



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 KINGSHIP CAPITAL CORPORATION, 2389401 ONTARIO  
INC., KENNETH WHITE, DAVID HOPPS, STUART MCKINNON and PRO-  
FINANCIAL ASSET MANAGEMENT INC.**

**ORDER  
(Subsection 8(3))**

**WHEREAS** on July 9 and 10, 2014, the Ontario Securities Commission (the "Commission") held a hearing under subsection 8(2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") (the "Hearing and Review") to consider an application dated March 12, 2014 (the "Application") brought by Kingship Capital Corporation ("KCC"), 2389401 Ontario Inc. ("238 Inc."), Kenneth White ("White"), David Hopps ("Hopps") (collectively, the "KCC Parties"), Stuart McKinnon ("McKinnon") and Pro-Financial Asset Management Inc. ("PFAM") (collectively, the "Applicants");

**AND WHEREAS** the purpose of the Hearing and Review was to: (a) consider the Application in a *de novo* hearing pursuant to subsection 8(2) of the Act of two decisions by a Director of the Commission in its Compliance and Registrant Regulation Branch (the "Director") set forth in a letter dated February 10, 2014 sent to then counsel to the Applicants (the "Decisions") that objected to (i) the PFAM Transaction (as defined below) pursuant to section 11.9 of National Instrument 31-103 - *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103"), and (ii) the KCC Transaction (as defined below) pursuant to section 11.10 of NI 31-103; (b) consider the Applicants' request for an order approving those transactions; and (c) make such other order as the Commission may consider appropriate;

**AND WHEREAS** the Application relates to a transaction under which KCC, a corporation currently owned by White, proposes to acquire all of the interests of PFAM in the investment management contracts for certain prospectus-qualified mutual funds known as the Pro-Index Funds (the "Funds"), and in discretionary managed accounts of investors with PFAM (the "PFAM Transaction");

**AND WHEREAS** 238 Inc., a corporation owned by Hopps, proposes, concurrently with the completion of the PFAM Transaction, to acquire all of the outstanding shares of KCC (the "KCC Transaction");

**AND WHEREAS** the PFAM Transaction is conditional upon KCC obtaining registration as an investment fund manager and as an exempt market dealer under the Act but the Application does not address those matters;

**AND WHEREAS** in connection with the Hearing and Review, the Applicants filed the affidavits of Hopps, White and McKinnon and staff of the Commission (“Staff”) filed affidavits of three members of Staff;

**AND WHEREAS** counsel for the Applicants and Staff appeared at the Hearing and Review and made submissions, and the Commission heard testimony from five of the witnesses that filed affidavits and heard the cross-examination of those witnesses;

**AND WHEREAS** on the recommendation of Staff, the Director objected to the Transactions on various grounds set forth in the Decisions, and it appears to me that Staff’s concerns, and the Director’s Decisions, were appropriate and reasonable in the circumstances;

**AND WHEREAS** my consideration of the Application is a fresh consideration of these matters as if no decision was previously rendered by the Director and the Applicants do not have the onus of showing that the Director’s Decisions were in error;

**AND WHEREAS** it appears that the PFAM Transaction and the KCC Transaction (the “Transactions”) are bona fide commercial transactions and that the KCC Parties deal at arm’s length with PFAM and McKinnon;

**AND WHEREAS** KCC and Hopps have proposed material changes to the terms and conditions of the PFAM Transaction from the terms and conditions of that transaction that were before Staff and the Director, and those changes address, but do not resolve from Staff’s perspective, a number of the principal concerns of Staff;

**AND WHEREAS** the proposed changes to the PFAM Transaction include (a) Hopps increasing the working capital of KCC by \$100,000 and expressing his intention to consider further capital contributions to KCC depending on future circumstances; (b) reducing McKinnon’s future role in KCC such that he will not be a director, officer or shareholder of KCC; and (c) proposing that North Star Compliance and Regulatory Solutions Inc. (“North Star Compliance”) be retained to assist KCC in complying with its regulatory obligations under NI 31-103 following the completion of the PFAM Transaction;

**AND WHEREAS** KCC intends to enter into an agreement with McKinnon under which McKinnon will provide on-going services to KCC in a role that will not require McKinnon to be registered in any capacity under the Act;

**AND WHEREAS** while McKinnon will benefit to some extent from the Transactions, he is walking away from a substantial investment in PFAM and he would, in any event, likely have benefitted from any other sale of PFAM or of its assets;

**AND WHEREAS** Hopps has required as a condition of the PFAM Transaction that three senior management employees of PFAM, excluding McKinnon, become officers or employees of KCC;

**AND WHEREAS** the unitholders of the Funds have approved the change in investment fund manager of the Funds from PFAM to KCC;

**AND WHEREAS** KCC is currently registered under the Act as a portfolio manager, and White is currently registered under the Act as a KCC advising representative, KCC's chief compliance officer and KCC's ultimate designated person;

