



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
CALDWELL INVESTMENT MANAGEMENT LTD.**

SETTLEMENT AGREEMENT

PART I - INTRODUCTION

1. Best execution is a critical tool in ensuring protection for investors and investor confidence in the market.
2. Advisers, such as Caldwell Investment Management Ltd. (“**CIM**”), are required to make reasonable efforts to achieve best execution of orders when acting for clients. Best execution is defined as the most advantageous execution terms reasonably available under the circumstances. In order to meet the reasonable efforts standard, an adviser must have, and abide by, policies and procedures that outline the process it has designed toward the objective of achieving best execution. The policies and procedures should describe how the adviser evaluates whether best execution was obtained and should be regularly and rigorously reviewed.
3. The selection of a dealer by an adviser should not be influenced by an adviser’s self-interest. When there is a conflict of interest, advisers should ensure that they are putting their clients’ interests ahead of their own interests when selecting a dealer.
4. Over an almost four year period, CIM failed in its obligation to provide best execution of equity and bond trades for its clients which resulted in overpayments by its clients.

5. CIM executed most of its client trades through Caldwell Securities Ltd., (“**CSL**”) its own related investment dealer, placing it in a clear conflict of interest.

6. Notwithstanding the conflict of interest, CIM had inadequate policies and procedures in place to ensure that it sought best execution for its clients. CIM did not have an adequate process in place to ensure that it was obtaining the most advantageous execution terms reasonably available under the circumstances for its clients. CIM also did not regularly evaluate whether best execution was obtained for its clients.

7. Moreover, CIM made misleading statements to clients of the Mutual Funds (defined below) by asserting that the brokerage fees paid by the Mutual Funds would be paid at the most favourable rates available to the Mutual Funds.

8. Even though CIM had an Independent Review Committee (the “**IRC**”) in place, the IRC was unable to properly monitor best execution practices because CIM provided inaccurate and insufficient information to the IRC.

PART II - JOINT SETTLEMENT RECOMMENDATION

9. Staff agrees to recommend settlement of the proceeding (the “**Proceeding**”) commenced by the Notice of Hearing dated June 14, 2018 issued by the Ontario Securities Commission (the “**Commission**”) against CIM in accordance with the terms and conditions set out in Part VI of this settlement agreement (the “**Settlement Agreement**”). Staff and CIM agree to the making of an order substantially in the form attached as Schedule “A” (the “**Order**”), based on the facts set out below.

10. For the purposes of the Proceeding and any other regulatory proceeding commenced by a Canadian securities regulatory authority only, CIM agrees with the facts as set out in Part III and the conclusions set out in Part IV of this Settlement Agreement.

PART III - AGREED FACTS

(a) Background

11. CIM was incorporated in Ontario in 1990 and became a registrant in 1997. During the period January 1, 2013 to November 15, 2016 (the “**Relevant Period**”), CIM was registered in Ontario and elsewhere as an adviser in the category of portfolio manager (“**PM**”) and as an investment fund manager (“**IFM**”).

12. CSL was incorporated in Ontario in 1980 and is registered in Ontario and elsewhere as a dealer in the category of investment dealer. CSL is also a member of the Investment Industry Regulatory Organization of Canada.

13. CIM and CSL are related parties as they are wholly-owned subsidiaries of Caldwell Financial Ltd (“**CFL**”). They operate inter-connected businesses in that CIM clients maintained parallel client relationships with CSL. CIM and CSL shared certain employees and their employees worked closely together and shared the same office.

14. During the Relevant Period, CIM acted as the IFM and PM for a number of Caldwell related mutual funds, including the Caldwell Balanced Fund (“**Balanced Fund**”) and the Caldwell Income Fund (“**Income Fund**”) (together, the “**Mutual Funds**”) and performed portfolio management services for clients under separately managed discretionary accounts (“**SMAs**”).

- (a) **The Mutual Funds:** CIM acted as the IFM and PM for the Mutual Funds. During the Relevant Period, the assets under management in the Mutual Funds ranged from about \$44 million to \$88 million.
- (b) **The SMAs:** CIM performed portfolio management services for SMA client accounts for a fee based on the assets under management. These accounts were held by individuals for the most part but some corporations were included. Around the start of the Relevant Period, CIM was managing SMAs holding approximately \$50 million. CIM currently has no SMAs and services CSL's SMA clients through a sub-advisory agreement.

15. All bond trades for the Mutual Funds and the majority of bond trades for the SMAs were executed through CSL. Most of these bond trades were in Canadian federal government and Ontario government bonds.

