

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

(Court Seal)

**ANTHONY WHITEHOUSE,  
CARRIE COUCH AND JASON COUCH**

- and -

**BDO CANADA LLP**

Proceeding under the *Class Proceeding Act, 1992*

**AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the ~~Plaintiff's~~ Plaintiffs' lawyer or, where the ~~Plaintiff~~ does Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

AMENDED THIS Nov-13, 2019 PURSUANT TO  
MODIFIED CE CONFORMANT A  
RULE/LA RÈGLE 26.01 (B) **Plaintiffs**  
☒ THE ORDER OF **Defendant**  
L'ORDONNANCE DU  
DATED / FAIT LE  
REGISTRAR **W. J. J. J.**  
SUPERIOR COURT OF JUSTICE

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date July 20, 2017  
July 19, 2017 Issued by "D. Skinner"  
Local Registrar

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## CLAIM

1. The Plaintiffs claims:

(a) an order certifying this proceeding as a class proceeding and appointing Anthony Whitehouse (“**Tony**”), Carrie Couch and Jason Couch as representative Plaintiffs on ~~his~~their own behalf ~~behalf~~ and on behalf of a class (the “**Class**”) consisting of each and every person who:

(i) ~~became a client~~ invested in any of the Funds, as that term is defined herein, of Crystal Wealth Management System Ltd. (“**Crystal Wealth**”) at any time from ~~the inception of Crystal Wealth's operations through April 12, 2007~~ to April 7, 2017 (the “**Class Period**”) and who ~~was a client of Crystal Wealth~~ retained investments in any of the Funds on April 7, 2017, including, without limitation, those persons or entities who filed claims in the receivership of Crystal Wealth, but excluding the Excluded Persons;

(ii) for purposes hereof, “**Excluded Persons**” means:

(1) any client of Crystal Wealth who did not invest in any of the Funds, as defined ~~in paragraph 4 below~~ herein, during the Class Period;

(2) the Defendant, BDO Canada LLP (“**BDO**”);

(3) any partner or employee of BDO, and any member of the immediate family of any such partner or employee;

- (4) any person who served as an officer or director of Crystal Wealth at any time, and any member of the immediate family of any such officer or director;
- (5) any person who acted as a Crystal Wealth investment advisor;
- (6) Media House Capital (Canada) Corp. ("**MHC**");
- (7) Bron Capital Partners Corp., Bron Studios Inc., Bron Animation Inc., Bron Media Corp., and Bron Developments Inc. (collectively, the "**Bron Companies**");
- (8) Aaron Gilbert ("**Gilbert**");
- (9) Stephen Thibault ("**Thibault**");
- (10) Chrysalis Yoga Inc. ("**Chrysalis Yoga**");
- (11) any other beneficial shareholders of Crystal Wealth, and members of their immediate families;
- (12) any entity in respect of which any of the persons identified in (1) to (11) above has a direct or indirect controlling interest;
- (13) any person who ultimately controls an entity that is an Excluded Person; and
- (14) the legal representatives, heirs, successors and assignees of any Excluded Person.

- (b) a declaration that all of the audit opinions delivered by BDO with respect to the financial reporting of Crystal Wealth and all attestations delivered by BDO with respect to Crystal Wealth and/or the BDO- Audited Funds (as defined herein), and all attestations delivered by BDO with Respect to the financial Statements of Crystal Wealth's Financial Statements (and Fund Statements) and/or The BDO- Audited Funds were given for the purpose of allowing Crystal Wealth to continue to operate as an Exempt Market Dealer, Investment Fund Manager, Portfolio Manager and Commodity Trading Manager registered in Ontario pursuant to the *Securities Act* and Regulations and with the expectation and knowledge that the Ontario Securities Commission (the "OSC") would rely on BDO's opinions and ~~the BDO Representations (as defined below)~~ its representations as the basis for:
  - (i) OSC registration renewals; and (ii) continued, additional or new investments by members of the Class;
- (c) a declaration that BDO owed a duty of care to the Class;
- (d) a declaration that BDO breached the duty of care it owed to the Class by failing to meet the applicable standard of care required of an auditor performing negligently performing its professional services and that such negligence caused the Class to suffer the damages claimed and described herein;
- (e) aggregate damages for negligence in the sum of \$1250,000,000 or such further sum as this Honourable Court may find appropriate;
- (f) punitive damages of \$25,000,000;

- (g) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 128;
- (h) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 129;
- (i) costs of this action on a substantial indemnity basis, including any applicable taxes; and
- (j) such further and other relief this Honourable Court may deem just.

