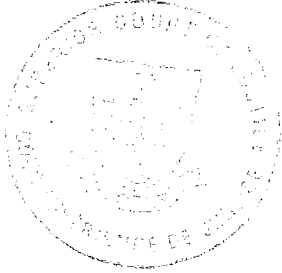


CV-17-11779-00CL
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

BETWEEN:



ONTARIO SECURITIES COMMISSION

Applicant

- and -

CRYSTAL WEALTH MANAGEMENT SYSTEM LIMITED, CLAYTON SMITH, CLJ
EVEREST LTD., 1150752 ONTARIO LIMITED, CRYSTAL WEALTH MEDIA
STRATEGY, CRYSTAL WEALTH MORTGAGE STRATEGY, CRYSTAL
ENLIGHTENED RESOURCE & PRECIOUS METALS FUND, CRYSTAL WEALTH
MEDICAL STRATEGY, CRYSTAL WEALTH ENLIGHTENED FACTORING
STRATEGY, ACM GROWTH FUND, ACM INCOME FUND, CRYSTAL WEALTH
HIGH YIELD MORTGAGE STRATEGY, CRYSTAL ENLIGHTENED BULLION
FUND, ABSOLUTE SUSTAINABLE DIVIDEND FUND, ABSOLUTE SUSTAINABLE
PROPERTY FUND, CRYSTAL WEALTH ENLIGHTENED HEDGE FUND, CRYSTAL
WEALTH INFRASTRUCTURE STRATEGY, CRYSTAL WEALTH CONSCIOUS
CAPITAL STRATEGY, CRYSTAL WEALTH RETIREMENT ONE FUND and
CHRYSALIS YOGA INC.

Respondents

APPLICATION UNDER SECTION 129 OF THE *SECURITIES ACT*
R.S.O. 1990, c. S.5, AS AMENDED

NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing before a judge presiding over the Commercial List at 330 University Avenue, Toronto, Ontario on Wednesday, April 26, 2017, at 10:00 a.m., or as soon after that time as the matter can be heard.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: April 25, 2017

Issued by



Local registrar

C. Irwin

Registrar

Address of

court office:

330 University Avenue, 7th floor
Toronto, Ontario
M5G 1R7

TO: ALL THE PARTIES ON THE ATTACHED SERVICE LIST

APPLICATION**1. THE APPLICANT MAKES APPLICATION FOR:**

- a) An order, if necessary, abridging the time for service and filing of this notice of application and the application record and applicant's factum such that this application is properly returnable on April 26, 2017, or, in the alternative, validating service on the respondents, or in the further alternative, dispensing with same;
- b) An order that the within application be consolidated, or alternatively heard at the same time, with the application to extend Freeze Directions commenced by the applicant by way of a notice of application issued through this Honourable Court on April 18, 2017 (CV-17-11769-00CL) (the "**Continuation Application**"), such that the Continuation Application is properly returnable on Wednesday, April 26, 2017;
- c) An order pursuant to section 129 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the "Act"):
 - i) appointing Grant Thornton Limited ("GTL") as receiver and manager (in such capacities, the "**Receiver**"), without security, of all of the assets, undertakings and properties of Crystal Wealth Management System Limited ("**Crystal Wealth**"), Clayton Smith ("**Smith**"), CLJ Everest Ltd. ("**CLJ Everest**"), 1150752 Ontario Limited ("**115**"), Crystal Wealth Media Strategy, Crystal Wealth Mortgage Strategy, Crystal Enlightened Resource & Precious Metals Fund, Crystal Wealth Medical Strategy, Crystal Wealth Enlightened Factoring Strategy, ACM Growth Fund, ACM Income Fund, Crystal Wealth High Yield Mortgage Strategy, Crystal Enlightened Bullion Fund, Absolute Sustainable Dividend Fund, Absolute Sustainable Property Fund, Crystal Wealth Enlightened Hedge Fund, Crystal Wealth Infrastructure Strategy, Crystal Wealth Conscious Capital Strategy, and Crystal Wealth Retirement One Fund (all entities listed after 115 being collectively referred to as the "**Funds**" or "**Crystal Wealth**

