Ontario
Securities
Commission

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IN THE MATTER OF THE
***SECURITIES ACT*, RSO 1990, c S.5**

- AND -

IN THE MATTER OF
ARGOSY SECURITIES INC. and
KEYBASE FINANCIAL GROUP INC.

REASONS FOR DECISION
(Section 8 of the *Securities Act*)

Hearing:	January 15, 18 and 20, 2016	
Decision:	April 20, 2016	
Panel:	Timothy Moseley	Commissioner and Chair of the Panel
	Grant Vingoe	Vice Chair of the Commission
	Deborah Leckman	Commissioner
Appearances:	Joseph Groia Kevin Richard David Sischy	For Argosy Securities Inc. and Keybase Financial Group Inc.
	Gavin Smyth Michael Denyszyn	For Staff of the Commission

TABLE OF CONTENTS

REASONS FOR DECISION

I. OVERVIEW

[1] On August 18, 2015, a Deputy Director of the Ontario Securities Commission (the "**Commission**") issued a decision[1] (the "**Director's Decision**") in which she found that Argosy Securities Inc. ("**Argosy**"), an investment dealer, and Keybase Financial Group Inc. ("**Keybase**"), a mutual fund dealer and exempt market dealer, had failed to comply with various provisions of Ontario securities law. In particular, she held that the record disclosed a long history of a failure to maintain and carry out an effective compliance program, leading to numerous related contraventions of the rules of the Investment Industry Regulatory Organization of Canada (previously the Investment Dealers Association, and referred to throughout these reasons as "**IIROC**") and the Mutual Fund Dealers Association of Canada ("**MFDA**", and together with IIROC, the "**SROs**"), as well as direct violations of Ontario securities law.

[2] As a result, she imposed terms and conditions upon the registrations of Argosy and Keybase. Among other things, the terms and conditions required each of Argosy and Keybase to retain, at its own expense, an independent consultant to prepare, and assist each firm in implementing, plans to improve the firm's "compliance system"[2] and to review and report upon the firm's progress against the plans.

[3] Argosy and Keybase (together, the "**Applicants**") requested a hearing and review of the Director's Decision. At the conclusion of that hearing and review before us, we concluded that the requirement to retain a consultant as contemplated in the Director's Decision was proper, on terms substantially similar to those imposed by the Deputy Director. We gave an oral decision and issued an order to that effect.[3] We advised that we would produce written reasons for that decision. These are our reasons.

[4] As discussed in detail below, it appears to us that the Applicants have failed to comply with Ontario securities law in many respects over a period of years. In our view, this history results from a number of contributing factors. Significant among these are:

a. inadequate governance of the firms, including the composition of each firm's board of directors;

b. the failure of the firms' owner and principal, Dax Sukhraj, to instil a "culture of compliance", which failure was exemplified in part by an inadequate "tone from the top", both of which are fundamental principles that should be areas of focus for any registered firm that seeks to participate in Ontario's capital markets;

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[1] *Argosy Securities Inc. and Keybase Financial Group Inc. (Re)* (2015), 38 OSCB 7393.
[2] Within the meaning of section 11.1 of National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. ("**NI31-103**")
[3] *Argosy Securities Inc. and Keybase Financial Group Inc. (Re)* (2016), 39 OSCB 1118.

c. inadequate Compliance[4] resources;

d. recurring deficiencies and failures to follow up on and rectify deficiencies; and

e. remedial measures that were often too little and too late, frequently undertaken only when significant regulatory consequences were looming.

[5] As a result, in our view it is necessary for the protection of investors that an independent consultant be retained in respect of each firm, that the consultant have a wide-ranging mandate to review the Applicants' compliance systems, and that the Applicants effect and sustain necessary improvements to those systems.

II. PRELIMINARY MATTER – CONFIDENTIALITY

[6] At the beginning of the hearing before us, the Applicants requested that certain matters and documents likely to come up in the hearing be treated as confidential and not be part of the public record, pursuant to section 9 of the *Statutory Powers Procedure Act*[5] (the "**SPPA**") and Rule 5.2 of the Commission's *Rules of Procedure*[6] (the "**OSC Rules**").

[7] Clause 9(1)(b) of the SPPA requires that an oral hearing be open to the public, except where in the panel's opinion:

> intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

[8] Rule 5.2 of the OSC Rules provides that a panel may order that "any document filed with the Secretary [to the Commission] or any document received in evidence or transcript of the proceeding" be kept confidential pursuant to section 9 of the SPPA.

[9] The Applicants identified three categories of evidence likely to be led at the hearing in respect of which they sought confidentiality protection:

a. certain financial information related to the Applicants;

b. certain information relating to litigation against Keybase; and

c. certain matters relating to the MFDA having placed Keybase in discretionary early warning status.

[10] The Applicants submitted that the information and related documents were "intimate financial… matters" within the meaning of clause 9(1)(b) of the SPPA.

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[4] We have used "Compliance" (with a capital "C") throughout these reasons when referring to the Compliance function within a firm.
[5] RSO 1990, c S.22.
[6] (2014), 37 OSCB 4168.

[11] In considering the Applicants' request, we were guided by what the Commission has previously described as the "strong presumption that all matters ought to take place in an open and public manner."[7] We advised counsel that if at any point in the hearing they expected to address matters that might come within the specified categories, we would determine at the time the evidence was to be introduced whether the evidence should be kept confidential. We also directed that opening submissions be made in the absence of the public, in case any of the submissions touched upon the specified categories.

[12] As it turned out, the entire evidence portion of the hearing, with the exception of one question of one witness, and that witness's answer, was conducted in public. The answer given by the witness is of no relevance to our decision in this matter.

[13] At the conclusion of the hearing, Applicants' counsel sought confidentiality protection for certain portions of some documents marked as exhibits during the hearing. We granted that request in respect of limited portions of two documents:

a. a letter dated December 23, 2015, from the MFDA to Mr. Sukhraj; and

b. a letter dated January 11, 2016, from Mr. Sukhraj to the MFDA.

[14] None of the portions subject to the confidentiality order was relevant to our decision. We also ordered that any reference in written submissions relating to those portions be subject to the same protection.

III. EVENTS LEADING TO THIS PROCEEDING

A. Staff recommends terms and conditions

[15] In March 2015, staff of the Commission ("**Staff**"), from the Compliance and Registrant Regulation Branch wrote to the Applicants and advised them that as a result of a review of the Applicants conducted a year earlier (the "**OSC Staff Review**"), Staff had identified a number of deficiencies, including thirteen significant deficiencies for each of Argosy and Keybase. Staff further advised that as a result, it had recommended to the Director that the following terms and conditions be imposed upon the registrations of the Applicants:

a. each of Argosy and Keybase shall, at its own expense, retain a consultant approved by Staff, to prepare and assist each firm in implementing a plan to strengthen its compliance system, to review progress of implementation and to submit written progress reports to Staff and to either IIROC or the MFDA, as the case may be;

b. the Ultimate Designated Person ("**UDP**") and Chief Compliance Officer ("**CCO**") of Argosy and Keybase must review, approve and sign the plan and progress reports;

[7] *Re HudBay Minerals Inc.* (2009), 32 OSCB 4427 at paras 22-24.

c. the consultant shall submit progress reports to Staff and to either IIROC or the MFDA every thirty days following approval of the plan until it has been fully implemented;

d. the consultant shall submit an attestation letter verifying that recommendations have been implemented and tested and are working effectively;

e. each of Argosy and Keybase shall give Staff and either IIROC or the MFDA unrestricted access to communicate with the consultant regarding progress; and

f. the consultant shall return one year after full implementation of the plan, at the firm's expense, to complete a review of the firms' compliance systems.

B. Director's Decision

[16] Section 31 of the *Securities Act*[8] (the "**Act**") provides that the Director shall not impose terms and conditions upon a registration without giving the registrant an opportunity to be heard. The Applicants exercised that right, and the hearing was held before the Deputy Director on July 20, 2015.

[17] On August 18, 2015, the Deputy Director issued her decision. The Director's Decision listed a number of concerns about the Applicants' past compliance with applicable regulatory requirements.

[18] Acknowledging that the Applicants had implemented certain changes to their operations since the examination findings were made, the Deputy Director decided that an independent consultant would be "best placed to determine the effectiveness of these recent changes".[9] As a result, the Deputy Director decided to impose the terms and conditions recommended by Staff.[10]

[19] The Director's Decision required that the independent consultant be retained by September 15, 2015, and that the consultant provide a compliance plan to Staff by October 15, 2015.[11]

C. Motion for a stay of the Director's Decision

[20] On September 14, 2015, the Applicants wrote to the Secretary of the Commission to request a hearing and review of the Director's Decision, pursuant to subsection 8(2) of the Act, and a stay of the Director's Decision pending the disposition of the hearing and review, pursuant to subsection 8(4) of the Act.

[21] The Commission heard the motion for a stay on November 6, 2015. On November 12, 2015, the Commission ordered that the Director's Decision be stayed effective immediately until further order of the Commission and,

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[8] RSO 1990, c S.5.
[9] Director's Decision at para 17.
[10] Ibid at para 1.
[11] Ibid at para 1.

in any event, not later than January 18, 2016, subject to a number of conditions.[12]

D. Hearing and Review

[22] The hearing and review of the Director's Decision was held before us on January 15, 18 and 20, 2016.

IV. FACTUAL BACKGROUND

A. Argosy

1. About the firm

[23] Argosy is registered as a dealer in the category of investment dealer and is a dealer member of IIROC. Currently, Argosy has approximately fifteen investment advisors and approximately $220 million of assets under administration.

[24] Until 2015, Mr. Sukhraj was the sole director of Argosy. In response to concerns from Argosy's regulators about the firm's governance structure, new directors were added to the board in 2015.