### **Background**

- 2. Crystal Wealth marketed and managed a number of mutual funds.
- 3. The largest of the funds was the Media Fund.
- 4. BDO was the auditor of the funds and year after year delivered clean and unqualified audit opinions.
- 5. The assets of the funds, however, were materially overstated or non-existent.
- 6. In terms of the Media Fund, Crystal Wealth's founder has admitted that it was a fraud and that he misappropriated millions of dollars from it.
- 7. BDO turned a blind eye to it and failed to take basic steps in its audit to ensure the assets existed and were fairly valued.
- 8. The result is that BDO is liable for more than \$200 million in investor money that is missing.

### **The Parties and the Crystal Wealth Funds**

~~2.9.~~ The proposed Representative Plaintiff, Tony, is an individual residing in Mississauga, Ontario. Tony is 55 years old and is semi-retired. Tony invested his life savings in a number of mutual funds marketed and managed by Crystal Wealth and Clayton Smith ("Smith"). Tony's total investment was approximately \$1 million.

10. The Proposed Representative Plaintiff's, Carrie Couch and Jason Couch, are individuals residing near Sundre, Alberta. Carrie and Jason are married. Carrie is 43 year old and Jason is 51 years old. They invested their life savings in a number of mutual funds marketed and managed by Crystal Wealth and Smith. Carrie and Jason's total investment was approximately \$590, 000.

~~3.11.~~ Tony invested in the following ~~5~~ five Crystal Wealth funds:

- (k) Crystal Wealth Mortgage Strategy;
- (l) Crystal Wealth High Yield Mortgage Strategy;
- (m) Crystal Wealth Infrastructure Strategy;
- (n) Crystal Wealth Media Strategy; and
- (o) Crystal Wealth Medical Strategy.

12. Carrie and Jason invested in the following three Crystal Wealth Funds:

- (a) Crystal Wealth Mortgage Strategy;
- (b) Crystal Wealth Media Strategy; and

- (c) Crystal Wealth Enlightened Factoring Strategy.

13. Crystal Wealth is an Ontario corporation based in Burlington and is registered with the OSC as an Exempt Market Dealer, Investment Fund Manager, Portfolio Manager and Commodity Trading Manager. ~~Crystal Wealth operated 15 proprietary investment funds. Of these, the following 10 mutual funds were audited by the defendant, BDO:~~

4.14. Crystal wealth created, marketed and managed the following 15 proprietary investment funds (individually, a “Fund” and collectively, the “Funds”):

- (a) Crystal Wealth Mortgage Strategy;
- (b) Crystal Enlightened Resource and Precious Metals Fund;
- (c) Crystal Wealth Enlightened Factoring Strategy;
- (d) Crystal Wealth Medical Strategy;
- (e) Crystal Enlightened Bullion Fund;
- (f) Crystal Wealth Media Strategy ~~(the “Media Fund”);~~
- (g) Crystal Wealth High Yield Mortgage Strategy;
- (h) ACM Income Fund;
- (i) ACM Growth Fund; ~~and~~
- (j) Crystal Wealth Retirement One Fund ~~(collectively the “Funds”);~~
- (k) Crystal Wealth Enlightened Hedge Fund;



- (l) Crystal Wealth Infrastructure Fund;
- (m) Crystal Wealth Conscious Capital Strategy; and
- (n) Absolute Sustainable Property Fund.

5.15. The Funds were structured as open-ended mutual fund trusts that were distributed to investors on an exempt basis, pursuant to Offering Memorandums. Crystal Wealth was the Investment Fund Manager of the Funds.

6.16. Generally, the Funds contained one or more of the following types of investments:

- (a) cash and money market securities held with National Bank Correspondent Network (“NBCN”) and Interactive Brokers Canada Inc.;
- (b) investments where the underlying security is held and recorded by NBCN; and
- (c) investments neither held nor recorded by NBCN but rather administered by Crystal Wealth or a third party (“**Off Book Assets**”).