Funds", and collectively with Crystal Wealth, CLJ Everest, and 115, the "**Crystal Wealth Respondents**"), including, without limitation, all of the assets, securities, funds or other property held by the Crystal Wealth Respondents on behalf of or in trust for any other person or company, and including any and all funds, securities, or other property frozen by Freeze Directions (identified below in paragraphs 2(aa)(ii) to (aa)(x)) issued by the Ontario Securities Commission (the "**Commission**") against the Crystal Wealth Respondents on April 6 and 7, 2017 (the "**Crystal Wealth Freeze Directions**") (collectively referred to with the assets, undertakings and properties of the Crystal Wealth Respondents, the "**Property**"); and

ii) appointing GTL as the Receiver of the account of the Respondent, Chrysalis Yoga Inc. ("**Chrysalis Yoga**"), No. 87296 00518 10 at Bank of Nova Scotia (the "**Chrysalis Account**"), and of all contents, including funds, contained in the Chrysalis Account, and directing Bank of Nova Scotia to pay all such funds in the Chrysalis Account to the Receiver or as the Receiver may otherwise direct in writing;

d) An order pursuant to subsections 126(5) and 126(5.1) of the Act continuing the Freeze Directions (identified below in paragraphs 2(aa)(i) and 2(aa)(xi)) issued by the Commission with respect to Chrysalis Yoga (the "**Chrysalis Yoga Freeze Directions**") until further order of this Honourable Court, with the exception: (i) that the funds in the Chrysalis Account be paid to the Receiver or as the Receiver may otherwise direct in writing, and that the Receiver have unrestricted access to the Chrysalis Account and records in connection therewith in accordance with its appointment herein; and (ii) that Chrysalis Yoga shall be permitted to use a bank account opened by Chrysalis Yoga at the Canadian Imperial Bank of Commerce, account no. 05162 010 59 37914 (the "**Chrysalis Yoga CIBC Account**"), for the sole purpose of operating Chrysalis Yoga's yoga studio business, and on the following terms:

i) the sole source of the funds deposited into the Chrysalis Yoga CIBC Account shall be from: (i) the parents of Shanine Lee Dennill ("**Dennill**"),

Dennill being the principal of Chrysalis Yoga; or (ii) clients of the yoga studio operated by Chrysalis Yoga, and not, directly or indirectly, from Smith and entities connected with or related to him as particularized in sub-paragraph ii) below;

- ii) the Chrysalis Yoga CIBC Account shall not be used in any manner by, and the funds contained therein shall not be received from or distributed to, directly or indirectly, Smith or persons or entities connected with or related to Smith, including: (i) Crystal Wealth; (ii) any investment funds managed by Crystal Wealth including without limitation the Funds; (iii) CLJ Everest; (iv) 115; or (v) any other company associated with Smith; and
- iii) copies of monthly bank statements for the Chrysalis Yoga CIBC Account shall forthwith be provided on a monthly basis by Chrysalis Yoga to Staff of the Ontario Securities Commission (“**Staff**”), until such time as Staff revokes or varies this requirement in writing, or the Ontario Securities Commission or Ontario Superior Court of Justice (Commercial List) orders otherwise;
- e) An order authorizing the Receiver to complete, on behalf of CLJ Everest, the sale of the property located at 5043 Mount Nemo Crescent in Burlington, Ontario (the “**Mount Nemo Property**”) to Martin McCready (the “**Purchaser**”) pursuant to an agreement of purchase and sale dated April 12, 2017 (the “**Sale Agreement**”) and vesting title in the Mount Nemo Property to the Purchaser free and clear of any liens, claims, and encumbrances, and ordering that Smith, and any other occupants of the Mount Nemo Property, vacate the Mount Nemo Property forthwith so that the Receiver can deliver vacant possession of it in accordance with the Sale Agreement;
- f) For the sole purpose of giving effect to the transaction contemplated by sub-paragraph e) above, an order directing the Land Titles Division of the Halton Land Registry Office (No. 20) to remove from title to the Mount Nemo Property the Certificate of Direction issued by the Ontario Securities Commission on April