**AND WHEREAS** KCC has previously resolved, on a timely basis, significant compliance deficiencies identified by Staff in a general compliance sweep of portfolio managers; those deficiencies related to KCC's role as a portfolio manager and included the failure to maintain adequate regulatory working capital, and the resolution of those deficiencies was acceptable to and confirmed by Staff;

**AND WHEREAS** White will be the President and a director of KCC after the completion of the Transactions and will be the chief compliance officer and ultimate designated person of KCC responsible in those roles for KCC's compliance with NI 31-103;

**AND WHEREAS** I find that the PFAM Transaction will not give rise to a conflict of interest or hinder PFAM in complying with securities legislation, within the meaning of NI 31-103;

**AND WHEREAS** I find that the current unresolved regulatory compliance issues identified by Staff related to PFAM and McKinnon, as reflected in previous temporary orders of the Commission, are not, in the circumstances, a material impediment to the completion of the Transactions; the terms of this Order shall not affect in any way Staff's discretion in addressing those compliance issues or affect those temporary orders;

**AND WHEREAS** KCC, White and Hopps are well aware of (a) KCC's previous regulatory compliance deficiencies; (b) the current compliance issues involving PFAM and McKinnon; and (c) the importance the Commission places on compliance by registrants with NI 31-103 and, in particular, with the requirements for excess regulatory working capital;

**AND WHEREAS** KCC has a limited operating history and limited financial resources, but the financial resources of KCC following the Transactions will be substantially better than the current financial circumstances of PFAM;

**AND WHEREAS** it appears that the PFAM Transaction will be positive for unitholders of the Funds given (a) PFAM's current financial circumstances; and (b) the proposed investment by Hopps in KCC; but, in any event, unitholders of the Funds are entitled, at any time, to redeem their units of the Funds, and the clients of PFAM are entitled, at any time, to terminate their managed accounts;

**AND WHEREAS** if the Transactions are not completed, the Funds may have to be wound-up and that winding-up could be prejudicial to unitholders of the Funds;

**AND WHEREAS** I find, on balance, that the Transactions on the terms and conditions now proposed are not inconsistent with an adequate level of investor protection and are not prejudicial to the public interest;

**AND WHEREAS** I am not prepared in these circumstances to levy \$43,200 in late fees from the Funds for the failure of PFAM to timely file the financial statements of the Funds;

**AND WHEREAS** I am of the opinion that it is in the public interest to make this Order;

**IT IS HEREBY ORDERED** that the PFAM Transaction is approved under subsection 11.9(5) of the Act, and the KCC Transaction is approved under subsection 11.10(6) of the Act, subject to the following terms and conditions:

1. The investment of \$350,000 by Hopps pursuant to the Transactions shall be completed upon the terms and conditions disclosed to the Commission at the Hearing and Review and those terms and conditions shall be confirmed in writing to Staff; that written confirmation shall include updated pro forma financial statements for KCC giving effect to the Transactions;
2. KCC shall enter into a consulting agreement under which North Star Compliance will agree to provide on-going regulatory compliance assistance to KCC, including assistance with respect to compliance with NI 31-103, substantially on the terms and conditions of the draft agreement submitted to the Commission, and those services, or comparable services provided by another consultant acceptable to Staff, shall be provided for a period of at least two years from the date of completion of the Transactions;
3. McKinnon may enter into a contractual relationship with KCC under which he will provide services to KCC that do not require McKinnon's registration under the Act but, except with the prior written consent of the Commission, McKinnon will not be an officer, director or shareholder of KCC or play a similar role in KCC;
4. A copy of any agreement entered into by KCC and/or 238 Inc. with McKinnon, as permitted by this Order, and any agreement relating to his compensation by KCC or 238 Inc., shall be forthwith delivered to Staff;
5. Following the completion of the Transactions, White shall be a director, the President, the chief compliance officer and the ultimate designated person of KCC (the latter two roles within the meaning of NI 31-103);
6. KCC shall upon completion of the Transactions issue a news release publicly announcing the completion of the Transactions and summarizing the conditions referred to in paragraphs 1, 2, 3 and 5 above of this Order, and a copy of this Order

- shall be sent to the then current unitholders of the Funds and to the then current managed account clients of PFAM;
7. This Order relates only to the approval of the Transactions under subsections 11.9(5) and 11.10(6) of NI 31-103 and to no other matter related to the Applicants or any of them;
  8. KCC shall pay to the Commission an application fee of \$3,500 for its application under section 11.10 of the Act and PFAM shall pay to the Commission a fee of \$1,750 as the application fee under OSC Rule 13-502 - *Fees* (the “Fee Rule”) for its application for relief from late fees under the Fee Rule, but the Funds shall be exempt from paying any further late fees for the previous failures by PFAM to timely file financial statements of the Funds; and
  9. The Applicants, Staff or any person directly affected by this Order, may apply to the Commission for directions as to the interpretation, scope and application of this Order.

**DATED** at Toronto this 16<sup>th</sup> day of July, 2014.

*“James E. A. Turner”*

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James E. A. Turner