



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF PRO-FINANCIAL ASSET MANAGEMENT INC.,
STUART MCKINNON and JOHN FARRELL**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (the “Commission”) makes the following allegations:

I. OVERVIEW

1. On or between May 2003 to August 2014 (the “Material Time”), Pro-Financial Asset Management Inc. (“PFAM”) acted as adviser, selling agent and note administrator for certain series of principal protected notes (“PPNs”) issued by Société Générale (Canada) (“SGC”) and BNP Paribas (Canada) (“BNP”) (collectively, the “Banks”). A chart of the nine series of PPNS and PFAM’s role with each series is attached as Appendix “A”.

2. Stuart McKinnon (“McKinnon”) has been a director and directing mind of PFAM since its incorporation on November 6, 2002. McKinnon was registered as PFAM’s Ultimate Responsible Person (“URP”) from October 19, 2005 to September 28, 2009 and as PFAM’s Ultimate Designated Person (“UDP”) since October 28, 2009.

3. John Farrell (“Farrell”) was a vice-president or senior vice-president of PFAM from October 17, 2006 to April 15, 2013 and was a director from October 17, 2006 to April 15, 2013. Farrell acted as PFAM’s chief compliance officer (“CCO”) from November 27, 2007 to September 28, 2009 and from October 28, 2009 to April 15, 2013.

4. In 2010, PFAM became aware of a discrepancy in the number of outstanding PPNs as reflected in the records of its record-keeper, The Investment Administration Solution Inc. (“IAS”) and the records of the trustee, Concentra Financial (“Concentra”). PFAM failed to fully investigate this discrepancy in a timely manner and failed to change its internal controls and procedures related to the redemption of early redemption of PPNs which resulted in further PPN discrepancies.

5. On April 23, 2013, PFAM delivered a report to Staff (“PFAM’s Reconciliation Report”) that stated that the total cash obligation to noteholders of the PPNs (the “PPN Noteholders”) as reflected in Concentra’s records and IAS’s records differed by \$1,222,549.45 (the “PPN Discrepancy”). As a result of the PPN Discrepancy, there was a shortfall of \$1,222,549.45 in the amount available to honour all outstanding maturity liabilities to PPN Noteholders.

6. On May 17, 2013, the Commission issued a temporary order (the “Temporary Order”) with PFAM’s consent which suspended PFAM’s registration as a dealer in the category of exempt market dealer (“EMD”) and restricted PFAM in its role as an adviser in the category of portfolio manager (“PM”) and its operation as an investment fund manager (“IFM”) to dealing only with existing clients and existing client accounts.

7. The PPN Discrepancy was primarily caused by PFAM submitting more redemption requests to the Banks than PFAM received from PPN Noteholders (the “Unsupported Redemption Requests”). PFAM also made redemption payments to PPN Noteholders using prices which were different from the prices used by the Banks.

8. PFAM failed to keep track of the monies received on the Unsupported Redemption Requests in PFAM’s trust account (the “Trust Account”). PFAM also made redemption and/or maturity payments to Noteholders in one series of PPNs with monies received in respect of another PPN series. By mishandling the redemptions of PPNs, PFAM failed to act fairly, honestly and in good faith with PFAM’s clients.

9. PFAM failed to maintain adequate internal controls and compliance systems and failed to maintain satisfactory books, records and other documents to record its business transactions, financial affairs and the transactions executed on behalf of others.

10. In 2013 and 2014, PFAM also experienced problems managing the Pro-Index Funds (defined below) including: (i) disclosure of inaccurate and incorrectly calculated management expense ratios (“MERs”) for the Pro-Index Funds; (ii) failure to renew the Pro-Index Funds’ prospectus, causing the Pro-Index Funds to cease distribution of their securities to the public, contrary to investor expectations and PFAM’s plan to continue distribution of the securities of the Pro-Index Funds; (iii) late filing of both the 2013 annual audited financial statements and management reports of fund performance (“MRFPs”); (iv) late delivery of T3 tax slips to unitholders of the Pro-Index Funds; and (v) failure, as of December 4, 2014, to file the interim financial reports and interim MRFPs for the Pro-Index Funds for the period ended June 30, 2014, which were due on August 29, 2014.

