

1.1.2 OSC Staff Notice 33-739 – Termination of the Ontario Contingency Trust Fund

ONTARIO SECURITIES COMMISSION STAFF NOTICE 33-739 TERMINATION OF THE ONTARIO CONTINGENCY TRUST FUND

December 6, 2012

Substance and Purpose

The trustee (**Trustee**) of the Ontario Contingency Trust Fund (the **Fund** or **Plan**) has proposed that the Fund be wound up in accordance with advice and direction that the Trustee will seek from the court. The Commission has advised the Trustee that it does not object to the Trustee pursuing such a wind-up of the Plan.

This Notice outlines why the Trustee has proposed such a wind-up. It also sets out a simplified procedure (with templates) for existing participants in the OCTF that are currently required by Ontario securities law to participate in the Plan to apply for an exemption from this requirement on the terms set out in this Notice and without any application fee.

Background

Subsection 110(1) of Ontario Regulation 1015¹ requires every dealer that is registered under the *Securities Act* (Ontario)(the **Act**), other than an exempt market dealer, to participate in a compensation fund or contingency trust fund that has been approved by the Commission and satisfies certain other requirements set out in that subsection (the **compensation fund participation requirement**).

Overview of the OCTF

The OCTF is a contingency trust fund that has been approved by the Commission. It came into being in the early 1970s, and has been the fund for dealers that are not members of a self-regulatory organization.

Twenty-nine registered dealers that are not members of either the Investment Industry Regulatory Organization of Canada (**IIROC**) or the Mutual Fund Dealers Association of Canada (the **MFDA**) participate in the OCTF to comply with the compensation fund participation requirement.

The terms of the Plan are set out in a form of trust agreement (the **Trust Agreement**) that has been entered into by each participant with the Trustee of the Plan.²

The OCTF provides for very limited compensation to clients of a participating dealer in the event the dealer is not able to return funds or securities belonging to a client that were held on behalf of the client at the participating dealer. The Plan has a coverage limit of \$5,000 on eligible claims.

Since it was established, the OCTF has been called upon to respond to claims arising as a result of the insolvency of three “securities dealers”, including most recently *Buckingham Securities Corporation*.³ As part of registration reform, “securities dealer” was eliminated as a category of registration; and dealers that were previously registered as “securities dealer” are now required to be registered as an “investment dealer” (and as such, are members of IIROC) to carry out the same trading activities.

Current Status of OCTF

As at September 30, 2012, the capital in the OCTF was approximately \$2.5 million.

There are currently 451 participants in the OCTF. Of this number, 422 are no longer required by Ontario securities law to participate in the Plan because they now participate in another approved compensation fund or they are no longer registered.

The Trust Agreement restricts participants from withdrawing from the Plan if there are potential claims against the Plan. Currently, the Trustee is not permitting any participants to withdraw from the Plan because the Trustee has not yet made a final call for claims in respect of Buckingham. The Trustee expects to soon make such a final call, and then be in a position to resume the return of capital to those 422 participants that would be eligible to withdraw from the Plan.⁴ This would, however,

¹ R.R.O. 1990, as amended, made under the Act.

² The form of agreement incorporates terms and conditions that were prescribed in Ontario Regulation 208/70, as amended.

³ The other dealers were *E. A. Manning Limited* (in 1995) and *Marchmont & Mackay Limited* (in 1999).

⁴ Each participant was required to make an initial capital contribution of \$10,000.

result in the Plan's remaining capital falling well below the critical mass necessary to sustain its continued operation; and if all of these 422 participants were to withdraw their capital, the remaining capital in the Plan would be essentially depleted.

Wind-up of OCTF

The Trustee has therefore proposed that the OCTF be wound up in accordance with advice and direction that the Trustee will seek from the court.

The Commission has advised the Trustee that it does not object to the Trustee pursuing such a wind-up of the Plan.

