ONTARIO SECURITIES COMMISSION

Applicant

– and –

EMERGE CANADA INC., LISA LANGLEY, DESMOND ALVARES, MARIE ROUNDING, MONIQUE HUTCHINS AND BRUCE FRIESEN

Respondents

APPLICATION FOR ENFORCEMENT PROCEEDING
(Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990 c S.5)

A. OVERVIEW

1. This case centres on a registered investment fund manager and portfolio manager that transferred millions of dollars from the investment funds it managed to help sustain its own businesses. In doing so, the registrant acted primarily in its own best interest rather than in the best interests of the funds it managed.

2. Emerge Canada Inc. (**Emerge Canada** or the **Manager**) was the trustee and manager of, among others, six Emerge "ARK Funds" (the **Funds**) that were publicly traded on the former NEO Exchange between June 2019 and April 2023. Commencing almost immediately after the launch of the Funds, Emerge Canada caused the Funds to enter into a series of transactions involving transfers of money from the Funds' bank accounts to the bank accounts of Emerge Canada and its affiliate, Emerge US (defined below), which transfers were recorded as an amount owing back from Emerge Canada to the Funds (the **Receivable**). These transactions continued until December 2022, when Emerge Canada advised the Ontario Securities Commission (**Commission**) that its and the Funds' auditor had resigned, which prompted Commission inquiries about the Receivable. By December 2022, the Receivable had grown to nearly $6 million, representing approximately 6.1% of the Funds' net asset value.

3. At the time the Funds were terminated (in December 2023) and Emerge Canada's registrations were suspended (in February 2024) pursuant to a May 2023 Director's decision that found Emerge Canada to be capital deficient, nearly $4.7 million remained outstanding and owing to the Funds by Emerge Canada.

I. Emerge Canada's Unlawful Conduct Causes Investor Harm

4. Compliance with Ontario securities laws is critical for all investment fund and portfolio managers to ensure robust investor protection from unfair or improper practices and to foster confidence in the capital markets. Specifically, adherence to rules prohibiting self-dealing and requiring proper internal compliance systems, adequate financial records and conflict mitigation is fundamental to fostering fair markets and investor protection. Fund managers must ensure full compliance with these rules in handling investor monies and operating funds, including by referring potential conflicts of interest (**COI**s) to an Independent Review Committee (**IRC**).

5. Emerge Canada did not refer the matter to the Funds' IRC before creating the Receivable, or for years thereafter while it grew the Receivable by taking more and more money from the Funds. When it finally referred the Receivable to the IRC, at the behest of the Funds' administrator, it purported to withdraw this referral after the IRC raised concerns.

6. Emerge Canada was prohibited from causing the Funds to lend money to itself and its affiliate. Emerge Canada used almost all of the Receivable to cover its own operating expenses, and those of its US affiliate. In doing so, Emerge Canada acted primarily in its own interest rather than those of the Funds, and failed to exercise the requisite degree of care, diligence and skill, contrary to ss. 116(a) and (b) of the *Securities Act*, RSO 1990, c. S.5, as amended (the **Act**).

7. In addition, Emerge Canada knowingly caused the Funds to make prohibited loans to Emerge Canada and its American associate, contrary to s. 13.5(2)(c) of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**). It further failed to maintain an adequate system of controls and supervision to ensure compliance with securities legislation, contrary to s. 32(2) of the Act and s. 11.1 of NI 31-103. Emerge Canada also failed to keep track of all the transactions related to the Receivable, and thereby failed to prepare and maintain proper books and records as required under s. 19(1) of the Act and s. 11.5 of NI 31-103.

8. As officers and directors of Emerge Canada, Lisa Lake Langley (**Langley**) and Desmond Alvares (**Alvares**) authorized, permitted or acquiesced in the breaches of Ontario securities law by Emerge Canada and are therefore liable for Emerge Canada's breaches pursuant to s. 129.2 of the

Act. In addition, Langley failed to meet her obligations under ss. 5.1 and 5.2 of NI 31-103 as Chief Compliance Officer (**CCO**) and Ultimate Designated Person (**UDP**) of Emerge Canada.

II. Emerge IRC's Inadequate Response to Emerge Canada's Conflict

9. An investment fund IRC must properly review a fund manager's proposed handling of potential COIs faced by a fund manager in the operation of an investment fund. Every member of an IRC owes a fiduciary duty to the investment fund and, in discharging their duties, must exercise the degree of care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances.