11. In 2012, PFAM operated with a capital deficiency in breach of section 12.1 of NI 31-103, failed to report its capital deficiency to Staff and failed to rectify the capital deficiency, which were factors resulting in the Temporary Order.

12. McKinnon failed to meet his obligations as PFAM’s URP and UDP and Farrell failed to meet his obligations as PFAM’s CCO.

13. As officers and directors of PFAM, McKinnon and Farrell, authorized, permitted or acquiesced in PFAM’s non-compliance with Ontario securities law and are deemed to have not complied with Ontario securities law.

II. THE RESPONDENTS

(a) PFAM

14. PFAM was registered as a dealer in the category of EMD prior to this registration being suspended with PFAM’s consent by the Temporary Order. PFAM was registered as an adviser in the category of PM although these activities became restricted to dealing with existing clients and existing client accounts by terms and conditions imposed by the Temporary Order.

15. PFAM acted as IFM of the Pro-Index Funds under the transition provisions of section 16.4 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing*

Registrant Obligations (“NI 31-103”). Staff of the Compliance and Registrant Regulation (“CRR”) Branch recommended to the Director that PFAM’s application for registration as an IFM be refused, in part due to PFAM’s ongoing capital deficiency, and communicated CRR Staff’s position to PFAM by letter dated December 21, 2012.

(b) McKinnon

16. McKinnon was the directing mind of PFAM. McKinnon was: (i) PFAM’s president and chief executive officer since March 2, 2003 (except for the period of approximately November 2010 to March 2011); (ii) a PFAM director since November 6, 2002; (iii) PFAM’s URP from October 19, 2005 until September 28, 2009; and (iv) PFAM’s UDP since October 28, 2009.

(c) Farrell

17. Farrell acted as: (i) PFAM’s vice-president or senior vice-president from October 17, 2006 to April 15, 2013; (ii) PFAM’s CCO from November 27, 2007 to April 15, 2013 (except for approximately one month in September and October 2009); and (iii) a PFAM director from October 17, 2006 to April 15, 2013.

III. THE PPN DISCREPANCY AND PFAM’S FAILURE TO DEAL FAIRLY, HONESTLY AND IN GOOD FAITH WITH ITS CLIENTS

18. During the Material Time, PFAM engaged in the following conduct in its roles as adviser, selling agent and/or notes administrator of nine series of PPNs, which conduct resulted in or contributed to the PPN Discrepancy.

(a) *Unsupported Redemption Requests*

19. During the Material Time, PFAM submitted Unsupported Redemption Requests to the Banks. PFAM caused the Banks to redeem approximately 11,814 more PPN units than PPN Noteholders actually requested to redeem. The Unsupported Redemption Requests submitted by PFAM contributed to the PPN Discrepancy.

(b) *Mishandling of Redemption Payments*

20. During the Material Time, PFAM made redemption payments to PPN Noteholders at prices different from the prices used by the Banks (the “Bank Prices”) to calculate the redemption amounts paid by the Banks via Concentra to PFAM (the “Price Variance Issue”).

21. PFAM’s Reconciliation Report stated that the Bank Prices often differed from the price received by PPN Noteholders and that the Price Variance Issue caused PFAM to pay \$566,839.26 more to PPN Noteholders than PFAM received from the Banks via Concentra for redeemed PPNs.

(c) *Failure to Account for Monies in the Trust Account*

22. PFAM failed to account for the monies that PFAM received from the Banks via Concentra for the Unsupported Redemption Requests. More specifically, PFAM was not in a position to identify the beneficial owners of the monies in the Trust Account, as least in part, due to the following:

- i. PFAM failed to keep track of: (i) the Unsupported Redemption Requests submitted to the Banks; (ii) the monies received from the Banks via Concentra in relation to the Unsupported Redemption Requests; and (iii) how the monies were used;
- ii. PFAM commingled monies received for the different PPN series, as well as monies related to other PFAM products, in the Trust Account;
- iii. PFAM failed to perform reconciliations of the Trust Account such that PFAM did not know, at any given time, how much of the balance of the Trust Account related to each PPN series; and
- iv. redemption and/or maturity proceeds received for one PPN series were used to make redemption and/or maturity payments for another PPN series.