[25] The record before us contains conflicting information as to who joined the board when.

[26] In Argosy's March 2015 response to the OSC Staff Review, Mr. Sukhraj states that "[o]ur current board consists of my wife, Kim Sukhraj and our two sons, Jason Sukhraj and Justin Sukhraj."

[27] Affidavits sworn July 17, 2015, by Mr. Sukhraj and by Argosy's CCO name three directors of Argosy, being Mr. Sukhraj and his son Jason (who was still in the process of being approved as a director), as well as Donald Cook, who has been Argosy's Chief Financial Officer for many years.

[28] We suspect that Mr. Sukhraj was mistaken in his March 2015 letter, in that he named the members of the board of Keybase (see paragraph [38] below) rather than of Argosy. In any event, nothing turns on it.

2. IIROC reviews and proceeding

[29] IIROC staff conduct regular reviews of Argosy's sales compliance procedures, policies and practices. In reviews conducted in 2005, 2006 and 2007, numerous deficiencies were found. Those deficiencies, many of which were considered by IIROC staff to be "significant" and recurring, spanned a wide range of areas, including:

a. corporate governance;

b. branch supervision;

c. lack of evidence of supervision;

d. training;

e. verification of client identity;

[12] *Argosy Securities Inc. and Keybase Financial Group Inc. (Re)* (2015), 38 OSCB 9711.

f. audits of branches and sub-branches;

g. the handling of client complaints;

h. omissions in the National Registration Database;

i. accounts held under codes of registered representatives who had been terminated;

j. inadequate client documentation;

k. outdated and inadequate policies, procedures and manuals;

l. improper handling of out-of-jurisdiction accounts;

m. improper handling of cancellations and corrections;

n. inadequate processes for approval of sales and marketing material; and

o. inadequate supervision.

[30] In 2008, IIROC staff commenced a proceeding against Argosy and Mr. Sukhraj. Following a hearing in September 2008, the IIROC hearing panel found[13] that:

a. over a long period of time, Argosy had serious deficiencies;[14]

b. Mr. Sukhraj and other Argosy officers attempted to address the deficiencies but remedial measures were often insufficient;[15]

c. "the long list of deficiencies which Argosy failed to cure cannot be described in terms other than gross negligence";[16] and

d. "there was a chronic failure to observe" the applicable regulatory requirements.[17]

[31] Following a penalty hearing, an IIROC panel imposed a $150,000 fine on Mr. Sukhraj and required him to successfully complete the Chief Compliance Officer's Qualifying Examination. The panel also required that a compliance consultant be retained for a period of one year, and that the consultant conduct regular evaluations of Argosy's compliance systems.[18]

[32] Between 2010 and 2014, IIROC staff conducted three further reviews of Argosy. In 2015, IIROC staff conducted three separate reviews – one of Argosy's head office and one of each of Argosy's business locations in Ottawa and Ajax.

[33] The reviews of the Ottawa and Ajax business locations resulted in seven significant findings, which related to the suitability and supervision of leveraged and inverse exchange-traded funds, including sales of new and

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[13] *Re Argosy Securities Inc. and Dax Sukhraj*, [2008] IIROC No. 22 (the "**2008 IIROC Decision**").
[14] Ibid at para 30.
[15] Ibid at para 11.
[16] Ibid at para 36.
[17] Ibid at para 36.
[18] *Re Dax Sukhraj*, [2008] IIROC No. 27 at para 12.

complex products to clients who were near, at, or above the age of retirement.

[34] The head office review resulted in nine findings, all of which were repeat items, and eight of which were classified as significant. These findings related to:

a. supervision of advertising, marketing and registrant communications;

b. supervision of client name mutual fund accounts (referred to below as "outside holdings");

c. supervision of account activity;

d. outside business activities;

e. delegation of duties;

f. failure to provide books and records to IIROC;

g. supervision of leveraged accounts;

h. Argosy's new account application form; and

i. out of jurisdiction accounts.

3. OSC Staff Review

[35] As noted above in paragraph [15], staff in the Commission's Compliance and Registrant Regulation branch conducted a review of the Applicants. The field review portion of the OSC Staff Review was carried out in March of 2014, although the resulting letter was not issued until March of 2015. We address this delay in paragraphs [74] to [76] below.

[36] The review of Argosy found the following significant deficiencies:

a. an inadequate compliance system and a failure of the CCO to meet the prescribed responsibilities;

b. a failure of the UDP to meet his responsibilities;

c. a failure to establish prudent business practices;

d. inadequate Compliance resources;

e. inadequate monitoring of trade suitability;

f. a failure to enforce policies with respect to identified suitability issues;

g. inadequate supervision of concentration risk;

h. clients bearing losses when unsuitable trades were unwound;

i. inadequate trend analysis and trade review process;

j. inadequate process for updating risk ratings of products;

k. misleading and inaccurate marketing materials;

l. inadequate resolution and tracking of deficiencies identified during branch audits; and

m. an inadequate branch audit program.

B. Keybase

1. About the firm

[37] Keybase is registered as a dealer in the category of mutual fund dealer and exempt market dealer and is a dealer member of the MFDA. Keybase currently has approximately 200 investment advisors and approximately $1.4 billion of assets under administration.

[38] Until 2015, Mr. Sukhraj was the sole member of Keybase's board of directors. In May 2015, in response to regulatory concerns, Mr. Sukhraj's wife and two sons were added to the board.

2. MFDA reviews and proceeding

[39] MFDA staff regularly review Keybase. In 2008, MFDA enforcement staff commenced a disciplinary proceeding against Keybase and Mr. Sukhraj. That proceeding was concluded in 2009 by way of a settlement agreement.[19] In the agreement, Keybase admitted that it had:

a. failed to establish and maintain an appropriate two-tier compliance structure to supervise client account activity;[20]

b. delegated supervisory tasks to a person who was not appropriately qualified;[21]

c. failed to review and approve the opening of new client accounts, and to maintain evidence of reviews and approvals;[22]

d. failed to ensure that client documentation was sufficient, and had allowed trading in accounts with insufficient documentation;[23]

e. failed to establish, implement and maintain policies and procedures to identify, review and approve dual occupations of its representatives;[24] and

f. failed to establish, implement and maintain policies and procedures relating to the review and approval of marketing materials.[25]

[40] Keybase agreed to pay a $150,000 fine and to retain an independent monitor to resolve outstanding compliance deficiencies. Mr. Sukhraj agreed to pay an additional $50,000 fine and to complete the Partners Directors and Senior Officers course.

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[19] *Re Keybase Financial Group Inc.,* 2009 File No. 200823 (Settlement Agreement)
[20] Ibid at para 31.
[21] Ibid at para 34.
[22] Ibid at para 37.
[23] Ibid at para 42.
[24] Ibid at para 46.
[25] Ibid at para 51.

[41] Between 2009 and 2015, MFDA staff conducted seven financial reviews and four compliance reviews. As a result of those reviews and client complaints, MFDA staff identified concerns relating to clients' use of leverage and Keybase's handling of client complaints.

[42] MFDA staff also cited concerns regarding a court judgment and numerous pending claims against Keybase relating to alleged unsuitable use of excessive leverage in the accounts of former clients.

3. OSC Staff Review

[43] The OSC Staff Review identified significant deficiencies at Keybase relating to:

a. an inadequate compliance system;

b. the failure of the UDP to meet his responsibilities;

c. Keybase's failure to establish prudent business practices;

d. inadequate Compliance resources;

e. inadequate controls regarding one of Keybase's back office systems;

f. inadequate and inconsistent policies and procedures;

g. inadequate training programs;

h. inadequate procedures and controls regarding the sale of funds with deferred sales charges;

i. inadequate supervision of concentration risk;

j. the absence of the required written agreement in support of referral arrangements;

k. an inadequate sub-branch audit program; and

l. inadequate sub-branch reviews.

[44] Commission Staff also echoed the concerns regarding the court judgment and claims against Keybase referred to in paragraph [42] above.

V. LEGAL FRAMEWORK

A. Nature of hearing and review

[45] Pursuant to subsection 8(3) of the Act, upon a hearing and review of a Director's decision the Commission may "confirm the decision […] or make such other decision as [it] considers proper."

[46] The hearing and review of a Director's decision is a hearing *de novo* and therefore a fresh consideration of the matter.[26] The Commission may substitute its own decision for that of the Director.[27]

[47] Staff bears the onus of establishing that terms and conditions ought to be imposed upon the registrations of Argosy and Keybase.[28]

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[26] *Re Sterling Grace & Co.* (2014), 37 OSCB 8298 ("***Sterling Grace"***) at para 24.
[27] *Ibid* at para 23; *Re Sawh* (2012), 35 OSCB 7431 ("***Sawh"***) at paras 16-17.

B. Basis for imposition of terms and conditions

[48] Section 28 of the Act provides that the Director "may impose terms and conditions of registration at any time during the period of registration of [a] company if it appears to the Director" that one or more of the following three tests are satisfied:

a. the company "is not suitable for registration";

b. the company "has failed to comply with Ontario securities law"; or

c. "the registration is otherwise objectionable".

[49] Each one of these tests, if satisfied, is a sufficient basis by itself for the imposition of terms and conditions.[29]

[50] At the hearing before the Director, and at the hearing before us, Staff relied exclusively on the second of the three tests set out in section 28 of the Act; namely, that it is apparent that the Applicants have "failed to comply with Ontario securities law".

C. Provisions of Ontario securities law

[51] Staff submits that the Applicants have failed to comply with numerous provisions of NI31-103, which forms part of "Ontario securities law", by virtue of its being a "rule" and therefore a "regulation", as those terms are defined in subsection 1(1) of the Act.