16. As executing broker, CSL received commissions on equity trades and charged spreads on bond trades.

17. CIM as a PM was able to engage other unaffiliated registered dealers for the purpose of carrying out both equity and bond trades.

(b) Conflict of Interest

18. The selection of a dealer should not be influenced by the adviser's self-interest. When there is a conflict of interest, advisers should ensure that they are putting their clients' interests ahead of their own interests.

19. CIM's Compliance Manuals (defined below) provided that "...it is likely that CIM would be considered to be a fiduciary in the context of its Clients due to the knowledge and power imbalance between the parties. CIM will conduct its affairs assuming it is in a fiduciary relationship with its Clients."

20. CIM's fiduciary duty to its clients (including the Mutual Funds) required CIM to place its clients' interests above its own interests when executing client trades.
21. CIM had a conflict of interest in directing client trades to CSL for execution given that CFL is the parent company of both CIM and CSL.
22. This close relationship resulted in CIM choosing CSL to execute most of CIM's client trades despite the fact that equity commission rates and bond spreads in many cases were more favourable at unaffiliated dealers.
23. By choosing CSL as a dealer for the majority of CIM's client trades, CIM conferred a benefit on CSL in the form of commissions on equity trades and spreads on bond trades (the "**CSL Spread**"). Sending more business to CSL ultimately conferred a benefit on CFL as the common owner of CIM and CSL.
24. For the Mutual Funds, CIM's conflict of interest in directing trades to CSL was reviewed by CIM's IRC. A standing instruction from the IRC required the brokerage arrangements with CSL to be at terms as favourable or more favourable than could be executed through another dealer. CIM certified semi-annually to the IRC that the standing instruction had been complied with.
25. As set out below, CIM provided both inaccurate and insufficient information to the IRC for it to properly carry out its responsibilities under National Instrument 81-107 *Independent Review Committee for Investment Funds* ("**NI 81-107**"), including the IRC's responsibility to review and assess the adequacy and effectiveness of the standing instructions to address CIM's brokerage arrangements with CSL.

(c) The Mutual Funds and the SMAs

26. During the Relevant Period, CIM managed approximately nine investment funds including the Mutual Funds. The Mutual Funds are reporting issuers and traded in both equities and bonds during the Relevant Period.

27. CIM also managed up to 200 SMAs during the Relevant Period.

28. CIM's assets under management ranged from approximately \$320 to \$495 million during the Relevant Period.

(d) CIM's Inadequate Policies and Procedures Regarding Best Execution

29. During the Relevant Period, CIM's policies and compliance procedures were set out in the CIM compliance manuals updated December, 2012 and June, 2015 (the "**Compliance Manuals**").

30. During the Relevant Period, CIM failed to meet its best execution obligation under section 4.2 of National Instrument 23-101 *Trading Rules* ("**NI 23-101**") because it failed to (i) set out in writing its policies, procedures and process for obtaining best execution, and (ii) have a best execution process in place that addressed dealer selection, trade evaluations, post-trade analyses or other reviews to evaluate whether CIM's best execution obligation was being met.

31. During Staff's investigation, CIM provided inconsistent explanations to Staff regarding CIM's policies and procedures for achieving best execution. This conflicting information was the result of CIM not having clear, documented and consistent policies and procedures to describe CIM's trading process, including how it was designed to reasonably achieve best execution.

(e) **CIM's Misleading Statements Regarding Best Execution to Mutual Fund Investors**

32. Notwithstanding the lack of policies and procedures regarding best execution, CIM made representations to Mutual Fund investors regarding its overall best execution obligation.

33. CIM made representations to Mutual Fund investors regarding its overall best execution obligation in annual information forms ("AIFs") to unitholders of the Mutual Funds:

The purchase and sale of portfolio securities will be arranged through registered brokers or dealers selected on the basis of [CIM's] assessment of the ability of the broker or dealer to execute transactions **promptly and on favourable terms, and the quality and value of services provided to the Fund ...**

Brokerage fees will be paid [to the broker selected] at the most favourable rates available to the Fund ...

[CIM] may also choose to execute a portion of the Funds' portfolio transactions with Caldwell Securities Ltd. (the Funds' principal distributor) **on terms as favourable or more favourable to the Funds as those executed through other brokers and dealers.** (Emphasis added)

34. For many Mutual Fund trades, brokerage fees were not paid at the most favourable commission rates available to the Mutual Funds.

35. Also, during the Relevant Period, the Income Fund executed all (and not a portion as stated in the AIFs) of its trades through CSL contrary to the representation in the AIFs to the Income Fund investors.

