) A person or company directly affected by a direction may apply to the Commission for clarification or to have the direction varied or revoked. 1994, c. 11, s. 375.

. . .

129 (1) The Commission may apply to the Superior Court of Justice for an order appointing a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company. 1994, c. 11, s. 375; 2006, c. 19, Sched. C, s. 1 (1).

(2) No order shall be made under subsection (1) unless the court is satisfied that,

(a) the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of the person or company is in the best interests of the creditors of the person or company or of persons or companies any of whose property is in the possession or under the control of the person or company or the security holders of or subscribers to the person or company; or

(b) it is appropriate for the due administration of Ontario securities law. 1994, c. 11, s. 375.

(3) The court may make an order under subsection (1) on an application without notice, but the period of appointment shall not exceed fifteen days. 1994, c. 11, s. 375.

(4) If an order is made without notice under subsection (3), the Commission may make a motion to the court within fifteen days after the date of the order to continue the order or for the issuance of such other order as the court considers appropriate. 1994, c. 11, s. 375.

(5) A receiver, receiver and manager, trustee or liquidator of the property of a person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and, if so directed by the court, the receiver, receiver and manager, trustee or liquidator has the authority to wind up or manage the business and affairs of the person or company and has all powers necessary or incidental to that authority. 1994, c. 11, s. 375.

(6) If an order is made appointing a receiver, receiver and manager, trustee or liquidator of the property of a person or company under this section, the powers of the directors of the company that the receiver, receiver and manager, trustee or liquidator is authorized to exercise may not be exercised by the directors until the receiver, receiver and manager, trustee or liquidator is discharged by the court. 1994, c. 11, s. 375.

(7) The fees charged and expenses incurred by a receiver, receiver and manager, trustee or liquidator appointed under this section in relation to the exercise of powers pursuant to the appointment shall be in the discretion of the court. 1994, c. 11, s. 375.

(8) An order made under this section may be varied or discharged by the court on motion. 1994, c. 11, s. 375.

Ontario Securities Commission Rule 31-505, *Conditions of Registration*, s. 2.1.

2.1 **General Duties**

(1) A registered dealer or adviser shall deal fairly, honestly and in good faith with its clients.

(2) A representative of a registered dealer or registered adviser shall deal fairly, honestly and in good faith with his or her clients.

National Instrument 31-103 – Registration Requirements, Exemptions, and Ongoing Registrant Obligations

12.10 Annual financial statements

(1) Annual financial statements delivered to the regulator or, in Québec, the securities regulatory authority under this
Division for financial years beginning on or after January 1, 2011 must include the following:

> (a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows, each prepared for the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;
>
> (b) a statement of financial position, signed by at least one director of the registered firm, as at the end of the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;
>
> (c) notes to the financial statements.

(2) The annual financial statements delivered to the regulator or, in Québec, the securities regulatory authority under this Division must be audited.

12.12 Delivering financial information – dealer

(1) A registered dealer must deliver the following to the regulator or, in Québec, the securities regulatory authority no later than the 90th day after the end of its financial year:

> (a) its annual financial statements for the financial year;
>
> (b) a completed Form 31-103F1 Calculation of Excess Working Capital, showing the calculation of the dealer's excess working capital as at the end of the financial year and as

at the end of the immediately preceding financial year, if any.

(2) A registered dealer must deliver the following to the regulator or, in Québec, the securities regulatory authority no later than the 30th day after the end of the first, second and third interim period of its financial year:

(a) its interim financial information for the interim period;

(b) a completed Form 31-103F1 Calculation of Excess Working Capital, showing the calculation of the dealer's excess working capital as at the end of the interim period and as at the end of the immediately preceding interim period, if any.