10. In this case, the Receivable was referred to the IRC for the Funds (the **Emerge IRC**) in October 2021 when it totaled less than $1 million. Over the following approximately five months, the Emerge IRC made repeated inquiries soliciting additional information from Emerge Canada about the Receivable, and identified a number of COI issues that arose as a result of the Receivable. However, the Emerge IRC failed to provide its recommendation on the Receivable, as required under ss. 4.1(1) and 5.3(1)(a) of National Instrument 81-107 – *Independent Review Committee for Investment Funds* (**NI 81-107**), including whether Emerge Canada's handling of the Receivable achieved a fair and reasonable result for the Funds. The Emerge IRC further failed to include a description of the Receivable and the Emerge IRC's activities regarding same in its next Annual Report to the Funds' unitholders, as required under s. 4.4(1) of NI 81-107. Instead, and despite persisting concerns about the Receivable and Emerge Canada's explanations of same, the Emerge IRC treated the matter as resolved after a March 2022 promise from the Manager to stop growing the Receivable and repay the full amount owing by year-end 2022.

11. The Emerge IRC members also breached their duties under s. 3.9 of NI 81-107 by failing to take any of the numerous courses of action available to the Emerge IRC members to address their concerns about the Receivable, including: (i) communicating with the Commission; (ii) disclosing the COI issues arising from the Receivable to unitholders; (iii) keeping the matter open and continuing to make inquiries of the Manager after March 2022 to ensure that it had, in fact, wound up the Receivable; (iv) seeking independent legal counsel about their duties and obligations in the circumstances; or (v) resigning. By December 2022, the Receivable had grown to approximately $6 million. Through their inaction, the Emerge IRC members failed to act in the Funds' best interests or exercise the requisite degree of care, diligence and skill.

B. GROUNDS

The Commission makes the following allegations of fact:

I. Emerge Canada Inc. and the Emerge Funds

12. Emerge Canada was, until February 12, 2024, registered under the Act as an investment fund manager (**IFM**), portfolio manager (**PM**) and exempt market dealer (**EMD**). Between 2019 and 2023, it offered two brands of funds which were listed on the then-called NEO Exchange (together, the **Emerge Funds**):

i. The Funds, comprised of six ARK ETFs and matching mutual funds. The first five ETFs launched in June 2019, and the sixth and final one was launched in March 2021. The Funds thematically held securities in the technology industry, with a stated focus on innovative and disruptive technologies.

ii. The "EMPWR Funds", comprised of five EMPWR ETFs and matching mutual funds, all of which launched in August 2022. The EMPWR Funds offered portfolios with a focus on environmental, social and governance (ESG) strategies, as well as investments by women-led investment managers.

13. Between 2019 and 2023, Emerge Canada earned approximately $5.1 million in management fees for its management of the Funds.

14. Langley is the sole shareholder, the Chief Executive Officer and a director of Emerge Canada. She was registered in Ontario as, among other things, the CCO and UDP of Emerge Canada. Langley is also the founder, CEO, President and majority voting shareholder of Emerge Capital Management Inc. (**Emerge US**), sub-advisor to Emerge Canada with respect to the Emerge Funds.

15. Alvares is the Chief Financial Officer (**CFO**) and a director of Emerge Canada.

II. The Receivable Owing from Emerge Canada to the Funds it Managed

16. Between July 30, 2019 and December 9, 2022, Emerge Canada caused the Funds to transfer money to Emerge Canada and Emerge US in amounts that exceeded the total amounts of the Emerge Canada management fees earned and proper Funds operating expenses incurred by Emerge Canada. Emerge Canada ceased taking money from the Funds after the Commission began

making inquiries in December 2022. Emerge Canada recorded these transactions as part of the Receivable owing by the Manager to the Funds.

17. Each of the Funds' financial statements disclosed a "Receivable from the Manager" which grew from $486,442 at the year ended December 31, 2019 to $2,539,235 at the period ended June 30, 2022 (the last public financial statements disclosed prior to the November 2022 auditor's resignation, described below). Emerge Canada subsequently disclosed to the Commission that the Receivable had grown to $5,908,205 in December 2022. A significant portion of this amount was transferred to Emerge US, and Emerge US had a corresponding receivable owing back to Emerge Canada (the **Emerge US Receivable**). By late 2022, the Emerge US Receivable had grown to over $4.5 million.

