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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 AN APPLICATION BY THE TRUSTEES OF CENTRAL GOLDTRUST AND SILVER BULLION TRUST

- AND –

IN THE MATTER OF SPROTT ASSET MANAGEMENT GOLD BID LP, SPROTT ASSET MANAGEMENT SILVER BID LP, SPROTT PHYSICAL GOLD TRUST and SPROTT PHYSICAL SILVER TRUST

REASONS AND DECISION
(Subsections 127(1)5 and 127(2) of the Act)

Hearing:	November 18, 2015	
Decision:	December 18, 2015	
Panel:	Mary G. Condon	- Commissioner and Chair of the Panel
	D. Grant Vingoe	- Vice-Chair
	Judith N. Robertson	- Commissioner
Appearances:	Robert W. Staley Derek J. Bell Jason Berall	- For the Applicants
	Peter F. C. Howard Eliot N. Kolers Mel Hogg	- For the Respondents
	Anna Perschy Naizam Kanji Adeline Lee Jordan Lavi	- For Staff of the Commission

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REASONS AND DECISION

I. OVERVIEW

[1] On November 18, 2015, a hearing was held before the Ontario Securities Commission (the "**Commission**") with respect to an application dated November 10, 2015 (the "**Application**") filed by the trustees of Central GoldTrust ("**CGT**") and Silver Bullion Trust ("**SBT**") (together, the "**Applicants**"), in connection with:

a. the unsolicited take-over bid by Sprott Asset Management Gold Bid LP, Sprott Asset Management LP and Sprott Physical Gold Trust ("**SPG**") (collectively, "**Sprott Gold**") to acquire all of the outstanding units of CGT in exchange for units of SPG (the "**Sprott Gold Bid**"); and

b. the unsolicited take-over bid by Sprott Asset Management Bid LP, Sprott Asset Management LP and Sprott Physical Silver Trust ("**SPS**") (collectively, "**Sprott Silver**", and together with Sprott Gold, "**Sprott** or the "**Respondents**") to acquire all of the units of SBT in exchange for units of SPS (the "**Sprott Silver Bid**", or together with the Sprott Gold Bid, the "**Sprott Bids**").

[2] The remedies sought by the Applicants included various orders under subsections 104(1) and 127(1) of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "**Act**").

[3] The Application raised a number of issues, which we have characterized as follows:

a. whether the Panel should hear the Application;

b. whether the Sprott bids violate the identical consideration requirements of section 97 of the Act;

c. whether the Sprott Bids are contrary to the public interest; and

d. if either (b) or (c) are found to be the case, what is the proper remedy to be imposed.

[4] We explained to the parties at the hearing that in the interests of efficiency we would hear the arguments about whether we should hear the Application as well as the evidence and substance of the Application at the same time. We therefore address each of the issues enumerated above in these reasons.

[5] At the hearing on November 18, 2015, we heard testimony from Bruce D. Heagle, a member of the Board of Trustees of each of CGT and SBT and Chair of the Special Committee of the Board of Trustees of each of CGT and SBT, and from John Wilson, the Chief Executive Officer, Co-Chief Investment Officer and Senior Portfolio Manager of Sprott Asset Management LP and oral submissions from the Applicants, the Respondents and Staff of the Commission ("**Staff**").

[6] Having considered all the evidence, submissions and materials, we determined that it was in the public interest to hear the Application and make the following

order (the "**Order**"), which was issued on November 19, 2015 (*Re Trustees of Central GoldTrust et al.* (2015), 38 O.S.C.B. 9871)[1]:

a. If Sprott wishes to proceed with the Sprott Gold Bid or Sprott Silver Bid it shall issue a notice of change in information providing clear and complete disclosure to unitholders of CGT and SBT concerning the effect of the November 4th Variation on the removal and replacement of the boards of trustees of CGT and SBT, unitholder withdrawal rights, the implementation of the Merger Transactions[2] and the attendant risks for unitholders of these matters;

b. For greater clarity, the disclosure should include:

   i. The effect of the amendments to the powers of attorney granted to Sprott and their intended use by Sprott;
   ii. The process by which the new trustees will effect the Merger Transactions, including the increased time period between their appointment and the implementation of the Merger Transactions, and associated risks and uncertainties;
   iii. The change in the required unitholder approval of the Merger Transactions as a result of the November 4th Variation from that contemplated by the Special Resolutions;[3]
   iv. The duties of the Sprott nominees proposed to be appointed as the trustees of CGT and SBT, and specifically including the undertaking provided to the Commission at the November 18, 2015 hearing that they would resign if the Merger Transactions are not effected;
   v. The consequences to unitholders if the Merger Transactions fail to obtain the necessary approvals; and
   vi. A description of the withdrawal rights available to unitholders both before and after the appointment of the new trustees;

c. Before dissemination of the notice(s) of change in information to unitholders, Sprott shall deliver them to Staff for its review and comment; and

d. Sprott shall not exercise any rights in relation to the Letters of Transmittal before the expiration of 15 days from the date on which Sprott issues the notice(s) of change in information required by this Order.