13, 2017 and registered on title to the Mount Nemo Property on the same date as instrument no. HR1446942 (identified below in paragraph 2(bb));

- g) An order authorizing the Receiver to make distributions from the sale proceeds of the Mount Nemo Property to the registered mortgagee of the Mount Nemo Property, without further order of the Court, subject to the Receiver satisfying itself as to the validity of such mortgage and the amounts claimed;
- h) If necessary, an order appointing GTL as interim Receiver of all of the Property of the Crystal Wealth Respondents and of the Chrysalis Account;
- i) Such further and other relief as counsel may advise and this Honourable Court may permit.

2. THE GROUNDS FOR THE APPLICATION ARE:

Investigation by the Ontario Securities Commission

- (a) Enforcement Staff of the Ontario Securities Commission (“**Staff**”) are conducting an investigation into the activities of Crystal Wealth and its principal, Smith, as well as the activities of companies connected to Smith, including CLJ Everest, for potential breaches of Ontario securities law;
- (b) Staff have obtained evidence that demonstrates:
 - i. that Smith, Crystal Wealth and CLJ Everest may have participated in a course of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud contrary to s. 126.1(1)(b) of the Act;
 - ii. that Smith and Crystal Wealth may have failed to act fairly, honestly and in good faith with clients, contrary to section 2.1 of Rule 31-505 – *Conditions of Registration*;
 - iii. that Smith and Crystal Wealth may have failed to comply with the standard of care expected of an Investment Fund Manager (“**IFM**”) under s. 116 of the Act;

- iv. that Crystal Wealth failed to comply with the Funds' obligations to deliver the Funds' audited financial statements for the calendar year ending December 31, 2016, according to sections 2.1, 2.2 and 2.11 of National Instrument 81-106 – *Investment Fund Continuous Disclosure*; and
 - v. that Crystal Wealth failed to comply with its obligations to file its audited financial statements in compliance with subsection 21.10(3) of the Act and sections 12.10(2), 12.12, 12.13 and 12.14 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registration Obligations*;
- (c) Among other things, Staff have reason to believe that Smith and Crystal Wealth may have used investor monies from the largest of the funds managed by Crystal Wealth (the Media Fund, as defined below) for purposes other than those set out in the offering memorandum. As detailed below, Staff have reason to believe that Smith directed investor money from the Media Fund to a third party intermediary, and from there, the monies flowed to Smith (into his bank account) and his companies, CLJ Everest and 115, for uses unconnected with the business of the investment fund. Staff have traced some of these monies to the purchase of the Mount Nemo Property acquired by CLJ Everest, which Smith uses as his personal residence, and among other uses, to Chrysalis Yoga, a yoga studio for which Smith is described as the co-founder along with Dennill;
- (d) On Friday, April 21, 2017, an Assistant Investigator in the Enforcement Branch of the Commission conducted a compelled examination of Dennill, who testified that Smith has provided \$2.4 million to Chrysalis Yoga since its incorporation in 2009;

Smith

- (e) Smith is an Ontario resident and the directing mind of Crystal Wealth. Smith holds a controlling interest in the shares of Crystal Wealth and is the sole officer and director of Crystal Wealth;

- (f) Smith is registered in Ontario with the Commission as a dealing representative, an advising representative in the category of portfolio manager (“PM”), an advising representative in the category of Commodity Trading Manager, and as Crystal Wealth’s Chief Compliance Officer (“CCO”) and Ultimate Designated Person (“UDP”). As CCO and UDP, Smith bears responsibility for the firm’s compliance with Ontario securities laws;

Crystal Wealth

- (g) Crystal Wealth is a Burlington-based Ontario corporation, registered with the Commission in the categories of Exempt Market Dealer, Investment Fund Manager (“IFM”), PM and Commodity Trading Manager;
- (h) Crystal Wealth has approximately 1,265 portfolio management clients with assets under management (“AUM”) as at March 31, 2016 in discretionary accounts totaling \$139,524,613.77. Approximately 309 of these clients are located in Ontario. Crystal Wealth’s clients were invested through discretionary accounts and of those approximately 94% were invested in the Crystal Wealth Funds managed by Crystal Wealth;