[52] The relevant portions of NI31-103, which are addressed in greater detail in our analysis that follows, include the following:

a. section 5.1, which describes the responsibilities of the UDP;

b. section 5.2, which describes the responsibilities of the CCO;

c. section 11.1, which sets out the requirements of a registered firm's compliance system;

d. section 12, which sets out financial requirements including in relation to capital and insurance;

e. section 13, which contains various requirements governing the relationship between the firm and its clients, including relating to the obligation to "know your client" ("**KYC**"), to suitability, and to the handling of complaints; and

f. section 14, which includes requirements regarding the handling of client assets and securities.

[53] Subsections 9.3(1) and 9.4(1) of NI31-103 provide that IIROC- and MFDA-registered firms, respectively, are exempt from certain requirements in sections 12, 13 and 14, but only if the firm complies with the applicable corresponding provision in IIROC or MFDA rules. Further, in our view subsection 2.1(1) of National Instrument 31-505, *Conditions of Registration* ("**NI31-505**") (the obligation to deal with clients "fairly,

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[28] *Sterling Grace* at para 25; *Sawh* at paras 147-148.
[29] *Sterling Grace* at para 150.

honestly and in good faith") requires that a firm substantially comply with SRO rules applicable to it. The firm's clients have a reasonable expectation in this regard for their own protection, and it therefore cannot be said that a firm that fails to comply, in substantial respects, with SRO rules is dealing "fairly" with its clients.

VI. ISSUES

[54] As noted above in paragraph [50], Staff's request that the Applicants be required to retain a consultant was based exclusively on the second of the three tests set out in section 28 of the Act; namely, the Applicants' apparent failure to comply with Ontario securities law.

[55] The Applicants submitted that they have taken many steps to respond to previous regulatory findings, to improve their compliance system and to increase their Compliance resources. The Applicants argued that there was insufficient evidence before us to establish that they should be required to retain a consultant. In response, Staff argued that the Applicants had a long and extensive history of non-compliance with Ontario securities law, and that this record was more than sufficient to warrant the order sought.

[56] When the positions taken by the Applicants and by Staff are contrasted, they raise the question of the role of the Director, and therefore of the Commission on this application. Specifically, is it the Commission's role to engage in an assessment of the current state of compliance at the Applicant firms?

[57] This application therefore presents the following three principal issues:

a. To what extent, if any, does it appear that the Applicants have failed, in the past, to comply with Ontario securities law?

b. If it appears that the Applicants have failed to comply with Ontario securities law, to what extent if at all should we engage in an assessment of the current state of compliance at the Applicant firms?

c. Taking the answers to those two questions into account, is it proper for the Commission to impose terms and conditions upon the registration of each Applicant, as requested by Staff?

VII. ANALYSIS

A. Introduction

[58] Before turning to an analysis of these issues, we review the purposes of the Act, and the purpose of and obligations associated with registration. In addition, we make general comments about two witnesses who testified during the hearing before us, and we consider the implications of the one-year delay between the conclusion of the OSC Staff Review and the issuance of the resulting report.

1. Purposes of the Act

[59] In reaching our decision, we are guided by both of the two purposes of the Act, as set out in section 1.1 of the Act:

a. to provide protection to investors from unfair, improper or fraudulent practices; and

b. to foster fair and efficient capital markets and confidence in capital markets.

2. Registration

[60] The registration requirement for an individual or firm seeking to act as a dealer or dealing representative is set out in subsection 25(1) of the Act.

[61] It is well established that registration is a privilege, not a right, that is granted to individuals and entities that have demonstrated their suitability for registration.[30] Upon being granted registration, the registrant assumes the duty to comply with applicable provisions of Ontario securities law and SRO rules, and must conduct himself, herself or itself accordingly to ensure continual maintenance of the standards expected of a registrant.[31]

3. Witnesses

(a) *Noel Sequeira*

[62] We consider it important to address an issue raised by Argosy with IIROC and again during the hearing before us, at least by implication. Specifically, Argosy had raised a concern with IIROC that Noel Sequeira, the Manager of Business Conduct Compliance at IIROC who was responsible for reviews of Argosy, might be biased against the firm. That concern eventually led to Argosy asking IIROC to remove Mr. Sequeira as the manager assigned to the firm. IIROC did not accede to Argosy's request.

[63] At the hearing before us, Mr. Sequeira gave evidence regarding IIROC's oversight of Argosy. Counsel for Argosy, in his cross-examination of Mr. Sequeira, referred to Argosy's request that Mr. Sequeira be removed, and asked Mr. Sequeira whether that request caused him to be upset or to offer to resign. Mr. Sequeira answered "no" to both questions.

[64] We reject any suggestion that Mr. Sequeira is biased against Argosy. On the contrary, we found Mr. Sequeira to be professional, candid and forthright. In our view, Mr. Sequeira has been measured in his dealings with Argosy and has neither demonstrated any bias nor acted improperly in any other way.

(b) *Leo Purcell*

[65] In December 2015, approximately one month after the Commission issued a stay of the Director's Decision and one month before the hearing in this matter was required to occur (see paragraph [21] above), Argosy and Keybase retained Leo Purcell as a consultant. Mr. Purcell delivered two reports dated January 13, 2016 (two days before the commencement of this hearing), one in respect of each firm.

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[30] *Re Trend Capital Services Inc*. (1992), 15 OSCB 1711 at p 1765; *Re Istanbul* (2008), 31 OSCB 3799 at para 60; *Sawh* at para 142.
[31] *Sterling Grace* at para 269.

[66] The Applicants called Mr. Purcell as a witness at the hearing before us. Mr. Purcell has worked in various compliance-related roles in the investment industry for approximately 25 years, including three years with IIROC, four years as CCO at a registered dealer, and as a Compliance Officer at bank-owned dealers and small investment firms. Mr. Purcell is currently the principal of his own consulting firm.

[67] We found Mr. Purcell to be a candid and credible witness. Having said that, we are unable to attribute significant weight to the findings in his reports and to his oral testimony in our consideration of two of the principal issues before us, *i.e.*, (i) the extent to which it appears that the Applicants have failed in the past to comply with Ontario securities law; and (ii) whether it is proper for the Commission to impose terms and conditions upon the Applicants' registration as requested by Staff.

[68] Our inability to give Mr. Purcell's findings and testimony much weight is not a reflection on Mr. Purcell; rather it flows primarily from the purpose for which he was called as a witness. We asked counsel for the Applicants whether he sought to put Mr. Purcell forward as an expert witness. He replied that Mr. Purcell was being offered as a "participating expert". Staff counsel acknowledged that Mr. Purcell was "a fact witness", and counsel for the Applicants chose not to respond or to pursue the question.

[69] We accept Mr. Purcell's evidence with respect to strictly factual observations. As a tribunal that is expert in the matters that were the subject of Mr. Purcell's review, the Commission does not need the benefit of his expertise in order to discharge its mandate.

[70] Even if we had been asked to treat Mr. Purcell as a true expert witness and to be persuaded by his conclusions, we would have given his opinions little if any weight due to the scope and timing of his retainer and reports. In our view, his retainer was an example of the Applicants attempting, in a manner that was too little and too late, to paint a more favourable picture of the firms' approach to compliance.

[71] That the work was "too little" is, in our view, demonstrated by numerous limitations on Mr. Purcell's retainer:

a. he did not read the Director's Decision;

b. he did not review any pre-2014 examination or audit reports with respect to either Applicant;

c. he did not consult with staff of either SRO or of the Commission to understand their concerns or to help in developing his work plan;

d. he did not review reporting lines;

e. with respect to many written policies and procedures, Mr. Purcell's information was that these were in flux, and he was unable to review the completed versions;

f. significantly, very little if any testing had been conducted by the firms or was conducted by Mr. Purcell, thereby preventing a proper and necessary assessment of the effectiveness of the policies, procedures and corrective actions;

g. he did not assess the adequacy of Compliance resources;

h. he did not assess or comment on the larger governance issues on an enterprise-wide basis or with respect to either firm individually, *e.g.*, the makeup of the boards of directors of the Applicants;

i. he did not consult with any clients who had complained; and

j. in the case of Keybase, Mr. Purcell limited his review to the firm's complaint handling procedures.

[72] As a result of these limitations, Mr. Purcell's work covers only a small portion of the issues and concerns that would be addressed by the consultant contemplated by the Director's Decision, and Mr. Purcell was not asked to conduct, nor did he conduct, the kind of holistic analysis of the Applicants that would increase the likelihood that the Applicants could successfully implement changes to bring the cycle of continuing non-compliance to an end. For these reasons, Mr. Purcell's reports and oral evidence are not of great assistance to us in assessing the need for the terms and conditions requested by Staff.

[73] As noted above, we also consider the retainer of Mr. Purcell to have been "too late". We do not dismiss the potential value in taking remedial steps at any time. However, the fact that such steps were taken does not necessarily demonstrate a proper compliance culture or a commitment to being a responsible registrant. In particular, steps that should be taken (such as the addition of Compliance resources) but are resisted for some time, or that are taken only in the face of imminent and potentially significant regulatory action (as was Mr. Purcell's limited retainer), are of substantially less weight.

4. Timing of the OSC Staff Review

[74] As noted above in paragraph [15], approximately one year elapsed between Commission Staff's review of the two firms, and the delivery of the reports resulting from that review. At the hearing before the Director and at the hearing before us, the Applicants quite fairly complained about this delay.

[75] We heard no evidence that would explain the delay. It is possible that there are good reasons for such a delay in any given case, but because in this instance the concern was raised at the hearing before the Director and again at the hearing before us, and Staff did not offer any explanation, we are left being troubled by the fact that it took a year for Staff to issue its findings.

[76] Having said that, this delay did not cause us to give less weight to Staff's findings. Those findings were entirely consistent with a long history of governance and compliance failures at Argosy and Keybase, and as we conclude below, the findings form part of our overall conclusion that it appears to us that the Applicants have, in the past, failed to comply with Ontario securities law.