17. Crystal Wealth engaged BDO to audit the Funds. BDO is a national assurance, accounting, tax and advisory firm.

#### **BDO’s Audits of the Funds**

18. BDO conducted annual audits with respect to the following 10 Funds (collectively, the “**BDO-Audited Funds**”):

- (a) Crystal Wealth Mortgage Strategy;

- (b) Crystal Enlightened Resource and Precious Metals Fund;
- (c) Crystal Wealth Enlightened Factoring Strategy;
- (d) Crystal Wealth Medical Strategy;
- (e) Crystal Enlightened Bullion Fund;
- (f) Crystal Wealth Media Strategy;
- (g) Crystal Wealth High Yield Mortgage Strategy;
- (h) ACM Income Fund;
- (i) ACM Growth Fund; and
- (j) Crystal Wealth Retirement One Fund.

7.19. ~~The Defendant, BDO, audited each of the Funds.~~ Each year, the BDO-Audited Funds released financial statements (~~collectively, the “Financial Statements”~~) and independent audit reports (~~from BDO~~) ~~representing~~ stating that the financial statements presented fairly, in all material respects, the financial position of each Fund and that their financial performance and cash flows were in accordance with Generally Accepted Accounting Procedures (“GAAP”) or International Financial Reporting Standards (“IFRS”) as applicable.

20. The following five funds were created in 2016 (collectively, the “2016 Funds”):

- (a) Crystal Wealth Enlightened Hedge Fund;

- (b) Crystal Wealth Infrastructure Strategy;
- (c) Crystal Wealth Conscious Capital Strategy;
- (d) Absolute Sustainable Dividend Fund; and
- (e) Absolute Sustainable Property Fund.

21. BDO never delivered audit reports with respect to the 2016 Funds as a result of the OSC's investigation of Crystal Wealth, and the Order freezing the Funds.

8.22. Tony, Jason and Carrie read the ~~Financial Statements~~ financial statements and the accompanying audit reports. He They used the ~~Financial Statements~~ financial statements and audit reports to fairly value ~~his~~ their investments, assess the performance of the Funds, and make decisions about investment in the Funds.

#### **The OSC Freezes the Funds**

9.23. On April 7, 2017, the OSC issued an order against Smith, Crystal Wealth, the Funds and certain other persons ("The Temporary Order"), which prohibited (with limited exceptions): all (i) trading including redemptions, distributions, and acquisitions of the Funds' units; (ii) trading in securities ~~in~~ held by the Funds; and (iii) trading in or acquisition of any securities or derivatives by Smith and certain other entities. In short, the Temporary Order froze the Funds and their assets. The temporary order was extended on a number of occasions.

10.24. Subsequently, pursuant to an Order of the Ontario Superior Court issued April 26, 2017, Grant Thornton LLP ("Grant Thornton") was appointed receiver of all of the assets,

undertakings and properties of Crystal Wealth and the Funds (the “**Appointment Order**”). Pursuant to the Appointment Order and as of the date of this claim, monies held in the Funds cannot be traded or redeemed by investors, including Tony, Carrie and Jason.

~~11.25.~~ These two orders resulted from an ongoing investigation by OSC Staff into breaches of securities laws by Crystal Wealth and Smith. The investigation focused in particular on improper activities associated with the Crystal Wealth Media Strategy mutual fund (the “Media Fund”).

~~12.26.~~ As described further below, the OSC investigation has revealed that Crystal Wealth, Smith, and others were involved in a scheme by which monies were improperly diverted from the Media Fund to enrich Smith, Crystal Wealth, and others.

~~13.27.~~ ~~As described further, below,~~ Grant Thornton's investigation, subsequent to its appointment as receiver, indicates that Crystal Wealth's record-keeping ~~is~~ was seriously deficient such that it ~~is not even possible~~ has been extremely difficult and in some cases impossible to identify Crystal Wealth's assets, liabilities or creditors from existing documentation.

### **The Media Fund Scheme**

~~14.28.~~ The Media Fund was purportedly the largest of the Funds – it ~~supposedly reported had~~ the ~~most~~ highest value of assets under management.