[7] In our view, the Order issued was the appropriate remedy as the issues raised by the Applicants could be adequately addressed by enhanced disclosure as well as by providing further time for investors to assimilate this disclosure. This would enable investors to make an informed choice about whether or not to tender to the Sprott Bids or to exercise withdrawal rights, as the case may be.

[8] These are our reasons for issuing the Order.

[1] The capitalized terms in this quote are as defined and/or used in the Order.
[2] As defined in the Order and paragraph 43 below.
[3] Such resolutions and special resolutions are set out in the excerpts of the original and amended Letters of Transmittal reproduced in Schedules A and B of these reasons.

II. HISTORY OF THE SPROTT BIDS

[9] On April 23, 2015, Sprott issued a press release announcing its intention to make the Sprott Bids to acquire all of the outstanding units of CGT and SBT. The Sprott Bids were formally commenced on May 27, 2015, pursuant to an offer to purchase and take-over circular of Sprott Gold and an offer to purchase and take-over circular of Sprott Silver.

[10] The Sprott Bids have since been amended by a Notice of Extension and Variation dated June 22, 2015, a Notice of Extension and Variation dated July 7, 2015, a Notice of Extension and Variation dated August 4, 2015, a Notice of Change dated August 18, 2015, a Notice of Change dated August 28, 2015, a Notice of Variation dated September 4, 2015, a Notice of Extension dated September 18, 2015, a Notice of Extension and Variation dated October 9, 2015, a Notice of Extension dated November 2, 2015 and a Notice of Variation dated November 4, 2015 (the "**November 4th Variation**").

[11] On June 24, 2015, CGT and SBT commenced an application to the Ontario Superior Court of Justice (the "**Court**") seeking declaratory relief with respect to the Sprott Bids, following which Sprott commenced a counter-application seeking a declaration that certain amendments to the CGT and SBT Declarations of Trust were improper defensive tactics.

[12] On July 31, 2015, Justice Wilton-Siegel issued his decision in both the Court application and the counter-application (the "**Court Decision**"). He denied the declaratory and injunctive relief sought by the trustees of CGT and SBT, and required Sprott to amend the "**Letters of Transmittal**" to ensure that the powers of attorney ("**POA**") would terminate upon the withdrawal of any units in the event that tendered units were not paid for by Sprott within three business days of Sprott taking up such units. He also found that the amendments to the "**Declarations of Trust**" of CGT and SBT were invalid.

[13] On August 31, 2015, the trustees of CGT and SBT filed a Notice of Appeal from the decision of Justice Wilton-Siegel. The appeal was not perfected and it was dismissed for delay by the Court of Appeal on November 2, 2015.

[14] On November 17, 2015, the trustees of CGT and SBT each announced that they were entering into a letter of intent with Purpose Investments Inc., proposing the conversion of each of CGT and SBT into exchange-traded funds of gold and silver bullion. At the hearing, we were provided with an affidavit which included the Applicants' news release announcing the transaction. Because the terms of this transaction were not public and continued to be negotiated at the time of the hearing, and limited evidence was provided about the details of the transaction, it was not a factor which influenced our decision in a substantial way.

III. ISSUES

A. Should the Panel hear the Application?

[15] The Supreme Court of Canada (the "**SCC**") has stated that "the [Commission] has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission),* [2001] 2 S.C.R. 132 ("***Asbestos***") at para. 45). The Commission's public interest jurisdiction allows it to intervene in matters affecting Ontario capital markets

even in circumstances where there has been no breach of the Act, the regulations or any policy statement (*Re Patheon Inc.* (2009), 32 O.S.C.B. 6445).

[16] In the extraordinary circumstance whereby a private party wishes to bring an application under section 127 of the Act, the Commission has the discretion to permit it to do so (*MI Developments (Re)* (2009), 32 O.S.C.B. 126 ("***MI Developments***")). In *MI Developments*, the Commission considered the following factors when deciding whether to exercise its discretion in favour of permitting an application by a private party: (i) the applications were not, at their core, enforcement in nature; (ii) the applications related to both past and future conduct regulated by Ontario securities law; (iii) the Commission has the authority to grant an appropriate remedy; (iv) the applicants were directly affected by the conduct (past and future); and (v) the Commission concluded it was in the public interest to hear the applications.

[17] We find that it is in the public interest to hear the Application for a number of reasons.