Exemptions from Requirement to Participate in a Compensation Fund

Action will need to be taken by Participants in the OCTF that remain registered and are not members of IIROC or the MFDA to continue to be in compliance with the compensation fund participation requirement. They may wish to apply to the Commission for an exemption from this requirement on the terms set out in Exhibit 1.

Staff will recommend that the Commission issue an exemption on the terms set out in Exhibit 1.

Staff will also recommend that the Director grant an exemption from the requirement to pay the corresponding application fee on the terms set out in Exhibit 1, if the application is received before January 31, 2013.

Simplified Procedure for Obtaining an Exemption

Applications for these exemptions need not be formal in nature and may be made by way of an e-mail from the applicant (or its authorized agent).

The e-mail should refer to "OSC Notice 33-739" and identify the full legal name of the applicant in the subject line of the e-mail, and in the body of the e-mail state that:

- The above-referenced registered dealer hereby applies to be included as a Filer for the exemptions set out in Exhibit 1 to OSC Staff Notice 33-739
- As a Filer, the applicant makes the representations to the Commission and Director which are identified as being made by a Filer, in paragraphs a, b, c, d, e and f of Exhibit 1 under the heading "Representations of each Filer"

The e-mail should identify the individual applying on behalf of the applicant (with their full name, position, e-mail address, and telephone number) and be sent before January 31, 2013 to the following address:

applications@osc.gov.on.ca

Questions

If you have questions regarding this Notice, please direct them to:

Robert F. Kohl,
Senior Legal Counsel
Compliance & Registrant Regulation
Ontario Securities Commission
Tel: 416-593-8233
Fax: 416-593-8283
Email: rkohl@osc.gov.on.ca

Kelly Everest
Senior Forensic Accountant
Compliance & Registrant Regulation
Ontario Securities Commission
Tel : 416-595-8914
Fax: 416-593-8283
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If you have any questions regarding the wind-up the OCTF, including the return of capital to existing participants, please direct them to:

Mark Wright
Relationship Manager
Global Corporate Trust
BNY Trust Company of Canada
320 Bay Street, 11th Floor
Toronto, ON M5H 4A6
Tel.: 416-933-8533
Fax.: 416-360-1711
Email: Mark.Wright@bnymellon.com

Exhibit 1

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED (the "Act"),
REGULATION 1015
R.R.O. 1990, AS AMENDED, MADE UNDER THE ACT (the "Regulation")

AND

ONTARIO SECURITIES COMMISSION RULE 13-502 FEES (the "Fee Rule")

AND

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION STAFF NOTICE 33-739
TERMINATION OF THE ONTARIO CONTINGENCY TRUST FUND

AND

CERTAIN REGISTERED DEALERS

COMMISSION ORDER
(Section 147 of the Act)

DIRECTOR EXEMPTION DECISION
(Section 6.1 of the Fee Rule)

Background

1. Subsection 110(1) of the Regulation requires every registered dealer, other than an exempt market dealer as defined in National Instrument 31-103 *Registration Requirements and Exemptions* (**NI 31-103**), to participate in a compensation fund or contingency trust fund that has been approved by the Commission and satisfies certain other requirements set out in that subsection (the **compensation fund participation requirement**).
2. The Ontario Contingency Trust Fund (the **OCTF** or **Plan**) is one of three compensation funds or contingency trust funds that have been approved by the Commission for the purposes of subsection 110(1) of the Regulation.
3. The terms of the OCTF are set out in a form of trust agreement (the Trust Agreement) that has been entered into by each participant in the Plan with the trustee (the **Trustee**) of the Plan.
4. Twenty-nine registered dealers (**OCTF Dealers**) that are not members of the Investment Industry Regulatory Organization of Canada (**IIROC**) or the Mutual Fund Dealers Association of Canada (**MFDA**) participate in the OCTF, and as such do not participate in the corresponding approved compensation fund for members of these self-regulatory organizations.
5. OCTF Dealers comprise scholarship plan dealers and mutual fund dealers that obtained an exemption from the requirement in Ontario securities law to be a member of the MFDA.
6. As indicated in Ontario Securities Commission Staff Notice 33-739 *Termination of the Ontario Contingency Trust Fund* (the **Notice**), the continued operation of the Plan is not financially sustainable. The Trustee has proposed that the OCTF be wound up in accordance with advice and direction from the court and the Commission has advised the Trustee that it does not object to the Trustee pursuing such a wind-up.