~~15.29.~~ In the Offering Memorandum and the Strategy Overview of the Media Fund ~~and elsewhere~~, Smith and Crystal Wealth represented to Tony, Jason and Carrie (and the other investors in the Funds) that the Media Fund functioned as follows:

- (a) MHC would enter into a loan agreement with a film production company;
- (b) MHC would then sell that loan to the Media Fund;
- (c) The Media Fund then owned the loan and recorded it as an asset in its financial reporting.

~~16.30.~~ The profitability of the Media Fund was driven in large part by the validity and collectability of the loans. If the loans were either invalid or uncollectable, the Fund would lose money and would have to write-down its assets and net asset value ("NAV").

~~17.31.~~ Crystal Wealth and Smith held out MHC to investors as being (i) independent from Crystal Wealth and (ii) in the business of making loans to film production companies with a portfolio of existing loans that Crystal Wealth could purchase.

~~18.32.~~ In reality, none of this was true. MHC did not have a stable of loans to production companies. It would only enter into loans with production companies when the Media Fund had already agreed to purchase those loans. Accordingly, the loan transactions were simultaneous – MHC would enter into the loan with the production company and simultaneously sell the loan to the Media Fund.

~~19.33.~~ At times, MHC played no role at all and the Media Fund made loans directly to the production companies (contrary to the process described above and in the Media Fund's financial disclosures).

~~20.34.~~ MHC was paid a fee, which initially was 10% of the loan amount. Over time, MHC began to remit part of this fee back to Smith and Crystal Wealth. It kept 7% of the loan amount and remitted 3% back to Smith and/or Crystal Wealth.

~~21.35.~~ Gilbert, Thibault and Smith together directed this flow of funds. It was not disclosed to investors.

**Gilbert and Thibault were both the Borrower and the Lender**

~~22.36.~~ The Media Fund purchased loans from MHC pursuant to a Production Loan Administration Agreement effective August 12, 2011. The Media Fund purchased approximately 24 loans from MHC.

~~23.37.~~ Smith primarily dealt with two individuals at MHC, Gilbert and Thibault, with respect to the Media Fund.

~~24.38.~~ In addition to having an executive role at MHC, Gilbert is the president and a director of Bron Studios and is a director of Bron Animation – two film production companies. He is also listed as the producer or executive producer of the majority of film productions for which the Media Fund purchased loans and he benefited from those loans.

~~25.39.~~ This means that when MHC was making loans to these film production companies, Gilbert was representing both the borrower (acting on behalf of the film production

company) and the lender (acting on behalf of MHC). This relationship and obvious conflict of interest was not disclosed to investors but should have been apparent to BDO.

~~26.40.~~ Thibault is an employee of MHC, former VP-finance of MHC, and is an Executive Vice President of Bron Media. Given his roles, Thibault was also representing both the borrower and the lender in connection with loans to film production companies. Again, this conflict of interest was not disclosed to investors but should have been apparent to BDO.

~~27.41.~~ Many of the films produced by the Bron Companies were commercial failures with no prospect of generating enough revenue to repay the loans.

~~28.42.~~ The validity and collectability of the loans was critical to the Media Fund's performance. To the extent that the loans were invalid, illegitimate, fabricated or uncollectable, the Media Fund's assets would need to be written down. This would affect the NAV of the Media Fund and the pricing of its units. It would also affect the NAV of the other Funds, because there was significant inter-fund investment in the Media Fund.

~~29.43.~~ Accordingly, in the course of its audits of the Media Fund, BDO should have assessed their legitimacy and collectability.

~~30.44.~~ In reality, the loans to the Bron Companies were worthless and uncollectable. Gilbert, Thibault and Smith misappropriated the majority of the loan proceeds.

### **Self-Dealing and Misappropriation of Investors' Money**

~~31.45.~~ Smith misappropriated money from the Media Fund with the assistance of MHC, the Bron Companies, Thibault and Gilbert.

~~32.46.~~ He also received undisclosed fees from MHC, Thibault and Gilbert (3% of any loans as described above).

~~33.47.~~ He also received significant payments (in excess of \$1 million) from the Bron Companies.

~~34.48.~~ At least \$9,634,200 from the ~~fund~~ Media Fund was improperly diverted into and through the accounts of MHC and the Bron Companies and into bank accounts held by Smith or by companies he controlled.

