



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
PARAMOUNT EQUITY FINANCIAL CORPORATION, SILVERFERN SECURED MORTGAGE
FUND, SILVERFERN SECURED MORTGAGE LIMITED PARTNERSHIP, GTA PRIVATE
CAPITAL INCOME FUND, GTA PRIVATE CAPITAL INCOME LIMITED PARTNERSHIP,
SILVERFERN GP INC., TRILOGY MORTGAGE GROUP INC., MARC RUTTENBERG,
RONALD BRADLEY BURDON and MATTHEW LAVERTY**

FRESH AS AMENDED STATEMENT OF ALLEGATIONS
(Subsection 127(1) and Section 127.1
of the *Securities Act*, RSO 1990, c S.5)

A. ORDER SOUGHT

1. Staff of the Enforcement Branch (“**Enforcement Staff**”) of the Ontario Securities Commission (the “**Commission**”) request that the Commission make the following orders:

- (a) As against the **Paramount Group** (as defined below):
 - (i) that it cease trading in any securities or derivatives permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(2) of the Securities Act, RSO 1990, c.S.5, as amended (the “Act”);
 - (ii) that it be prohibited from acquiring any securities permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(2.1) of the Act;
 - (iii) that any exemption contained in Ontario securities law not apply to it permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(3) of the Act;
 - (iv) that it be reprimanded, pursuant to subsection 127(1)(6) of the Act;

- (v) that it be prohibited from becoming or acting as a registrant, or promoter permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(8.5) of the Act; and
 - (vi) such other order as the Commission considers appropriate in the public interest.
- (b) As against **Trilogy** (as defined below):
- (i) that the Order of the Commission dated September 10, 2018, which extended its initial Order of April 16, 2018 that Trilogy temporarily cease trading in securities be extended until the conclusion of this hearing pursuant to subsection 127(1)(2) and (8) of the Act;
 - (ii) that it cease trading in any securities or derivatives permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(2) of the Act;
 - (iii) that it be prohibited from acquiring any securities permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(2.1) of the Act;
 - (iv) that any exemption contained in Ontario securities law not apply to it permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(3) of the Act;
 - (v) that it be reprimanded, pursuant to subsection 127(1)(6) of the Act;
 - (vi) that it be prohibited from becoming or acting as a registrant, or promoter permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(8.5) of the Act;
 - (vii) that it pay an administrative penalty of not more than \$1 million for each failure to comply with Ontario securities law, pursuant to subsection 127(1)(9) of the Act;

- (viii) that it pay costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and
 - (ix) such other order as the Commission considers appropriate in the public interest.
- (c) As against each of Marc Ruttenberg, Ronald Bradley Burdon and Matthew Laverty, the **Principals** (as defined below):
- (i) that he cease trading in any securities or derivatives permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(2) of the Act;
 - (ii) that he be prohibited from acquiring any securities permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(2.1) of the Act;
 - (iii) that any exemption contained in Ontario securities law not apply to him permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(3) of the Act;
 - (iv) that he be reprimanded, pursuant to subsection 127(1)(6) of the Act;
 - (v) that he resign any position he may hold as a director or officer of any issuer, pursuant to subsection 127(1)(7) of the Act;
 - (vi) that he be prohibited from becoming or acting as a director or officer of any issuer permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(8) of the Act;
 - (vii) that he resign any position he may hold as a director or officer of any registrant, pursuant to subsection 127(1)(8.1) of the Act;

- (viii) that he be prohibited from becoming or acting as a director or officer of any registrant permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(8.2) of the Act;
- (ix) that he be prohibited from becoming or acting as a registrant, or promoter permanently or for such period as is specified by the Commission, pursuant to subsection 127(1)(8.5) of the Act;
- (x) that he pay an administrative penalty of not more than \$1 million for each failure to comply with Ontario securities law, pursuant to subsection 127(1)(9) of the Act;
- (xi) that he disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;
- (xii) that he pay costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and
- (xiii) such other order as the Commission considers appropriate in the public interest.

B. FACTS

Enforcement Staff make the following allegations of fact:

OVERVIEW

2. This proceeding involves fraud, misleading investors, unregistered trading, and the illegal distribution of securities of Mortgage Investment Entities (“MIEs”).

