Nevertheless, the Court accepted that Wright did not plead the material facts necessary to establish that he had a cause of action under s. 130, as he did not plead that he purchased one or more Creation Units. Thorburn J.A. granted leave to amend the Statement of Claim in this regard.

Takeaway

The Ontario Court of Appeal's decision does not speak to the merits of the claim and does not certify the Class. Wright will still need to satisfy the remaining certification criteria in order to have the action certified as a class action and to prove his claims at trial.

Nevertheless, practically speaking, the Court opening the door to recognition of a novel duty of care as between investment fund managers and investors expands the categories of potential available claims for pure economic loss and could have a wide-ranging impact on the entire investment fund industry.

To the extent such a duty of care exists between fund managers and investors, it raises questions about the nature of the relationships between manufacturers of investment products, the dealers who sell those products and investors. In light of the Court's decision, fund managers will be wise to scrutinize their current and proposed products to ensure they understand how they will perform under a broad range of conditions and to identify the appropriate market for such products. Managers will also want to carefully review their disclosure documents to ensure they clearly identify the types of investors for whom a product is suitable (and not suitable), as well as the risks associated with such investment.

It will be interesting to see whether this decision emboldens disgruntled investors to bring more securities class actions framed to fit within this novel duty of care.

Veronica Sjolin maintains a broad practice in commercial disputes. She assists both individuals and organizations with securities and banking matters, contractual disputes, and issues relating to public and administrative law. In addition to appearing as counsel before several tribunals including the OSC, the MFDA, and IIROC, Veronica has appeared as counsel before all levels of court in Ontario, and has assisted with matters before the Supreme Court of Canada.

EXPECT BIG CHANGES TO SROS: CSA RELEASES ITS CONSULTATION PAPER FOR A REVISED SRO FRAMEWORK

— Brad Moore and Robert Marks. © Fasken Martineau DuMoulin LLP. Reproduced with permission.

Introduction

On June 25, 2020 the Canadian Securities Administrators ("CSA") released their Consultation Paper 25-402—*Consultation on the Self-Regulation Organization Framework* ("Consultation Paper"). The Consultation Paper discusses seven key issues of the existing framework for self-regulatory organizations ("SROs") and is seeking feedback from industry representatives, investor advocates, and the public on how the innovation and development of the financial services industry has impacted the current regulatory regime.

CSA announced its plan to undertake this review in December 2019. In anticipation of CSA's Consultation Paper, the Investment Industry Regulatory Organization ("IIROC") and the Mutual Fund Dealers Association of Canada ("MFDA") released papers outlining their proposed new framework for SROs.

MFDA—Proposal for a Modern SRO

MFDA released its special report titled *A Proposal for a Modern SRO* on February 3, 2020. MFDA recommended creating an entirely new SRO referred to as "NewCo". NewCo would be a Canadian business conduct and securities regulator and its mandate would include registration, business conduct standards, prudential matters, policy and rule development and enforcement. However, its mandate would not include market surveillance and regulation. Regulation of markets and exchanges would be integrated with the CSA Statutory Regulators (e.g., OSC, BCSC, etc.,).

IIROC—Improving Self-Regulation for Canadians

IIROC released its proposal titled *Improving Self-Regulation for Canadians* on June 9, 2020. The proposal recommends bringing together IIROC and MFDA as divisions of a consolidated SRO. IIROC believes that the consolidation would save hundreds of millions of dollars over the next decade from reduced duplicative regulatory costs. The proposal highlights the burdensome and lengthy process of trying to develop a new rule book from scratch and emphasizes that a consolidation of IIROC and MFDA would allow dealers and representatives to continue performing under their existing regulatory regime or consolidate their regulatory oversight under one division of the combined SRO.

CSA—Consultation Paper

CSA's Consultation Paper discusses seven key issues of the existing SRO framework that were identified during informal consultations. The issues were grouped into three broad categories: structural inefficiencies, investor confidence, and market surveillance. With respect to each issue, the Consultation Paper provides a targeted outcome for consideration. The following summarizes each issue and states the CSA's targeted outcome.

Issue 1—Duplicative Operating Costs for Dual Platform Dealers

Dual platform dealers often experience higher operating costs and difficulty achieving economies of scale. This inhibits dealers' ability to minimize costs for investors and innovate product and service offerings. In addition, dual platform dealers are faced with maintaining separate compliance functions and, as a result, are saddled with separate information technology systems. Lastly, dual platform dealers incur both IIROC and MFDA fees.