~~35.49.~~ Smith used the misappropriated money for his own purposes. Some of it was used to buy a multi-million dollar luxury home near Toronto. Other investor money was used by Smith and his then-girlfriend to found and fund a yoga studio, Chrysalis Yoga.

~~36.50.~~ Thibault, Gilbert, MHC, and the Bron Companies also received investor funds.

~~37.51.~~ As the scheme began to unravel (when it became more and more apparent that the loans would not be repaid), Smith began to use funds from new investors to satisfy redemption requests from older investors. In short, he began running a Ponzi scheme. He did this to attempt to lure new investors to the Funds (or in the hopes of keeping existing investors from withdrawing their money), so that he and the Defendants could continue to misappropriate investor funds.

~~38.52.~~ BDO turned a blind eye to all of this.

~~39.53.~~ Subsequent to the receivership, Grant Thornton has been unable to obtain enough information to fully understand and support the value of the loans underlying the Media Fund. The documents simply do not exist.



54. Smith has admitted (in a settlement with the OSC) that the Media Fund (and the Mortgage Fund) was a fraud.

**Problems not Limited to the Media Fund.**

40.55. The Media Fund-Scheme scheme described above impacted each and every other Fund due to the significant amount of inter-fund investment amongst the Crystal Wealth Funds. In fact, the Media Fund was the single largest recipient of inter-fund investments by the other Funds. Many of those inter-fund investments were made to create liquidity in the Media Fund to, among other things, fund redemptions by investors. As a result, the inaccurate valuation of the Media Fund rendered inaccurate the value of every other Fund.

41.56. The assets of each of the Funds were materially overstated during the Class Period. In particular, to the extent that a Fund held Off-Book Assets, the value of those assets was overstated in Crystal Wealth's financial reporting.

42.57. Moreover, many assets ~~are~~ were simply non-existent. Though the Crystal Wealth Funds purportedly had assets under management ("AUM") of \$177 million as at January 1, 2017, OSC staff could only find \$49 million worth of cash and investments, \$22 million of which were inter-fund investments in other Crystal Wealth Funds.

43.58. Grant Thornton has also concluded in its review of Crystal Wealth's records that the documentation supporting the purported value of the funds Funds is seriously deficient, particularly with respect to the Off-Book Assets.

44.59. Indeed, Grant Thornton has been unable to identify all of the creditors of Crystal Wealth or the Funds from existing documentation.

**The Claim**

45.60. BDO was engaged by Crystal Wealth to audit each of the Funds.

46.61. Crystal Wealth was required to file audited financial statements with the OSC pursuant to s. 21.10(3) of the *Securities Act*, National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (ss. 12.10, 12.14, 12.3 and 12.14), and National Instrument 81-106 – *Investment Fund Continuous Disclosure* (ss. 2.1 and 2.2).

47.62. Accordingly, BDO was conducting its audits for two purposes: (i) to ensure that Crystal Wealth complied with Ontario's securities laws such that it could continue to offer and redeem units in the Funds; and (ii) to allow investors in the Funds to assess the performance of the Funds and fairly value and/or evaluate their investments and to make investment decisions.

48.63. BDO knew that the OSC would rely on its audits in making decisions about Crystal Wealth and its ability to offer securities to the public.

49.64. In addition, BDO knew that investors were relying on its audits in purchasing units in the Funds and making decisions in respect of their investments. Indeed, BDO specifically addressed each of its audit reports to the "Unitholders" of the particular ~~fund~~ Fund that it was auditing. Accordingly, BDO intended that the Unitholders receive each audit report and rely on it in making investment decisions.

65. While BDO never delivered audit reports for the 2016 Funds, its clean audit reports for the BDO-Audited Funds allowed Crystal Wealth to continue to operate as an Exempt Market Dealer, Investment Fund Manager, Portfolio Manager, and Commodity Trading Manager registered with the OSC, to create the 2016 Funds, and to solicit investments in them from members of the Class.

66. In other words, had BDO not released clean audit reports for the BDO-Audited Funds, the 2016 Funds would never have come into existence and members of the Class would not have lost money by investing in them.

#### **The Duty to the Class**

~~50-67.~~ BDO knew and intended for the Class to receive and rely on its audit reports. As part of its audits of the Funds, BDO had access to the individual names and number of units held by each investor of the Funds through the Funds Unit Holder Listing. BDO was aware of the exact amounts held by each investor and in which of the Funds each of the investors had invested.