18. Emerge Canada used most of the Receivable to fund its and Emerge US's operations and/or pay their creditors. Between 2019 and 2022, neither Emerge Canada nor Emerge US earned sufficient revenue to cover all its expenses, including creditor payments, without the money they received from the Funds. Among other things, the Funds' money was used to make payments towards: (i) startup costs of the Emerge Funds that are to be borne by the Manager; (ii) marketing and promotional expenses for the Emerge Funds that are to be borne by the Manager; and (iii) Emerge US third-party debts.

19. Emerge Canada needed the Emerge US Receivable to be paid in full before it would have been able to repay the Receivable to the Funds. However, Emerge Canada knew or ought to have known that Emerge US was not likely to be able to repay the money.

20. The Funds generally did not perform well enough to give rise to a large enough management fee to cover the Receivable. When, in or around late 2021, the management fees were sufficient to cover most or all of the outstanding Receivable, Emerge Canada failed to repay the Receivable. Instead, Emerge Canada expanded operations by launching new funds. In particular, the Receivable's significant growth in 2022 coincided with the launch of the EMPWR Funds.

III. The Emerge IRC's Review of the Receivable

21. As required by NI 81-107, the Emerge IRC was established to deal with COIs which arose in the management of the Emerge Funds. At all material times, Marie Rounding (**Rounding**),

Bruce Friesen (**Friesen**) and Monique Hutchins (**Hutchins**) were the sole three members of the Emerge IRC. Rounding was also the Chair of the Emerge IRC.

22. In or around October 2021, at the Funds' administrator's request, Emerge Canada brought a COI referral to the Emerge IRC with respect to the Receivable. Among other things, according to the Manager's reports to the Emerge IRC (i) the amount due from Emerge Canada to the Funds had been first established in 2019, (ii) the total amount due to the Funds as at October 2021 was nearly $1 million, and (iii) the full amount would be paid by the end of 2021. Although the Manager's explanations of the Receivable were not entirely clear to the Emerge IRC, the Manager explained that it had "absorbed" certain fund expenses by allocating the amount of certain expenses as the Receivable owing from the Manager to the Funds. The Manager advised it would reimburse the Funds for such expenses over time either directly or by setting off the expense amounts against the management fees owed by the Funds to the Manager.

23. The Emerge IRC immediately began requesting additional information from the Manager and identified a number of potential COI matters related to the Receivable. The Emerge IRC, through its appointed secretariat, also delivered memoranda to the Manager outlining its concerns with respect to the Receivable.

24. Although it provided answers to some of the Emerge IRC's inquiries, the Manager advised that it did not accept the Emerge IRC's characterization of the issues. Beginning January 2022 and in contrast to its initial communications calling the matter a "Conflict of Interest Referral" and "conflict referral" to the IRC, the Manager took the position that the Receivable was not a COI and that it had brought this topic to the Emerge IRC's attention "for informational purposes" only.

25. On January 6, 2022, the Emerge IRC convened a meeting with the Manager to discuss the Receivable. At the January 6, 2022 meeting, the Emerge IRC reiterated its concerns with respect to the Receivable, including: (i) indications that the Manager had borrowed certain start-up costs (which are Manager expenses) from the Funds; (ii) the 2.5% interest rate on the Receivable that had been determined by the Manager (which the Manager agreed was not "best practice") may be below market; and (iii) the Manager's use of the word "absorbed" appeared to be different from the understanding of the word "absorbed" by most investors. These potential COIs had initially occurred in 2019 and had persisted through to date.

26. Following the January 6, 2022 meeting, the Emerge IRC sent the Manager a number of follow-up questions about the issues raised by the Receivable and as discussed at the meeting. The Emerge IRC did not receive a response to these inquiries until March 4, 2022.

27. On March 4, 2022, the Manager advised the Emerge IRC, among other things, that: (i) the Manager did not view its expenses "absorption" practice to be a COI; and yet (ii) the Manager had ceased the practice and would pay all outstanding Receivable amounts by the end of calendar 2022.