23. PFAM failed to regularly analyze or reconcile the balance in the Trust Account and in doing so failed to comply with its own internal policies and procedures.

(d) *Caused or Permitted Deficiencies in the PPN Records*

24. PFAM was responsible, through IAS, for maintaining a register of PPN Noteholders but has failed to explain to Staff:

- i. why the opening number of PPN units differed between the records of IAS and Concentra in eight of nine PPN series;
- ii. other than the Price Variance Issue, how the balance of the redemption proceeds that PFAM received for Unsupported Redemption Requests were used; and
- iii. why the PPN Discrepancy was not investigated earlier and reported to the Banks, Concentra, IAS and/or PPN Noteholders.

(e) *Failure to Communicate and Investigate PPN Discrepancies*

25. In December 2010, when the first PPN series (“Pro 101”) matured, PFAM was aware that IAS’s records on the Pro 101 series differed from Concentra’s records such that the maturity proceeds provided by SGC via Concentra was \$197,031 greater than what was necessary to repay all outstanding units based on IAS’s records.

26. In December, 2011 when the second PPN series (“Pro 706”) matured, PFAM should have been aware of a further discrepancy between IAS’s records for the Pro 706 series and Concentra’s records as the maturity liability was \$114,803 greater than the maturity proceeds which PFAM received.

27. On May 1, 2012, McKinnon was provided with results of a reconciliation conducted by PFAM which identified a discrepancy between the records of IAS and Concentra for each and every then outstanding PPN series and an overall discrepancy of \$13,122.84.

28. PFAM failed to fully investigate the PPN discrepancies in a timely manner and failed to inform the Banks, Concentra, IAS and/or PPN Noteholders.

29. PFAM continued to submit Unsupported Redemption Requests to the Banks until late 2012 and used, at least in part, the surplus maturity proceeds from the Pro 101 series to fund the shortfall in maturity proceeds relating to the Pro 706 series and/or redemption payments of other PPN series.

30. The manner in which PFAM dealt with the redemptions and maturity payments of PPNs was a breach of PFAM's obligation to deal fairly, honestly and in good faith with its clients, contrary to subsection 2.1(1) of OSC Rule 31-505 *Conditions of Registration* ("OSC Rule 31-505").

IV. PFAM'S BREACH OF ITS STANDARD OF CARE AS AN IFM AND BREACHES OF PRO-INDEX FUNDS' CONTINUOUS DISCLOSURE OBLIGATIONS

31. As a result of the management expense ratio ("MER") errors and PFAM's failure to deliver key documents in a timely manner as set out below, PFAM breached its statutory standard of care as an IFM as set out in subsection 116(b) of the Act.

(a) MER Errors

32. On March 28, 2013, PFAM filed its annual MRFPs for the year ended December 31, 2012 ("December 2012 MRFPs") on SEDAR for each of the following prospectus-qualified mutual funds: (i) Pro FTSE RAFI Canadian Index Fund; (ii) Pro FTSE RAFI US Index fund; (iii) Pro FTSE RAFI Global Index Fund; (iv) Pro Money Market Fund; (v) Pro FTSE RAFI Hong Kong China Index Fund; (vi) Pro FTSE RAFI Emerging Markets Index Fund; (vii) Pro FTSE NA Dividend Index Fund; (viii) Pro-Fundamental Balanced Index Fund; and (ix) Pro-Fundamental Bond Index Fund (collectively, the "Pro-Index Funds").

33. On August 29, 2013, PFAM filed its semi-annual MRFPs for the period ended June 30, 2013 (the "June 2013 MRFPs") on SEDAR for each of the Pro-Index Funds.

34. In late 2013, Staff became aware of possible inaccuracies in the MERs for the Pro-Index Funds.

35. Each of the 26 published MERs in the December 2012 MRFPs were incorrect. In two instances, the original published MERs were overstated by between 58% and 69%. In 24 instances, the original published MERs were understated by between 11% and 96%.

36. Each of the 26 published MERs in the June 2013 MRFPs were incorrect. In all 26 instances, the original published MERs were understated by between 41% and 379%.