~~51-68.~~ At all material times BDO knew or ought to have known:

- (a) the identities and contact information of Crystal Wealth's investors;
- (b) that some or all of the ~~Class Members~~ members of the Class knew that BDO was the auditor of the Funds;
- (c) that its audits would be relied upon by ~~Class Members~~ members of the Class;

- (d) the holdings in some or all of the ~~Class Members'~~ accounts of members of the Class; and
- (e) that the purpose of the ~~its~~ audits was, in part, to enable Crystal Wealth to receive and hold cash and securities owned by the ~~Class Members~~ members of the Class.

~~52.69.~~ At all material times, BDO owed a duty of care to the Class to:

- (i) audit the financial statements of each Fund in accordance with generally accepted auditing standards (“GAAS”);
- (ii) ensure that the financial statements of each Fund presented fairly, in all material respects, the financial position of the Fund and its financial performance and its cash flows for the year in question in accordance with Generally Accepted Accounting Principles (“GAAP”) or International Financial Reporting Standards (“IFRS”) as applicable;
- (iii) issue audit reports on Crystal Wealth's financial statements for delivery to, *inter alia*, the OSC; and
- (iv) identify any material misstatements in Crystal Wealth's financial reporting or material weaknesses in Crystal Wealth's internal controls.

~~53.70.~~ To the extent that the Funds held Off-Book Assets or non-traditional/illiquid assets, a GAAS-compliant audit required BDO to: ~~obtain substantial evidence that the assets (i) actually existed and (ii) were fairly valued.~~

(a) Obtain substantial evidence that the assets (i) actually existed, and (ii) were fairly valued;

~~54.(b)~~ Furthermore, a GAAS compliant audit required BDO to ~~e~~Employ measures to obtain evidence and reasonable assurance that the loans in the Media Funds were (i) legitimate; (ii) enforceable; (iii) collectable; and (iv) did not constitute related party transactions; and;

~~55.(c)~~ Similarly, a GAAS compliant audit required BDO to ~~e~~Employ measures to obtain reasonable assurance that Smith was not misappropriating investor money from the Funds.

~~56.71.~~ The ~~Plaintiff~~ pleads Plaintiffs plead and ~~relies~~ rely upon the Ontario Business Corporations Act (the "OBCA") and, in particular, sections 149, 151, 152, 153, 155, 158 and 159. In addition the ~~Plaintiff~~ pleads Plaintiffs plead and ~~relies~~ rely upon the regulations promulgated under the *OBCA* and, in particular, Regulation 62, sections 40, 41 and 42. The Plaintiffs further pleads and ~~relies~~ rely upon sections 19, 21.10, 122 and 143 of the *Securities Act* and National Instruments 31-103 and 81-106.

~~57.72.~~ BDO knew or ought to have known, the requirements of the *Securities Act* and the associated regulations and National Instruments applicable to the conduct of Crystal Wealth's business. BDO had an obligation conduct a competent and thorough audit in accordance with GAAS. BDO was required to report any material misstatements or omissions contained in any material filed with the OSC.

### **BDO Breaches Its Duty to the Class**

~~58.73.~~ Contrary to its duties, BDO did not conduct its audits of the BDO-Audited Funds in accordance with GAAS and/or ensure that the BDO-Audited Funds' financial statements were prepared in accordance with GAAP/ or IFRS.

~~59.74.~~ Among other things:

- (a) BDO did not obtain reasonable assurance about whether the financial statements were free from material misstatement, ~~as it was required to do;~~
- (b) BDO did not obtain appropriate and sufficient evidence that the assets of the BDO-Audited Funds actually existed and were fairly valued;
- (c) BDO did not conduct a sufficient review of the underlying documentation associated with the assets of the Funds;
- (d) BDO's 2015 audit of the Media fund ~~lacks~~ lacked support for at least \$4.5 million in reported value;
- (e) BDO did not appropriately account for the value (or lack thereof) of the Off-Book Assets;
- (f) BDO relied on emails from MHC to confirm the value and collectability of the loans in the Media Fund, rather than independently confirming same through its own review;
- (g) BDO failed to discover that there was insufficient documentation to support the value of the Media Fund;

- (h) BDO failed to identify Crystal Wealth's poor record-keeping and internal controls; and
- (i) BDO did not identify that the Funds were significantly over-valued.