28. At the next regularly-scheduled Emerge IRC meeting, held on March 25, 2022, the Manager advised that it had only made "limited" progress paying down the Receivable as promised, yet was incurring additional operating costs to launch a new series of funds.

29. In its March 25, 2022 Annual Report of the Independent Review Committee of the Emerge Canada Group of Funds for the "Reporting Period" of January 1, 2021 to December 31, 2021 (the **March 2022 Annual Report**), the Emerge IRC reported that "There were no referrals considered by the IRC during the Reporting Period." The Emerge IRC made no disclosure of the October 2021 Receivable referral or its discussions with the Manager about same.

30. The Emerge IRC conducted no further follow up after March 2022 to ensure that the Manager had, in fact, ceased growing and was repaying the Receivable. By December 2022, the Receivable had grown to nearly $6 million.

31. Each of the Emerge IRC members resigned effective June 30, 2023.

IV. Emerge Canada is Wound Down Pursuant to a Director's Decision

32. On December 7, 2022, counsel to Emerge Canada contacted the Commission to advise that the auditor of the Manager and Emerge Funds had resigned in November 2022. The Commission immediately made inquiries of the Manager and the Emerge Funds.

33. On January 11, 2023, the Commission delivered a Letter of Brief Reasons recommending that Emerge Canada's registrations be suspended for its failure to comply with the minimum working capital requirements in s. 12.1 of NI 31-103. Emerge Canada disputed the recommendation and requested an opportunity to be heard (OTBH). This commenced a months-long process culminating in the Director Decision (defined and described below).

34. In the meantime, Emerge Canada was unable to retain a replacement auditor and failed to file audited annual financial statements and management report of fund performance for fiscal 2022. Accordingly, the Emerge Funds were cease-traded by the Commission on April 6, 2023.

35. A decision of Commission Director dated May 10, 2023 (the **Director Decision**) found that the Emerge US Receivable was not "readily convertible to cash" and, therefore, could not be included as a current asset in the calculation of Emerge Canada's working capital. As a result, Emerge Canada was working capital deficient in September 2022 and had likely been working capital deficient prior to September 30, 2022. The Commission Director ordered that Emerge Canada's registrations as IFM, PM and EMD were to be suspended, with interim terms and conditions imposed on its registrations restricting its conduct to activities necessary for an orderly wind-down of its business.

36. NEO Exchange (now called Cboe) de-listed the Emerge Funds on October 23, 2023, and unitholders were paid out in December 2023. Despite repeated promises to repay the Receivable to the Funds, Emerge Canada failed to do so before it was wound down. At the time the Funds were terminated, a total of $4,694.813.49 remained outstanding and owing to the Funds. Emerge Canada has made no payments towards the Receivable since the Funds' termination and that total amount remains outstanding and owing. Emerge Canada has been silent on whether it intends to pay interest on the outstanding Receivable accruing since the termination of the Funds at the same 2.5% rate as before the Funds' termination (or otherwise).

37. Emerge Canada's registration suspensions came into effect on February 12, 2024, following Emerge Canada's wind-down of its business as a registered firm pursuant to the Director Decision.

V. Emerge Canada's Breaches of Duty to Investors

38. Emerge Canada was the IFM for the Funds. As IFM, Emerge Canada had duties pursuant to s. 116 of the Act to: (a) exercise its powers and discharge the duties of its offices honestly, in good faith and in the best interests of the Funds, and (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

39. Emerge Canada failed to act honestly, in good faith and in the best interests of the Funds and/or did not act with the degree of care, diligence and skill of a reasonably prudent person in the circumstances, contrary to s. 116 of the Act in that it, among other things:

i. caused the Funds to make a series of prohibited loans and used the money from the Funds to pay Emerge Canada and Emerge US expenses;

ii. failed to adequately respond to its COI by failing to refer the Receivable to the Emerge IRC prior to October 2021, purporting to withdraw the October 2021 referral after the Emerge IRC expressed concerns about the Receivable, and making misleading and inaccurate statements to the Emerge IRC;

iii. failed to repay the Receivable when it had the opportunity to do so, and instead expanded operations by launching new funds despite not being able to afford to do so without relying on money from the Funds; and

iv. failed to keep proper books and records of the Receivable.