The Crystal Wealth Funds

- (i) Crystal Wealth has created and manages the following 15 proprietary investment funds:
- i. Crystal Wealth Media Strategy (the “**Media Fund**”);
 - ii. Crystal Wealth Mortgage Strategy (the “**Mortgage Fund**”);
 - iii. Crystal Enlightened Resource & Precious Metals Fund (the “**Enlightened Resource Fund**”);
 - iv. Crystal Wealth Medical Strategy (the “**Medical Fund**”);
 - v. Crystal Wealth Enlightened Factoring Strategy (the “**Factoring Fund**”);
 - vi. ACM Growth Fund;

- vii. ACM Income Fund;
- viii. Crystal Wealth High Yield Mortgage Strategy (the “**High Yield Mortgage Fund**”);
- ix. Crystal Enlightened Bullion Fund;
- x. Absolute Sustainable Dividend Fund (the “**Sustainable Dividend Fund**”);
- xi. Absolute Sustainable Property Fund (the “**Sustainable Property Fund**”);
- xii. Crystal Wealth Enlightened Hedge Fund (the “**Hedge Fund**”);
- xiii. Crystal Wealth Infrastructure Strategy (the “**Infrastructure Fund**”);
- xiv. Crystal Wealth Conscious Capital Strategy (the “**Conscious Capital Fund**”); and
- xv. Crystal Wealth Retirement One Fund

(collectively, the “**Crystal Wealth Funds**” or the “**Funds**”);

- (j) The Crystal Wealth Funds are structured as open-ended mutual fund trusts, and distributed on an exempt basis, pursuant to offering memoranda (“OMs”). As the IFM of the Funds, Crystal Wealth manages the day-to day business of the Funds and oversees the Portfolio Manager function. As PM of the Funds, Crystal Wealth is required to make suitable investment decisions for the Funds’ portfolios consistent with the respective Fund’s investment objectives. As at January 30, 2017, the total Assets under Management (“AUM”) for all of the Crystal Wealth Funds was approximately \$177,237,747;

The Media Fund

- (k) The largest of the Crystal Wealth Funds is the Media Fund, which had an AUM of \$53,221,497 as at January 31, 2017. The business of the Media Fund involves the following:

- i. Investors with discretionary managed accounts provide funds to Crystal Wealth to manage on their behalf in accordance with their investment objectives and agreements governing their accounts;
- ii. As PM for the discretionary managed accounts, Crystal Wealth uses its discretionary authority to place investor funds into the proprietary funds it manufactures, such as the Media Fund;
- iii. The Media Fund's investment objective is to earn interest income from loans made for film productions ("**Film Loans**");
- iv. As PM for the Media Fund, Crystal Wealth decides in which Film Loans the Media Fund will invest;
- v. Media House Capital (Canada) Corp. ("**MHC**") enters into agreements with film production companies to lend them money so that they can produce a film. The end borrower is the production company;
- vi. MHC then sells those Film Loans to the Media Fund, and receives an up-front 10% fee, which is built into the principal of the Film Loan; and
- vii. By virtue of owning units of the Media Fund, investors indirectly own the value of the Film Loan, which is reflected in the NAV of the Media Fund;

CLJ Everest and 115

- (l) Smith's company, CLJ Everest, has the same registered office in Burlington, Ontario as 115. Smith is the sole shareholder, officer and director of CLJ Everest, which holds 28.26% of Crystal Wealth's outstanding shares and 100% of the shares of 115. 115 holds 63.5% of Crystal Wealth's outstanding shares;

Chrysalis Yoga

- (m) Chrysalis Yoga is a yoga studio in Burlington that was co-founded by Smith;