60.75. As a result of its negligent audits of Crystal Wealth and the BDO-Audited Funds, BDO did not discover the following:

- (a) ~~that~~ Crystal Wealth's financial record-keeping was deficient and potentially inaccurate;
- (b) ~~that~~ the governance and management of the Funds, especially with respect to Off-Book Assets, was contrary to Ontario's securities laws and in breach of Crystal Wealth's fiduciary duties to the Class;
- (c) ~~that~~ there were little or no internal tracking mechanisms in place at Crystal Wealth with respect to Off-Book Assets in the Funds;
- (d) there was little to no evidence to support the existence and value of the Off-Book Assets;
- (e) ~~that~~ the Net Asset Value of the Funds was materially overstated;
- (f) ~~that~~ the underlying loan assets in the Media Fund had little or no value;
- (g) ~~that~~ the loans in the Media Fund were transacted with related parties;
- (h) ~~that~~ the Funds and Crystal Wealth were undercapitalized or insolvent; and
- (i) ~~that~~ Smith and others were improperly diverting investors' money to themselves.

~~61.76.~~ BDO knew or ought to have known the facts alleged above. BDO owed the Class a continuing duty of care to diligently investigate, uncover, and disclose any misstatements or omissions in the Funds' financial statements and in any material filed with the OSC. BDO breached this duty.

~~62. At all material times BDO knew or ought to have known that the Class would suffer damage if BDO breached any of the duties it owed to the class.~~

~~63. Members of the class would not have invested in the Funds if they had known that;~~

~~(a) that Crystal Wealth's financial record keeping was deficient and potentially inaccurate;~~

~~(b) that the governance and management of the Funds, especially with respect to Off-Book Assets, was contrary to Ontario's securities laws and in breach of Crystal Wealth's fiduciary duties to the Class;~~

~~(c) that there were little or no internal tracking mechanisms in place at Crystal Wealth with respect to Off-Book Assets in the Funds;~~

~~(d) that there was little or no evidence to support the existence and value of the Off-Book Assets;~~

~~(e) that the loans in the Media Fund were transacted between related parties;~~

~~(f) that the Net Asset Value of the Funds was materially overstated;~~

~~(g) that the underlying loan assets in the Media Fund had little or no value;~~



~~(h) — that the Funds and Crystal Wealth were undercapitalized or insolvent; and~~

~~(i) — that Smith and others were improperly diverting investors' money to themselves.~~

64.77. BDO repeatedly represented to Crystal Wealth, the members of the Class Members, and to the OSC that:

- (a) The audit evidence obtained by BDO with regard to each of the BDO-Audited Funds was sufficient and appropriate to provide a basis for BDO's audit opinion;
- (b) The financial statements of each BDO-Audited Fund were free from material misstatement;
- (c) The financial statements of the BDO-Audited Funds presented fairly, in all material respects, the financial position of each Fund and each Fund's financial performance and cash flows in accordance with IFRS or GAAP, as applicable; and
- (d) ~~That~~ BDO's audits ~~was~~ were conducted in accordance with GAAS.

65.78. More particularly, BDO filed a series of audit reports with the OSC between April 1, 2007 and December 31, 2015 that contained the representations set out above. These audit reports were addressed to the unit-holders of each of the BDO-Audited Funds.

66.79. The representations set out in paragraph 64.87 above were untrue, and were made in breach of BDO's duty to the Class. The Class members relied on these representations to their detriment in investing in each of the Funds, including the 2016 Funds.

80. At all material times, BDO knew or ought to have known that the Class would suffer damages if BDO breached any of the duties it owed to the Class. At all material times, BDO knew or ought to have known that its clean audit reports would allow Crystal Wealth to continue to operate as an Exempt Market Dealer, Investment Fund Manager, Portfolio Manager and Commodity Trading Manager registered pursuant to the *Securities Act*, and furthermore, that they would allow Crystal Wealth to continue to solicit additional or new investments by members of the Class.