(2.1) If a registered firm is a member of the MFDA and is registered as an exempt market dealer or scholarship plan dealer, the firm is exempt from paragraphs (1)(b) and (2)(b) if all of the following apply:

(a) the firm has a minimum capital of not less than $50,000 as calculated in accordance with MFDA Form 1 MFDA Financial Questionnaire and Report;

(b) the firm delivers to the regulator or, in Québec, the securities regulatory authority a completed MFDA Form 1 MFDA Financial Questionnaire and Report, no later than the 90th day after the end of its financial year, that shows the calculation of the firm's risk adjusted capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any;

(c) the firm delivers to the regulator or, in Québec, the securities regulatory authority a completed MFDA Form 1 MFDA Financial Questionnaire and Report, no later than the 30th day after the end of the first, second and third interim period of its financial year, that shows the calculation of the firm's risk adjusted capital as at the end of the interim period and as at the end of the immediately preceding month, if any.

(3) Subsection (2) does not apply to an exempt market dealer unless it is also registered in another category, other than the portfolio manager or restricted portfolio manager category.

12.13 Delivering financial information – adviser

A registered adviser must deliver the following to the regulator or, in Québec, the securities regulatory authority no later than the 90th day after the end of its financial year:

(a) its annual financial statements for the financial year;

(b) a completed Form 31-103F1 Calculation of Excess Working Capital, showing the calculation of the adviser's excess working capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any.

12.14 Delivering financial information – investment fund manager

(1) A registered investment fund manager must deliver the following to the regulator or, in Québec, the securities regulatory authority no later than the 90th day after the end of its financial year:

(a) its annual financial statements for the financial year;
(b) a completed Form 31-103F1 Calculation of Excess Working Capital, showing the calculation of the investment fund manager's excess working capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any;
(c) a completed Form 31-103F4 Net Asset Value Adjustments if any net asset value adjustment has been made in respect of an investment fund managed by the investment fund manager during the financial year.

(2) A registered investment fund manager must deliver the following to the regulator or, in Québec, the securities regulatory authority no later than the 30th day after the end of the first, second and third interim period of its financial year:

(a) its interim financial information for the interim period;
(b) a completed Form 31-103F1 Calculation of Excess Working Capital, showing the calculation of the investment fund manager's excess working capital as at the end of the interim period and as at the end of the immediately preceding interim period, if any;
(c) a completed Form 31-103F4 Net Asset Value Adjustments if any net asset value adjustment has been made in respect of an investment fund managed by the investment fund manager during the interim period.

<u>National Instrument 81-106 – *Investment Fund Continuous Disclosure*</u>

2.1 Comparative Annual Financial Statements and Auditor's Report

(1) An investment fund must file annual financial statements for the investment fund's most recently completed
financial year that include
(a) a statement of net assets as at the end of that financial year and a statement of net assets as at the end of the immediately preceding financial year;
(b) a statement of operations for that financial year and a statement of operations for the immediately preceding financial year;
(c) statement of changes in net assets for that financial year and a statement of changes in net assets for the immediately preceding financial year;
(d) a statement of cashflows for that financial year and a statement of cashflows for the immediately preceding financial year, unless it is not required by Canadian GAAP;
(e) a statement of investment portfolio as at the end of that financial year; and
(f) notes to the annual financial statements.

(2) Annual financial statements filed under subsection (1) must be accompanied by an auditor's

report.

2.2 Filing Deadline for Annual Financial Statements

The annual financial statements and auditor's report required to be filed under section 2.1 must be filed on or before the 90th day after the investment fund's most recently completed financial year.

2.11 Filing Exemption for Mutual Funds that are Non-Reporting Issuers

A mutual fund that is not a reporting issuer is exempt from the filing requirements of section 2.1 for a financial year or section 2.3 for an interim period if:

(a) the mutual fund prepares the applicable financial statements in accordance with this Instrument;

(b) the mutual fund delivers the financial statements to its securityholders in accordance with Part 5 within the same time periods as if the financial statements were required to be filed;

(c) the mutual fund has advised the regulator or securities regulatory authority that it is relying on this exemption not to file its financial statements; and

(d) the mutual fund has included in a note to the financial statements that it is relying on this exemption not to file its financial statements.

ONTARIO SECURITIES COMMISSION **and** **CRYSTAL WEALTH MANAGEMENT SYSTEM LIMITED, *ET AL.***

Applicant | Respondents

CV-17-11779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto

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