[18] The Application raises novel issues pertaining to take-over bid mechanisms where the target is a trust, governed by a declaration of trust, as opposed to a corporation, governed by corporate law and constating documents adopted pursuant to such legislation. The powers granted pursuant to the POAs contained within the Letters of Transmittal provide for the replacement of the trustees of the target prior to taking up and paying for such securities, subject to the ability of the tendering security holder to withdraw such securities. As there is relatively little case law involving targets that are trusts as opposed to corporations, there are public interest issues that the Commission should address.

[19] While the Respondents submitted that we should not hear the Application because issues contained therein were either dealt with in the Court Decision or could have been raised in the Court application, we find that certain of the issues raised by the Application were not and could not have been addressed at that time. Specifically, the issues stemming from the November 4th Variation could not have been known to the Applicants at the time of the Court application. The issue of non-identical consideration was also not raised before the Court.

[20] The Respondents took the position that the non-identical consideration issue should have been apparent to the Applicants from the date of the launch of the Sprott Bids and should not be heard by us. While there was delay in identifying the identical consideration issue, given the importance of this principle to the take-over bid regime we are prepared to consider the issues raised about it by the Applicants.

[21] Concerning whether the Court or the Commission is the appropriate forum to deal with the Application, we note that Justice Wilton-Siegel stated in the Court Decision that "the Court is not exercising a public interest discretion similar to that of the Ontario Securities Commission..." (*Central GoldTrust v Sprott Asset Management Gold Bid LP*, 2015 O.N.S.C 4888 at para. 31). While there is some overlap in the subject matter of the applications relating to Ontario securities law that were brought before the Court in June 2015 and the Commission now, both the public interest jurisdiction of the Commission and the remedies available to the Commission are different from those available to the Court. The Commission's mandate, as expressed in section 1.1 of the Act, is forward looking

and prospective in nature (*Asbestos, supra* at para. 45) and it is open to the Commission to intervene, as it has in this case and others, to assess whether the bid in question has features that may engage investor protection, efficient market concerns and broader public interest considerations.

B. Do the Sprott Bids violate the identical consideration requirement of section 97 of the Act?

1. Facts

[22] Under the Sprott Bids, CGT and SBT unitholders would receive units of SPG or SPS, as applicable, on a Net Asset Value ("**NAV**") to NAV basis, at a fixed exchange ratio.[4] SPG and SPS units have both cash redemption and physical redemption features.

[23] The cash redemption feature permits unitholders to redeem their units for cash at a redemption price per unit equal to 95% of the lesser of: (i) the volume-weighted average trading price of the units; and (ii) the net asset value of the redeemed units on the applicable redemption date.

[24] The physical redemption feature permits unitholders to redeem their units for physical bullion at a redemption price equal to 100% of the NAV on the applicable redemption date. The physical redemption feature is only open to unitholders redeeming the number of units that are at least equivalent to the value of one London Good Delivery bar of gold or ten London Good Delivery bars of silver, as applicable. Any fractional amount of redemption proceeds in excess of the value of one London Good Delivery bar of gold or ten London Good Delivery bars of silver, is paid in cash at a rate equal to 100% of the NAV of the redeemed units on the applicable redemption date. We were informed at the hearing that one London Good Delivery bar had a current market value of approximately US$430,000 and that ten London Good Delivery bars of the silver had a current market value of approximately US$139,000.

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[4] As set out in the Letter of Transmittal for deposits of units of CGT (defined in the Letter of Transmittal as "GTU") pursuant to the Sprott Gold Bid in the initial offer dated May 27, 2015:

"GTU Unitholders who deposit GTU Units to the Offer will be offered the opportunity to make the Exchange Offer Election or the Merger Election. The number of PHYS [defined in our reasons as SPG] Units to be distributed to each GTU Unitholder under the Offer and the Merger Transaction will be determined on the basis of the NAV to NAV Exchange Ratio, being for each GTU Unit such number of PHYS Units as is equal to (A) the Net Asset Value per GTU Unit (as calculated in accordance with the GTU Declaration of Trust on Expiry Date, including, in the case of GTU's gold bullion, the value thereof based on the London Bullion Association second fixing price for gold bullion on the Expiry Date) divided by (B) the Net Asset Value per PHYS Unit (as calculated, in accordance with the PHYS Trust Agreement, on the Expiry Date, including, in the case of Sprott Physical Gold Trust's gold bullion, the value thereof based on the London Bullion Association second fixing price for gold bullion on the Expiry Date)".