81. Members of the Class would not have invested in the Funds if they had known any of the following:

- (a) Crystal Wealth's financial record-keeping was deficient and potentially inaccurate;
- (b) the governance and management of the Funds, especially with respect to Off-Book Assets, was contrary to Ontario's securities laws and in breach of Crystal Wealth's fiduciary duties to the Class;
- (c) there were little or no internal tracking mechanisms in place at Crystal Wealth with respect to Off-Book Assets in the Funds;
- (d) there was little or no evidence to support the existence and value of the Off-Book Assets;
- (e) the loans in the Media Fund were transacted between related parties;
- (f) the NAVs of the Funds were materially overstated;

- (g) the underlying loan assets in the Media Fund had little or no value;
- (h) the Funds and Crystal Wealth were undercapitalized or insolvent; and
- (i) Smith and others were improperly diverting investors' money to themselves.

### **Negligence**

67.82. As outlined above, the Class alleges that:

- (a) BDO owed a duty of care to the Class in connection with the preparation of the Audit Reports;
- (b) BDO was retained in whole or in part for the specific purpose of preparing the Audit reports such that Crystal Wealth could operate and continue to operate;
- (c) BDO knew or ought to have known that the purpose, or at a minimum one of the core purposes, of the Audit reports was to protect the interests of the Class Members;
- (d) BDO did not ~~prepare~~ obtain reasonable assurance that the BDO-Audited Funds' Reports in financial statements had been prepared accordance with GAAS GAAP and/or ~~IFRS and the standard of care that it owed to Class Members;~~
- (e) BDO did not conduct GAAS-compliant audits of the BDO-Audited Funds;
- (f) but for BDO's failure to properly prepare the Audit Reports the Class would not have invested with Crystal Wealth or would have ceased to do business with Crystal Wealth;

(g) BDO knew:

- (i) that Crystal Wealth had clients;
- (ii) the identify of some or all of Crystal Wealth's clients;
- (iii) the number or approximate number of Crystal Wealth's clients;
- (iv) that Crystal Wealth's ability to operate was dependant, in whole or in part, on the preparation of accurate Audit Reports; and
- (v) that the Audit Reports were prepared, in whole or in part, to allow Crystal Wealth to operate and to take funds from the Class;~~;~~ and

~~68.~~83. Accordingly, the Class claims that BDO negligently performed its professional duties.

#### **Damages**

84. The members of the Class have suffered and continue to suffer damages as a result of BDO's negligence. They have lost their investments in the Funds. Their damages also include losses as a result of the incorrect valuation of the Funds, lost opportunity, and their inability to access their investments following the Appointment Order.

~~69.~~85. ~~The Plaintiff states~~ Plaintiffs state that if the BDO had complied with the duties it owed to the Class to investigate, detect, and report any ~~Deficiencies~~ deficiencies as well as material misstatements and omissions in the ~~Audit Reports~~ audit reports, Crystal Wealth would not have been able to renew its registrations, thereby:

- (i) minimizing and/or avoiding further losses on the part of the existing Crystal Wealth clients including Tony, Carrie, Jason and other similarly situated members of the Class; ~~and/or~~
- (ii) Preventing Crystal Wealth from incurring increased liability to the Class; and/or
- (iii) Preventing Crystal Wealth from creating the 2016 Funds and soliciting investments in them by members of the Class.

~~70.86.~~ The ~~Plaintiff states~~ Plaintiffs state that, if BDO had complied with its duties, BDO and/or the OSC would have discovered the Media Fund ~~Scheme~~ scheme described above and the misappropriation of investor funds sooner than they did. If these improprieties had been discovered earlier, losses to investors would have been reduced or avoided.

~~71.87.~~ The Plaintiff states that if BDO had complied with its duties, the members of the Class  
~~Members would have:~~

- (iii) would have minimized or reduced their own losses by altering their investment profile, including by redeeming their investments; and/or
- (iv) would not have invested or made further investments in the Funds, including the 2016 Funds.

88. BDO's conduct as described herein, and in particular its gross negligence and flagrant breach of the duties it owed to the Class, justifies an award of punitive damages.

~~72.89.~~ The ~~Plaintiff proposes~~ Plaintiffs propose that this action be tried at Toronto.

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Court File No.: CV-17-579357-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Toronto

**STATEMENT OF CLAIM**

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