37. MERs for investment funds must not be disclosed unless the MERs are calculated in accordance with section 15.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (“NI 81-106”). The MERs published in the December 2012 MRFPs and the June 2013 MRFPs for the Pro-Index Funds were not calculated in accordance with section 15.1 of NI 81-106. By disclosing MERs for the Pro-Index Funds that were not calculated in accordance with section 15.1 of NI 81-106, the Pro-Index Funds and PFAM contravened section 15.1 of NI 81-106 and made misrepresentations in the December 2012 MRFPs and the June 2013 MRFPs.

38. On March 10, 2014, PFAM issued a press release which disclosed that calculation errors were made by PFAM in the MERs in both the December 2012 MRFPs and the June 2013 MRFPs. The press release was required by the Commission as a condition to granting a further extension of the lapse date for the Pro-Index Funds’ prospectus from March 4 to April 7, 2014.

(b) Failure to Deliver Key Documents

i. *Pro-Index Funds’ Prospectus Renewal*

39. On January 15, 2014, Staff were advised that the Pro-Index Funds’ prospectuses received on January 14, 2013 had not been renewed through PFAM’s inadvertence.

40. Lapse date extensions for the Pro-Index Funds’ prospectus were provided by Commission orders dated January 21, March 4 and April 7, 2014. On April 21, 2014, PFAM’s lapse date extension was dismissed without prejudice to PFAM bringing an application under

section 144 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) to vary the April 21, 2014 Order once the annual audited financial statements and MRFPs for the Pro-Index Funds were filed. As a result, the distribution of securities of the Pro-Index Funds ceased at the end of the day on April 21, 2014 contrary to investor expectations and PFAM’s plan to continue distribution of the securities of the Pro-Index Funds.

ii. Pro-Index Funds’ Audited Financial Statements and MRFPs

41. The annual audited financial statements and MRFPs for the Pro-Index Funds for the year ended December 31, 2013 were due on or before March 31, 2014, as required by sections 2.2 and 4.2 of NI 81-106.

42. On June 6, 2014, the Pro-Index Funds’ annual audited financial statements and MRFPs were filed on SEDAR which was 67 days after they were due.

iii. 2013 T3 Tax Slips for Pro-Index Fund Unitholders

43. PFAM was required to provide Pro-Index Fund unitholders with 2013 T3 tax slips – *Statement of Trust Income Allocations and Designations* by no later than 90 days after the end of the Pro-Index Funds’ taxation year which ended December 31, 2013.

44. The 2013 tax slips for the Pro-Index Funds were mailed to clients on June 12, 2014.

iv. Failure to File Interim Financial Reports and MRFPs of the Pro-Index Funds

45. The interim financial reports and interim MRFPs for the Pro-Index Funds for the period ended June 30, 2014 were due on or before August 29, 2014. As of December 4, 2014, these documents have not been filed, as required by sections 2.4 and 4.2 of NI 81-106.

46. As a result of the above MER errors and failures to file and deliver key documents in a timely manner, PFAM breached its statutory standard of care as an IFM as set out in subsection 116(b) of the Act.

V. PFAM'S FAILURE TO MAINTAIN REQUIRED WORKING CAPITAL

47. On November 21, 2012, CRR Staff conducted a PFAM site visit. PFAM's chief financial officer ("CFO") provided CRR Staff with documents showing PFAM's monthly working capital calculations for the period from May to October 2012 which confirmed that PFAM had adequate working capital as at October 31, 2012 and all other month-ends during the period.

48. On November 30, 2012, PFAM's CFO advised CRR Staff that recent adjustments affected PFAM's working capital calculations such that PFAM was capital deficient by \$183,367 as at October 31, 2012 (the "Revised Calculation").

49. The Revised Calculation reflected additional accrued liabilities that PFAM failed to initially account for which was the primary reason for PFAM's working capital decreasing to a deficit of \$183,367.

50. CRR Staff then prepared its own excess working calculation for PFAM which indicated that PFAM's working capital deficiency was approximately \$634,423 as of October 31, 2012 after the necessary adjustments.

51. On February 22, 2013, after its annual financial statements were audited, PFAM filed a Form 31-103F1 – *Calculation of Excess Working Capital* ("Form 31-103F1") which reflected a revised capital deficiency of \$726,746 as at October 31, 2012.