As set out in the Letter of Transmittal for deposits of units of SBT pursuant to the Sprott Silver Bid in the initial offer dated May 27, 2015:

"SBT Unitholders who deposit SBT Units to the Offer will be offered the opportunity to make the Exchange Offer Election or the Merger Election. The number of PSLV [defined in our reasons as SPS] Units to be distributed to each SBT Unitholder under the Offer and the Merger Transaction will be determined on the basis of the NAV to NAV Exchange Ratio, being for each SBT Unit such number of PSLV Units as is equal to (A) the Net Asset Value per SBT Unit (as calculated, in accordance with the SBT Declaration of Trust, on Expiry Date, including, in the case of SBT's silver bullion, the value thereof based on the London Bullion Association fixing price for silver bullion on the Expiry Date) divided by (B) the Net Asset Value per PSLV Unit (as calculated, in accordance with the PSLV Trust Agreement, on the Expiry Date, including, in the case of Sprott Physical Silver Trust's silver bullion, the value thereof based on the London Bullion Association fixing price for silver bullion on the Expiry Date)."

[25] SPG and SPS units trade on the Toronto Stock Exchange and the NYSE Arca market.

2. Analysis

[26] Our analysis is based on subsection 97(1) of the Act, which states that, if a formal bid is made, all holders of the same class of securities shall be offered identical consideration.

[27] The Applicants submitted that the Sprott Bids violate subsection 97(1) of the Act because the consideration offered is not identical for all unitholders of CGT and SBT. In their submission, the physical redemption feature existing in SPG and SPS units has the effect of providing different consideration to those CGT and SBT unitholders who hold a sufficient number of units to take advantage of the physical redemption feature. The Applicants submitted that the minimum threshold to take advantage of the physical redemption features has the practical effect of offering institutional and other large unitholders different consideration than retail unitholders.

[28] The Respondents submitted that the consideration offered by the Sprott Bids is identical. All unitholders of CGT and SBT are to receive identical units of SPG and SPS, as the case may be, at a fixed exchange ratio.

[29] Staff submitted that the Sprott Bids do not violate the identical consideration requirement under subsection 97(1) of the Act. In order to determine the identical consideration issue, Staff also submitted that the Commission should have reference to the principles underlying "consideration of greater value" in the collateral benefits subsection (s. 97.1(1) of the Act).

[30] Staff submitted that: (i) the Sprott Bids do not appear to have been structured to intentionally favour a particular group of unitholders; (ii) the alleged discriminatory effect would arise because of the pre-existing attributes of the SBG and SBS units; and (iii) the unitholders that acquire SPG and SPS units under the Sprott Bids would have the same units of any other existing SPG or SPS unitholder.

[31] Staff, in its submission, recognized that the Panel may appropriately consider the value of the rights underlying the securities offered as consideration in assessing whether identical consideration has been offered.

[32] Staff, however, submitted that the value of the rights underlying the securities that pertain to the Sprott Bids accrues to all of the CGT and SBT unitholders because the implied value of the physical redemption feature is reflected in the market price. It is on this basis that Staff submitted that the physical redemption features should not be considered to violate the identical consideration requirements of the Act.

[33] We are mindful that the analysis of the consideration offered under a bid is a fact specific one and we are not convinced that in this case the Sprott Bids violate subsection 97(1) for the reasons below.

[34] We find that each of the Sprott Gold Bid and Sprott Silver Bid were comprised of a single security, already existing in the marketplace. The Sprott Bids did not involve securities that were created for these transactions, nor were the redemption features at issue adopted or amended as a result of the Sprott Bids in order to appeal to a segment of CGT or SBT unitholders.

[35] We note that SPG and SPS units attach the same rights, i.e. they all have a cash redemption feature and a physical redemption feature. We acknowledge that the ability of a unitholder to choose and exercise the physical redemption feature is dependent on the value of their holdings. Depending on the total holdings of the specific unitholder, that unitholder may not have a choice between the cash redemption and physical redemption options. However, in our view, the difference in access to redemption choices does not amount to different consideration being offered pursuant to the Sprott Bids.

[36] In deciding that the physical redemption feature of the SPG and SPS units did not result in non-identical consideration being offered to CGT and SBT unitholders, we considered the statement of the SCC in *McClurg v. Canada*, [1990] 3 S.C.R. 1020 at para. 24, "that shareholder rights attach to the shares themselves and not to shareholders". We find that the rights attached to all SPG and SPS units are identical.

[37] While there will be unitholders who do not own the number of units to meet the threshold for the physical redemption option, we accept that it is likely that the benefits of the physical redemption feature flow, to a considerable degree, to all of the SPG and SPS unitholders through its effect on the market price of units. The physical redemption feature may well result in unit prices that more closely track NAV and may enhance the liquidity of all the units in the secondary market.

[38] Given our analysis of the Sprott Bids, the consideration offered does not contravene the securities law requirement for identical consideration. In these circumstances we do not believe that we should intervene to deny investors the opportunity to make the choice whether or not to tender to the Sprott Bids. This is not to say that a future panel could not decide in a different fact scenario that a certain set of features relating to a single security could result in a situation whereby security holders would receive non-identical consideration. In the specific circumstances before us, we find that subsection 97(1) of the Act is not breached.