Applications

Each of the OCTF Dealers (each, a **Filer**) listed in the attached Appendix has applied to the Commission for an order, under section 147 of the Act, exempting the Filer from the compensation fund participation requirement on the terms set out in this Order.

Each Filer has also applied to the Director, under section 6.1 of the Fee Rule, for an exemption from the requirement in section 4.1 to pay a fee for its filing of these exemption applications.

Representations of each Filer

Each Filer has represented to the Commission and the Director that:

- a. The Filer is not a member of either IIROC or the MFDA, and the Filer is not required by Ontario securities law to be a member of either of these self-regulatory organizations.
- b. The Filer does not now hold for its clients any funds, securities or other property (**Client Assets**).
- c. So long as the Filer relies upon the exemption from the compensation fund participation requirement set out in this Order, the Filer will not hold any Client Assets.
- d. Before any person or company that is not a client of the Filer on the Effective Date (defined below) becomes a client of the Filer, the Filer will provide to that person or company prominent written notice of the following:

The Filer has obtained an exemption from the requirement in Ontario securities law to participate in an approved compensation fund or contingency trust fund. These funds provide for certain compensation to eligible clients of a participating dealer who suffer a financial loss as a result of the dealer becoming insolvent and not being able to return assets which it was holding on behalf of clients.

It is a condition of the exemption that the Filer not hold any client assets.

- e. On the Effective Date, the Filer will have provided to any person or company that is an existing client of the Filer prominent written notice of the following:

The Filer has obtained an exemption from the requirement in Ontario securities law to participate in an approved compensation fund or contingency trust fund. These funds provide for certain compensation to eligible clients of a participating dealer who suffer a financial loss as a result of the dealer becoming insolvent and not being able to return assets which it was holding on behalf of clients.

It is a condition of the exemption that the Filer not hold any client assets.

The Filer was a participant in the Ontario Contingency Trust Fund at the time it applied for this exemption. It applied for this exemption in response to the proposed wind-up of that fund, as discussed in Ontario Securities Commission Staff Notice 33-739 Termination of the Ontario Contingency Trust Fund.

- f. The Filer will not rely upon the passport provisions of Canadian securities legislation to passport this Ontario Order into any other jurisdiction of Canada without the prior written consent of that other jurisdiction.

Commission Order

In the opinion of the Commission it is not prejudicial to the public interest to make this Order.

It is ordered by the Commission pursuant to section 147 of the Act that:

- (i) beginning on the Effective Date (as defined below), each of the Filers is exempt from subsection 110(1) of the Act, but only so long as, in the case of that Filer:
 - A. the Filer is not required by Ontario securities law to be a member of either IIROC or the MFDA;
 - B. the Filer does not hold any Client Assets; and
 - C. the Filer provides the disclosure to its clients referred to in paragraph (d) above and has provided the disclosure to its clients referred to in the paragraph (e) above; and
- (ii) this Order shall be effective on the day that is 30 calendar days after the date hereof (the "**Effective Date**").

DATED at Toronto, Ontario this _____ day of _____, 2012.

Commissioner
Ontario Securities Commission

Commissioner
Ontario Securities Commission

Director Exemption Decision

The Director is satisfied that to grant this Exemption would not be prejudicial to the public interest.

It is the decision of the Director, pursuant to section 6.1 of the Fee Rule, that each Filer is exempt from the requirement in section 4.1 of the Fee Rule to pay an activity fee for the filing by the Filer of the above-referenced applications.

DATED at Toronto, Ontario this _____ day of _____, 2012.

Deputy Director
Compliance and Registrant Regulation
Ontario Securities Commission

Appendix

[to be completed following the submission of applications]