



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

-AND-

**IN THE MATTER OF
PRO-FINANCIAL ASSET MANAGEMENT INC.**

**ORDER
(Subsections 127(1), (2) and (8))**

WHEREAS on May 17, 2013, the Commission issued a temporary order (the "Temporary Order") with respect to PFAM pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering that:

- (i) pursuant to paragraph 1 of subsection 127(1) of the Act, the registration of PFAM as a dealer in the category of exempt market dealer is suspended and the following terms and conditions apply to the registration of PFAM as an adviser in the category of portfolio manager ("PM") and to its operation as an investment fund manager ("IFM"):
 - a. PFAM's activities as a PM and IFM shall be applied exclusively to the Managed Accounts and to the Pro-Hedge Funds and Pro-Index Funds; and
 - b. PFAM shall not accept any new clients or open any new client accounts of any kind in respect of the Managed Accounts;
- (ii) pursuant to subsection 127(6) of the Act, the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on May 28, 2013, the Commission ordered: (i) the Temporary Order be extended to June 27, 2013; (ii) the hearing to consider whether to further extend the terms of the Temporary Order and/or to make any further order as to PFAM's registration proceed on June 26, 2013 at 10:00 a.m.;

AND WHEREAS on June 26, 2013, the Commission ordered that: (i) the Temporary Order be extended to July 15, 2013; and (ii) the affidavit of Michael Denyszyn sworn May 24, 2013 not be marked as an exhibit until the next appearance in the absence of a Commission order to the contrary; and the hearing to consider this matter proceed on July 12, 2012;

AND WHEREAS on July 11, 2013, the Commission ordered that: (i) the Temporary Order be extended to July 22, 2013; (ii) the hearing be adjourned to July 18, 2013 at 11:00 a.m.; and (iii) the hearing date of July 12, 2013 at 10:00 a.m. be vacated;

AND WHEREAS on July 18, 2013, PFAM brought a motion (the “First PFAM Motion”) that the hearing be held *in camera* and that the affidavits of Michael Denyszyn sworn May 24 and June 24, 2013 and the affidavit of Michael Ho sworn July 17, 2013 (collectively the “Staff Affidavits”) either not be admitted as evidence or else be treated as confidential documents and the parties agreed that the motion should be heard *in camera*;

AND WHEREAS on July 18, 2013, PFAM’s counsel filed supporting documents (the “PFAM Materials”) in support of the First PFAM Motion and counsel for PFAM and Staff made oral submissions and filed written submissions;

AND WHEREAS on July 22, 2013, the Commission ordered:

- (i) the Temporary Order be extended to August 26, 2013;
- (ii) leave be granted to the parties to file written submissions in respect of the First PFAM Motion;
- (iii) the Staff Affidavits, the transcript of the PFAM motion, the PFAM Materials, written submissions filed by Staff and PFAM and other documents presented during the course of the First PFAM Motion shall be treated as confidential documents until further direction or order of the Commission; and
- (iv) the hearing be adjourned to August 23, 2013 at 10:00 a.m.;

AND WHEREAS on August 23, 2013, Staff filed with the Commission the affidavit of Michael Ho sworn August 22, 2013 and PFAM’s counsel filed the affidavit of Stuart McKinnon dated August 23, 2013 but the parties did not seek to mark these affidavits as exhibits;

AND WHEREAS on August 23, 2013, Staff and counsel for PFAM advised the Commission that the parties had agreed on the terms of a draft order;

AND WHEREAS on August 23, 2013, PFAM requested that the hearing be held *in camera* so PFAM’s submissions on certain confidentiality issues could be heard and Staff did not oppose PFAM’s request;

AND WHEREAS on August 27, 2013, the Commission ordered:

- (i) the Temporary Order be extended to October 11, 2013;
- (ii) the affidavit of Michael Ho sworn August 22, 2013 and the affidavit of Stuart McKinnon sworn August 23, 2013 be treated as confidential documents until further order of the Commission;
- (iii) PFAM will deliver to Staff the final PPN reconciliation report by 4:30 p.m. on September 30, 2013; and