B. Analysis of issues

1. Introduction

[77] We now address each of the three principal issues in turn. In doing so, we are mindful of the fact that each of Argosy and Keybase is a separate firm, registered on its own, and that the two firms are regulated by different SROs. It is therefore necessary that we reach independent conclusions with respect to each of them. However, given the commonality of ownership and substantial commonality of governance between the two firms, and given the similarity of compliance failures alleged with respect to both firms, we deal with many of the substantive issues in the context of both firms together, with distinctions drawn where appropriate.

2. To what extent if any does it appear that the Applicants have failed, in the past, to comply with Ontario securities law?

(a) *Introduction*

[78] The record before us, including the findings of staff of the SROs over the course of their examinations, contained evidence of failures to comply with numerous provisions of NI31-103, and with the obligation imposed on a dealer by NI31-505 to deal with its clients "fairly, honestly and in good faith".

(b) *"Know your client" and suitability*

i. Introduction

[79] Section 13.2 of NI31-103 requires a registered firm to take reasonable steps to ensure that it has, with respect to each of its clients, information regarding the client's investment needs and objectives, the client's financial circumstances, and the client's risk tolerance. This information must be sufficient to enable the firm to ensure that a recommendation made by the firm to buy or sell a security, or an instruction accepted by the firm from the client to buy or sell a security, would result in a transaction that is suitable for the client, all as required by section 13.3 of NI31-103.

[80] Once obtained at the beginning of the firm-client relationship, the KYC information must be updated regularly. Information that is inaccurate for any reason, including because it is out of date, can significantly undermine the firm's ability to comply with its suitability obligation.

[81] At a minimum, KYC information must be updated to reflect material changes in a client's circumstances that may have occurred. The existence of such changes can be determined only through regular communication with the client.

[82] In addition, and as a second check to ensure the ongoing accuracy of KYC information, that information should be updated regularly. There is currently no explicit regulatory requirement applicable to IIROC members that prescribes the precise period. However, in general we consider a one-year period to be a prudent minimum. Such a period is consistent

with that prescribed for exempt market dealers and portfolio managers[32] and with the requirement that MFDA members contact each client in writing at least annually to determine whether there has been any material change in information or circumstances relating to the client.[33]

ii. Argosy

[83] In the following paragraphs we review seven areas of concern with respect to Argosy's practices in respect of client information and suitability:

a. inadequate processes for updating client information;

b. inadequate processes for assessing the risk associated with specific securities;

c. instances of client investments being materially inconsistent with stated objectives and limitations, accompanied by inadequate responses from dealing representatives to Compliance queries;

d. inadequate oversight of concentration risk;

e. a requirement that clients absorb any loss resulting from the unwinding of unsuitable trades;

f. a recurring failure to obtain adequate information, and a lengthy period of time during which an improved New Account Application Form ("**NAAF**") will not be implemented for existing clients; and

g. inappropriate use of leverage.

[84] First, Argosy's methods of acquiring and updating information regarding clients' risk tolerance and investment objectives were insufficient:

a. A client would indicate his/her investment objectives and the risk tolerance was subsequently assigned automatically.

b. As noted by IIROC staff in reviews conducted in 2012, 2014 and 2015, Argosy's investment holding ranges were too wide to be meaningful. For example, while there were limits on client holdings of high-risk securities, there were no restrictions on exposure to above-average or average-risk securities. The revised NAAF introduced after the 2015 review improves the alignment between client risk tolerance and product risk, but will not be implemented immediately for existing clients. Given Argosy's usual practice of conducting a review of an existing client once every two years, it will take that long before all clients have been transitioned to the new form. In the meantime, deficiencies in Argosy's processes and in its ability to ensure that clients are adequately protected will persist.

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[32] See CSA Notice 31-336, *Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know Your Client, Know Your Product and Suitability Obligations (*"**CSA Notice 31-336**"*);* and OSC Staff Notice 33-740, *Report on the results of the 2012 targeted review of portfolio managers and exempt market dealers to assess compliance with the know your client, know your product and suitability obligations.*

[33] MFDA Rule 2.2.4(e).

[85] Second, as noted in the OSC Staff Review, Argosy lacked adequate policies and procedures to ensure sufficient assessment of risks associated with specific securities and had demonstrated insufficient attention to this issue. Specifically,

a. Argosy's Compliance Officer manually reviewed approximately 1900 products twice a year, which is not sufficiently timely.

b. Argosy failed to incorporate volatility, which is an important factor in assessing risk. Argosy argued that there is a lack of proper data in most cases, which is untrue; there are numerous reliable and widely available measures of volatility. Further, Argosy's new system uses the security's price from the prior quarter and its market capitalization as a proxy for volatility, but these are not factors that necessarily contribute to risk.

c. Despite an April 2013 email to Mr. Sukhraj in which Argosy's CCO highlighted the urgency of updating the risk ranking system and stated that he was prepared to take immediate action from the moment potential approval was granted, the new system was not implemented until June 2015, more than two years later.

[86] Third, there were numerous instances of clients' investments being inconsistent, in material respects, with the risk tolerance recorded for the client. Three of these, queried in the first half of 2015, exemplify the problem:

a. Client W.C.'s maximum high-risk allocation was 30%, whereas 63% of the client's portfolio was in high-risk investments. In response to a Compliance query, the advisor promised "not [to] do any further high risk investments". This response was silent as to whether and how the client's portfolio would be brought into line.

b. Client J.B.'s RRSP account was also limited to 30% high risk, but consisted of 63% high-risk investments. The advisor's response to the Compliance query was: "Get more money during RRSP and refrain from buying high rated equities." This response was also silent as to whether and how the client's portfolio would be brought into line.

c. Client A.P.'s investment objective was recorded as income, with a maximum equity allocation of 40%. The client's actual equity allocation was 100%. In response to the Compliance query, the advisor said: "Talked to [client] on phone. We will be meeting next week to adjust the forms to keep things in line." This response fails to address whether the information on the form was an error, and if not, why it would be appropriate to adjust the information so significantly.

[87] Fourth, Argosy gave insufficient attention to concentration risk. As noted in the OSC Staff Review, Argosy had a policy that limited a client's investment in a single issuer to 25% of the client's total portfolio. While there is no universal maximum prescribed by regulation, it is useful to refer to the relevant Staff Notice issued by the Canadian Securities Administrators:

> Most CSA staff will consider investments (either individually or taken together with prior investments) in securities of a single issuer or group of related issuers that represent more than 10% of the investor's net financial assets as potentially raising suitability concerns due to concentration.[34]

[88] Holding 25% of one's portfolio in a single issuer is significantly riskier than holding 10% in a single issuer. However, while Argosy's policy limit of 25% did not contravene any regulatory requirement, even that limit does not appear to have been enforced by Argosy. Staff concluded that where a client's portfolio exceeded the prescribed limit, Argosy's Compliance staff would send an email to the client's representative, but there was no process in place to ensure that the issue was rectified.

[89] Fifth, where unsuitable trades were identified and unwound, Argosy required the client to absorb any resulting loss. When Staff expressed concern about this practice, Argosy responded that a "balanced and fair approach should also consider the situations when the outcome of unsuitable trades resulted in profits for the clients which they kept in all cases." We reject this approach as a violation of subsection 2.1(1) of NI31-505 (the obligation to deal with clients "fairly, honestly and in good faith"). It is not "fair" to require clients to bear such losses, and an internal decision to allow clients to keep gains resulting from unsuitable trades does not absolve the firm of its responsibility for any losses.

[90] Sixth, in 2012 and 2014 IIROC staff found Argosy's processes for determination of client risk tolerance and investment objectives to be deficient. As noted above in paragraph [84], a revised NAAF that sought to address this and other issues would not be fully implemented for two years.

[91] Finally, issues arose regarding leveraged and inverse exchange-traded funds ("**ETFs**") and leveraged (*i.e.*, borrow-to-invest) accounts.

[92] With respect to leveraged products, the 2015 Argosy Compliance Manual correctly states that typically, inverse and/or leveraged ETFs are unsuitable for retail investors whose investment horizon is longer than one day. Yet a significant number of clients had invested in leveraged ETF's in contravention of this restriction.

[93] Despite the warnings and requirements in the manual, advisor practices varied and were often in violation of those requirements. A number of retail clients held these products, sometimes in concentrated amounts. When Compliance queried a transaction, in some instances the representative's response was that the securities were "buy and hold"; in other instances, the query was either not followed up or remained unanswered.

[94] With respect to borrow-to-invest accounts, IIROC staff concluded in 2015 that Argosy had not implemented adequate policies, procedures and

[34] CSA Notice 31-336, *supra* note 32.

controls to supervise accounts in which clients employed such a strategy. The policies and procedures did not contain sufficient detail to alert registrants and supervisors as to the risks of leveraging or the indicators that might indicate that a client was using borrowed funds to invest. Further, the monitoring reports did not always contain information sufficient to allow a proper assessment of whether the strategy was suitable.

[95] In June 2015, Argosy sought to improve its practices with respect to this issue by adding a specific question to its NAAF to determine whether the client was using borrowed funds to invest. However, as with many remedial efforts undertaken by the Applicants, this measure is insufficient, in that it addresses the question at the time of account opening, but has no lasting value through the life of the account. This problem is compounded by the two-year lag referred to in paragraph [84] above.

iii. Keybase

[96] A range of account- and trade-related problems, similar to those described above in paragraph [86], existed at Keybase. This fact was confirmed by Keybase's CCO, who in her March 2015 report to the UDP and board of directors stated that she anticipated that the 2016 MFDA audit would "point out only minor items", such as a high percentage of outdated KYCs and accounts that were inconsistent with the client's stated risk tolerance and investment objectives.