Transfers of Monies from the Media Fund to Smith and CLJ Everest

- (n) Staff's investigation has revealed that monies from the Media Fund, purportedly for the purchase of Film Loans, have flowed through either MHC or Bron Animation Inc. ("**Bron Animation**"), a company related to MHC, and ultimately into the accounts of Smith, CLJ Everest, 115, Chrysalis Yoga, and a joint account at TD Bank in the name of Smith and Lee Ann Smith;
- (o) Staff's investigation to date has revealed that at least \$9,634,200 was disbursed from the Media Fund's account, transferred to the accounts of MHC or Bron Animation, and from there Staff have traced \$329,930 into the account of Smith, and \$2,307,347.50 into the account of Smith's company, CLJ Everest. Staff have traced further transfers from the accounts of Smith and CLJ Everest totaling \$187,000 to Chrysalis Yoga and at least \$13,000 to a joint account in the name of Smith and Lee Ann Smith;
- (p) Staff are still investigating these and other transfers from the Media Fund's account;
- (q) Staff's investigation has also revealed that CLJ Everest acquired the Mount Nemo Property. CLJ Everest acquired this property through two payments totalling \$1,455,585.13 which were funded largely with monies transferred to CLJ Everest from the Media Fund;
- (r) On Smith's National Registration Database profile, the address for the Mount Nemo Property is listed as Smith's home address;

The Net Asset Value ("NAV") of the Media Fund

- (s) Staff also have concerns about the existence and valuation of the Film Loans acquired by the Media Fund and it appears to Staff that the net asset value ("NAV") of the Media Fund may have been and continues to be materially overstated. Staff's concerns arise from Staff's review of the audit of the Media Fund's Financial Statements for the year ended December 31, 2015, and from email correspondence in which Smith appeared to acknowledge significant

valuation issues with respect to certain Film Loans in the summer and fall of 2016;

- (t) If the Media Fund's NAV were incorrect by being overvalued, investors' purchases and redemptions of the Media Fund's units would have been executed at incorrect, inflated prices. In other words, those investors who redeemed their Media Fund units may have received excess proceeds to the detriment of remaining and new investors. Further, those new investors may have paid too much for their units. In addition, if the Media Fund's NAV were overstated, it would similarly impact Funds that were invested in the Media Fund, and potentially the NAVs of each of those Funds;

Inter-Fund Investments and Loans

- (u) As at April 7, 2017, there were investments by Crystal Wealth Funds in the units of other Crystal Wealth Funds ("**Inter-Fund Investments**") totalling \$22,694,777.01. Of that amount, seven of the Crystal Wealth Funds held \$11,218,727.32 in units of the Media Fund, three of the Crystal Wealth Funds held \$4,894,288.43 in units of the Factoring Fund and three Funds held \$4,841,079.30 in units in the Enlightened Hedge Fund. The extent and amount of Inter-Fund Investments is dynamic;

Failure to File or Deliver Financial Statements for Crystal Wealth and 12 of the 15 Funds

- (v) Crystal Wealth was required to file audited annual financial statements for the year ended December 31, 2016 by March 31, 2017. The Crystal Wealth Funds were required to deliver their audited annual financial statements for the year ended December 31, 2016 by March 31, 2017;
- (w) The 2016 financial statements for Crystal Wealth and the Crystal Wealth Funds were not delivered or filed prior to March 31, 2017. Crystal Wealth's auditor, was unable to complete audits of the 2016 financial statements for the Funds by March 31, 2017 other than for three Funds – the Sustainable Dividend Fund, the Conscious Capital Fund, and the Enlightened Resource Fund. Collectively, these

three Funds represented 4.8% of the AUM of the Crystal Wealth Funds at January 31, 2017;

- (x) BDO has advised Staff that it could not complete the audits of the 2016 financial statements for 12 of the 15 Funds, and for Crystal Wealth, as a result of Crystal Wealth's failure to furnish information requested by the auditor;

The Commission's Temporary Order

- (y) On April 7, 2016, Staff obtained a temporary order (the "**Temporary Order**") providing that trading of units of all of the Crystal Wealth Funds cease, that trading in securities held by the Crystal Wealth Funds cease, and prohibiting the trading in or acquisition of securities by Smith and Crystal Wealth, with limited exceptions that permit Smith and Crystal Wealth to liquidate exchange-traded securities in the Funds with such proceeds being deposited into the account of the relevant fund (the Temporary Order modified and replaced a temporary order issued by the Commission on April 6, 2017);
- (z) The Temporary Order also imposed terms and conditions on Crystal Wealth's registration, including the restriction on Crystal Wealth from accepting new clients, opening new client accounts, or accepting new client monies;