36. The statements made in the AIFs regarding brokerage fees being paid on the most favourable rates available to the Mutual Funds and the statement that the Income Fund may choose to execute a portion of its trades through CSL were misleading.

37. CIM was unable to provide Staff with documentary evidence that it: (i) systematically assessed the ability of brokers to execute transactions promptly and on favourable terms, and the

quality and value of services provided to the Mutual Funds, (ii) performed any post-trade quantitative analysis to determine that the terms at CSL were as favourable or more favourable to the Mutual Funds as those executed through other brokers and dealers, and (iii) determined in good faith on the basis of a pre-set methodology that the commissions charged were reasonable in relation to the value of such investment decision-making and/or order execution services viewed in terms of the particular transaction.

(f) CIM's Statements Regarding Best Execution to SMA Clients

38. CIM, as the Advisor, described its practice for achieving best execution in its Investment Management Agreement (“IMA”) signed by SMA clients. Section 3 of the IMA states:

“(a) Unless the Client specifies otherwise, **the Advisor shall have discretion to select brokers or dealers through which portfolio transactions may be executed on behalf of the Client. The Advisor intends to cause, and the Client hereby consents to, the execution of portfolio transactions on behalf of the Client through Caldwell Securities Ltd. (“CSL”), an affiliate of the Advisor.** Notwithstanding the selection by the Advisor of CSL for Account execution services, **the Advisor shall at all times ensure that the prices charged, and services provided, by CSL are competitive having regard to the relevant portfolio transaction factors described in 3(b) below;**

(b) When selecting brokers and dealers, including CSL, to execute portfolio transactions for the Account, the Advisor shall secure best execution and the most favourable net transaction price for the Account having regard to various relevant factors including the size and type of the transaction, the nature and character of the markets for the relevant security, the execution experience, integrity, financial responsibility and commission rates charged by available brokers and dealers, as well as supplemental services and information which may be provided by some brokers and dealers to the Advisor in relation to investment decision making services and order execution services.

For this purpose, the term “investment decision making services” means:

- (i) advice as to the value of securities and the advisability of effecting transaction in securities;**
- (ii) analyses and reports concerning securities, portfolio strategy or performance, issuers, industries or economic or political factors and trends;**
and

(iii) databases or software to the extent they are designed mainly to support the services described in sections 3(b)(i) and 3(b)(ii) above.

Also for this purpose, the term “order execution services” means order execution and services related directly to order execution such as clearance, settlement and custody whether the services are provided by a dealer directly or by a third party. Accordingly, **the objective of securing the most favourable net transaction price for the Account does not obligate the Advisor to obtain the lowest net price.** The Advisor is therefore authorized, to the extent permitted by applicable law, to commit the Account to pay a broker or dealer who furnishes investment decision making and/or order execution services to the Advisor a commission for effecting such transactions provided the Advisor determines in good faith that the excess commission is reasonable in relation to the value of such investment decision making and/or order execution services viewed in terms of the particular transaction or the Advisor’s overall responsibilities with respect to the discretionary accounts managed by it.” (Emphasis added)

39. SMA clients were also advised in the relationship disclosure document that when CIM used its discretion to trade securities in SMAs that CIM must seek to achieve the best possible result having regard to the price of the security, speed of execution, quality of execution and total transaction cost.

40. Contrary to the representations to SMA clients about seeking to achieve best execution and that CIM would determine in good faith that the excess commissions were reasonable, CIM was unable to provide Staff with documentary evidence that CIM: (i) ensured that the prices charged and services provided by CSL were competitive; (ii) took into account and evaluated various relevant factors in deciding to use CSL as a dealer; and/or (iii) systematically determined that commissions were reasonable in relation to the value of such investment decision making and/or order execution services viewed in terms of the particular transaction.

(g) Equity Trades in the Mutual Funds and SMAs

41. Companion Policy 23-101 (“**23-101CP**”) provides that one must consider a number of factors when considering whether the best execution obligation of an adviser has been met, including price, speed of execution, certainty of execution and the overall cost of the transaction.

The overall cost of the transaction includes all costs associated with executing a trade that are passed on to a client, and includes the commission fees charged by a dealer for execution of orders.

42. Further, 23-101CP states that the “reasonable efforts” test does not require achieving best execution for each and every order when acting for a client. 23-101CP states that in making reasonable efforts to achieve best execution, the adviser should consider a number of factors, including assessing a client’s portfolio objectives, selecting appropriate dealers and marketplaces and monitoring the results on an ongoing basis.

