



Ontario  
Securities  
Commission

Commission des  
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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 which was not marked as an exhibit on December 12, 2013 at the Commission hearing held that day;

**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** by Commission Order dated December 13, 2013, the Commission ordered that:

- (i) the Confidential Documents may be provided to any member of Staff of the Commission, as necessary in the course of their duties;
- (ii) the Temporary Order is extended to January 24, 2014;
- (iii) the hearing is adjourned to January 21, 2014 at 11:00 a.m.; and
- (iv) Staff shall be entitled to provide a copy of each document relating to the PPN reconciliation process listed on Schedule “A” of the October 13, 2013 order to counsel

for IAS on the conditions that: (a) IAS treat those documents as confidential and does not provide them to any third party without further direction or order of the Commission; and (b) IAS may use the documents for the purpose of assisting Staff in resolving the PPN discrepancy, and for no other purpose;

**AND WHEREAS** on January 15, 2014, PFAM's counsel advised Staff that PFAM's Pro-Index Funds ("Pro-Index Funds") passed their lapse date on January 14, 2013 and PFAM's counsel requested a lapse date extension of 40 days from Staff;

**AND WHEREAS** on January 17, 2014, PFAM's counsel filed a pre-hearing conference memorandum ("PFAM's Pre-Hearing Memorandum") with the Secretary's office to discuss various issues and seek an Order granting an extension to the lapse date for the Pro-Index Funds under subsection 62(5) of the *Act* (the "Lapse Date Relief");

**AND WHEREAS** PFAM filed the affidavit of Stuart McKinnon sworn January 19, 2014 with the Secretary's office and Staff filed the affidavit of Susan Thomas sworn January 20, 2014 with the Secretary's office but neither party marked either affidavit as an exhibit at the appearance on January 21, 2014;

**AND WHEREAS** on January 21, 2014, Staff and PFAM's counsel appeared before the Commission and Staff advised the Commission that: (i) Staff's review of the Notice was expected to take another three to four weeks; (ii) the parties agreed that the prior confidentiality orders should be revised to permit Staff to provide the Confidential Documents or excerpts therefrom to the Purchaser, the Investor and their counsel as Staff determines necessary in the course of their duties and on the condition that the recipients treat such documents as confidential and not disclose them to any third party without further direction or order of the Commission; and (iii) the parties agreed that the Temporary Order should be extended;

**AND WHEREAS** on January 21, 2014, PFAM's counsel requested that submissions relating to the issues raised in PFAM's Pre-Hearing Memorandum be made *in camera* pursuant to Rule 6 of the Commission's *Rules of Procedure*, Staff opposed PFAM's request, and the Commission directed and the parties made submissions *in camera* on the Lapse Date Relief;

**AND WHEREAS** on January 21, 2014, the Commission ordered that: (i) the Temporary Order be extended to February 24, 2014; (ii) the hearing be adjourned to February 21, 2014 at 2:00 p.m.; (iii) Staff who have received the Confidential Documents may provide the Confidential Documents or an excerpt of the Confidential Documents to the Purchaser, the Investor and their counsel as set out in the Order; and (iv) PFAM be granted the Lapse Date Relief under subsection 62(5) of the *Act* to extend the lapse date for the Pro-Index Funds to February 24, 2014 on the conditions set out in the Order;

**AND WHEREAS** on February 14, 2014, PFAM's counsel served on Staff and filed a pre-hearing conference memorandum with the Secretary's office and requested a confidential pre-hearing conference during the week of February 24, 2014;

**AND WHEREAS** on February 21, 2014, PFAM's counsel was unavailable to attend before the Commission so the Commission ordered: (i) the Temporary Order be extended to March 6, 2014; (ii) the hearing be adjourned to March 3, 2014 at 11:00 a.m.; and (iii) a confidential pre-hearing conference proceed on February 25, 2014 at 3:30 p.m.;