Freeze Directions and Certificate of Direction Issued By the Commission

- (aa) As a result of this information, Staff sought and on April 6 and 7, 2017, the Commission issued, the following Freeze Directions:
 - i. Pursuant to s. 126(1)(a) of the Act, that the Bank of Nova Scotia, branch at 4519 Dundas Street, Burlington, Ontario, retain all funds, securities or property on deposit or under the bank's control in the name of or otherwise under the control of Chrysalis Yoga, including in the specified account;
 - ii. Pursuant to s. 126(1)(a) of the Act, that Interactive Brokers Canada Inc. retain all funds, securities or property on deposit or under the brokerage's

control in the name of or otherwise under the control of ACM Growth Fund, Crystal Wealth Management System Limited, Crystal Wealth Strategic Yield Media Fund, Crystal Wealth Medical Income Fund and Crystal Enlightened Resource and Precious Metals Fund, including in the specified accounts;

- iii. Pursuant to s. 126(1)(a) of the Act, that NBCN Inc. retain all funds, securities or property on deposit or under the brokerage's control in the name of or otherwise under the control of the Crystal Wealth Funds or Crystal Wealth, including in the specified accounts;
- iv. Pursuant to s. 126(1)(a) of the Act, that the Royal Bank of Canada, 200 Bay Street, Toronto, Ontario branch retain all funds, securities or property on deposit or under the bank's control in the name of or otherwise under the control of Crystal Wealth, including in the specified accounts;
- v. Pursuant to s. 126(1)(a) of the Act, that the TD Bank Group retain all funds, securities or property on deposit or under the bank's control in the name of or otherwise under the control of Smith, including in the specified account;
- vi. Pursuant to s. 126(1)(a) of the Act, that the TD Bank Group retain all funds, securities or property on deposit or under the bank's control in the name of or otherwise under the control of CLJ Everest, Crystal Wealth, Smith and Lee Ann Smith, including in the specified accounts;
- vii. Pursuant to s. 126(1)(a) of the Act, that the TD Bank Group retain all funds, securities or property on deposit or under the bank's control in the name of or otherwise under the control of Crystal Wealth Mortgage Strategy, including in the specified account;
- viii. Pursuant to s. 126(1)(b) and (c) of the Act, that Smith refrain from withdrawing any funds, securities or property from the listed institutions, and directing Smith to maintain funds, securities or property and refrain

from disposing of transferring, dissipating or otherwise dealing with or diminishing the value of those funds, securities or property;

- ix. Pursuant to s. 126(1)(b) and (c) of the Act, that Crystal Wealth refrain from withdrawing any funds, securities or property from the listed institutions, and directing Crystal Wealth to maintain funds, securities or property and refrain from disposing of transferring, dissipating or otherwise dealing with or diminishing the value of those funds, securities or property;
- x. Pursuant to s. 126(1)(b) and (c) of the Act, that CLJ Everest refrain from withdrawing any funds, securities or property from the listed institution, and directing CLJ Everest to maintain funds, securities or property and refrain from disposing of transferring, dissipating or otherwise dealing with or diminishing the value of those funds, securities or property;
- xi. Pursuant to s. 126(1)(b) and (c) of the Act, that Chrysalis Yoga refrain from withdrawing any funds, securities or property from the listed institution, and directing Chrysalis Yoga to maintain funds, securities or property and refrain from disposing of transferring, dissipating or otherwise dealing with or diminishing the value of those funds, securities or property;

(collectively, the “**Freeze Directions**”);

- (bb) Staff also sought and on April 13, 2017, the Commission issued a Certificate of Direction pursuant to subsections 126(1)(a) and 126(4) of the Act to permit the registration of a Certificate of Direction on title to the Mount Nemo Property, which Certificate was registered on title on April 13, 2017;
- (cc) The Commission issued the Certificate of Direction on the basis that it was expedient for the due administration of Ontario securities law or the regulation of the capital markets in Ontario;