CSA's targeted outcome is a "regulatory framework that minimizes redundancies that do not provide corresponding regulatory value."

Issue 2—Product-Based Regulation

Different rules or different interpretations of similar rules between IIROC and MFDA exist at a time where there is a convergence of similar products and services between registrants of each SRO. The inconsistent application of rules and compliance between the SROs creates an opportunity for some registrants to take advantage of these differences.

CSA's targeted outcome is a "regulatory framework that minimizes opportunity for regulatory arbitrage, including the consistent development and application of rules."

Issue 3—Regulatory Inefficiencies

There is inefficient access to certain products and services for some registration categories. For example, mutual fund dealers under the MFDA are unable to easily distribute exchange traded funds. The current framework also makes it difficult for any one of the SROs or even the CSA to effectively resolve issues that span multiple registration categories.

CSA's targeted outcome is a "regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors."

Issue 4—Structural Inflexibility

Evolving business models are restricted by the current framework. The structural inflexibility is posing challenges for dealers to accommodate changing investor preferences and to access to a wider range of products and services from a single registrant. Additionally, the current regulatory structure places unnecessary barriers on professional advancement. For example, the higher IIROC proficiency standard makes the transition from mutual fund dealer to investment dealer challenging.

CSA's targeted outcome is a "flexible regulatory framework that accommodates innovation and adapts to change while protecting investors."

Issue 5—Investor Confusion

Investors are generally confused by the existing regulatory framework. There is investor confusion surrounding the number of SROs and their roles and jurisdictions, accessing the complaint resolution processes, and why an investor cannot access similar investment products from a single source.

CSA's targeted outcome is a "regulatory framework that is easily understood by investors and provides appropriate investor protection."

Issue 6—Public Confidence in the Regulatory Framework

There is a possible lack of public confidence in the existing SRO framework. Inadequacies in the SRO governance structure (industry-focused boards and a lack of formal investor feedback mechanisms) fail to provide enough support for SRO's public interest mandate. Further, there is concern regarding ineffective SRO compliance and enforcement practices.

CSA's targeted outcome is a "regulatory framework that promotes a clear, transparent public interest mandate with an effective governance structure and robust enforcement and compliance processes."

Issue 7—The Separation of Market Surveillance from Statutory Regulators (CSA)

IIROC continues to conduct the surveillance of trading activity on the debt and equity marketplaces in Canada. Statutory Regulators that regulate marketplace operations require IIROC to provide the necessary information. There is concern over possible information gaps and lack of market transparency resulting from this separation of market surveillance away from Statutory Regulators.

CSA's targeted outcome is an "integrated regulatory framework that fosters timely, efficient access to market data and effective market surveillance to ensure appropriate policy development, enforcement, and management of systemic risk."

Going Forward

CSA is collecting feedback on the Consultation Paper for a 120-day comment period ending October 23, 2020. The consultation process will result in a CSA paper outlining a proposed regulatory framework for SROs whereby the CSA will seek further public comment.

Brad Moore is a partner at Fasken Martineau DuMoulin LLP. Brad is a securities litigator who represents investment dealers, registered representatives and other market participants in civil and regulatory proceedings.

Robert Marks is a summer law student at Fasken Martineau DuMoulin LLP. Robert will be completing his dual JD/MBA at the University of Toronto in 2021.

CANADIAN SECURITIES ADMINISTRATORS

Amendments to National Instrument 21-101

CSA Notice of Approval *Amendments to National Instrument 21-101 Marketplace Operation and Changes to Companion Policy 21-101CP Marketplace Operation*, was published on June 18, 2020. Provided all ministerial approvals are obtained, the Amendments will come into force on September 14, 2020.

Amendments to National Instrument 24-102

Notice of Ministerial Approval of Amendments to National Instrument 24-102 *Clearing Agency Requirements*, was published on June 18, 2020. Amendments will be incorporated in National Instrument 24-102 and Companion Policy 24-102CP, which will be reproduced in Volume 1 of the *Canadian Securities Law Reporter* at ¶ 2412 and ¶ 2412c, respectively.

CSA Consultation Paper 25-402

CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*, dated June 25, 20220 was published. For more information, please see CSA Consultation Paper 25-402, which will be reproduced in Volume 1 of the *Canadian Securities Law Reporter* at ¶ 2542.