- (iv) the hearing to consider whether to: (i) make any further order as to PFAM's registration as an adviser in the category of PM or in respect of its operation as an IFM, as a result of PFAM's ongoing capital deficiency; and/or (ii) otherwise vary or extend the terms of the Temporary Order, proceed on October 9, 2013 at 11:00 a.m.;

AND WHEREAS on October 9, 2013, PFAM brought a second motion (the "Second PFAM Motion") for an order that the hearing be held *in camera* and for a confidentiality order treating as confidential documents: (i) the Staff and PFAM affidavits; (ii) all facts and correspondence exchanged by Staff and PFAM; and (iii) any transcript of this and prior *in camera* proceedings;

AND WHEREAS on October 9, 2013, PFAM's counsel filed written submissions dated October 8, 2013, the affidavit of Stuart McKinnon sworn October 7, 2013 and the affidavit of Kenneth White sworn October 7, 2013 in support of the Second PFAM Motion and Staff filed written submissions dated October 9, 2013 and the affidavit of Michael Ho sworn October 8, 2013 and opposed the request for an *in camera* hearing and for the confidentiality order;

AND WHEREAS on October 9, 2013, the Commission heard submissions from counsel on the Second PFAM Motion *in camera* and the Commission requested the parties to prepare a draft order that, among other matters, addressed the confidentiality of documents filed with the Commission and permitted BNP Paribas Canada and Société Générale Canada (the "Banks") to review certain documents attached to Staff affidavits dealing substantively with the PPN reconciliation process, provided the Banks treated such documents as confidential;

AND WHEREAS on October 11, 2013, the Commission ordered that:

- (i) the Temporary Order be extended to December 15, 2013;
- (ii) the affidavit of Michael Ho sworn October 8, 2013, the affidavit of Stuart McKinnon sworn October 7, 2013, the affidavit of Kenneth White sworn October 7, 2013 and the written submissions of the parties dated October 8 and 9, 2013 shall be treated as confidential documents until further order of the Commission; and
- (iii) the hearing to consider whether to: (i) make any further order as to PFAM's registration as an adviser in the category of PM or in respect of its operation as an IFM, as a result of PFAM's ongoing capital deficiency; and/or (ii) otherwise vary or extend the terms of the Temporary Order, shall proceed on December 12, 2013 at 10:00 a.m.;

AND WHEREAS on October 17, 2013, the Commission ordered (the "October 17, 2013 Order") that:

- (i) the affidavit of Michael Ho sworn October 8, 2013, the affidavit of Stuart McKinnon sworn October 7, 2013, the affidavit of Kenneth White sworn October 7, 2013 and the written submissions of the parties dated October 8 and 9, 2013 shall be treated as confidential documents until further order of the Commission;
- (ii) the previous orders as to confidentiality made by the Commission on July 22, 2013 and August 27, 2013 shall remain in force until further order or direction of the Commission; and

- (iii) documents related to the PPN reconciliation process listed on Schedule "A" to the October 17, 2013 Order be provided to counsel for the Banks on condition that the Banks treat those documents as confidential documents and not provide copies to any third party without further direction or order of the Commission;

AND WHEREAS on September 30, 2013, PFAM agreed to sell to another portfolio manager (the "Purchaser") PFAM's interest in all of the investment management contracts for the Pro-Index funds and the Managed Accounts (the "First Transaction"). In a second transaction, an investor has agreed to purchase through a corporation (the "Investor") all of the shares of the Purchaser (the "Second Transaction").:

AND WHEREAS on October 22, 2013, the Purchaser and PFAM filed a notification letter providing Compliance and Registrant Regulation Branch ("CRR Branch") Staff with notice ("Notice") of the application filed under section 11.9 and 11.10 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") relating to the First Transaction and the Second Transaction (collectively, the "Transactions");

AND WHEREAS on November 5, 2013, the staff member of the CRR Branch conducting the review of the Notice requested copies of the affidavits of Michael Denyszyn sworn May 24 and June 24, 2013, the affidavits of Michael Ho sworn July 17, August 22 and October 8, 2013, the affidavits of Stuart McKinnon sworn July 17, August 23 and October 7, 2013, the affidavit of Kenneth White sworn October 7, 2013 and the submissions of Staff and Pro-Financial Asset Management Inc. ("PFAM") (collectively, the "Confidential Documents");

