

A Stitch in Time Saves Nine: The Ontario Securities Commission Approves Two Additional No Contest Settlements

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July 21, 2017

In June and July 2017, the Ontario Securities Commission approved its eighth and ninth no-contest settlements, which both involved financial institutions. In both approved settlements, the financial institutions agreed to significant compensation payments to clients, \$21.8 million and \$11.7 million respectively, voluntary payments to advance the OSC's mandate of protecting investors, \$925,000 and \$495,000 respectively, and payments to the OSC in respect of costs. Both no-contest settlements followed the financial institutions' self-reporting of certain inadequacies in their internal control systems which resulted in excess fees for some clients in their fee-based accounts and other clients not being advised that they qualified for a mutual fund series that had a lower management expense ratio than the series of the same fund in which the clients were invested.

Both settlements provide strong confirmation of the benefits of self-detection and self-reporting of issues and the OSC's continued commitment to early resolution of certain matters without requiring admissions of liability.

The circumstances of both matters were determined to warrant approval of the settlements on a no contest basis in accordance the *OSC Staff Notice 15-702- Revised Credit for Cooperation Program*. In a particular, the following factors favoured a no-contest settlement in both instances:

- self-discovery and prompt self-reporting upon discovering the alleged inadequacies;
- the provision of prompt, detailed and candid cooperation with OSC Staff throughout its investigation;
- no evidence of dishonest conduct;
- the commitment to take measures to establish and implement enhanced procedures and controls, supervisory and monitoring systems designed to prevent recurrence of the alleged inadequacies; and
- voluntary payment of compensation to affected clients and significant additional payments to the OSC.

No-contest settlements were introduced in 2014 in an effort to achieve more timely and efficient resolution of enforcement matters. Such settlements do not require respondents to admit facts alleged by OSC Staff, a contravention of the *Securities Act*, or that the alleged conduct is contrary to the public interest. Though the

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OSC's approval of only nine no-contest settlements since 2014 confirms the regulator's commitment to cautious use of this enforcement tool, one can expect an uptick in no-contest settlements going forward as market participants develop a better understanding of the landscape, including criteria for eligibility and expected consequences, and the OSC continues to reap the benefits of timely and cost-efficient resolutions. As Jeff Kehoe, Director of Enforcement at the OSC recently said: "Our no-contest settlement program continues to deliver results. We will continue to use this strong enforcement tool in appropriate cases that meet our strict criteria."

Links to the eighth and ninth Settlement Agreements approved by the OSC, as well as a transcription of the OSC's Oral Ruling and Reasons with respect to its approval of the eighth Settlement Agreement, can be found below:

- Eighth Settlement Agreement (June 2017)
- OSC's Oral Ruling and Reasons (June 2017)
- Ninth Settlement Agreement (July 2017)

For further information regarding the issues raised by this settlement or if you have any questions, please contact Wendy Berman, John M. Picone, David Kelman or any other member of our Securities Litigation Group.

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