(i) *Balanced Fund*

43. During the Relevant Period, the Balanced Fund executed approximately 66% of its equity trades with unaffiliated dealers at an average commission rate of \$0.05 per share, which included compensation to the dealers for research provided to CIM. During the same period, approximately 34% of the Balanced Fund’s equity trades were executed through CSL at an average commission rate of \$0.16 per share, which did not include research provided to CIM.

44. A review of CIM’s trading blotter revealed instances where the same security was traded for the Balanced Fund at CSL and at unaffiliated dealers for significantly different commission rates. Some examples of varying commissions, in which the CSL commission rates were higher by multiples of 4.4 to 13.4 when compared to commission rates from unaffiliated dealers for similar trades, are set out below:

Security	Account	B/S	Date traded	Quantity	Dealer	Commission/ share	Multiple over unaffiliated dealer
Bank Nova Scotia	Balanced Fund	B	2014-01-30	4400	CIBC	\$0.05	

Security	Account	B/S	Date traded	Quantity	Dealer	Commission/ share	Multiple over unaffiliated dealer
Bank Nova Scotia	Balanced Fund	B	2014-01-31	2000	CSL	\$0.30	6x
Fedex Corp	Balanced Fund	S	2013-10-21	4500	Cowen	\$0.05	
Fedex Corp	Balanced Fund	S	2013-11-06	4500	CSL	\$0.67	13.4x
Timken Co	Balanced Fund	S	2013-01-25	1400	BMO	\$0.05	
Timken Co	Balanced Fund	S	2013-02-05	1000	CSL	\$0.55	11x
Verizon Comms	Balanced Fund	S	2015-09-22	10000	Cowen	\$0.05	
Verizon Comms	Balanced Fund	S	2015-10-09	19000	CSL	\$0.22	4.4x

45. During the Relevant Period, many of the Balanced Fund trades executed through CSL were not done at the most favourable rates available.

46. CIM was unable to provide Staff with any evidence that it took steps to satisfy itself that, despite the higher rates charged by CSL, the Balanced Fund trades executed through CSL, were done on terms as favourable or more favourable as trades done through unaffiliated dealers relative to the services provided.

(ii) *Income Fund*

47. During the Relevant Period, equity trades for the Income Fund were all executed through CSL at an average commission rate of \$0.17 per share. Some of the securities traded for the Income Fund through CSL were also traded for the Balanced Fund through unaffiliated dealers at

significantly lower commission rates.

48. During the Relevant Period, many Income Fund trades executed through CSL were not done at the most favourable commission rates available. Some comparative examples of the same security traded in the Income Fund through CSL, and in the Balanced Fund through unaffiliated dealers for significantly lower commission rates are set out below:

Security	Account	B/S	Date traded	Quantity	Dealer	Commission/ share	Multiple over unaffiliated dealer
Bank Nova Scotia	Balanced Fund	B	2013-12-16	4500	CIBC	\$0.05	
Bank Nova Scotia	Income Fund	S	2015-11-17	2000	CSL	\$0.30	6x
BCE	Balanced Fund	S	2013-01-09	8000	BMO	\$0.05	
BCE	Income Fund	S	2016-04-15	3000	CSL	\$0.30	6x
Onex	Balanced Fund	B	2013-06-04	3000	CIBC	\$0.05	
Onex	Income Fund	S	2016-02-26	2000	CSL	\$0.42	8x

49. CIM was unable to provide Staff with any evidence that it took steps to satisfy itself that, despite the higher rates charged by CSL as compared to unaffiliated dealers, the Income Fund equity trades executed through CSL were done on terms as favourable or more favourable as trades through unaffiliated dealers.

(iii) *SMA Clients*

50. CIM had three main categories of SMA clients paying commissions during the Relevant Period: (i) clients who paid 1.25% of gross dollar value of trades (“**1.25% SMAs**”); (ii) clients who paid 1.0% of gross dollar value of trades (“**1% SMAs**”); and (iii) clients who paid \$0.10 per share for Canadian shares and 1.25% of gross dollar value for USD trades (“**Insurance SMAs**”).

51. During the Relevant Period, CSL executed trades on behalf of CIM’s SMA clients. The average commission rates for SMA clients were: (i) \$0.22 per share for 1.25% SMAs; (ii) \$0.19 per share for 1% SMAs; and (iii) \$0.09 per share for Insurance SMAs.