52. PFAM's annual audited financial statements, on which the Form 31-103F1 for October 31, 2012 was based, reflected an increase in accounts payables and accrued liabilities and an increase in the current note payable balance (the "Note Payable") when compared to the amounts included in the Revised Calculation. These additional current liabilities were the primary reasons for PFAM's working capital, as at October 31, 2012, decreasing to a deficit of \$726,746.

53. Staff alleges that PFAM's monthly Form 31-103F1 for the period of May 31, 2012 to October 31, 2012 inclusive were incorrect as PFAM failed to reflect the full Note Payable balance as a current liability in PFAM's working capital calculation when the full loan balance

was due to mature on May 1, 2013. The effect of this error was that PFAM was below its minimum capital requirements as of May 31, 2012.

54. In the period from May 1 to November 30, 2012, PFAM failed to report its capital deficiency in breach of subsection 12.1(1) of NI 31-103. During this period and after November 30, 2012, PFAM operated with an excess working capital less than zero contrary to section 12.1 of NI 31-103.

VI. PFAM'S FAILURE TO KEEP SATISFACTORY BOOKS AND RECORDS

55. PFAM's failure to have or retain the following documents, books and/or records breached PFAM's record-keeping obligation as required by subsections 19(1) and 32(1) of the Act, sections 11.5 and 11.6 of NI 31-103 and PFAM's own policies and procedures.

(a) Trust Account Disbursements

56. By summons dated February 13, 2014, PFAM was required to produce supporting documents for 125 transactions from PFAM's Trust Account in order for Staff to identify recipients of payments, amounts received and reasons for the payments. Staff subsequently reduced the number of transactions for which Staff required supporting documents.

57. On September 19, 2014, in response to the summons, PFAM's counsel advised Staff that "Best efforts have been made to locate this information, but it is presently in storage."

(b) Calculation of Original December 2012 MERs

58. By summons dated September 18, 2013, PFAM's CFO was required to produce: (i) PFAM's calculation of the December 2012 MERs; and (ii) copies of supporting documents for the total expense amounts used in the December 2012 MER calculations, including financial statements.

59. By email dated October 9, 2013, in response to the summons, PFAM's counsel advised Staff that, with respect to December 2012 MER calculations, "the employee who prepared the

calculations is no longer with PFAM and PFAM is unable to locate the calculation in the archival record of her emails.”

(c) PFAM’s Monthly Approved Form 31-103F1s for Period of May to October 2012

60. During McKinnon’s examination on July 30, 2014, McKinnon provided an undertaking to: (i) confirm that the monthly Form 31-103F1s for the period of May to October 2012 provided to CRR Staff by PFAM’s CFO on November 21, 2012 were approved by McKinnon and Farrell; or (ii) provide the Form 31-103F1s which were approved by McKinnon and Farrell as at November 2012.

61. On September 19, 2014, in response to this undertaking, PFAM’s counsel advised that “Mr. McKinnon is unable to confirm that the monthly Form 31-103F1 provided to Staff in November 2012 were approved by Mr. McKinnon and does not presently have access to the Form 31-103F1 which were approved by Mr. McKinnon and Mr. Farrell in November, 2012”.

(d) “Management Fees-Contra” line item in the Pro-Index Funds’ G/L Trial Balance Reports

62. During an examination on December 30, 2013, PFAM’s CFO provided an undertaking to advise of the types of transactions that are reported under the “Management Fees–Contra” line item in the Pro-Index Funds’ General Ledger Trial Balance Reports.

63. By email dated January 17, 2014, PFAM’s counsel advised that “PFAM is having difficulty obtaining a detailed explanation from IAS of these items”.

(e) Expenses waived/absorbed by Manager” amounts in the Pro-Index Funds’ financial statements for years ended December 31, 2012 and 2013

64. During an examination on July 17, 2014, PFAM’s CFO was unable to explain to Staff the source or basis for the line items entitled “Expenses waived/absorbed by Manager” in the Pro-Index Funds’ financial statements for the years ended December 31, 2012 and 2013. PFAM’s CFO advised that only IAS could explain the “Expenses waived/absorbed by Manager” numbers in the Pro-Index Funds’ financial statements.

65. PFAM's failure to have or retain the following documents, books and/or records breached PFAM's obligation to accurately record PFAM's business activities, financial affairs and transactions that it executes on behalf of others as required by subsection 19(1) of the Act and sections 11.5 and 11.6 of NI 31-103 and as required by PFAM's own internal policies and procedures.