[97] We do not agree that these are minor items, and we are troubled by the assertion that they are.

[98] Like Argosy, Keybase had a practice of updating client information only once every two years. For the reasons set out above, we consider this period to be inadequate.

[99] In addition, Staff found in its review that deferred service charge ("**DSC**") funds were purchased in Registered Retirement Income Funds and other systematic withdrawal plans, to seniors and others whose time horizons were shorter than the DSC term. This resulted in the clients incurring unnecessary additional costs. Keybase's processes to identify, monitor and resolve this issue were inadequate, and clients ended up absorbing related losses.

(c) *Training*

[100] The record before us with respect to training at the Applicant firms gives rise to two areas of concern:

a. the frequency and content of training of dealing representatives and Compliance staff; and

b. records, or the absence of records, to show completed training.

i. Anti-money laundering and privacy training

[101] In her annual report for the period June 1, 2014, to March 31, 2015, Keybase's CCO expressed serious concern about the lack of annual anti-money laundering ("**AML**") training, and training with respect to privacy, both for dealing representatives and for other staff (including

Compliance staff). She noted that the firm had not conducted AML training since 2008 and that it had never conducted privacy training.

[102] These two topics are areas of significant regulatory risk for any firm handling funds and in possession of private information about individual clients. While the Commission and the SROs are not the primary regulators with respect to AML and privacy, we consider it to be a significant failure by the firm to manage its risk when it demonstrates such a lack of attention to this responsibility.

[103] The seriousness of this lapse is aggravated by the fact that in 2008, IIROC staff found Argosy's AML training to be deficient. In response to this finding, Argosy undertook to deliver the necessary training at a 2009 conference. However, it failed to do so. The independent monitor appointed pursuant to the 2008 IIROC Decision noted this failure in February 2010. The monitor's follow-up report recorded that the training had been completed. That Keybase failed to conduct AML training despite the issue being front and centre at Argosy is particularly troubling, given that Mr. Sukhraj was the UDP, CEO and sole director of both firms.

ii. Other training - Argosy

[104] In its 2015 review, IIROC staff noted that there was no record that Argosy's registrants and supervisors received ongoing training concerning advertising and marketing. In response, Argosy advised that the updated training materials would be available in the last quarter of 2015. The training module was computer-based and testing was to be done immediately. Mr. Sequeira testified that he has no evidence as to whether this testing occurred.

iii. Other training – Keybase

[105] The OSC Staff Review noted deficiencies with respect to the training that Compliance staff would receive regarding back office systems and regarding how to identify, investigate and resolve identified issues. It also noted that the training material had not been updated in ten years and therefore did not reflect current business practices.

iv. Records of attendance

[106] In numerous reviews, IIROC staff reported that Argosy was unable to produce records to demonstrate that employees required to attend various training sessions had in fact attended those sessions. In cross-examining Mr. Sequeira and in oral submissions, counsel for Argosy expressed what in our view are two fundamental misunderstandings about the importance of such records.

[107] First, Mr. Sequeira described the deficiency as being unresolved. This state of affairs continued through several reviews. In cross-examination, Mr. Sequeira refused counsel's repeated invitation to describe the deficiency as "significant", in the sense that term is used by IIROC. Mr. Sequeira testified that it "was significant only insofar as it had transpired for a number of years uncorrected." We accept Mr. Sequeira's characterization. In our view, counsel's line of questioning failed to

recognize that a one-time deficiency that may not be significant in and of itself may well become part of a recurring pattern that is itself significant.

[108] Second, counsel attempted, through cross-examination and oral submissions, to dismiss the importance of records that would show the content of training and that would provide some evidence of who had completed the training. Counsel described this obligation as making the representatives "sign an attendance sheet like they're in grade 4 and it's an after school class and they have to show they are actually being there", and akin to teachers awarding "gold stars" for attendance. We categorically reject these suggestions. Taking attendance is a simple matter that helps the firm itself determine whether individuals have completed mandatory training, and helps the firm's regulators assess compliance with these obligations.

[109] While perfection in keeping records of attendance and of the content of training cannot reasonably be expected, Argosy fell well short of a registered firm's obligation in this regard.

(d) *Prudent business practices – Keybase*

i. Going concern note

[110] In 2015, the MFDA placed Keybase in discretionary early warning status because of a going concern note contained in Keybase's December 2014 financial statements. The note indicated that there was doubt about Keybase's ability to continue as a going concern due to a $1.8 million judgment against the firm in Nova Scotia, as well as 47 claims, as yet unresolved, that alleged unsuitable use of leverage in client accounts.

[111] Keybase appealed the Nova Scotia judgment but settled the claim for approximately $700,000 while the appeal was pending.

[112] In April 2015, Mr. Sukhraj advised the MFDA that despite the discretionary early warning status and the going concern note, he would not inject additional capital, because doing so would negatively affect ongoing settlement discussions with those Keybase clients who were asserting claims.

[113] It was not alleged that Keybase had a capital deficiency at the time of the hearing. Keybase asked the MFDA to remove it from early warning status in light of the Nova Scotia settlement. While MFDA staff acknowledged that the $1.1 million difference between the judgment and the settlement amount was a legitimate addition to available capital, in their view that amount was insufficient to justify the removal of the going concern note. MFDA staff therefore declined the request and pressed Keybase to inject actual new money in the amount of $1.5 million into the firm to address the going concern note.

[114] In the view of MFDA staff, the absence of any sources within the firm from which this amount could be added to the provision for claims necessitated the requested injection of new capital. The going concern note and the remaining claims based on allegations of excessive leverage, in conjunction with our other findings, demonstrate to us that Keybase has not managed and is not currently managing the risks associated with its

business in accordance with prudent business practices as is required by section 11.1 of NI31-103.

ii. Errors and omissions insurance

[115] Both at the hearing before the Director and at the hearing before us, there was some discussion about errors and omissions insurance held by Keybase and its representatives, and the extent to which, if any, that insurance might serve to alleviate concerns regarding the claims against Keybase.

[116] Irene Cheung, Manager of Financial Compliance at the MFDA, testified at the hearing before us. She explained that the availability of insurance does not eliminate or reduce a liability arising from a claim until the claim is actually paid by the insurer.

[117] This is a sound approach, given the uncertainty as to whether a particular claim would in fact be covered by insurance, and if so, to what extent. In our view, therefore, since the existence of errors and omissions insurance would not affect the presence of a going concern note to the financial statements, that insurance does not detract from our conclusion that Keybase has not managed its risks in accordance with prudent business practices.

(e) *Acquisition of WH Stuart by Keybase*

[118] In May 2013, Keybase acquired substantially all of the assets of W.H. Stuart Mutuals Ltd. ("**WH Stuart**"). There was little evidence in the record as to the details of this acquisition. At the hearing before the Director, counsel for the Applicants alluded to a "hornet's nest" of problems associated with that firm and argued that a number of the problems found at Keybase were legacy issues from WH Stuart.

[119] In our view, a firm that seeks to acquire another must first have conducted sufficient due diligence, and must have sufficient systems and resources in place to effect the acquisition as seamlessly as possible. A failure to do so is a breach of the obligation to follow prudent business practices. Inevitably, following an acquisition, not everything will proceed perfectly. However, significant and enduring problems are strongly indicative of improper diligence and planning prior to the closing of the transaction.

[120] It is clear that Keybase was insufficiently prepared for the acquisition of WH Stuart, and that Keybase did not act quickly enough to rectify problems that were encountered. For example, WH Stuart's back office system did not have adequate controls. Specifically, it had no controls to prevent trades for clients with outdated KYC forms, there was no ability to monitor concentration of securities, and many tasks were performed manually. Staff noted this as a significant deficiency in the OSC Staff Review, and we agree with that characterization. It took fifteen months before clients were transitioned to Keybase's own system.

(f) *Supervision of branch offices*

[121] Section 11.1 of NI31-103 requires that a registered firm establish a system of controls and supervision sufficient to "provide reasonable

assurance that the firm and each individual acting on its behalf complies with securities legislation". In the case of a registered firm that has branch offices, this supervisory obligation necessarily extends to those branch offices, which by their very existence make supervision from head office more difficult. The increased difficulty does not relieve the firm of its obligation.

i. Argosy

[122] Argosy has a long history of inadequate supervision of branch offices, as reflected in the 2008 IIROC Decision, which notes recurring deficiencies going back to 2003.

[123] The OSC Staff Review resulted in similar findings. Specifically, Argosy did not receive adequate responses to deficiencies identified in the Ajax and Ottawa branches and did not maintain a tracking mechanism to ensure that each deficiency was resolved adequately and in a timely manner. The branch audit program itself was deficient regarding interviews of dealing representatives and reviews of client files.

[124] In 2015, IIROC staff found that supervisors at two branches had not taken adequate steps to ensure that tasks delegated from each branch to head office were being properly completed. IIROC staff noted that similar concerns had been identified in 2005, 2010, 2012 and 2014.

ii. Keybase

[125] In the OSC Staff Review, Staff found that Keybase's sub-branch audit program was deficient in numerous respects. The program did not:

a. adequately test representatives' understanding of product and suitability obligations;

b. document the client file selection review process;

c. include input from the audit planning process; or

d. verify that dealing representative notes were retained.

[126] Staff had expressed its concern that due in part to the acquisition of WH Stuart, sub-branch audits were not being performed as frequently as was called for by the audit program. In response, Keybase proposed to use dealing representatives who had compliance experience to supplement Keybase's Compliance staff. We share the concern expressed by Staff that doing so would compromise the independence of the reviews.

[127] Moreover, by the time of the OSC Staff Review, Keybase had not assessed the risk associated with each WH Stuart sub-branch. Keybase was therefore not in a position to determine which branches were higher risk and should consequently attract greater scrutiny.