52. CIM told clients that CIM would secure best execution “having regard to various relevant factors including ... commission rates charged by available brokers and dealers”. CIM was unable to provide Staff with any evidence that it took steps to secure best execution of equity trades for its SMA clients. CIM used CSL for trades for the SMA clients and did not check with other dealers to see if trades could be executed on more advantageous terms.

(h) Bond Trades in the Mutual Funds and SMAs

53. All bond trades for the Mutual Funds and the majority of bond trades for the SMA clients were executed through CSL. These bond trades were often in liquid Government of Canada and Ontario bonds.

54. During the Relevant Period, CSL did not carry any bonds in its inventory. CSL would buy or sell bonds for CIM by buying or selling the bonds from or to another market making investment dealer and adding a spread (i.e. the CSL Spread).

55. The average spread (i.e. the CSL Spread) charged by CSL during the Relevant Period was \$0.119 per \$100 of bonds.

56. Starting on August 1, 2016, CIM and one of its PMs reached an agreement by which the CSL Spread was reduced to \$0.01 per \$100 worth of bonds traded for the Mutual Funds (the “**One Penny Practice**”). The chart below sets out sample bond trades before and after the One Penny Practice.

Trade Date	Account Name	B/S	Quantity	Bond	Spread/ \$100	Total Spread	Net Amount	Before or After One Penny Practice
Mar 20, 2013	Balanced Fund	B	2,000,000	ON Prov 2.1% 08Sep18	\$0.175	\$3,500	\$2,017,856	Before
Nov 15, 2016	Balanced Fund	B	2,000,000	CDA Govt 1.5% 01Jun26	\$0.01	\$200	\$2,012,973	After
Apr 22, 2015	Balanced Fund	B	4,000,000	CDA Govt HSG Tr 1.2% 15Jun20	\$0.15	\$6,000	\$3,989,797	Before
Sept 7, 2016	Balanced Fund	B	4,000,000	CDA Govt 1.5% 01Jun23	\$0.01	\$400	\$4,212,932	After
Feb 26, 2013	Income Fund	S	4,375,000	ON Prov 2.85% 02Jun23	(\$0.23)	\$10,063	\$4,384,403	Before
Sept 27, 2016	Income Fund	S	4,300,000	CDA Govt 1.5% 01Jun26	(\$0.01)	\$430	\$4,533,157	After
Jun 3, 2014	Income Fund	B	5,000,000	ON Prov 2.1% 08Sep19	\$0.18	\$9,000	\$5,024,603	Before
Sept 7, 2016	Income Fund	B	5,000,000	CDA Govt 1.5% 01 Jun 23	\$0.01	\$500	\$5,266,164	After

57. During the Relevant Period, CIM did not: (i) do any regular analyses, including comparisons between CSL and unaffiliated dealers, to assess whether CIM was achieving best execution for the bond trades executed through CSL (ii) explain how or whether the interpositioning of CSL between unaffiliated dealers and CIM for client bond trades met CIM’s

best execution obligation; (iii) have any documents to explain how the CSL Spread was determined or why a particular CSL Spread was charged to a CIM client on a particular trade; and (iv) have any documents to explain the implementation of the One Penny Practice.

58. The CSL Spread was charged for most trades, including trades sourced by CIM directly with unaffiliated dealers. CIM did not perform any post-trade quantitative analysis on bond trading to determine whether the terms at CSL were as or more favourable as those executed through other brokers and dealers.

(i) CIM's Failure to Establish a System of Controls and Supervision

59. CIM had an obligation as a registered firm to have a system of adequate internal controls and supervision to ensure compliance with securities laws and to manage the risks associated with its business in accordance with prudent business practices.

60. CIM's internal controls and supervision to satisfy its best execution obligation were inadequate during the Relevant Period for the following reasons:

- (a) CIM's lack of detailed written policies and procedures regarding its best execution obligation;
- (b) The lack of policies and procedures setting out how the CSL Spread on bond trades for CIM clients was determined;
- (c) The lack of documentation evidencing the One Penny Practice;
- (d) The conflicting descriptions of CIM's best execution obligation in the Compliance Manuals;
- (e) The conflicting information provided to Staff about CIM's process during the Relevant Period for executing bond trades;
- (f) CIM's failure to evaluate whether best execution had been achieved for client trades; and
- (g) CIM's failure to provide sufficient information or perform analyses to support its

certifications to the IRC.

61. CIM's failure to have adequate policies and procedures regarding best execution breached section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103").