VII. INADEQUATE INTERNAL CONTROLS AND COMPLIANCE SYSTEMS

66. PFAM had an obligation as a registrant to have adequate internal controls and systems to ensure compliance with securities laws and to manage the risks associated with its business in accordance with prudent business practices.

67. The following conduct and/or failures by PFAM demonstrate its inadequate internal controls and compliance systems:

- a. submitting Unsupported Redemption Requests to the Banks and/or failing to track monies received for Unsupported Redemption Requests;
- b. paying PPN Noteholders at redemption prices different from the prices paid by the Banks;
- c. using redemption or maturity proceeds from one PPN series to pay redemptions or maturity proceeds for other PPN series;
- d. failing to analyze and identify components of the balance in the Trust Account;
- e. failing to investigate PPN discrepancies fully and in a timely manner and report the discrepancies to the Banks, Concentra, IAS and/or PPN Noteholders;

- f. failing to maintain and deliver books, records and documents required to accurately record PFAM's business activities, financial affairs and client transactions;
- g. failing to ensure that reasonable controls were in place for the for the calculation of MERs for the Pro-Index Funds; and
- h. failing to ensure that reasonable controls were in place for the calculation and maintenance of PFAM's excess working capital.

68. PFAM's conduct and/or failures as set out above were contrary to PFAM's obligation to establish, maintain and apply policies and procedures that establish an adequate system of controls and supervision and in doing so breached section 11.1 of NI 31-103 and subsection 32(2) of the Act.

VIII. FAILURE OF MCKINNON TO FULFILL RESPONSIBILITIES AS PFAM's URP AND UDP

69. McKinnon was PFAM's URP from October 19, 2005 to September 28, 2009. As PFAM's URP, pursuant to former subsection 1.3(2) of OSC Rule 31-505, McKinnon had ultimate responsibility for ensuring that PFAM's obligations under Ontario securities law were discharged.

70. McKinnon has been PFAM's UDP since October 28, 2009. As PFAM's UDP, pursuant to section 5.1 of NI 31-103, McKinnon has an obligation to supervise the activities of PFAM that are directed towards ensuring compliance with securities legislation by PFAM and individuals acting on its behalf and to promote compliance with securities legislation by PFAM and the individuals acting on its behalf.

71. As a result of the conduct and/or failures set out above, since October 19, 2005 and before September 28, 2009, McKinnon breached his obligations as PFAM's URP pursuant to subsection 1.3(2) of OSC Rule 31-505. On or after September 28, 2009, McKinnon breached his obligation as PFAM's UDP pursuant to section 5.1 of NI 31-103.

IX. FAILURE OF FARRELL TO FULFILL RESPONSIBILITIES AS PFAM'S CCO

72. Farrell was the CCO of PFAM from November 27, 2007 to September 28, 2009 and from October 28, 2009 to April 15, 2013. As PFAM's CCO, pursuant to former subsection 1.3(1) of OSC Rule 31-505 before September 28, 2009 and on and after September 28, 2009, pursuant to section 5.2 of NI 31-103, Farrell had statutorily prescribed obligations in connection with PFAM's compliance with securities legislation.

73. As a result of the conduct and/or failures set out above, Farrell breached his obligations as PFAM's CCO pursuant to former subsection 1.3(1) of OSC Rule 31-505 from November 27, 2007 to September 27, 2009 and pursuant to section 5.2 of NI 31-103 from September 28, 2009 to April 15, 2013.

X. MCKINNON'S AND FARRELL'S LIABILITY AS OFFICERS AND DIRECTORS

74. McKinnon was PFAM's president and chief executive officer since March 2, 2003 (except for the period of approximately November 2010 to March 2011). McKinnon has been a PFAM director since November 6, 2002.

75. Farrell was vice-president or senior vice-president and a director of PFAM from October 17, 2006 to April 15, 2013.

76. As officers and directors of PFAM, McKinnon and Farrell authorized, permitted or acquiesced in the breaches of Ontario securities law by PFAM set out above and, pursuant to section 129.2 of the Act, McKinnon and Farrell are deemed to have not complied with Ontario securities law.