CSA Staff Notice 31-358

CSA Staff Notice 31-358 *Guidance on Registration Requirements for Chief Compliance Officers and Request for Comments*, was published July 2, 2020. For more information, please see CSA Staff Notice 31-358, which will be reproduced in Volume 1 of the *Canadian Securities Law Reporter* at ¶ 3188.

PROVINCIAL UPDATES

New Brunswick

Proposed Local Rule 25-501

Notice and Request for Comment *Proposed Local Rule 25-501 Designation as a Market Participant, 2020,* was published. Comments are to be provided, in writing, by no later than September 7, 2020.

Ontario

OSC Staff Notice 11-739

The OSC has revised its list of new instruments in OSC Staff Notice 11-739 *Policy Reformulation Table of Concordance and List of New Instruments*. The revised notice will be reproduced in Volume 3A of the *Canadian Securities Law Reporter* at ¶ 490-128l.

OSC Notice 11-789

OSC Notice 11-789 *Notice Statement of Priorities for Financial Year to end March 31, 2021*, was published on June 25, 2020. For more information, please see OSC Notice 11-789, which will be reproduced in Volume 3A of the *Canadian Securities Law Reporter* at ¶ 490-139ag.

RECENT CASES

Reciprocal Orders

Ontario Securities Commission, June 3, 2020

On December 12, 2017, a panel of the British Columbia Securities Commission (the "BCSC") found that Paul Se Hui Oei ("Oei"), Canadian Manu Immigration & Financial Services Inc. ("Manu"), and two numbered companies (together, the "Respondents") had engaged in fraud, contrary to paragraph 57(*b*) of the British Columbia *Securities Act*, RSBC 1996, c. 418 (the "BC Act"). Among other things, the BCSC Panel found that Oei told investors he was raising capital to fund two start-up companies, and he diverted over $5 million towards other purposes, including the payment of personal expenses. The BCSC Panel rejected the Respondents' argument that the fraud resulted from faulty legal advice, and it found the Respondents' poor record-keeping was an aggravating factor. A BCSC Panel subsequently ordered that Oei and Manu be permanently prohibited from participating in the capital market, from acting as director or officer of any issuer, and from acting as a promotor or in a consultative capacity in connection with securities activities. Oei and Manu were also jointly and severally liable to disgorge $4,160,577, and both were ordered to pay significant administrative penalties (the "BCSC Order"; see 2018 CSLR ¶ 900-752). An application for review of the BCSC merits and sanctions decisions was dismissed, as the BCSC Panel found it would be contrary to the public interest to order the same (the "BCSC Appeal Decision"; see 2019 CSLR ¶ 900-794). An application for leave to appeal the BCSC Appeal Decision was subsequently dismissed by the British Columbia Court of Appeal. Staff of the Ontario Securities Commission (the "Commission") requested orders against Oei and Manu (as the number companies had been dissolved some years earlier) under subsection 127(1) of the Ontario *Securities Act*, RSO 1990, c. S.5 (the "Act") substantially mirroring the non-monetary sanctions under the BCSC Orders. Staff relied on the inter-jurisdictional enforcement provisions found in subsection 127(10) of the Act.

The orders were granted. There were two issues before the Panel: first, were Oei and Manu subject to an order made by a securities regulatory authority in any jurisdiction that imposed on them "sanctions, conditions, restrictions or requirements" such that the threshold set out in subsection 127(10)4 of the Act was met; and, if so, was it in the public interest for the Commission make an order against Oei and Manu, or had they demonstrated that the BCSC Order should not be reciprocated? On the first issue, the Panel had little trouble in determining that the threshold was met, as the BCSC was a securities regulatory authority and the BCSC Order imposed sanctions on Oei and Manu. On the second issue, the Panel noted, among other things, that: the onus was on a respondent to show an order should not be reciprocated by the Commission; the Commission should only refuse to reciprocate an order if a respondent demonstrated that there was no substantial connection between the respondent and the originating jurisdiction, the original order was procured by fraud, or there was a denial of natural justice in the originating jurisdiction; and factors for the Commission to consider when fashioning orders includes the seriousness of the misconduct, mitigating factors, and specific and general deterrence. Key findings by the Panel included that: Oei and Manu had failed to establish that the BCSC Order was outrageous or that the BCSC proceedings had been unfair; Oei did not understand the "underlying principles of securities regulation and particularly the role of disclosure" and made a number of untrue statements to investors; fraud was considered one of the most serious securities regulatory offences; and there were no mitigating factors. The Panel concluded that substantive orders were needed to protect the Ontario capital markets and deter others from similar misconduct and found that the orders requested by Staff were appropriate and proportionate to the misconduct.