(j) CIM's Failure to Provide Sufficient Information to IRC

62. As required by NI 81-107, each Mutual Fund has an IRC. CIM's IRC had a duty to review potential conflicts of interest and other matters referred to the IRC by CIM in respect of the Mutual Funds managed by CIM. Section 5.4 of NI 81-107 recognizes that for certain categories of conflicts, such as executing trades of the Mutual Funds through a related party, it may be appropriate for the IRC to provide a standing instruction to the manager allowing the practice.

63. During the Relevant Period, CIM's IRC issued a series of semi-annual standing instructions which were in place from at least November 1, 2012 to October 31, 2016 to address the conflicts of interest created by CIM's brokerage arrangements with CSL. Each of the standing instructions stated: "1. Brokerage arrangement with CSL must be executed at terms as favourable or more favourable than could be executed through another dealer."

64. For each of these semi annual standing instructions, CIM provided a certification and an assessment to the IRC stating that CIM reviewed equity trades for the Mutual Funds and certified that: "Equity trades were executed at terms as favo[u]rable or more favo[u]rable than could be executed through another dealer".

65. CIM was under an obligation to maintain evidence of any reviews conducted to support representations and certifications provided semi annually to CIM's IRC. CIM was unable to produce any evidence of any reviews of trading conducted to support representations to its clients

and to the IRC. CIM did not systematically compare the specific costs of CSL's services to those of unaffiliated dealers.

66. The representations made by CIM to the IRC that trades made through CSL for the Mutual Funds were executed at terms as favourable or more favourable than could be executed through another dealer were inaccurate.

67. CIM did not provide the IRC with all the information which it required to properly carry out its responsibilities under NI 81-107, including the IRC's responsibility to review and assess the adequacy and effectiveness of the standing instructions to address CIM's brokerage arrangement with CSL.

(k) Mitigating Factors

(i) CIM Co-operated with Staff during and after CIM's compliance review

68. Staff first raised concerns about CIM's compliance with its best execution obligation during a compliance review by the Commission's Compliance and Registrant Regulation Branch ("**CRR Review**") that occurred from July 2015 to December 2015. CIM co-operated with Staff during the CRR Review and Staff's subsequent investigation.

(ii) CIM's improved best execution policy

69. CIM has proactively enhanced its best execution policies and procedures.

70. In or around June, 2016, CIM retained an independent consultant (the "**Consultant**") to assist it with improving its best execution policy. The Consultant suggested that CIM make use of the Trade Management Guidelines set out by the CFA Institute (the "**CFA Guidelines**") to assist investment management firms in meeting their best execution obligations. The CFA Guidelines

describe best execution as a process that investment management firms apply to seek to maximize the value of a client's portfolio.

71. CIM decided to implement new policies and procedures regarding best execution based on the CFA Guidelines. The Consultant provided comments on CIM's new policies and procedures regarding best execution.

72. On June 17, 2016, CIM provided Staff of the CRR Branch with a draft new trade management oversight policy (the "**New Best Execution Procedures**"), which proposed a new best execution policy for CIM including a new Trade Management Oversight Committee to oversee and ensure compliance with CIM's New Best Execution Procedures.

73. On the same day, CIM also provided Staff with a letter from the Consultant advising CIM that the New Best Execution Procedures were an appropriate interpretation of the CFA Guidelines given CIM's circumstances. In addition, the Consultant's letter advised CIM that the New Best Execution Procedures reflected best practices which would provide CIM with a suitable framework to monitor, manage and deliver best execution to its clients.

PART IV – THE RESPONDENT'S POSITION

74. CIM requests that the settlement hearing panel consider its position on the facts agreed to in Part III. CIM fully accepts, and is not contradicting, the facts agreed to in Part III. Staff do not object to the circumstances set out by CIM below being considered by the hearing panel.

75. During the Relevant Period, CIM was of the view that CSL was an appropriate broker to send its orders for equities and bonds on behalf of the Mutual Funds and SMA clients based on the nature of CSL's services. For example, CSL provided CIM with two dedicated traders to work on

and execute its trades in cooperation with the CIM portfolio managers. In addition, SMA clients were often CSL clients and CIM was of the view that SMA clients derived value from their relationship with the CSL investment adviser.

PART V – NON-COMPLIANCE WITH ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

76. CIM breached its best execution obligation under section 4.2 of NI 23-101 by placing most of its trades for execution through CSL, a related investment dealer, without having adequate policies and procedures or an adequate written process in place to ensure that CIM's best execution obligation was being met and that conflicts of interest were adequately managed.

77. CIM had inadequate policies and procedures relating to its best execution obligation contrary to section 11.1 of NI 31-103.