(g) *Outside holdings*

[128] IIROC's Rule 200.2(e) addresses situations where a member firm's client holds a position outside of the member firm. This rule was relevant for Argosy, some of whose clients held mutual funds directly with the mutual fund company instead of on Argosy's books, but where Argosy received ongoing compensation in respect of those positions.

[129] While Argosy is not alone in having clients who have "outside holdings" (as that term is used in the IIROC rule), and while Argosy had taken steps to reduce its clients' outside holdings, IIROC staff continued to have concerns about Argosy's management of these situations. Specifically, IIROC staff noted that Argosy continuously failed to meet its obligation to:

a. supervise the outside holdings;

b. ensure that the clients received trade confirmations and monthly statements that reflected the outside holdings; and

c. warn clients that outside holdings were not covered by the Canadian Investor Protection Fund.

[130] Argosy notes that it inherited all of the accounts with outside holdings from another firm. That fact does not relieve Argosy of the obligations set out above. Argosy should have had a plan to deal with these accounts from the time that they were taken over.

[131] We are particularly concerned about Argosy's failure to supervise these accounts. As Mr. Sequeira testified, Argosy was required to conduct a monthly review of the accounts as part of its suitability analysis, but this was not being done. Indeed, Argosy's ability to supervise was severely hampered because the accounts were not reflected in the firm's books and records.

[132] Argosy's failure to maintain appropriate records relating to outside holdings appears to us to be a failure to comply with section 11.5 of NI31-103, which requires a registered firm to maintain records to accurately record client transactions. Further, the failure to deliver trade confirmations and monthly statements to clients who held positions outside the firm appears to be a failure to comply with IIROC rule 200.2(e) and therefore of sections 14.12 and 14.14 of NI31-103.

(h) *Outside business activities*

[133] Section 13.4 of NI31-103 requires registered firms to take reasonable steps to identify and manage material conflicts of interest. In order to comply with this obligation, a firm must be aware of the outside business activities of its registered employees and must keep that information current. In some cases, firms may be required to prohibit individuals from engaging in certain outside business activities. In other cases, a firm may have to disclose the outside business activity to its clients.

[134] Argosy has a long history of failing to meet its obligations in this regard. In 2015, IIROC staff found that Argosy had failed to have adequate policies and procedures regarding the assessment and management of registrants' outside business activities. This finding echoed similar findings by IIROC staff from 2005, 2010, 2011 and 2012.

[135] As Mr. Purcell testified, Argosy did record some information about outside business activities. However, those records would not be sufficient to enable one to determine whether a real assessment of potential conflict of interest had been carried out, as opposed to a mere recording of the activity.

(i) *Out-of-jurisdiction accounts*

[136] When an Ontario-registered firm chooses to accept a client who is resident in a jurisdiction outside Ontario and in which the firm is not registered, that firm must ensure that it fully complies with the regulatory requirements that apply in the client's jurisdiction. In some cases, registration of the firm may be required in the other jurisdiction. A failure to comply with regulatory requirements applicable in another jurisdiction would, in our view, constitute a breach of an Ontario registrant's obligations to adopt prudent business practices and to treat its out-of-jurisdiction clients fairly.

[137] In its 2015 examination of Argosy, IIROC staff found, as it had on five previous examinations between 2005 and 2014, that Argosy had inadequate records of any due diligence it had performed regarding its registration obligations in jurisdictions where it was not registered but where its clients resided.

[138] In its response to IIROC, Argosy indicated that it would assess this matter on a case-by-case basis and that it had amended its Compliance Manual to require approval for a change in address of a customer to a new jurisdiction.

[139] Argosy also proposed to rely on Compliance resources provided by its clearing firm to determine its registration obligations. This kind of reliance is not necessarily improper. However, any firm that chooses to rely on outside resources must first, and on an ongoing basis, conduct a proper assessment of whether the resources being relied upon are themselves adequate. We saw no evidence of any such assessment by Argosy.

[140] As to measures that Argosy itself promised to take, it is not clear to us that those measures were indeed implemented, and if so, whether they were effective.

(j) *Marketing and advertising*

[141] IIROC Dealer Member Rule 29.7 prescribes a number of standards and prohibitions relating to advertising and sales literature. In examinations of Argosy going back to 2005, and continuing through to 2014, IIROC staff repeatedly observed significant deficiencies in Argosy's practices and controls in this regard. Findings included lack of necessary approvals, undated materials, missing disclosures, improper use of designations, and failure to maintain final versions.

[142] Commission Staff reported significant problems in the OSC Staff Review. These included inaccurate and misleading marketing materials, inappropriate use of benchmarks, and marketing of outside business activities.

[143] Inadequate oversight of, and management response to, these deficiencies reflect themes that recur through many of the issues that arise in this case. As noted by Staff, Argosy's Compliance staff purported to carry out a quarterly review of marketing materials, but this review failed to identify any of the problems cited above. In response to all of these concerns, Argosy asserts that the Compliance Manual has been updated and that

necessary issues were the subject of training conducted in early 2015. While this may be so, we saw no evidence that these measures have been effective.

(k) *Compliance queries*

[144] The record before us leads us to the conclusion that there has been a chronic failure at the Applicants to discharge the obligation to maintain robust processes for Compliance oversight of sales activities.

[145] A proper compliance system includes systematic and appropriate generation of queries, with follow-up and remedial actions as necessary. Records must be generated and available so that supervisors, management, Compliance and regulators can determine whether existing issues are being addressed adequately and emerging issues are being identified and are being responded to appropriately.

[146] In 2015, IIROC staff found significant deficiencies in Argosy's follow-up of inquiries sent to individual registrants regarding suitability and other matters. This concern echoed findings from examinations in 2010, 2012, and 2014. Argosy's own CCO stated, in a formal report, that dealing representatives often failed to respond to inquiries from Compliance.

[147] Argosy responded to this concern in 2015 by updating its policies and procedures, and by incorporating those into its 2015 Compliance Manual. Given the history, and in the absence of any evidence that the policy changes have been effective, we have little confidence that Argosy's identification and management of Compliance inquiries meets the necessary standard.

[148] We can only imagine the frustration of Argosy's CCO, who found it necessary to incorporate into a formal report (which, as he knew, would be seen by IIROC) his concern that representatives often failed to respond to inquiries. It is apparent that those representatives knew there would be no consequences for their failure to respond. Responsibility for this state of affairs lies squarely at the feet of Mr. Sukhraj, who would have been the only person with the power to effect the changes required to ensure that queries were properly addressed, whether those changes would come in the form of additional resources, disciplinary consequences for the representatives involved, or otherwise.

(l) *Policies and procedures – updating and testing*

[149] The enactment of policies and procedures by a registrant firm is only a first step toward the establishment and maintenance of a satisfactory compliance and supervisory system. Such policies and procedures are of no benefit unless they are implemented, a step that itself requires a number of actions (*e.g.*, communication, training, oversight).

[150] Further, a registered firm must conduct monitoring and testing of the firm's activities in order to assess whether the policies and procedures are being implemented properly. To the extent that the monitoring and testing reveals deficiencies, these deficiencies must be rectified promptly, whether through amendment of the policies and procedures, further communication and/or training with respect to the policies and procedures,

increased management supervision of firm activity, employee discipline, or other means.

[151] Argosy's response to IIROC's 2015 audit report asserts that various significant concerns had been addressed, in part, by changes to Argosy's Compliance Manual, including in the following areas:

a. supervision of co-op marketing;

b. supervision in advertising and marketing, generally, including social media;

c. supervision and operation of outside holdings;

d. outside business activities;

e. implementation of a NAAF recording a client's risk tolerance and investment objectives, among other information; and

f. registration in jurisdictions where the firm conducts business.

[152] Argosy's response did not describe any meaningful Compliance department testing that had taken place or that was taking place in respect of these concerns or others. In our view, therefore, the response does not demonstrate sufficient remedial measures.

(m) *Compliance resources*

i. Introduction

[153] The question of whether the Applicants had sufficient resources devoted to the Compliance function was on the minds of both Applicants' CCOs and was a matter of concern for staff of the SROs and of the Commission.

ii. Measuring Compliance resources

[154] The assessment of the adequacy of Compliance resources is not a precise science. In the OSC Staff Review, Staff concluded that the inadequacy of Compliance resources at both Applicants was a problem that contributed to the significant deficiencies found at both firms. In our view, a high number of deficiencies, particularly significant and recurring ones of the kind observed at the Applicants, is often an indicator of inadequate Compliance resources, among other causes.

[155] In response to Staff's conclusion, Mr. Sukhraj stated in his July 2015 affidavit that 40% of payroll costs for Argosy and Keybase were dedicated to the Compliance function. In his view, that ratio is "on the high side relative to other industry members".

[156] We had no evidence before us as to whether that ratio is indeed higher than average. In any event, however, we reject the implication that a ratio that is higher than average demonstrates greater-than-adequate Compliance resources, for a number of reasons:

a. by itself, any arithmetic assessment of Compliance payroll costs as a percentage of total payroll costs tells an incomplete story, in that many factors unrelated to the adequacy of Compliance resources are likely to contribute to a higher or lower ratio – specifically, such factors often include the business mix of a firm (*e.g.*, mutual funds,

other securities), the geographic distribution of a firm's business and employees, the basis of employees' compensation (*e.g.*, base salary vs. commission for salespersons or advisors), the compensation of senior non-producing business leaders, and many others;

b. the ratio can be significantly affected by the extent to which employees who are nominally part of the Compliance department are indeed devoted to Compliance-related tasks, as opposed to other functions;

c. the same problems would apply to any other arithmetic assessment of the adequacy of resources (*e.g.*, ratio of Compliance employees to total employees, ratio of Compliance payroll to firm revenues); and

d. inadequacies in a firm's compliance system, *e.g.*, with respect to training, monitoring, testing, or policies and procedures, inevitably lead to a greater number of deficiencies in the first place, with the result that the existing Compliance resources must spend more time addressing client complaints, following up internally on queries and deficiencies, and dealing with regulators, as opposed to performing the tasks required of them in the first place.

iii. History of concerns - Argosy

[157] The record reveals a pattern of concerns about the inadequacy of Compliance resources, and of resistance or neglect on the part of Mr. Sukhraj.