C. Are the Sprott Bids contrary to the public interest?

[39] The Applicants submitted that the Sprott Bids were contrary to the public interest on the following grounds:

- The Respondents made misleading statements in the media regarding the NAVs and trading value of CGT and SBT;
- The structure of the transactions created confusion for investors; and
- The November 4th Variation amended the POAs granted to Sprott and their intended use by Sprott in a manner that was contrary to the public interest and circumvents the proxy solicitation rules.

[40] Each of these grounds is addressed below.

1. Misleading Statements

[41] With respect to the allegation concerning misleading statements, we note that *MI Developments* limited the ability of private parties to bring applications to remedy past conduct alleged to have brought them harm. Specifically, the Commission explained at paragraph 107 of *MI Developments:*

> In our view, persons other than Staff are not entitled as of right to bring an application under section 127 where the application is, at its core, for the purpose of imposing sanctions in respect of past breaches of the Act or past conduct alleged to be contrary to the public interest. In our view, those purposes are regulatory in nature and enforcement related and such applications should be able to be brought as of right only by Staff. Section 127 should not be used merely to remedy misconduct alleged to have caused harm or damage to private persons.

[42] In our view, the allegations relating to misleading statements engage the enforcement function of Staff. We note that the Applicants also provided their complaints to Staff. Further, we were provided with limited evidence relating to the allegedly misleading statements. As a result, we make no findings on the issue of misleading statements and the Applicants' allegation that the Respondents breached subsection 126.2(1) of the Act.

2. The Structure of the Transactions

[43] The Sprott Bids are structured so that tendering unitholders are required to make one of two elections: (i) the Exchange Offer Election; or (ii) the Merger Election. Unitholders that make the Exchange Offer Election will have their units taken up under the Sprott Bids and exchanged for units of SPG or SPS, as applicable. Unitholders that make the Merger Election will receive units of SPG or SPS, as applicable, upon the compulsory redemption of their units as part of the proposed merger transactions between SPG and CGT and between SPS and SBT (collectively, the "**Merger Transactions**"). If a unitholder tenders without making an election, the unitholder is deemed to have made the Merger Election.

[44] The Merger Transactions contemplated the following steps:

(i) CGT and SBT units subject to the Exchange Offer Election would be taken up and purchased by Sprott;

(ii) Sprott would exercise certain POAs contained within the Letters of Transmittal to execute Special Resolutions that give effect to the Merger Transactions, and to elect new boards of trustees for each of CGT and SBT;

(iii) Sprott would cause CGT and SBT to implement the Merger Transactions pursuant to which CGT would transfer its assets to SPG in return for units of SPG and the assumption of CGT's liabilities, and SBT would transfer its assets to SPS in return for units of SPS and the assumption of SBT's liabilities, in each case exclusive of the administration agreement pertaining to the applicable trust; and

(iv) The boards of trustees of CGT and SBT, would cause CGT and SBT to amend the compulsory acquisition provisions contained in section 13.6 of the "**Declarations of Trust**" to permit a compulsory acquisition of the units of CGT and SBT upon deposit of more than 66 2/3% of the outstanding units of CGT and SBT pursuant to the Sprott Bids and to redeem all of the units of CGT and SBT (subject to retention of one unit of CGT and SBT by SPG and by SPS) in exchange for a distribution to the unitholders of the units of SPG and SPS.

[45] The Applicants submitted that this alleged complexity caused significant confusion among brokers, unitholders and other market participants and, as a result, has had coercive and prejudicial effects on CGT and SBT unitholders, with many units being tendered on the basis of inaccurate or incomplete information, or against the express instructions of unitholders. According to the Applicants, certain unitholders were informed that declining to tender their units to the Sprott Bids was not an available option. The Applicants also submitted that the effect of the fees paid to "soliciting dealer groups" reduced the incentive to communicate with unitholders to clear up confusion.

[46] The Respondents submitted that the Sprott Bids are structured in a manner similar to previous unsolicited bids for income trusts and real estate investment trusts and are not coercive in nature. The Respondents submitted that the Sprott Bids are specifically structured this way in order to seek to mitigate tax consequences for unitholders who wish to defer the immediate realization of gain or loss. Specifically, if there was no merger election and unitholders could only choose the exchange election, then this potential tax deferral would not be available. Further, the Respondents submitted that the formation of a soliciting dealer group is a common feature in the Canadian take-over bid landscape. In addition, Sprott emphasized that nevertheless, once the allegations of confusion were brought to the attention of Sprott, it voluntarily and without prompting went back to each member of the soliciting dealer group and ensured that members were aware that tendering to the Sprott Bids is voluntary.

[47] We find that the structure of the Sprott Bids, specifically the choice between the Exchange Offer Election or the Merger Election, was not a coercive feature. This feature had the commercial goal of seeking to mitigate adverse tax consequences for unitholders who wish to avoid immediate realization of a gain or loss as a result of the transaction, and was intended to be beneficial to unitholders.