3. MIEs are mortgage-financing businesses that pool together money from investors to lend as mortgages. Each mortgage is meant to be secured by real property. The mortgage is registered in the name of the MIE or an entity created by the MIE for the benefit of the MIE investors. MIEs

must comply with Ontario securities law when engaging in the distribution of securities in the exempt market.

4. The Respondents engaged in egregious violations of securities law, misleading investors and misusing investor funds for personal gain. The Commission applied for and had a receiver appointed to shut down these activities by the Paramount Group and the Principals. The Principals then engaged in similar conduct through Trilogy, and the Commission issued a cease trade order to stop that activity. This improper and fraudulent behaviour is an affront to investors that undermines public confidence in the fairness and efficiency of Ontario's capital markets. This fraudulent behaviour must be definitively and permanently stopped.

5. Between September 2014 and December 1, 2016, the Paramount Group raised approximately \$78 million from over 500 investors through pooled MIEs by engaging in unregistered trading and through illegal distributions.

6. Investors were told their money would be invested in second residential mortgages. Instead, approximately \$50 million of their funds were invested in higher risk land and property development projects ("**Multi-Res Projects**"). Paramount Group and the Principals of the mortgage investment entities' manager engaged in hidden self-dealing by paying approximately \$3.87 million in fees on these projects to the Principals and by the Principals either taking an indirect 50% ownership interest in such projects or agreeing to do so as described below.

7. The Paramount Group also used funds reserved to pre-pay interest on mortgages for its own purposes, without disclosing this to investors.

8. With respect to one Multi-Res Project, PACC Angus, the Paramount Group and its principals surreptitiously cycled investor funds advanced by the Silverfern Fund as a loan on this project back to themselves in the guise of a loan from an entity described as Aleria Capital Inc. ("**Aleria**"), which was controlled by one of the Principals, Ronald Bradley Burdon, to PEFC (as defined below). In the course of doing so, they conferred a financial benefit on a business associate, Enzo Mizzi ("**Mizzi**"), for no apparent business purpose.

9. In May 2017, the OSC applied for and obtained a receivership order over the Paramount Group. Following this, and in or after February 2018 to April 24, 2018, Trilogy employed a website

to offer securities to the public. Trilogy made misleading statements to investors, including grossly inflating the appraised value of certain properties and failing to disclose that the owners of certain properties were in receivership. Further, Trilogy was not registered, nor did it comply with the disclosure requirements of Ontario securities law. Trilogy was assisted in these breaches of Ontario securities law by the same Principals who were the directing minds of the Paramount Group. Fortunately, there is no evidence that any money was obtained from investors before Trilogy was cease traded by the Commission.

10. The activity of the Paramount Group and the Principals outlined below constitutes a fraud perpetrated against the Silverfern Fund investors. Trilogy and the Principals made misleading statements to investors and failed to disclose material facts and material risks to potential investors. The Paramount Group, Trilogy and the Principals engaged in significant non-compliance with the registration and disclosure provisions of Ontario securities law. Their conduct breached securities law and undermined the integrity of the capital markets. It was conduct contrary to the public interest.

THE RESPONDENTS

11. Paramount Equity Financial Corporation (“**PEFC**”), Silverfern Secured Mortgage Fund (“**Silverfern Fund**”), Silverfern Secured Mortgage Limited Partnership (“**Silverfern LP**”), GTA Private Capital Income Fund (“**GTA Fund**”, together with the Silverfern Fund, the “**Funds**”), GTA Private Capital Income Limited Partnership (“**GTA LP**”), and Silverfern GP Inc. are collectively referred to herein as the “**Paramount Group**”.

12. PEFC is an Ontario corporation which, had its head office in Stouffville, Ontario and was licensed as a mortgage broker with the Financial Services Commission of Ontario.

13. Silverfern GP Inc. is an Ontario corporation which had its head office in Stouffville, Ontario. It was the general partner of the Silverfern Fund and the GTA Fund.

14. The Silverfern Fund is a trust pursuant to a Declaration of Trust dated September 2, 2014. As outlined below, investors in the Silverfern Fund acquired ownership in limited partner units of Silverfern LP. Legal ownership of the fund units was held by the Principals, as defined below.

15. The GTA Fund is a trust pursuant to a Declaration of Trust dated May 5, 2015. Investors in the GTA Fund acquired ownership in limited partner units of GTA LP. Legal ownership of the fund units was held by the Principals, as defined below.