[158] The consultant imposed as a result of the 2008 IIROC Decision found that Argosy did not have sufficient strength in its Compliance function, and therefore recommended that Argosy undertake a search for a qualified CCO. The consultant noted that Mr. Sukhraj disagreed with this recommendation.

[159] In his 2012 annual report, Argosy's CCO wrote:

> The Compliance department continues to face serious challenges due to the limited qualified staff performing this function, while being faced with a higher number of tasks. … The Compliance function continues to be performed by the CCO with only one person licensed and no available alternates… It is imperative to have at least one additional compliance officer in order to ease the pressure on the department and to fulfill the minimum regulatory requirements for backups.

[160] In the OSC Staff Review, Staff found that Argosy's Compliance staff were not issuing branch audit reports in a timely manner. Further, Staff found no evidence of any queries having been made as a result of alerts generated by monthly commission reports.

[161] Argosy added one person to its Compliance department following the conclusion of the OSC Staff Review but before the issuance of the report resulting from that review.

[162] In his annual report for the period April 1, 2014, to March 31, 2015, issued on April 15, 2015, immediately following delivery of the OSC Staff Review report, Argosy's CCO stated: "The Compliance Department is confident that the existing resources are able to support existing registrants and the anticipated business growth in the future." He made similar statements in his affidavit submitted for the hearing before the Director.

[163] It is difficult to give any weight to these assertions. Argosy's CCO states in his January 5, 2016, affidavit filed for the hearing before us that "[i]n the 5.5 years that I've been the CCO at Argosy I do not recall any instance where I felt that I could not approach the UDP with a compliance concern or where I felt that we did not have a satisfactory discussion about any issue raised." We find it impossible to reconcile the urgent plea referred to in paragraph [159] above with the statement that "we [always had] a satisfactory discussion about any issue raised."

iv. History of concerns – Keybase

[164] In her 2012 annual report, Keybase's CCO wrote:

> Because of the conversion of branches into sub-branches of Head Office, Head Office compliance workload and responsibilities have increased tremendously… Additional resources and support have to be provided to Head Office Compliance Team in order to ensure [that] the effectiveness of compliance supervision will be affected because of restructure. [sic]

[165] She repeated her plea in her 2013 report: "…workload responsibilities have increased a lot…Additional resources and support have to be provided to Head Office Compliance Team in order to ensure the effectiveness of compliance supervision."

[166] Keybase hired nine additional Compliance staff between June 2013 and July 2015. However, we take little comfort from this, for a number of reasons:

a. Keybase acquired WH Stuart in June 2013, so additional Compliance staff would have been necessary in any event;

b. the workload for the additional Compliance staff must have been significantly greater than normal, given the "hornet's nest" of problems at WH Stuart, as referred to in paragraph [118] above;

c. Compliance staff devoted some unknown portion of their time to litigation support, which is not a Compliance function; and

d. it is unclear how many Compliance staff quit or were terminated, which leaves us unable to know whether the net number of additional staff was nine or some smaller number.

[167] Following the conclusion of the OSC Staff Review, and when the hearing before the Director was looming, Keybase's CCO, like her Argosy counterpart, stated that she was "satisfied that Keybase's current compliance resources and staffing levels is sufficient." However, there was little to explain how she reached this conclusion, which at least on its surface was inconsistent with the recurring and unremediated deficiencies.

v. Conclusion

[168] We are troubled by the fact that the CCOs had to insist that additional Compliance resources were required. Our concern is heightened, as it was with respect to the inadequate follow-up of Compliance queries referred to in paragraph [148] above, by the fact that these pleas had to be made by way of the CCOs' annual reports.

[169] We take little comfort from the unsubstantiated assertions, made only once Staff had recommended that the Applicants be required to retain a consultant, that the resources were sufficient. We do not consider ourselves to be in a position to properly assess the adequacy of resources as at the time of the hearing before us. In our view, this is a task that requires analysis by an independent consultant.

(n) *Role of the Ultimate Designated Person*

[170] Section 11.2 of NI31-103 requires a registered firm to designate a registered individual as "ultimate designated person". In the case of firms such as the Applicants, the UDP must be either the chief executive officer or the sole proprietor. Section 5.1 of NI31-103 requires that a UDP "supervise the activities of the firm that are directed towards ensuring compliance with securities legislation by the firm and each individual acting on the firm's behalf", and "promote compliance by the firm, and individuals acting on its behalf, with securities legislation."

[171] The role of UDP is critically important. The UDP bears ultimate responsibility for establishing, maintaining and promoting a culture of compliance and ethical behaviour within the firm.[35] This responsibility can and must be discharged in a number of ways, including by ensuring an appropriate "tone from the top", a tone that the UDP must also satisfy himself/herself is being promulgated throughout the firm by other members of management. This latter obligation is often referred to as "tone from the middle", and is a necessary complement to the tone from the top.

[172] Each of these messages must be communicated frequently and consistently, using different media, and must be reinforced by actions (*e.g.*, decisions as to employee hiring, promotion, discipline and compensation; promotion of industry involvement and continuing education; avoidance and management of conflicts of interest; response to client complaints; co-operation with regulators and SROs).

[173] In its 2016 Priorities Letter, the Financial Industry Regulatory Authority ("**FINRA**") identifies culture as its first area of focus and reiterates many

[35] See, *e.g.*, *Re Northern Securities Inc.* (2014), 37 OSCB 8535 at para 168.

of the same principles set out above. FINRA defines culture as the "set of explicit and implicit norms, practices, and expected behaviours that influence how firm executives, supervisors and employees make and implement decisions in the course of conducting a firm's business." As FINRA notes, "firm culture has a profound influence on how a firm conducts its business and manages conflicts of interest." Two indicators FINRA will assess are if compliance is valued or simply tolerated and if managers are effective role models of appropriate firm culture.

[174] We consider FINRA's comments in this regard to be appropriate definitions of, statements of the importance of, and measures of, a culture of compliance and tone from the top.

[175] In our view, Mr. Sukhraj failed in numerous and material respects to meet the necessary standard in this regard. The record before us told a consistent story, over many years, of:

a. resisting urgent internal requests for necessary Compliance resources (see paragraphs [159], [164] and [168] above);

b. ignoring an urgent request for a proper risk-ranking system for products (see paragraph [85] above);

c. requiring Argosy clients to bear the loss associated with the unwinding of an unsuitable trade (see paragraph [89] above); and

d. apparent antipathy toward regulatory requirements and standards (*e.g.*, his characterization of MFDA standards as "onerous" and "constraining").

[176] The seriousness of Mr. Sukhraj's failure as UDP is compounded by the fact that he was not only the UDP of both firms, but also the firms' CEO and chair of the board of directors. Holders of both those positions bear responsibility for ensuring that the firm adopt and implement appropriate policies, procedures and practices, and for empowering and enabling the UDP to discharge his/her critical compliance-related obligations.

[177] With respect to Argosy, it appears to us that Mr. Sukhraj and the board of directors failed in their obligations:

a. prescribed by IIROC rule 38.1, to ensure that:

i. Argosy maintained a compliance and supervisory system that would, at a minimum, provide for the establishment and enforcement of appropriate policies and procedures designed to achieve compliance with applicable requirements; and

ii. Argosy had sufficient personnel and other resources to carry out its obligations; and

b. prescribed by IIROC rule 38.8, to review the CCO's annual report and ensure that appropriate action is taken to rectify any compliance deficiencies identified in that report.

[178] It also appears to us that Keybase, and by extension Mr. Sukhraj and the board of directors, failed in the obligation, prescribed by MFDA Rule 2.5.1, to establish and implement "policies and procedures to ensure the

handling of [the firm's] business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation."

(o) *Conclusion*

[179] As noted above in paragraph [48], the Director (and by extension the Commission) may impose terms and conditions upon a registration if "it appears" that the registrant has failed to comply with Ontario securities law. This is not an enforcement proceeding, and we are not necessarily being asked to conclude, on a balance of probabilities, that the Applicants have contravened Ontario securities law. It is sufficient for us to conclude, as we do, that it appears that there has been a failure to comply with Ontario securities law.

[180] We have no difficulty reaching that conclusion in this case. For the reasons set out above, it appears to us that the Applicants:

a. failed to comply with various applicable provisions of NI31-103;

b. failed to comply with various provisions of NI31-103 from which they would have been exempted had they complied with the applicable SRO rule, except that they did not so comply (see paragraph [53] above); and

c. failed substantially to comply with applicable SRO rules, thereby contravening the requirement in subsection 2.1(1) of NI31-505 that the firms deal with their clients fairly, honestly and in good faith (see paragraph [53] above).

3. To what extent if at all should we engage in an assessment of the current state of compliance at the Applicant firms?

[181] The Applicants urged us to take into account all of the remedial measures that have been implemented to date. As reviewed above, affidavits from Mr. Sukhraj and from both firms' CCOs describe these measures and give assurances that all is well. In written submissions, the Applicants assert that "the Commission must consider the reality as of the date of the hearing and review".

[182] We have considered all the evidence presented to us, including that which demonstrates measures taken in the weeks and months leading up to the hearing. However, in light of the wide-ranging findings we have made above, and our serious concerns about the state of compliance at Argosy and Keybase, we cannot rely upon promises and assurances. We are not in a position to reach a certain conclusion as to the present state of affairs, in the absence of any evidence that the remedial measures identified have been fully and effectively implemented.

