corporate and securities litigation

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Sent via Email

Robert Blair
Secretary to the Commission
Ontario Securities Commission
20 Queen Street West, 20th Floor
Toronto, ON M5H 3S8

Dear Mr. Blair:

Re: Notice of Request for a Stay and Hearing and Review of the Decision of the Director dated July 15, 2016 in the Matter of Waverley Corporate Financial Services Ltd.

We are counsel for Waverley Corporate Financial Services Ltd. ("**Waverley**") and its Chief Compliance Officer ("**CCO**"), Don McDonald. Please accept this letter as a request, pursuant to section 8 of the *Securities Act*, RSO 1990, c S 5 (the "**Act**"), for a stay and hearing and review of the decision of the Director of the Compliance and Registrant Regulation Branch ("**CRR**"), Debra Foubert, dated July 15, 2016 (the "**Decision**").

Background

Waverley is registered with the Ontario Securities Commission (the "**Commission**") in the category of exempt market dealer ("**EMD**"). Waverley began to develop its business model over four years ago in consultation with Staff members from various securities regulators. It was not until February 8, 2016, following a compliance review of Waverley for the period between August 1, 2013 and July 31, 2014 pursuant to section 20 of the Act, that Staff of the Commission recommended to the Director that Waverley's registration be subject to certain terms and conditions.

Waverley exercised its right to an opportunity to be heard ("**OTBH**") pursuant to section 31 of the Act. The OTBH was conducted by way of written submissions exchanged between March 14, 2016 and April 22, 2016, various correspondence

provided by Michael Denyszyn, Senior Legal Counsel at CRR, and the undersigned, and an in-person meeting between counsel and the Director held on May 25, 2016. As a result of a joint agreement between Staff and Waverley, Staff withdrew two of its recommended terms and conditions.

The Director's Decision

On July 15, 2016, the Director issued her decision ("**Decision**") imposing the following two terms on Waverley's registration:

1. Waverley shall cease all activity conducted under the Issuer-Connected DR Model...and shall not sponsor a dealing representative, except in accordance with Ontario securities law, effective 30 days from the date of this decision to allow for an orderly transition ("**Term 1**").

2. [Mr. McDonald] is required to successfully complete, and provide proof thereof for, the Osgoode Certificate in Regulatory Compliance and Legal Risk Management for Financial Institutions, by no later than July 15, 2017 ("**Term 2**").

The Director's decision to impose the above terms was based on findings in respect of the Issuer-Connected DR Model (the "**Model**")[1] as defined in the Decision. Term 1 was not recommended by Staff and, as such, the parties were not afforded an opportunity to make submissions in respect of it.

The Grounds for a Stay and Hearing and Review

The grounds for a stay and hearing and review are:

1. Waverley will suffer irreparable harm to its business and reputation if the Decision is not stayed pending the hearing and review;

2. The balance of convenience favours granting a stay;

3. In summary, the Director's Decision does not take into account the realities of capital raising in Ontario. The Director erroneously preferred hypothetical risks over the concrete factual record. Further, the Decision is premised on the unfounded assumption that the existence of disclosed financial incentives will result in wrongful conduct by registrants in good standing. Integrity was not an issue in the OTBH;

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[1] Defined in the Decision as a "*novel business model*" that "*consists of Waverley providing registration and compliance services to independent issuers by sponsoring an employee, principal or person connected to an independent issuer of a dealing representative*".

4. The Decision is vague and hypothetical. The Director failed to provide adequate reasons for the findings made therein and give due weight and consideration to the evidentiary record before her;

5. Further, the Director erred in her interpretation of the supervisory obligations imposed on Waverley by Ontario securities law;

6. The Director erred in concluding that Waverley was incapable of supervising issuer-connected dealing representatives ("**DRs**"). The factors relied on by the Director, which include the fact that Waverley received certain compensation and that issuer-connected DRs marketed exclusively the securities of their connected issuer, have no relevance to Waverley's ability to supervise in accordance with its legal obligations;

7. Waverley presented evidence as to its robust supervision process. This evidence was completely ignored by the Director;

8. The Director erred in concluding that any actual or potential conflicts of interest associated with the Model were not adequately addressed by Waverley through disclosure, among other things;

9. The Director erred in concluding that payment of a desk fee gives rise to an inherent conflict of interest vis-à-vis the issuer-connected DRs. The desk fee is not absorbed by the client and is independent of the investment. In any case, receipt of a desk fee does not affect Waverley's ability to supervise;

10. The Director erred in concluding that conflicts of interest between Waverley and issuer-connected DRs create "a high risk of harm to clients." The existence of a disclosed financial incentive does not increase the risk of unsuitable investments being made. There was no evidence upon which to base such a finding;

11. The Director ignored the factual record presented by Waverley which clearly demonstrated that client confusion is not at issue in this case;

12. The Director erred in concluding that avoidance was required to address any conflicts of interest that may arise in respect of the Model. Staff did not take this position in their recommendations to the Director;

13. The Director's conclusion that Waverley is facilitating issuers in engaging in registerable activity without registration is based on hypothetical concerns, not facts. In making this finding, the Director ignored the evidentiary record regarding the detailed product due diligence conducted by Waverley, which fully addresses any such risk;

14. The terms imposed by the Director are disproportionate and unprecedented;

15. The use of the phrase "except in accordance with Ontario securities law" in Term 1 is ambiguous and puts the registrant in an untenable position;

16. Term 1 was imposed by the Director without providing Waverley with an opportunity to be heard, contrary to section 31 of the Act and the principles of procedural fairness and natural justice;

17. The Director erred by seeking to impose new legal obligations through the OTBH process rather than through the statutorily prescribed rule making procedures;

18. The Director failed to give reasons in support of the imposition of Term 2 requiring Mr. McDonald to take an industry course and failed to give due weight and consideration to the evidence presented by Waverley as to Mr. McDonald's proficiency; and

19. Such further and other grounds as counsel may advise and the Commission may permit.

Please do not hesitate to contact us should you have any questions or concerns.

Yours truly,

Melissa J. MacKewn

*md

c. Debra Foubert, Director Compliance and Registrant Regulation Branch
Michael Denyszyn, Senior Legal Counsel, OSC