[48] We were not provided with sufficient evidence to demonstrate that the terms and conditions related to the formation of "soliciting dealer groups" or their conduct in this case was improper. Further we note that the Respondents did communicate with the soliciting dealer groups in an effort to clear up confusion once they became aware of it.

3. November 4th Variation and Amended POA

[49] The Sprott Bids require that each tendering unitholder under the Sprott Bids execute a Letter of Transmittal. The Letters of Transmittal contain a form of POA, which is set out in paragraphs 12 and 13 therein. The POA provides the Respondents with the ability to execute Special Resolutions that give effect to the Merger Transactions, and to elect new boards of trustees for each of CGT and SBT. For reference, the POA included in the initial Letter of Transmittal pursuant to the Offer made on May 27, 2015 is provided in Schedule A (and was identical for both CGT and SBT).

[50] Before the November 4th Variation, the Respondents only intended to use the POAs once unitholders holding 66 2/3% or more of the outstanding units tendered their units to the Sprott Bids.

[51] The November 4th Variation amended the POAs in the Letters of Transmittal allowing the Respondents to execute and deliver written resolutions removing

and replacing the current trustees of CGT/SBT effective on and after 5:00 p.m. (Toronto time) on November 19, 2015, if 50.1% or more of the CGT/SBT units were tendered to the applicable Sprott Bid. Once the written resolution was passed, it was expected that the Sprott nominees would convene a meeting of CGT/SBT unitholders to attempt to obtain the approval of the merger transaction with SPG and SPS. The language of the amendment is provided in Schedule B (and was identical for both CGT and SBT).

[52] The Applicants submitted that Sprott should not be permitted to deviate from its initial intention to obtain the support of 66 2/3% of the respective units and complete the Merger Transactions by way of a special resolution that would be completed concurrently with the replacement of the Trustees. The Applicants argued that allowing Sprott to amend the POAs to reduce the percentage of units required to effect the Merger Transactions defeats the reasonable expectations of the unitholders and is an inappropriate use of the take-over bid process.

[53] According to the Applicants, the amendment to the POAs has transformed the POAs from a technical mechanism to undertake a merger into a means for soliciting proxies to remove an incumbent board as would occur in a proxy contest. The Applicants argued that Sprott should therefore be restricted to either complying with its 66 2/3% minimum tender condition, which would result in a technical use of the POAs at the expiry of a successful bid, or should be required to abandon its offer.

[54] Further, the Applicants submitted that the timing of the November 4th Variation did not allow adequate time for unitholders to receive the respective notices of variation in the mail, review and make a reasoned judgment concerning the changes or enough time to instruct their brokers to withdraw their units from the Sprott Bids.

[55] The Respondents submitted that there was adequate notice of the November 4th Variation and that unitholders retained the option and had sufficient time to exercise withdrawal rights if they chose to do so as a result of the amendments. According to the Respondents, there is nothing coercive about the November 4th Variation and nothing precluded them from amending the POA. The Respondents emphasized that the November 4th Variation is not expanding the powers contained in the POA, it is merely changing the timing of the replacement of the trustees of CGT and SBT and the timing of the unitholder actions to approve the Merger Transactions, and, with variations required by the structure of the bid, including tax considerations, was similar in effect to a waiver of a minimum tender condition.

[56] Staff took the position that the mechanism by which the Respondents intend to effect the acquisition of all the units has indeed been altered by the November 4th Variation from one of obtaining sufficient tenders to undertake a second-step squeeze change from a 2/3 vote to one of obtaining a simple majority to remove the Trustees, replacing them with Sprott nominees who will propose the Merger Transactions at the applicable meeting of Unitholders, and using the POAs obtained in connection with the Sprott Bids to vote in favour of the Merger Transactions at the meeting.

[57] We note that with respect to approval of the merger itself, the change resulted in the unitholder approval requirement moving from a special resolution of 2/3 of

the units outstanding to a vote of 2/3 of units represented at a meeting. We agree with Staff's position that the mechanism to implement the Sprott Bids has changed. We do not consider the change by itself to be coercive or abusive. However, we find that the Respondents' disclosure relating to the November 4th Variation explaining the process and risks involved with these changes is not adequate.

[58] We find that the Respondents should not be prohibited from using the amended POAs as proposed in the November 4th Variation as long as there is sufficient disclosure for unitholders to enable them to understand the steps involved and the risks associated with the decision by Sprott to replace the Trustees, propose the Merger Transactions at a meeting of unitholders and vote deposited units in favour of the Merger Transactions.

[59] Initially, the process contemplated was that upon 66 2/3 % of units tendering, the Board of Trustees of CGT and SBT would be replaced and immediately after this, the new trustees would amend the Declarations of Trust to implement the Merger Transactions.