16. Paramount Alternative Capital Corporation (“**PACC**”) is the parent company to a number of companies that have “PACC” in their name (the “**PACC Affiliates**”). The function of these companies was to hold co-ownership interests in Multi-Res Projects, which were structured as joint ventures in which PACC or a PACC Affiliate was either granted a 50% interest or there was an intention to make such a grant. It would appear that certain intended PACC Affiliates were never incorporated. Attached as Appendix A is a chart outlining PACC’s ownership of certain PACC Affiliates.

17. Trilogy Mortgage Group Inc. (“**Trilogy**”) offered securities to the public and solicited investors via a website (the “**Website**”) as set out below.

18. Marc Ruttenberg (“**Ruttenberg**”) is the founder, and was the Chief Executive Officer and a director of PEFC. He was also PEFC’s principal broker. He was a director and officer of Silverfern GP Inc and a trustee of the Silverfern Fund and the GTA Fund. Ruttenberg was a director and a 40% indirect owner of PACC and of the PACC Affiliates. He was also a *de facto* officer and director of Trilogy.

19. Ronald Bradley Burdon (“**Burdon**”) was an officer and a de facto director of PEFC. He was a director and officer of Silverfern GP Inc. Burdon was a trustee of the Silverfern Fund and the GTA Fund. Burdon was a director and a 40% indirect owner of PACC and of the PACC Affiliates. He was also a *de facto* officer and director of Trilogy.

20. Matthew Lavery (“**Lavery**”) was an officer and a de facto director of PEFC. He was a trustee of the Silverfern Fund and the GTA Fund. Lavery was a 20% indirect owner of PACC and of the PACC Affiliates. He was also a *de facto* officer and director of Trilogy.

21. Collectively, Ruttenberg, Burdon and Lavery are referred to herein as the **Principals**.

BACKGROUND

22. Ruttenberg began operating PEFC as a mortgage broker in 2006. PEFC began to arrange second mortgages on single-family properties, with PEFC performing the administration of these mortgages.

23. In September 2014, the Principals established the Silverfern Fund. The funds raised from investors were pooled and were to be used to lend to various borrowers on the security of second residential mortgages in various markets across Canada.

24. In May 2015, the Principals established the GTA Fund for a group of investors that did not want their investment funds co-mingled with other investors. This group of investors required that their pooled funds only be used in residential second mortgages in the Greater Toronto Area.

25. PEFC promoted and administered the Funds. It was responsible for mortgage origination, underwriting and administration and for investor relations.

26. Notwithstanding that the Silverfern Fund monies were to be invested in second residential mortgages, a majority of investor funds were used to finance Multi-Res Projects. These carried higher risk for the Silverfern Fund.

27. On application to the Ontario Superior Court by the Commission pursuant to s. 129 of the Securities Act, Grant Thornton Limited (“GTL”) was appointed interim receiver over the Paramount Group, PACC and certain PACC Affiliates on June 7, 2017 and full receiver on August 2, 2017. GTL has been realizing on the security held over the various Multi-Res Projects. It is clear that there will be significant shortfalls and that many investors in the Funds will suffer material losses. The period between September 2014, when the Paramount Group began to raise funds through mortgage investment entities, and August 2, 2017 when the receivership order was made is referred to herein as the **Paramount Relevant Period**.

28. At some point in or after February 2018, Trilogy began offering securities to the public and was soliciting investors via the Website. The Website was later removed on or about April 24, 2018 at the request of OSC Staff (February 2018 to April 24, 2018 is referred to herein as the “**Trilogy Relevant Period**”). As outlined below, Trilogy misled investors through statements on the Website about the nature of certain real estate development projects for which it solicited investments. Staff applied for and received a Temporary Cease Trade Order with respect to Trilogy

on April 16, 2018. The Temporary Cease Trade Order remains in place and has been extended to March 31, 2019. Based on Staff's investigation, it appears that the formation of TEGLP was never completed and that there were never any investors in Trilogy.

ALLEGATIONS INVOLVING THE PARAMOUNT GROUP

Acts, practices and a course of conduct that have perpetrated a fraud upon investors

29. The conduct described below involves misrepresentations, omissions and non-disclosures as well as unauthorized and hidden uses of investor funds. This either caused economic loss to the Silverfern Fund investors or gave rise to an increased risk of economic loss to them. In consequence, these actions constitute a fraud perpetrated upon the Silverfern Fund and its investors contrary to subsection 126.1(1)(b) of the Act.