Re Oei, 2020 CSLR ¶ 900-837

Documentary Disclosure

Ontario Securities Commission, June 2, 2020

Staff of the Ontario Securities Commission (the "Commission") alleged that a number of respondents, including Donald Alexander (Sandy) Goss ("Goss") and John Fielding ("Fielding"; together with Goss, the "Moving Parties") carried out illegal insider tipping and trading in Amaya Gaming Group Inc. ("Amaya") contrary to the Ontario *Securities Act*, RSO 1990, c. S.5 (the "Act"). Staff began reviewing Amaya's trades in February 2015, and three investigators were primarily involved, Christine George ("George"), Stuart Mills ("Mills"), and Anne Paiement ("Paiement"). Staff initially disclosed over 76,000 documents, including 100 summons, numerous emails, transcripts of interviews, and notes of communications entered in the Commission's Enforcement Information System ("EIS"). The Moving Parties requested an order that Staff disclose: all relevant, non-privileged investigator notes, including notes taken during interviews and hearings; all relevant, non-privileged internal Commission communications; and a log of all undisclosed relevant but privileged documents with the rationale for withholding to allow the respondents to challenge the decision. The Moving Parties' position was that there were significant gaps in Staff's disclosure, which was inconsistent with Rule 27 of the Commission's *Rules of Procedure and Forms* (the "Rules") and undermined their ability to make full answer and defence. More particularly, Rule 27(1) of the Rules requires Staff to provide parties with "copies of all non-privileged documents in Staff's possession that are relevant to an allegation".

The motion was dismissed. There were three issues before the Panel: whether the investigator notes and internal communications were relevant and required to be disclosed; whether Staff was required to do a document-by-document relevance review; and whether Staff was required to provide a log of privileged material. The Panel began its analysis by noting, among other things, that: the applicable disclosure standard reflected the standard in criminal proceedings (see *R. v. Stinchcombe*, [1991] 3 SCR 326 ("*Stinchcombe*")); in assessing the relevance of non-privileged documents, Staff had to consider documents that might assist a respondent in making full answer and defence to the allegations, defences a respondent might raise, and err on the side of inclusion; Staff did not have to disclose documents that were clearly irrelevant; following initial disclosure, the moving parties had the burden to establish the basis for further disclosure by establishing a sufficient connection between those requested documents and their ability to make full answer and defence to the allegations; the Commission found in *Philips (Re),* 2012 ONSEC 43 that, "internal analysis, commentary, opinion or discussions, even by a non-expert fact witness, and even if squarely on the issue to be determined by the Commission, would have no probative value before the Commission" (followed in *Azeff (Re),* 2015 ONSEC 11, and the Alberta Securities Commission in *Fauth (Re),* 2017 ABASC 3); whether a document was internally generated was not determinative of relevance, it was whether it contained "analysis, commentary, opinion or discussion"; and the fact that a relevant document was transcribed into another format did not alter the relevance of the original document. On the first issue, the Panel found that: internal Staff emails were not required to be disclosed as they either contained "analysis, commentary, opinion or discussion" or the contents had been disclosed as evidence (i.e., the respondents' background information); the hand-written notes underlying the EIS entries were required to be disclosed (and were provided prior to this hearing) as they differed from the EIS entries and where there were different versions of the same document, Staff should not decide which version to disclose; documents created by investigators for their personal use, including notes taken during interviews or interpretations of evidence, were not required to be disclosed as they fell within the category of commentary or opinion; and draft spreadsheets created to analyze Amaya trades were not required to be disclosed as they were for internal analysis. On the second issue, the Moving Parties alleged that Staff did not typically engage in a document-by-document review but took a categorical approach. The Panel found that the *Stinchcombe* obligation did "not require perfection in disclosure", rather, the objective was overall fairness to the respondent. Staff had to exercise considerable judgment in deciding what to disclose, and it was not the Commission's role to dictate the actual process by which this was achieved. Accordingly, the Panel declined to make the requested order. On the last issue, because privilege was not being asserted by Staff, the Panel found it unnecessary to render a decision.