[60] Now as a result of the November 4th Variation, only 50.1% of all outstanding units (of each of CGT and SBT) are required for a resolution to replace each board of trustees. Once the resolution is passed, then a meeting (for each of CGT and SBT) will be called where unitholders will vote on the Merger Transactions. However, following the variation, the voting on the Merger Transactions does not occur immediately after the replacement of the trustees. It is possible that there will be an undefined time period between the change of trustees and implementing the transaction. This raises the possibility that the new trustees may make other decisions during this time period, including the decision not to proceed with the transaction. In addition, now the Merger Transactions will be approved at a special meeting of unitholders of CGT and SBT. Instead of 66 2/3 % of units outstanding being required as originally contemplated, the approval threshold will be 66 2/3 % of units voted at the special meeting.

[61] Specifically, there is a lack of clarity regarding:

- The effect of the amendments to the POAs granted to Sprott and their intended use by Sprott;
- The process by which the new trustees will effect the Merger Transactions, including the increased time period between their appointment and the implementation of the Merger Transactions, and associated risks and uncertainties;
- The change in the required unitholder approval of the Merger Transactions as a result of the November 4th Variation;
- The duties of the Sprott nominees proposed to be appointed as the trustees of CGT and SBT, and specifically including the undertaking provided to the Commission at the November 18, 2015 hearing that they would resign if the Merger Transactions are not effected;
- The consequences to unitholders if the Merger Transactions fail to obtain the necessary approvals; and

- The withdrawal rights available to unitholders both before and after the appointment of the new trustees.

[62] In our view, these are all factors which may influence a unitholder's decision whether or not to tender to the Sprott Bids or for those who have already tendered, to consider whether or not to withdraw their units from the bid. Further, it is reasonable for unitholders to expect more complete disclosure concerning the situation that would prevail after the proposed removal of the boards of trustees is implemented, through to the conclusion of the Merger Transactions.

[63] At the hearing, the Respondents gave an undertaking that the new trustees put in place by the Respondents would resign if the transaction is not approved. They further explained that pursuant to the Declarations of Trust of each of CGT and SBT, once the new Sprott trustees resign a single trustee affiliated with the Administrator of CGT and SBT would remain as the sole trustee and could then appoint other new trustees. Further, in cross-examination of Mr. Wilson, we heard testimony that it is not contemplated that the new trustees would implement any changes to the Declarations of Trust of CGT and SBT other than the amendment to implement the Merger Transactions.

[64] This information was relevant to our decision. In our view, such information should be described in detail in the disclosure made to CGT and SBT unitholders.

[65] The November 4th Variation did not contain adequate disclosure about the consequences to unitholders of the amendments made therein. It is not in the public interest that investors be required to make a choice whether or not to tender to the Sprott Bids without further disclosure. We are therefore exercising our public interest jurisdiction to require adequate disclosure if the Sprott Bids are to proceed. As a result, we issued the Order as set out in paragraph 6 of these reasons.

[66] We also ordered that Sprott shall not exercise any rights in relation to the Letters of Transmittal before the expiration of 15 days from the date on which Sprott issues the notice(s) of change in information required by our Order.

[67] In our view, an additional 15 days will provide investors with adequate time to review the new disclosure and make an informed decision whether they wish to tender to the Sprott Bids or exercise their withdrawal rights, as the case may be.

[68] With respect to the Applicants' submission that the Letters of Transmittal sent by the Respondents to unitholders constitute a "communication to a security holder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy", we note that in the Court Decision Justice Wilton-Siegel determined that the Offers were not an illegal proxy solicitation. In our view, this issue has been disposed of by the Court and there is no need to address it further.

[69] Lastly, the parties made limited submissions regarding the application of MI 61-101, however at this time it is premature to address this subject as the special meetings for CGT and SBT are not yet scheduled.

Dated at Toronto this 18th day of December, 2015.

"Mary G. Condon"

Mary G. Condon

"D. Grant Vingoe"

D. Grant Vingoe

"Judith N. Robertson"