(c) Nature and risk profile of the investment in the Silverfern Fund

30. The Paramount Group and the Principals made statements to investors regarding the nature and risk profile of their investment in the Silverfern Fund that were untrue, misleading or omitted necessary information to prevent statements from being misleading.

31. The constating legal documents of the Silverfern Fund, as well as materials provided to investors refer to the Silverfern Fund's proceeds being used to invest in second residential mortgages of up to 85% loan to value ratio ("LTV") and, in certain cases, higher ratio residential mortgages, provided that such higher ratio mortgages shall not exceed 50% of the Silverfern Fund's total mortgage portfolio. They state that the Silverfern Fund's investment objective is focused on capital preservation and to build a diversified portfolio of mortgage assets that generates attractive, stable returns to unitholders.

32. The written materials provided to investors in the Silverfern Fund, which included fund fact sheets, power point presentations, web-based material and video presentations, describe the Fund as investing in residential second mortgages in Canada. They describe investment in the Silverfern Fund using words such as "predictable, steady returns", "low volatility", "high-returning annuity/GIC alternative", "safety", "capital preservation" and "stable returns".

33. Ruttenberg made representations to investors that were similar to the statements outlined in paragraphs 29 and 30.

34. The subscription agreements for the Silverfern Fund prepared by the Paramount Group and provided to certain investors described the use of proceeds as going to fund second residential mortgages.

35. In fact, as of February 16, 2017, the Silverfern Fund had investments totaling approximately \$70 million, of which only approximately \$21 million were second residential mortgages, with the balance invested in Multi-Res Projects.

36. The investment in Multi-Res Projects included second, third and/or fourth mortgages on land or development projects seeking to re-zone, construct, and/or convert properties into multiple residential units (“**Multi-Res Mortgages**”), although in two cases (the PACC Angus Project, as defined below, and Levante Living Project), no mortgages were registered in respect of the advances made. The Multi-Res Mortgages and other advances were different in nature from the second residential mortgages promised to investors in the Silverfern Fund and carried significant additional risk in comparison to what was represented to investors. The additional risk included the following:

- a. In many cases, the value of the total mortgage debt exceeded the ‘as is’ value of the property. The ranking of the mortgage also left insufficient value in the property to cover the debt. In two cases, no mortgages were registered.
- b. No, or insufficient income was generated by the projects to service the debt.
- c. Many of the projects were speculative, with recovery dependent upon resale of the development at a sufficient price to repay the loan.
- d. The fees and “soft costs” were often significant and without clear controls.
- e. With many of the Multi-Res Mortgages, the mortgage term was for more than one year. Prepaid interest for the first year was added to the principal amount of the mortgage; no provision was made for the payment of interest in the following period with the resulting risk of no revenue available to pay interest; and
- f. Most of the Multi-Res Mortgages were related to entities controlled by one individual, Mizzi. This increased risk due to concentration.

37. These risks, inherent in the Multi-Res Mortgages, were not disclosed to investors.

38. PEFC represented that, with respect to the investments in the Silverfern Fund, it would exercise diligence in selecting mortgage investments, manage and service the mortgage loans and ensure that proper underwriting and credit assessment processes were followed. Investors were told this would be the case. In fact, the risk to investors in the Silverfern Fund was compounded by the substandard mortgage underwriting practices and inaccurate books and records and financial controls of PEFC, which was not disclosed to investors.

(b) *Hidden self-dealing - failure to disclose interest in Multi-Res Projects and fees paid to Paramount Group and Principals*

39. With respect to most of the Multi-Res Projects, PACC, one of the PACC Affiliates, or a contemplated but not yet incorporated PACC Affiliate, received or was intended to receive a 50% co-ownership interest in the joint ventures that owned these development projects, and thereby acquired an equity interest and the right of profit participation in the joint ventures (the “**PACC Co-Ownership Interests**”). In this manner, the Principals acquired or intended to acquire an indirect 50% interest in the Multi-Res Projects, although they do not appear to have invested any of their own funds in these projects. Instead, the PACC Co-Ownership Interests were acquired or planned for acquisition as a result of approximately \$50 million of mortgages being funded with investor money from the Silverfern Fund.