Re Kitmitto, 2020 CSLR ¶ 900-838

Advisor Obligations

Alberta Securities Commission, June 17, 2020

Kenton Roy Rustulka (the "Respondent") was an Alberta resident who was registered as an exempt market dealing representative (a "DR") in the provinces of Alberta, British Columbia, and Saskatchewan. He was previously a pastor and police officer. From January 1, 2013 through June 3, 2016 (the "Relevant Period"), the Respondent was under contract with WealthTerra Capital Management Inc. ("WealthTerra"), an exempt market dealer firm. During the Relevant Period: the Respondent sold approximately $6.5 million in exempt market securities ("EMS") and earned approximately $460,000 in commissions; WealthTerra management circulated and the Respondent received WealthTerra's Policy and Procedures Manual which replicated portions of the Alberta *Securities Act*, RSA 2000, c. S-4 (the "Act"), National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("31-103"), and outlined the conduct expected of DRs; and WealthTerra circulated several notices emphasizing the importance of adhering to Know Your Client ("KYC") and Know Your Product ("KYP") obligations, and ensuring the suitability of an investment product for the client. WealthTerra discovered the Respondent had made misrepresentations in a client's KYC form, and as the Respondent thwarted attempts to curtail his client interaction, he was terminated from WealthTerra in June 2016. In a notice of hearing issued on December 20, 2018, Staff of the Alberta Securities Commission (the "Commission") alleged that the Respondent contravened subsection 92(4.1) of the Act by making misrepresentations to his investor clients. More specifically, Staff alleged that the Respondent falsely told clients that: EMS were inherently low risk and secure; securities in certain issuers were low-risk and safe; certain securities were backed by the Alberta government or the Commission; and the risk acknowledgement form ("RAF") that was required to be signed by investors was only procedural and could be ignored. It was also alleged that the Respondent contravened sections 13.2 and 13.3 of 31-103 by failing to comply with KYC obligations by incorrectly identifying clients' needs, objectives, and circumstances; reporting false information on KYC forms; not taking reasonable steps to ensure that the EMS he recommended to clients were suitable; and recommending to certain clients that they borrow money to make leveraged purchases of EMS which was unsuitable to the clients' circumstances.

The Respondent was found to have breached the Act. The Commission Panel began its analysis by noting, among other things, that: the primary goals of securities regulation are investor protection and efficient capital markets; and the requirement for individuals who participate in the market to be registered supports the goals as registrants must adhere to certain standards of conduct and competence. Further, both *Re Lamoureux*, 2001 LNABASC 433 ("*Lamoureux*"), and 31-103 articulated a three-stage process for registrants: (1) using due diligence to "know the product" and "know the client"; (2) assessing whether a particular securities product is appropriate for a client; and (3) if suitable, making a recommendation but ensuring the client is aware of material factors associated with the product. Evidence presented by Staff included the testimony of eight investors who the Panel found credible. On the first step of the 31-103 process, the Panel noted that in *Lamoureux*, the KYC obligation was "the obligation to learn about the client, their personal financial situation, financial sophistication and investment experience, investment objectives and risk tolerance", and this information was typically collected in a KYC form. The Panel found in reviewing the investors' testimony as compared to their KYC forms that it was clear that the Respondent had inaccurately prepared their KYC forms by, among other things, overstating their income, risk tolerance, and investment knowledge. This was done in order to ensure transactions would be approved to maximize his commissions. This was in clear violation of 13.2 of 31-103. The suitability assessment was: as stated by the Ontario Securities Commission, "an essential component of the consumer protection scheme of the Act and a basic obligation of a registrant"; and a fact specific determination that required a registrant to know the product, know the client, and sometimes disagree with a client's idea of his or her risk tolerance. As investors' KYC forms were inaccurately completed, there was "an impossibly weak foundation upon which suitability could be assessed". The Panel also found that the Suitability Assessment Forms were completed inaccurately to ensure transactions were approved by WealthTerra's Chief Compliance Officer. On their circumstances alone (i.e., advanced age, nearing retirement, little to no investment knowledge), several of the investors should not have been in the exempt market at all. The breach of section 13.3 of 31-103 was exacerbated by the Respondent ignoring guidance not to over-concentrate a client's portfolio and advising some clients to borrow money to invest. On the third stage, subsection 92(4.1) of the Act prohibits an individual from making a statement he or she knows or should know is materially misleading or making an omission that results in a statement being materially misleading and that would have a significant effect on the value of a security. In this case, the investor testimony was consistent that the Respondent: led them to believe that EMS were secure when they were not; told them certain issuers' securities were safe when in reality the issuers were start ups, speculative, or had no records of revenue; and told them that the RAF could be disregarded when they were integral to guarding against unsuitable high risk investments. The Panel also had no trouble in concluding that the Respondent was aware that his statements were untrue as he was an experienced exempt market dealer, and he deliberately downplayed the risk of the products he was offering to induce the investors into purchasing them.