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

77. Staff's allegations are that:

- a. PFAM failed to deal fairly, honestly and in good faith with its clients, in breach of its obligations under subsection 2.1(1) of OSC Rule 31-505;

- b. PFAM failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances and in doing so, breached the standard of care for IFMs under subsection 116(b) of the Act;
- c. PFAM failed to maintain the minimum capital required of a registered firm and failed to report its capital deficiency contrary to section 12.1 of NI 31-103;
- d. PFAM failed to keep satisfactory books, records or other documents contrary to subsection 19(1) of the Act and contrary to sections 11.5 and 11.6 of NI 31-103;
- e. PFAM failed to establish, maintain and apply policies and procedures that establish an adequate system of controls and supervision contrary to section 11.1 of NI 31-103 and subsection 32(2) of the Act;
- f. McKinnon and Farrell, as officers and directors of PFAM, authorized, permitted or acquiesced in breaches by PFAM of subsection 2.1(1) of OSC Rule 31-505, subsection 116(b) of the Act, sections 11.1 and 12.1 of NI 31-103, subsections 19(1) and 32(2) of the Act and sections 11.5 and 11.6 of NI 31-103 and thereby McKinnon and Farrell are deemed to have breached subsection 2.1(1) of OSC Rule 31-505, subsection 116(b) of the Act, sections 11.1 and 12.1 of NI 31-103, subsections 19(1) and 32(2) of the Act and sections 11.5 and 11.6 of NI 31-103 pursuant to section 129.2 of the Act;
- g. Farrell breached his obligations as CCO of PFAM contrary to former subsection 1.3(1) of OSC Rule 31-505 and, on and after September 28, 2009, contrary to section 5.2 of NI 31-103; and
- h. McKinnon breached his obligations as URP and UDP of PFAM contrary to former subsection 1.3(2) of OSC Rule 31-505 and, on and after September 28, 2009, contrary to section 5.2 of NI 31-103.

78. Staff alleges that the conduct set out above was also conduct contrary to the public interest.

79. Staff reserves the right to make such other allegations as Staff may advise and the Commission may permit.

Dated at Toronto this 8th day of December, 2014

PFAM - List of PPN Series								Appendix "A"
PPN Series	Short Name (Fund Code)	Issuer	Settlement / Closing Date	Maturity Date	Agent	Investment Advisor / Manager	Note Administrator	
1	Pro-Hedge Principal Protect Notes, Univest Series 1	SGC Series I (Pro 101)	Société Générale (Canada)	10-Jul-03	31-Dec-10	Legacy Investment Management Inc. ("Legacy")	PFAM	-
2	Pro-Hedge Principal Protected Notes, Series II	SGC Series II (Pro 201)	Société Générale (Canada)	19-Dec-03	19-Dec-12	Legacy	PFAM	-
3	Pro-Hedge Principal Protected Deposit Notes, Series III	SGC Series III (Pro 301 & 311)	Société Générale (Canada)	30-Apr-04	19-Dec-12	PFAM	PFAM	-
4	Pro-Hedge G.I.S., Series 1	BNP GIS 1 (Pro 401 & 411)	BNP Paribas (Canada)	23-Dec-04	31-Oct-13	-	-	PFAM
5	Pro-Hedge G.I.S., Series 2	BNP GIS 2 (Pro 421 & 431)	BNP Paribas (Canada)	27-Apr-05	31-Mar-14	-	-	PFAM
6	Pro-Hedge Principal Protected Deposit Notes, Series IV	SGC Series IV (Pro 441 & 451)	Société Générale (Canada)	16-Dec-05	30-Jun-14	PFAM	PFAM	-
7	Pro-Performance Blue Chip Yield Deposit Notes, Series 1	BNP Blue Chip (Pro 701)	BNP Paribas (Canada)	31-Mar-06	31-Mar-14	-	-	PFAM
8	Pro-Performance Principal Protected Commodity Deposit Notes	SGC Commodity (Pro 706)	Société Générale (Canada)	21-Jul-06	15-Dec-11	PFAM	-	-
9	Pro-Performance Berkshire/iShares Linked Deposit Notes	SGC Berkshire (Pro 711)	Société Générale (Canada)	05-Dec-06	12-Dec-16	PFAM	-	-