40. The Paramount Group and the Principals intentionally withheld disclosure of the actual or intended PACC Co-Ownership Interests from investors. There is no disclosure of these interests in any of the marketing materials for the Silverfern Fund. The Silverfern Fund OM, dated April 30, 2016, does not include reference to them. Instead, it stated that the Silverfern Fund will avoid making investments in entities that are not at arm’s length in amounts which exceed an amount equal to 25% of the book value of its mortgage investments. It also stated that the fund has no present intention to create any borrowing exposure to entities that are not at arm’s length to the Fund or PEFC. Both statements were untrue.

41. The Paramount Group and the Principals also initially withheld information about the existence, nature and degree of the PACC Co-Ownership Interests from OSC Staff. On December 8, 2016, Ruttenberg advised Staff, in an examination under oath, that there were only two PACC mortgages that were related to PEFC or its affiliates. This was later confirmed in writing on

December 16, 2016. In his examination, Ruttenberg references the 25% threshold outlined in the Silverfern Fund OM and advised that it had only been exceeded once (in 2015) and that it was currently below 25%. On January 26, 2017, PEFC advised that it received a minority interest in borrowers. Finally, in response to further inquiries by Staff, on February 2, 2017, PEFC provided the truth: a list that showed that the PACC Co-Ownership Interest was 50% in most of the Multi-Res Projects.

42. In addition, \$3.87 million in undisclosed brokerage or lending fees on the Multi-Res Mortgages and other advances on Multi-Res Projects were paid to a PACC Affiliate or in respect of a not yet incorporated PACC Affiliate. None of the PACC Affiliates were licensed mortgage brokers. These fees were in addition to sourcing and brokerage fees paid to PEFC. The Paramount Group confirmed to Staff that these fees were allocated amongst the Principals according to their percentage ownership of the PACC Affiliates which was 40% to each of Ruttenberg and Burdon and 20% to Lavery, subject, in certain cases, to a holdback. Approximately \$2.55 million of the monies used to pay these fees came from the Silverfern Fund. The fees were not disclosed to Silverfern Fund investors, nor was the fact that they were allocated to the Principals.

43. The Paramount Group and the Principals deliberately or recklessly withheld information from the Silverfern Fund investors concerning their own interests in the Multi-Res Projects and the fees from the Multi-Res Mortgages as set out above, in order to be able to direct Silverfern Fund monies to their own benefit, and to the detriment of investors. It is clear that there will be significant shortfalls and that many investors in the Funds will suffer material losses. They have perpetrated a fraud on the Silverfern Fund investors contrary to subsection 126.1(1)(b) of the *Act*.

(c) *Misuse of Prepaid Funds Account*

44. According to the terms of the Multi-Res Mortgages, prepaid interest representing one year of interest payments and what was described as buy-down rate fees was added to the principal amount for the purpose of paying interest in the first year of the mortgage. The amount of the prepaid interest and fees was advanced by the Silverfern Fund and then paid back to PEFC to be held in trust to pay the interest and fees for the first year of the mortgages. These monies were commingled into a PEFC account with other funds related to PEFC's business, rather than being segregated for the purpose intended. PEFC and the Principals used at least \$1.5 million of the

funds in this PEFC account for their own purposes, including to cover operating costs and to pay back over \$1 million in PEFC loans from individuals, rather than being held in trust to pay interest and fees on the Multi-Res Mortgages.

45. The foregoing information was withheld from Silverfern Fund investors. The conduct permitted the Paramount Group and the Principals to divert monies intended to fund prepaid interest for their own benefit to the detriment of the Silverfern Fund investors.

(d) *Advances on the Angus Multi-Res Project*

44. The Paramount Group and the Principals caused approximately \$2.36 million in Silverfern Fund monies to be diverted to the benefit of the Principals and their business associate, Mizzi, for no valid business purpose. In particular:

(a) Approximately \$2.36 million of investor funds from the Silverfern Fund were advanced to 21830366 Ontario Inc. (“**218 Ontario**”), an entity controlled by Mizzi, which was the borrower on a Multi-Res Project in Angus, Ontario (the “**PACC Angus Project**”) in May and June 2016. These funds were ostensibly presented as a mortgage advance on the PACC Angus Project. However, no mortgage or other documents were ever registered for this transaction.