78. One or more of the representations made by CIM to the IRC were inaccurate and CIM did not provide the IRC with the type or amount of information the IRC required to properly carry out its responsibilities and therefore CIM breached subsection 2.4(1)(a) of NI 81-107.

79. The conduct set out above in paragraphs 11 to 67 was conduct contrary to the public interest.

PART VI - TERMS OF SETTLEMENT

80. CIM agrees to the terms of settlement listed below and to the Order substantially in the form attached hereto as Schedule "A" that provides that:

- (a) the settlement agreement is approved, pursuant to subsection 127(1) of the Act;
- (b) the terms and conditions in Schedule "B" be imposed on the Respondent's registration, pursuant to paragraph 1 of subsection 127(1) of the Act;

- (c) the Respondent is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
- (d) the Respondent pay an administrative penalty in the amount of \$1,800,000 pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act;
- (e) the Respondent pay the costs of the investigation in the amount of \$250,000 pursuant to section 127.1 of the Act; and
- (f) the amounts referred to in paragraphs (d) and (e) shall be paid as follows:
 - (i) \$1,025,000 on the date of this order; and
 - (ii) \$1,025,000 on or before April 19, 2020.

81. The Respondent agrees to pay 50% of both the administrative penalty and costs referred to above to the Commission before the commencement of the Settlement Hearing and the balance as set out above.

82. The Respondent acknowledges that failure to pay in full any monetary sanctions and/or costs ordered will result in the Respondent's name being added to the list of "Respondents Delinquent in Payment of Commission Orders" published on the Commission's website.

83. The Respondent acknowledges that this Settlement Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to the Respondent. The Respondent should contact the securities regulator of any other jurisdiction in which the Respondent intends to engage in any securities- or derivatives-related activities, prior to undertaking such activities.

PART VII - FURTHER PROCEEDINGS

84. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against the Respondent under Ontario securities law based on the misconduct described in Part III of this Settlement Agreement, unless the Respondent fails to comply with any term in this Settlement Agreement, in which case Staff may bring proceedings under Ontario securities law against the Respondent that may be based on, among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

85. The Respondent acknowledges that, if the Commission approves this Settlement Agreement and the Respondent fails to comply with any term in it, the Commission is entitled to bring any proceeding necessary to, among other things, recover the amounts set out in subparagraphs 80(d) and 80(e) of Part VI above.

86. The Respondent waives any defences to a proceeding referenced in paragraph 84 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement.

PART VIII - PROCEDURE FOR APPROVAL OF SETTLEMENT

87. The parties will seek approval of this Settlement Agreement at a public hearing (the “**Settlement Hearing**”) before the Commission which will be heard on a date determined by the Secretary of the Commission in accordance with this Settlement Agreement and the Commission’s *Rules of Procedure and Forms* (2017), 40 OSCB 8988.

88. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

89. A senior representative of the Respondent will attend the Settlement Hearing.

90. If the Commission approves this Settlement Agreement:

- (a) the Respondent irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and
- (b) neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

91. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART IX - DISCLOSURE OF SETTLEMENT AGREEMENT

92. If the Commission does not make the Order:

- (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the Settlement Hearing will be without prejudice to Staff and the Respondent; and
- (b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

93. The parties will keep the terms of this Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

PART X - EXECUTION OF SETTLEMENT AGREEMENT

94. This Settlement Agreement may be signed in one or more counterparts which, together, constitutes a binding agreement.

95. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated at Toronto this “9” day of “July”, 2019.

Caldwell Investment Management Ltd.

By: “*Brendan Caldwell*”

Name: Brendan Caldwell
Title: President and Chief Executive
Office

Witness: “*Stefanie Stringer*”

DATED at Toronto, Ontario, this “10th” day of “July”, 2019.

Staff of the Ontario Securities Commission

By: “*Jeff Kehoe*”

Name: Jeff Kehoe
Title: Director, Enforcement Branch

SCHEDULE "A" TO SETTLEMENT AGREEMENT

FORM OF ORDER



Ontario
Securities
Commission
3S8

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H

FILE NO. 2018-36

**IN THE MATTER OF
CALDWELL INVESTMENT MANAGEMENT LTD.**

(Names of panelists comprising the panel)

(Day and date order made)

ORDER

(Sections 127 and 127.1 of the
Securities Act, RSO 1990 c. S.5)