Re Rustulka, 2020 CSLR ¶ 900-839

Orders for Breach of IIROC Rules

British Columbia Securities Commission, June 12, 2020

Lawrence Bradley Chang (the "Respondent") was registered with the Investment Industry Regulators of Canada ("IIROC"). In a decision dated August 26, 2013, an IIROC panel found that the Respondent breached IDA Bylaw 29.1 by: purchasing $498,160 of one security (USSU) in a client's account without authorization; making misrepresentations to the client about how many shares of USSU were in the client's account to hide the purchases; and engaging in business conduct unbecoming and detrimental to the public interest. In a sanctions decision dated January 20, 2014, the Respondent was permanently banned from IIROC approval, and ordered to pay a fine of $100,000 and to pay costs of $7,500. Subsequent to the IIROC hearings, the Respondent: was sued by the client and paid $220,000 as a term of the settlement; had his marriage end and became financially responsible for four children; declared bankruptcy in 2018 and was unable to pay the IIROC fine; and became involved in the business of supplying bulk fuel and had the opportunity to become a director of a newly incorporated private company ("Newco"). The Executor Director of the British Columbia Securities Commission (the "Commission") requested orders under subsection 161(1) of the British Columbia *Securities Act*, RSBC 1996, c. 418 (the "Act") prohibiting the Respondent from: becoming or acting as a director or officer of any issuer or registrant except Newco; becoming or acting as a registrant or promoter; and acting in a management or consultative capacity in connection with securities market activities, except in connection with Newco. The Executive Director relied on paragraph 161(6)(c) of the Act which "facilitates cooperation between the Commission and other securities regulatory authorities self-regulatory bodies and exchanges" by allowing orders to be made against a person who "is subject to an order made by, among other entities, a self-regulatory body such as IIROC, imposing sanctions, conditions, restrictions or requirements on the person." The Respondent did not oppose the registrant bans but argued that the remainder of the orders were too broad.

The registrant related bans were granted. The Panel began its analysis by noting that it had the ability to make orders against the Respondent based on paragraph 161(6)(*c*) of the Act, as the IIROC was a self-regulatory body that had made an order that imposed sanctions on the Respondent. Other key points included that: public interest orders were to be "protective and preventative, intended to be exercised to prevent future harm" (see *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission),* 2001 SCC 37); a panel could rely on another jurisdiction's efforts to avoid duplicating proceedings but still had to make its own determination as to whether to make a public interest order rather than mirroring that of the other jurisdiction (see *Maclean v. British Columbia (Securities Commission)*, 2013 SCC 67); factors to consider when fashioning sanctions included the seriousness of the respondent's conduct, harm to investors and the market, the respondent's enrichment and past conduct, the risk to investors and the market if the respondent continued to participate, specific and general deterrence, and orders made in similar circumstances; and a commission had to consider a respondent's circumstances when determining whether measures short of a permanent ban would protect the public and the respondent's livelihood was in issue (see *Davis v. British Columbia (Securities Commission),* 2018 BCCA 149). Key findings by the Panel included that: the misconduct was serious; an investor was significantly harmed; the Respondent was not significantly enriched; and the Respondent's conduct fell short of that expected of a registrant. The Panel also noted that in the case of *Re Pawar*, 2016 BCSECCOM 174 ("*Pawar*"), the respondent had breached Dealer Member Rule 29.1 and was permanently banned from IIROC registration, and the Executive Director requested similar prohibitions to the one requested against the Respondent. However, the Commission only ordered registrant prohibitions and declined prohibitions to act as a director or officer of an issuer. The Panel concluded that, given *Pawar,* the fact that the misconduct was limited to a breach of the bylaws while a registrant, there was no evidence that the Respondent engaged in capital market misconduct, and considering the sanctioning factors, it was in the public interest to permanently prohibit the Respondent from becoming or acting as a registrant or a director or officer of a registrant.

Re Chang, 2020 CSLR ¶ 900-840

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For LexisNexis Canada Inc.

Jaime Latner, LLB,
Content Development Associate
905-479-2665
email: jaime.latner@lexisnexis.ca

Customer Support
Phone: 1-800-387-0899
Email: service@lexisnexis.ca
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LexisNexis Canada Inc.
111 Gordon Baker Road
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