(b) Of the approximate \$2.36 million:

- (i) \$1.75 million was redirected to PEFC under the guise of a loan from Aleria, a company controlled by Burdon. According to PEFC’s financial records, the \$1.75 million advanced was used by PEFC to replenish the bank account that held the prepaid interest and fees. In June 2017, Aleria demanded repayment of approximately \$1.78 million from PEFC by July 5, 2017. On August 2, 2017, GTL learned that Aleria had taken possession of two vehicles owned by PEFC, apparently pursuant to its general security agreement; and
- (ii) approximately \$610,000 was conferred upon Mizzi and/or 218 Ontario, for no apparent reason;

45. Further, \$190,000 in ‘repayments’ on the loan to Aleria were also made to 218 Ontario (rather than to Aleria) between August and November 2016 from the undisclosed brokerage or lending fees on the Multi-Res Mortgages. The notations in the financial records show the payments as being in respect of loan repayments from Ruttenberg connected to specific PACC transactions or the loan to Aleria.

Representation to Silverfern Fund investors relevant to deciding whether to enter into or maintain a trading relationship

46. The conduct by the Paramount Group and the Principals, outlined below, is contrary to subsection 44(2) of the Act and is therefore contrary to Ontario Securities law.

47. The Paramount Group, through the Principals and referral agents, made certain statements, or omitted to provide certain information, to Silverfern Fund investors that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading relationship. This included:

- (a) The statements and omissions described above with respect to the nature and risk profile of the Silverfern Fund investments;
- (b) The omission to disclose the actual or intended PACC Co-Ownership Interests; and
- (c) The omission to disclose the fees, and other compensation received by the Principals through PACC and the PACC Affiliates.

Trading in Securities without registration

48. During the Paramount Relevant Period, the Paramount Group and the Principals raised over \$70 million from over 500 investors in the Silverfern Fund and over \$5 million from 6 investors in the GTA Fund without being registered and without being eligible for an exemption from the dealer registration requirement, contrary to Ontario securities law and, in particular, contrary to subsection 25(1) of the Act.

49. In addition, they used a network of referral agents to sell units of the Funds to investors. These agents were not registered with the Commission.

50. Units in the Funds were sold to investors. The investors' funds were pooled and were to be used to make loans secured by mortgages. Investors received units in the Funds. Thus, the units of the Funds are securities as that term is defined in subsection 1(1) of the Act.

51. Marketing materials were prepared by PEFC and were provided to prospective investors in the Funds. Such materials included term sheets, PowerPoint presentations, web pages, investor testimonials, and fund fact sheets. Investors were provided subscription agreements and unit certificates in connection with their purchases of units in the Funds. The unit certificates and the Silverfern Fund OM, as defined below, were signed by the Principals.

52. In marketing and selling the units of the Funds to the public, and in operating the Funds, the Paramount Group were acting as a dealer and as such were required to be registered under the Act.

53. In addition, Ruttenberg and Laverty engaged directly in marketing and selling units of the Funds to the public and were therefore engaged, and held themselves out as engaged, in the business of trading in securities and as such was required to be registered under the Act.

54. PEFC was paid approximately \$700,000 in management fees by the Silverfern Fund. Ruttenberg and Laverty each received commissions or referral fees from the Silverfern Fund, and all of the Principals through their ownership interests in PACC and the PACC Affiliates were paid fees in respect of mortgages funded by the Silverfern Fund and were either provided with, or promised, an ownership interest in Multi-Res Projects.

55. PEFC made 11 offerings of the Silverfern Fund between June 1, 2016 and November 15, 2016, raising approximately \$39 million of the approximately \$70 million raised in respect of this fund, despite having received legal advice that sales should be effected through a registered entity.

56. On November 11, 2016, Staff wrote to PEFC to advise that it may be conducting unregistered trading and that it should cease accepting any new client funds and contact Staff immediately. On November 25, 2016, PEFC acknowledged to Staff that it was now aware that its offerings should have been made through a registered dealer. However, notwithstanding this, PEFC closed a \$5.2 million offering of the Silverfern Fund on November 15, 2016, four days after Staff's letter.

57. On December 1, 2016, the Paramount Group provided an undertaking to the Commission that it would cease trading the Funds' units. The undertaking was broadened on March 9, 2017.

58. On April 7, 2017, PEFC sent a letter to all investors in the Funds and to the referral agents acknowledging that the units should have been sold through a registered entity or individual.

Illegal distributions

59. During the Paramount Relevant Period, the Paramount Group and the Principals engaged in distributions of securities without having filed or received a receipt for a prospectus, contrary to Ontario securities law and, in particular, contrary to subsection 53(1) of the Act.