WHEREAS on [date], 2019, the Ontario Securities Commission (the **Commission**) held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider the Joint Request for a Settlement Hearing filed by Caldwell Investment Management Ltd. (the **Respondent**) and Staff of the Commission (**Staff**) for approval of a settlement agreement dated [date], 2019 (the **Settlement Agreement**);

ON READING the Statement of Allegations dated June 12, 2018 and the Settlement Agreement, and on hearing the submissions of Staff and the representative of the Respondent;

IT IS ORDERED THAT:

- (a) the Settlement Agreement be approved;
- (b) the terms and conditions in Schedule "A" be imposed on the Respondent's registration, pursuant to paragraph 1 of subsection 127(1) of the Act;
- (c) the Respondent is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

- (d) the Respondent pay an administrative penalty in the amount of \$1,800,000 pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act;
- (e) the Respondent pay costs of the investigation in the amount of \$250,000 pursuant to section 127.1 of the Act; and
- (f) the amounts referred to in paragraphs (d) and (e) shall be paid as follows:
 - (i) \$1,025,000 on the date of this order; and
 - (ii) \$1,025,000 on or before April 19, 2020.

[Commissioner]

[Commissioner]

[Commissioner]

SCHEDULE “B” TO SETTLEMENT AGREEMENT

SCHEDULE “A” TO ORDER

TERMS AND CONDITIONS

Retention and Mandate of Consultant

1. Within sixty days of the date of the order approving the settlement agreement between Caldwell Investment Management Ltd. (“**CIM**”) and staff of the Ontario Securities Commission (“**Staff**”) in Ontario Securities Commission File 2018-36 (the “**Approval Order**”), CIM shall retain, at its own expense, an independent consultant (the “**Consultant**”) acceptable to a Deputy Director or Manager in the Compliance and Registrant Regulation Branch of the Commission (the “**OSC Manager**”) to review and test CIM’s new policies and procedures regarding the discharge of its best execution obligation under Ontario securities law (“**New Best Execution Procedures**”) to ensure that:
 - a. the New Best Execution Procedures and CIM’s use of its affiliated dealer, Caldwell Securities Limited (“**CSL**”), to execute bond and equity trades fully comply with applicable law, including National Instrument 23-101 *Trading Rules*, National Instrument 23-102 *Use of Client Brokerage Commissions*, subsection 32(2) of the Act, sections 11.1 and 13.4 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and Part 2 of National Instrument 81-107 *Independent Review Committee for Investment Funds*;
 - b. the New Best Execution Procedures are specifically tailored to CIM’s own business practices, including its use of its affiliated dealer, CSL, to execute bond and equity trades, and are consistent with prudent business practices and best industry standards;
 - c. the New Best Execution Procedures have been fully implemented, and are being appropriately followed and administered by CIM and its trade management oversight committee; and
 - d. all applicable CIM staff are trained on best execution matters to ensure compliance with applicable laws related to the New Best Execution Procedures.

Consultant’s Report

2. Within nine months of the date of the Approval Order, CIM shall require the Consultant to deliver to the OSC Manager a written report describing the Consultant’s testing and assessment for a six month period following the Approval Order of whether the requirements of paragraphs 1(a) to 1(d) above, have been met (the “**Consultant’s Report**”) for the OSC Manager’s review and approval.

OSC Manager Review of Consultant's Report

3. If, following the OSC Manager's review of the Consultant's Report, it appears to the OSC Manager that all requirements of paragraphs 1(a) to 1(d) above have been satisfied, the OSC Manager shall notify CIM in writing accordingly.
4. If, following the OSC Manager's review of the Consultant's Report, it appears to the OSC Manager that any requirements of paragraphs 1(a) to 1(d) above have not been satisfied, CIM shall work with the Consultant to satisfy all such outstanding requirements, and shall submit such reports of that work, including any necessary revisions, to the OSC Manager as may be requested by the OSC Manager until such time as the OSC Manager informs CIM in writing that it appears to the OSC Manager that all requirements of paragraphs 1(a) to 1(d) above have been satisfied.

Other Procedural Matters

5. CIM shall provide the Consultant with reasonable access to all books and records necessary to complete the Consultant's mandate and will allow the Consultant to meet privately with CIM's officers, directors and employees. CIM shall require its officers, directors and employees to co-operate fully with the Consultant with respect to the Consultant's work and with respect to the implementation of any of the recommendations in the Report.
6. CIM shall not terminate the Consultant's retainer without the prior written authorization by the OSC Manager.
7. CIM shall submit to Staff a direction giving consent for unrestricted access and permission for Staff and the Consultant to communicate with one another regarding the Consultant's work and/or any other matter relevant to this review.