- (dd) Despite the Freeze Directions, Staff has learned that Smith has caused CLJ Everest to enter into the Sale Agreement with the Purchaser, with a completion date for the transaction of Friday, April 28, 2017;
- (ee) Staff are of the view that Smith, Crystal Wealth and CLJ Everest's conduct has negatively affected the reputation and integrity of Ontario's capital markets;
- (ff) Based on the conduct of the Crystal Wealth Respondents, and Smith in particular to date, the interests of existing investors will not be served by maintaining the *status quo*. A Receiver is necessary to ensure that all investors' assets are dealt with appropriately and fairly in the circumstances;
- (gg) The gravity of the breaches of the Act suggested by the evidence put forward by Staff means that there are serious concerns about the ability of Smith and Crystal Wealth to operate in the capital markets in a manner that complies with securities laws. The interests of existing investors and the integrity of the capital markets would be better served if they were not to continue in positions of trust with respect to the assets of the Funds or the monies of investors;
- (hh) The proposed Receivership Order will ensure that investors' interests are protected while Staff's investigation and enforcement efforts continue, and that the Funds and their assets are properly administered by the Receiver in compliance with Ontario securities law and in the best interests of all stakeholders. In the circumstances, anything less than the appointment of a receiver would not provide the necessary oversight or control over the financial affairs of the Crystal Wealth;
- (ii) The Continuation Application and the within application: (i) have questions of fact in common; and (ii) contain claims for relief arising out of the same transactions or occurrences;
- (jj) Consolidating the within application and the Continuation Application would avoid unnecessary costs or delay;
- (kk) Sections 1.1, 21.10(3), 116, 126, 126.1(1), 128 and 129 of the Act;

- (ll) Section 2.1 of OSC Rule 31-505 – *Conditions of Registration*;
- (mm) Sections 2.1, 2.2 and 2.11 of National Instrument 81-106 – *Investment Fund Continuous Disclosure*;
- (nn) Sections 12.10(2), 12.12, 12.13 and 12.14 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registration Obligations*;
- a) Rules 1.04, 2.03, 3.02, 6.01, 14.05 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- b) Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- a) The affidavit of Marcel Tillie sworn April 17, 2017, and the exhibits attached thereto;
- b) The affidavit of Michael Ho sworn April 17, 2017, and the exhibits attached thereto;
- c) The supplementary affidavit of Michael Ho sworn April 24, 2017, and the exhibits attached thereto;
- d) The affidavit of David Adler sworn April 24, 2017, and the exhibits attached thereto;
- e) The consent of GTL to act as Receiver;
- f) The notice of application issued by the Commission in the Continuation Application; and
- g) Such other material as counsel for the Applicant may submit and this Honourable Court may permit.

April 25, 2017

ONTARIO SECURITIES COMMISSION
20 Queen Street West, 22nd Floor
Toronto ON M5H 3S8

Catherine Weiler - LSUC No. 52424M
Tel: (416) 204-8985
Fax: (416) 593-8321
Email: cweiler@osc.gov.on.ca

Yvonne B. Chisholm - LSUC No. #37040F
Tel: (416) 593-2363
Fax: (416) 593-8321
Email: yichisholm@osc.gov.on.ca

*Lawyers for the Applicant,
Ontario Securities Commission*

ONTARIO SECURITIES COMMISSION

- and -

CRYSTAL WEALTH MANAGEMENT SYSTEM LIMITED, ET AL.

Applicant

Respondents

CV-17-11779-0001
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto

NOTICE OF APPLICATION
(Returnable April 26, 2017)

ONTARIO SECURITIES COMMISSION
20 Queen Street West, 22nd Floor
Toronto ON M5H 3S8

Catherine Weller - LSUC No. 52424M
Tel: (416) 204-8985
Fax: (416) 593-8321
Email: cweiler@osc.gov.on.ca

Yvonne B. Chisholm - LSUC No. #37040F
Tel: (416) 593-2363
Fax: (416) 593-8321
Email: ychisholm@osc.gov.on.ca

*Lawyers for the Applicant,
Ontario Securities Commission*