**AND WHEREAS** PFAM's counsel requested in his prehearing conference memorandum an extension to the lapse date of PFAM's fund prospectus which was previously extended to February 24, 2014 by Commission order dated January 21, 2014 (the "Further Lapse Date Relief");

**AND WHEREAS** Staff filed the affidavit of Michael Ho sworn February 24, 2014 and written submissions dated February 28, 2014 to oppose the request for the Further Lapse Date Relief and PFAM's counsel filed the affidavits of Stuart McKinnon sworn February 21, 2014 and March 3, 2014 and a factum dated March 3, 2014 in support of the Further Lapse Date Relief;

**AND WHEREAS** on March 3, 2014, counsel for PFAM requested that submissions relating to the Further Lapse Date Relief be heard *in camera* and the Commission agreed to this request and the parties made oral submissions *in camera* on the issue of whether the Commission should grant the Further Lapse Date Relief;

**AND WHEREAS** on March 3, 2014, the Commission ordered that the Further Lapse Date Relief would be granted until April 7, 2014 subject to: (i) PFAM issuing a news release, in a form satisfactory to Staff, to ensure that investors receive full disclosure of the matters identified by Staff as set out below; and (ii) PFAM only being permitted to distribute securities of the Pro-Index Funds to existing security holders of the Pro-Index Funds and not to any new security holders of the Pro-Index Funds;

**AND WHEREAS** on March 3, 2014, the Commission advised, in the public portion of the hearing, that there have been two Director decisions recently made affecting PFAM (the "Director Decisions") and PFAM's counsel advised that the affected parties will seek a hearing and review under subsection 8(2) of the Act of both of these Director Decisions on an expedited basis;

**AND WHEREAS** on March 3, 2014, Staff requested that Applications for Hearing and Review be filed with the Secretary's office and the parties agreed to defer discussion before the Commission of the hearings and reviews of the Director Decisions;

**AND WHEREAS** the parties have agreed to extend the Temporary Order to April 10, 2014 and to adjourn the hearing to April 7, 2014 at 10:00 a.m.;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this order;

**IT IS HEREBY ORDERED** that:

1. The terms and conditions imposed on PFAM's registration in the Temporary Order are deleted;
2. The following terms and conditions apply to the registration of PFAM as an adviser in the category of portfolio manager and to its operation as an investment fund manager:
  - (a) PFAM's activities as a portfolio manager and investment fund manager shall be applied exclusively to the Managed Accounts and to the Pro-Hedge Funds and Pro-Index Funds;

- (b) PFAM shall not accept any new clients or open any new client accounts of any kind in respect of the Managed Accounts; and
  - (c) PFAM may only distribute securities of the Pro-Index Funds to existing security holders of the Pro-Index Funds.
3. PFAM is granted the Further Lapse Date Relief under subsection 62(5) of the Act to extend the lapse date for the Pro-Index Funds to April 7, 2014, subject to the conditions that:
- (a) PFAM issue a news release by March 6, 2014, in a form satisfactory to Staff, providing disclosure about the following items:
    - (i) PFAM's ongoing capital deficiency;
    - (ii) the lapse date extensions granted by the Commission on January 21 and March 3, 2014;
    - (iii) the Director Decisions and the affected parties' intention to seek an expedited hearing and review of the Director Decisions under subsection 8(2) of the Act;
    - (iv) the errors in PFAM's previously reported management expense ratios for the Pro-Index Funds;
    - (v) the late filings of PFAM's 2014 audited financial statements;
    - (vi) PFAM's ongoing litigation with Investment Administrative Solutions Inc.; and
  - (b) PFAM complies with the terms of this Order.
4. The hearing is adjourned to April 7, 2014 at 10:00 a.m.
5. The Temporary Order is extended to April 10, 2014.

**DATED** at Toronto this 4<sup>th</sup> day of March, 2014.

*"James E. A. Turner"*

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James E. A. Turner