[183] As noted above in paragraphs [48] to [50], section 28 of the Act, which empowers the Director (and by extension the Commission) to impose terms and conditions upon a registration, does not require a current assessment. Instead, our task is to determine whether it appears that the Applicants have, in the past, failed to comply with Ontario securities law. For the reasons set out above, we have no difficulty coming to that conclusion in this case.

4. Is it proper for the Commission to impose terms and conditions upon the registration of the Applicants, as requested by Staff?

(a) *Should the Applicants be required to retain a consultant?*

[184] The record before us does not allow us to conclude that Mr. Sukhraj is willing or able to take the necessary steps to ensure that the Applicants will be managed in a manner that complies with regulatory requirements and expectations. He has failed to demonstrate an understanding of the importance of the regulatory requirements that exist for the protection of investors, and we have no confidence in his capacity for determining, on his own, what resources, policies, procedures, and other measures are required.

[185] In our view, only an independent consultant can properly assess the state of compliance at Argosy and Keybase and determine what governance and compliance improvements are necessary. Our concerns are heightened by the firms' ambitious growth strategy.

(b) *Scope of the consultant's mandate*

[186] As is evident from the record before us and from the reasons set out above, the problems at both Argosy and Keybase are wide-spread. The apparent failure to comply with Ontario securities law described above likely stems in significant part from systemic weaknesses in firm governance, oversight by Mr. Sukhraj, and Compliance resources.

[187] While meaningful improvements in these areas would undoubtedly result in fewer specific deficiencies, we have no reason to be confident that the Applicants would, on their own, undertake a diligent, objective and comprehensive assessment of the existing compliance system and determination of the necessary remedial measures.

[188] We think it important that the consultant consider firm governance, including the composition of the boards of directors, and the independence of those directors. Although there is no regulatory requirement that a registered firm have independent directors, it is reasonable to conclude that had the Applicants' boards included independent directors, more attention would have been paid to regulatory obligations, and many of the regulatory difficulties that Mr. Sukhraj and the firms have encountered might have been avoided.

[189] Further, the presence of one or more independent directors better enables a firm's CCO to raise significant concerns, and to see that those concerns are properly addressed.

[190] In our view, therefore, the consultant must examine and consider systemic, structural and governance issues without limitation. The terms and conditions imposed by the Director, and substantially replicated in our decision and order, give the consultant the necessary mandate.

(c) *Follow-up report*

[191] As we have stated above, implementing an improvement to the compliance system or to a compliance process is only the first step.

Proper oversight requires testing the effectiveness of the improvement over a period of time.

[192] In addition, it is essential to assess whether improvements made are sustainable. Improvements will likely have consequences that add to the Compliance burden, so only time will tell if further changes need to be made.

[193] It is therefore necessary, in our view, that the consultant have an opportunity to assess the effectiveness of the recommended changes.

VIII. CONCLUSION

[194] For the reasons set out above, we consider it proper to impose upon the registrations of Argosy and Keybase the terms and conditions set out in the order that we issued at the conclusion of the hearing. Those terms and conditions are appended to these reasons as Schedule 'A' (in respect of Argosy) and Schedule 'B' (in respect of Keybase).

[195] We urge Mr. Sukhraj to:

a. think carefully about the regulatory history of the Applicants;

b. accept that he has chosen to engage in business in an industry that is highly regulated for good reason, given that investors' life savings are at stake;

c. appreciate that many registered firms manage to operate profitably and successfully while being in substantial compliance with regulatory requirements; and

d. be open to the change of mindset that may be required in order for Argosy and Keybase to operate as successful and compliant registrants.

Dated at Toronto this 20th day of April, 2016.

"Timothy Moseley"

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Timothy Moseley

"D. Grant Vingoe"

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D. Grant Vingoe

"Deborah Leckman"

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Deborah Leckman

SCHEDULE 'A'

Terms and conditions for the registration of Argosy Securities Inc. ("Argosy")

1. By no later than February 19, 2016, Argosy shall retain, at its own expense, the services of an independent consultant (the "Consultant") that is approved by the OSC Manager assigned by the Director from time to time (the "OSC Manager"), to:

    a. prepare and assist Argosy in implementing a plan (the "Plan") to strengthen Argosy's "compliance system" within the meaning of section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, including the expected dates of completion and person(s) responsible for the implementation. In the Plan, the Consultant will examine Argosy's internal policies, practices and procedures, including but not limited to, in relation to:

        i. resources allocated to compliance, including whether appropriate staffing levels are maintained and whether individuals have the education, training and experience that a reasonable person would consider necessary to perform the activity competently; and

        ii. prudent business practices, including developing an enhanced corporate governance structure at Argosy, and at Argosy's affiliate Keybase Financial Group Inc., sufficient to effectively address ongoing compliance with securities legislation; and

    b. review Argosy's progress with respect to implementation of the Plan; and,

    c. submit written progress reports ("Progress Reports") to the OSC Manager and to the Investment Industry Regulatory Organization of Canada ("IIROC") detailing Argosy's progress with respect to the implementation of the Plan and stating whether the specific recommendations included in the Plan have been implemented and, if not, the expected date of completion and person(s) responsible for the implementation.

2. The Consultant shall provide the Plan to the OSC Manager for approval no later than March 21, 2016.

3. The Plan and the Progress Reports must be reviewed and approved by Argosy's ultimate designated person ("UDP") and chief compliance officer ("CCO"), and signed by the UDP and the CCO as evidence of their review and approval.

4. The Consultant shall submit Progress Reports to the OSC Manager and to IIROC every thirty days following approval of the Plan by the OSC Manager until the Plan has been fully implemented.

5. Argosy understands and acknowledges that staff of the Commission expects that substantial progress towards the implementation of the Plan must be demonstrated in each of the Progress Reports.

6. Upon the full implementation of the Plan, the Consultant shall submit an attestation letter for approval by the OSC Manager verifying that the Consultant's recommendations have been implemented and tested, and are working effectively.

7. Argosy shall immediately submit to the Commission a direction from Argosy giving unrestricted permission to staff of the Commission and of IIROC to communicate with the Consultant regarding Argosy's progress with respect to the implementation of the Plan or any of its specific recommendations.

8. One year after the full implementation of the Plan, the Consultant shall return, at Argosy's expense, to complete a review of Argosy's compliance system. The Consultant shall submit a report for the OSC Manager's approval that the Consultant's recommendations continue to be implemented, that the compliance system is working effectively, and shall note any deficiencies.

9. These terms and conditions shall remain in place until they are removed by Staff. Staff will not recommend that the terms and conditions be removed until IIROC confirms that Argosy has addressed its internal policies, practices and procedures in respect of trade review and complaint handling to the satisfaction of IIROC, including in respect of complaints referred to the Ombudsman for Banking Services and Investments.

Schedule 'B'

Terms and conditions for the registration of Keybase Financial Group Inc.

1. By no later than February 19, 2016, Keybase shall retain, at its own expense, the services of an independent consultant (the "Consultant") that is approved by the OSC Manager assigned by the Director from time to time (the "OSC Manager"), to:

    a. prepare and assist Keybase in implementing a plan (the "Plan") to strengthen Keybase's "compliance system" within the meaning of Section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, including the expected dates of completion and person(s) responsible for the implementation. In the Plan, the Consultant will examine Keybase's internal policies, practices and procedures, including but not limited to, in relation to:

        i. resources allocated to compliance, including whether appropriate staffing levels are maintained and whether individuals have the education, training and experience that a reasonable person would consider necessary to perform the activity competently; and

        ii. prudent business practices, including developing an enhanced corporate governance structure at Keybase, and at Keybase's affiliate Argosy Securities Inc., sufficient to effectively address ongoing compliance with securities legislation;

    b. review Keybase's progress with respect to implementation of the Plan; and,

    c. submit written progress reports ("Progress Reports") to the OSC Manager and to the Mutual Fund Dealers Association of Canada (the "MFDA") detailing Keybase's progress with respect to the implementation of the Plan and stating whether the specific recommendations included in the Plan have been implemented and, if not, the expected date of completion and person(s) responsible for the implementation.

2. The Consultant shall provide the Plan to the OSC Manager for approval no later than March 21, 2016.

3. The Plan and the Progress Reports must be reviewed and approved by Keybase's ultimate designated person ("UDP") and chief compliance officer ("CCO"), and signed by the UDP and the CCO as evidence of their review and approval.

4. The Consultant shall submit Progress Reports to the OSC Manager and to the MFDA every thirty days following approval of the Plan by the OSC Manager until the Plan has been fully implemented.

5. Keybase understands and acknowledges that staff of the Commission expects that substantial progress towards the implementation of the Plan must be demonstrated in each of the Progress Reports.

6. Upon the full implementation of the Plan, the Consultant shall submit an attestation letter for approval by the OSC Manager verifying that the Consultant's recommendations have been implemented and tested, and are working effectively.

7. Keybase shall immediately submit to the Commission a direction from Keybase giving unrestricted permission to staff of the Commission and of the MFDA to communicate with the Consultant regarding Keybase's progress with respect to the implementation of the Plan or any of its specific recommendations.

8. One year after the full implementation of the Plan, the Consultant shall return, at Keybase's expense, to complete a review of Keybase's compliance system. The Consultant shall submit a report for the OSC Manager's approval confirming that the Consultant's recommendations continue to be implemented, that the compliance system is working effectively, and shall note any deficiencies.

9. These terms and conditions shall remain in place until they are removed by Staff. Staff will not recommend that the terms and conditions be removed until the MFDA confirms that Keybase has addressed its internal policies, practices and procedures in respect of trade review and complaint handling to the satisfaction of the MFDA, including in respect of complaints referred to the Ombudsman for Banking Services and Investments.