Judith N. Robertson

SCHEDULE A – EXCERPT FROM ORIGINAL LETTERS OF TRANSMITTAL

12. unless the Deposited GTU Units are withdrawn from the Offer (other than Merger Elected GTU Units deemed to be withdrawn in connection with the Offer), (i) appoints the Offeror, each director and officer of SAM GP Inc. or any other person designated by the Offeror, with full power of substitution, as the undersigned's nominee and proxy in respect of any meeting or meetings (whether annual, special or otherwise, or any adjournments or postponements thereof) of GTU Unitholders in respect of matters related to the Offer, the Merger Transaction, the nomination, election or removal of GTU Trustees, any amendments or action related to the GTU Declaration of Trust, the Administration Agreement, the Storage Agreement or any other matter that would materially and adversely impact, or otherwise frustrate, the Offer, the Merger Transaction or matters related to (including approval of) the Offer or the Merger Transaction (or substantially similar transactions), for all Deposited GTU Units; and (ii) irrevocably approves, and irrevocably constitutes, appoints and authorizes the Offeror, each director and officer of SAM GP Inc. and any other person designated by the Offeror, as the true and lawful agent, attorney and attorney-in-fact of the holder of the GTU Units with respect to the Deposited GTU Units, with full power of substitution (such power of attorney, being coupled with an interest, being irrevocable), in the name of and on behalf of the undersigned to: (A) requisition and call (and receive and execute all forms, proxies, securityholder proposals and other documents and take other steps needed to requisition and call) any meeting or meetings (whether annual, special or otherwise, or any adjournments or postponements thereof) of GTU Unitholders; or (B) exercise any rights of redemption under the GTU Declaration of Trust in respect of such Deposited GTU Units provided such redemption would occur at a redemption price equal to 100% of the NAV of the Deposited GTU Unit and such redemption is only consummated following the Offeror having taken up and paid for such Deposited GTU Units. Upon such appointment, all prior proxies and other authorizations (including, without limitation, all appointments of any agent, attorney or attorney-in-fact) or consents given by the undersigned with respect to the Deposited GTU Units will be revoked and no subsequent proxies or other authorizations or consents may be given by such person with respect thereto (other than with respect to the powers in 13 and 19 below);

13. in addition to, and without derogating from the power provided to the Offeror, each director and officer of SAM GP Inc. and any other person designated by the Offeror under 12 above, effective from and after 4:58p.m. (Toronto time) on the Expiry Date, irrevocably approves, and irrevocably constitutes and appoints and authorizes the Offeror, each director and officer of SAM GP Inc. and any other persons designated by the Offeror in writing, as the true and lawful agents, attorneys and attorneys-in-fact of the holder of the GTU Units with respect to the Deposited GTU Units, with full power of substitution (such power of attorney, being coupled with an interest, being irrevocable), in the name of and on behalf of the undersigned to vote, execute and deliver any and all instruments of proxy, authorizations, requisitions, resolutions (in writing or otherwise and including any counterparts thereof), consents and directions, in form and substance satisfactory to the Offeror approving, and in respect of, the special resolutions substantially as set forth in Appendix A hereto;

SCHEDULE B – EXCERPT FROM AMENDED LETTERS OF TRANSMITTAL

**Italics indicate amendments*

12. unless the Deposited GTU Units are withdrawn from the Offer *(in which case, for greater certainty, the power in this section 12 shall terminate)*, (i) appoints the Offeror, each director and officer of SAM GP Inc. or any other person designated by the Offeror, with full power of substitution, as the undersigned's nominee and proxy in respect of any meeting or meetings (whether annual, special or otherwise, or any adjournments or postponements thereof) of GTU Unitholders in respect of matters related to the Offer, the Merger Transaction, the nomination, election or removal of GTU Trustees, any amendments or action related to the GTU Declaration of Trust, the Administration Agreement, the Storage Agreement or any other matter that would materially and adversely impact, or otherwise frustrate, the Offer, the Merger Transaction or matters related to (including approval of) the Offer or the Merger Transaction (or substantially similar transactions), for all Deposited GTU Units; and (ii) irrevocably approves, and irrevocably constitutes, appoints and authorizes the Offeror, each director and officer of SAM GP Inc. and any other person designated by the Offeror, as the true and lawful agent, attorney and attorney-in fact of the holder of the GTU Units with respect to the Deposited GTU Units, with full power of substitution (such power of attorney, being coupled with an interest, being irrevocable), in the name of and on behalf of the undersigned to: (A) requisition and call (and receive and execute all forms, proxies, securityholder proposals and other documents and take other steps needed to requisition and call) any meeting or meetings (whether annual, special or otherwise, or any adjournments or postponements thereof) of GTU Unitholders; (B) exercise any rights of redemption under the GTU Declaration of Trust in respect of such Deposited GTU Units provided such redemption would occur at a redemption price equal to 100% of the NAV of the Deposited GTU Unit and such redemption is only consummated following the Offeror having taken up and paid for such Deposited GTU Units; *and (C) effective from and after 5:00p.m. (Toronto time) on November 19, 2015, execute and deliver resolutions in writing (including counterparts thereof), consents and directions, in form and substance satisfactory to the Offeror, removing the current GTU Trustees (other than the Administrator's Nominees) and replacing such individuals with Sprott Nominees.* Upon such appointment, all prior proxies and other authorizations (including, without limitation, all appointments of any agent, attorney or attorney-in-fact) or consents given by the undersigned with respect to the Deposited GTU Units will be revoked and no subsequent proxies or other authorizations or consents may be given by such person with respect thereto (other than with respect to the powers in 13 and 19 below);