60. During the Paramount Relevant Period, no prospectus was filed by any member of the Paramount Group, whether in respect of the Silverfern Fund or otherwise.

61. During the Paramount Relevant Period, units in the Silverfern Fund were distributed in purported reliance upon the accredited investor, family, friends and business associates and minimum amount prospectus exemptions. In June 2016, a Silverfern Fund Offering Memorandum (the "**Silverfern Fund OM**") was filed with the Commission dated April 30, 2016. After that point, investors were also subscribed with reliance upon the offering memorandum exemption.

62. On November 25, 2016, PEFC also advised Staff that it had taken steps to ensure that all investors comply with exemption requirements, including implementing screening procedures with a complete Know Your Client checklist and suitability checklists. This was not true. For a number of the investors where the Paramount Group purported to rely upon the accredited investor exemption set out in section 2.3 of NI 45-106, those investors did not meet the requirements of the accredited investor definition in the National Instrument.

63. Based on the 45-106F1 filings made by the Paramount Group, for at least eleven distributions of units of the Silverfern Fund, there was inappropriate reliance upon the family, friends and business associates prospectus exemption available pursuant to section 2.5 of NI 45-106 as a commission was paid to a director, officer, founder, or control person of the issuer or an affiliate of the issuer in connection with the distributions: in nine cases to Ruttenberg and in two cases to Lavery, contrary to subsection 2.5(2) of NI 45-106. In addition, Ruttenberg advised

certain investors that they could rely on the friends and family exemption, in circumstances where he knew or ought to have known that they could not.

ALLEGATIONS INVOLVING TRILOGY

Trilogy and the Principals made statements that they knew or ought reasonably to have known were misleading or untrue

64. As outlined above, the Paramount Group had provided an undertaking to the Commission in December 2016, which it broadened in March 2017, that it would cease trading in the Funds' units. On May 25, 2017 the Commission commenced the receivership application in respect of the Paramount Group. GTL was appointed interim receiver on June 7, 2017. Thus, by the beginning of the Trilogy Relevant Period, the Principals were well aware of the concerns of the Commission and of the Ontario Superior Court with respect to their activities.

65. Nonetheless, they participated in Trilogy's launch of the Website and in the Trilogy activities, as outlined below. In so doing, Trilogy and the Principals made statements that they knew or ought reasonably to have known in a material respect, at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state facts necessary to make the statements not misleading and would reasonably be expected to have a significant effect on the value of the securities being offered by Trilogy, contrary to subsection 126.2(1) of the Act.

67. On the Website, Trilogy marketed investment opportunities in a property located in Cambridge, Ontario (the "**Cambridge Property**") and in a property in Toronto, Ontario (the "**Wilson Property**") that had been the subject of Multi-Res Mortgages invested in by the Paramount Group.

68. The Website stated that there was an "as is" appraisal valuing the Cambridge Property at \$8.4 million. GTL was appointed as receiver over the Cambridge Property on April 10, 2018. An appraisal for the Cambridge Property, prepared for the Paramount Group showed an estimated property value of \$8.4 million based on an approved development with a gross floor area of approximately 339,106 square feet. As of April 10, 2018, the specified approvals had not been granted for this property. Despite this, under "Project Status" for the Cambridge Property on the

Website, Trilogy stated that there was an "as is" appraisal valuing the Cambridge Property at \$8.4 million. In fact, the value of the Cambridge property was significantly lower than \$8.4 million.

69. The Website also failed to disclose:

- (a) that the owner of the Cambridge Property was put into receivership on April 10, 2018,
- (b) the ongoing receivership proceedings relating to the Wilson property;
- (c) that GTL had made a demand loan related to the Cambridge property on November 23, 2017, and another related to the Wilson property on March 7, 2018, neither of which were paid.

Trading in Securities without registration

70. During the Trilogy Relevant Period, Trilogy and the Principals engaged in, and held themselves out to be engaged in, the business of trading in securities to the public despite the fact that they were not registered with the Commission, nor were they eligible for an exemption from the dealer registration requirement. They used the Website to promote the sale of investments in mortgages secured against real estate to investors. They represented that they offered a full range of investment options, including those suitable for RRSPs, LIRAs and TFSAs and that investors could contact Trilogy to obtain offering memoranda and subscription agreements.