AND WHEREAS on November 12, 2013, PFAM filed an application with the Investment Funds Branch ("IF Branch") of the Commission for an order under section 5.5 of National Instrument 81-102 – *Mutual Funds* ("NI 81-102") for approval of the Purchaser as investment fund manager of the Pro-Index Funds and the Purchaser applied on October 24, 2013 for registration in the investment fund manager category for this purpose;

AND WHEREAS on November 13, 2013, Staff filed a Notice of Motion returnable on a date to be determined by the Secretary's office seeking an Order that Staff of the Enforcement Branch be permitted to provide some or all of the Confidential Documents to certain staff members of the CRR Branch and the IF Branch;

AND WHEREAS on November 25, 2013, the Commission ordered that:

- (i) Staff of the Enforcement Branch be permitted to provide the Confidential Documents to the following persons:
 - a. the staff members of the CRR Branch assigned to review the Notice;
 - b. the staff member who has been designated to act in the capacity of the Director on behalf of the CRR Branch for the purposes of deciding whether to object to the Notice;
 - c. the staff members of the IF Branch who have been assigned to review the application made by PFAM or the Purchaser under section 5.5 of NI 81-102; and

- d. the staff member who has been designated to act in the capacity of the “Director” for the purposes of deciding whether to approve the application under section 5.5 of NI 81-102;
- (ii) The CRR staff members assigned to review the Notice be permitted to provide relevant information derived from the Confidential Documents (“Relevant Information”) to PFAM, the Purchaser and their counsel involved in the Notice as part of the CRR staff members’ review and analysis of the Notice on condition that the recipients of such information treat it as confidential and not provide it to any third party without further direction or order of the Commission;
- (iii) The IF staff members assigned to review the application for change of fund manager be permitted to provide Relevant Information to PFAM, the Purchaser and their counsel involved in the application filed under NI 81-102 as part of the Investment Funds staff members’ review and analysis of the application on condition that the recipients of such information treat it as confidential and not provide it to any third party without further direction or order of the Commission;
- (iv) The CRR staff members assigned to review the Notice be permitted to provide Relevant Information to the Investor or its counsel with the consent of PFAM; and
- (v) The parties may seek direction from the Commission in the event that the CRR staff members and PFAM cannot agree on whether Relevant Information should be provided to the Investor or its counsel:

AND WHEREAS Staff has filed an affidavit of Michael Ho sworn December 10, 2013 attaching a letter from counsel to Investment Administration Solution Inc. (“IAS”), PFAM’s recordkeeper for the PPNs, requesting a copy of the PPN reconciliation report submitted by PFAM to Staff;

AND WHEREAS PFAM’s counsel provided to Staff and to the Commission and made submissions based on an affidavit of Stuart McKinnon sworn December 11, 2013;

AND WHEREAS on December 12, 2013, Staff and counsel for PFAM appeared before the Commission and made submissions on: (i) the appropriate form of order to govern the provision of the Confidential Documents to other members of Staff of the Commission; and (ii) whether IAS should receive copies of the PPN reconciliation reports submitted by PFAM to Staff;

AND WHEREAS, whether or not this order may be necessary in the circumstances, the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED that:

1. The Confidential Documents may be provided to any member of Staff of the Commission, as necessary in the course of their duties.
2. The Temporary Order is extended to January 24, 2014.
3. The hearing is adjourned to January 21, 2014 at 11:00 a.m.

4. Staff shall be entitled to provide a copy of each document relating to the PPN reconciliation process listed on Schedule "A" to this order to IAS and its legal counsel on the conditions that: (i) IAS treats those documents as confidential and does not provide them (or copies of them) or disclose their contents to any third party without further direction or order of the Commission; and (ii) IAS may use such documents only for the purpose of assisting Staff in resolving the issues related to the PPN discrepancy, and for no other purpose.

DATED at Toronto this 13th day of December, 2013.

"James E. A. Turner"

James E. A. Turner

Schedule "A"

1. Letter from M. Jog to D. Ferris dated April 23, 2013 (Tab 31 of M. Denyszyn affidavit sworn May 24, 2013)
2. Letter from S. Pinto to D. Ferris dated September 30, 2013 (Tab H of M. Ho affidavit sworn October 8, 2013)