71. In so doing, Trilogy and the Principals were acting as a dealer and as such were required either to be registered under the Act or to be eligible for a recognized registration exemption. Despite this, they actively marketed the investments without being registered and without being eligible for a registration exemption, contrary to Ontario securities law and, in particular, to subsection 25(1) of the Act.

Illegal distributions

72. Based on the representations on the Website, Trilogy and the Principals were promoting that a security was available to be acquired. They advised that an offering memoranda and subscription agreement were available, and that investment could be made through an exempt

market dealer or financial advisor. At no time had Trilogy or the Principals engaged an exempt market dealer.

73. No prospectus or preliminary prospectus was filed with the Commission by Trilogy and no receipt for them has ever been issued by the Director as required by subsection 53(1) of the Act with respect to trades offered on the Website by Trilogy. No exemptions from the prospectus requirements were available, and no exemptive relief was sought.

74. Thus, during the Trilogy Relevant Period, Trilogy and the Principals engaged in distributions of securities without having filed or received a receipt for a prospectus, contrary to Ontario securities law and, in particular, contrary to subsection 53(1) of the Act.

C. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

75. Enforcement Staff allege the following breaches of Ontario securities law and/or conduct contrary to the public interest by the Paramount Group, and the Principals during the Paramount Relevant Period:

- (a) The Paramount Group and the Principals directly or indirectly engaged or participated in acts, practices or courses of conduct relating to the securities of the Silverfern Fund that they knew or reasonably ought to have known perpetrated a fraud on persons contrary to subsection 126.1(b) of the Act;
- (b) The Principals, as actual or *de facto* officers and/or directors of the Paramount Group, PACC and the PACC Affiliates, authorized, permitted, and/or acquiesced in the breaches of subsection 126.1(b) of the Act by the Paramount Group, PACC and the PACC Affiliates and thereby failed to comply with Ontario securities law pursuant to section 129.2 of the Act;
- (c) The Paramount Group and the Principals made certain statements, or omitted to provide certain information, to Silverfern Fund investors that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading relationship contrary to subsection 44(2) of the Act;

- (d) The Paramount Group and the Principals engaged in, and held themselves out to be engaged in, the business of trading in securities to the public while being unregistered to do so contrary to subsection 25(1) of the Act;
- (e) The Paramount Group and the Principals failed to file a prospectus or preliminary prospectus with respect to trades of units of the Silverfern Fund contrary to subsection 53(1) of the Act, in circumstances where no prospectus exemptions were available pursuant to Part XVII of the Act;
- (f) The Principals, as actual or *de facto* officers and/or directors of the Paramount Group, authorized, permitted, and/or acquiesced in the breaches of subsections 25(1), 53(1), and 44(2) of the Act by the Paramount Group and thereby failed to comply with Ontario securities law pursuant to 129.2 of the Act; and
- (g) Further, and in any event, the conduct described above is contrary to the public interest.

76. Enforcement Staff allege the following breaches of Ontario securities law and/or conduct contrary to the public interest by Trilogy and the Principals during the Trilogy Relevant Period:

- (a) Trilogy and the Principals made statements that they knew or ought reasonably to have known in a material respect, at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state facts necessary to make the statements not misleading and would reasonably be expected to have a significant effect on value of the security being offered, contrary to subsection 126.2(1) of the Act;
- (b) Trilogy and the Principals engaged in, and held themselves out to be engaged in, the business of trading in securities to the public while not being registered to do so contrary to subsection 25(1) of the Act;
- (c) Trilogy and the Principals failed to file a prospectus or preliminary prospectus with respect to proposed trades in securities contrary to subsection 53(1) of the

Act, in circumstances where no prospectus exemptions were available pursuant to Part XVII of the Act;

- (d) The Principals, as actual or *de facto* officers and/or directors of Trilogy, authorized, permitted, and/or acquiesced in the breaches of subsections 25(1), 53(1), and 126.2(1) of the Act by Trilogy and thereby failed to comply with Ontario securities law pursuant to section 129.2 of the Act; and
- (e) Further, and in any event, the conduct described above is contrary to the public interest.

Enforcement Staff reserve the right to make such other allegations as Enforcement Staff may advise and the Commission may permit.

DATED at Toronto, March 12, 2020

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Staff of the
Ontario Securities Commission

APPENDIX "A"

Paramount Alternative Capital Corporation Ownership Structure