VI. Emerge Canada's Prohibited Loans

40. Emerge Canada was PM of the Funds. As PM, Emerge Canada was a "responsible person" within the meaning of NI 31-103. Pursuant to s. 13.5(2)(c) of NI 31-103, Emerge Canada was prohibited from causing the Funds to provide a loan to it or to any of its associates.

41. Between July 30, 2019 and December 9, 2022, Emerge Canada breached s. 13.5(2)(c) of NI 31-103 by knowingly causing the Funds to provide a series of loans to it and its associate, Emerge US, which loans were accumulated and recorded as a single Receivable owing back to the Funds by the Manager. Emerge Canada and Emerge US spent most of the Receivable on their own expenses as described above.

VII. Emerge Canada's Failure to Adequately Address its Conflict of Interest

42. Sections 5.1(1) and 5.3(1) of NI 81-107 require COI matters, which include a situation where a reasonable person would consider a manager to have an interest that may conflict with the manager's ability to act in good faith and the best interests of the fund, to be referred to the fund's IRC for its review before the manager takes any action in the matter.

43. In addition, the Policies and Procedures for Emerge Canada Conflict of Interest Matters (the **COIM Manual**) required Emerge Canada to refer conflict of interest matters to the Emerge IRC, particularly in the event that, as here, the CCO (*i.e.*, Langley) was in a potentially conflicted situation.

44. As described above, Emerge Canada did not refer the Receivable matter to the Emerge IRC in 2019 prior to when it established and began growing the Receivable, even though the Receivable was a COI matter for Emerge Canada. As a COI, the Receivable necessitated a referral to the Emerge IRC and a recommendation by the Emerge IRC. It was not until October 2021, at the insistence of the Funds' administrator, that Emerge Canada referred the COI matter to the Emerge IRC. However, after referring the matter to the Emerge IRC, Emerge Canada (i) purported to withdraw this referral after the Emerge IRC raised concerns and (ii) made representations to the Emerge IRC that were inaccurate and misleading with respect to, among other things, the nature of the Receivable and likelihood of repayment.

45. Then, in March 2022, after months of discussions with the Emerge IRC, Emerge Canada advised the Emerge IRC, among other things, that it had ceased the practice underlying the Receivable and would pay all outstanding Receivable amounts by the end of calendar 2022. Contrary to this representation, Emerge Canada continued to grow the Receivable throughout 2022 to its largest amount by a significant margin.

46. Accordingly, Emerge Canada breached its obligations under the COIM Manual and ss. 5.1(1) and 5.3(1) of NI 81-107 to refer a COI matter to the Emerge IRC *before* taking any action in the matter.

47. Emerge Canada also breached its obligation as a registered firm to establish, maintain and apply a system of adequate internal controls and supervision to ensure compliance with securities laws and to manage the risks associated with its business in accordance with prudent business practices. Although Emerge Canada had policies and procedures pertaining to conflicts of interest matters such as the Receivable – namely, the COIM Manual – Emerge Canada failed to implement and follow its own policies and procedures.

48. Emerge Canada's failure to have an adequate system of controls and supervision breached s. 32(2) of the Act and s. 11.1 of NI 31-103.

VIII. Emerge Canada's Failure to Keep Adequate Books and Records

49. Emerge Canada was obligated to keep or cause to be kept appropriate books and records with respect to (among other things) business transactions and financial affairs, including as it relates to the Receivable owing to the Funds. Emerge Canada failed to meet its books and record keeping obligations in the following ways:

i. Emerge Canada's books and records do not contain sufficient detail to identify how Emerge Canada spent the Funds' money;

ii. Emerge Canada's books and records do not identify which Manager expenses were allocated to which Funds or how such allocations were determined;

iii. Emerge Canada's books and records do not always match Emerge US's, and cash transfers between the two entities are sometimes recorded differently in the different entities' financial records; and

iv. Emerge Canada's books and records fail to document all compensation arrangements and incentive practices for Langley.

50. Emerge Canada's failure to maintain adequate books and records breached s. 19(1) of the Act and s. 11.5 of NI 31-103.

IX. Langley's Breaches of Duties and Obligations as Registrant

51. Langley was the UDP of Emerge Canada at all material times. As Emerge's UDP, pursuant to s. 5.1 of NI 31-103, Langley had an obligation to supervise the activities of Emerge Canada that were directed towards ensuring compliance with securities legislation by Emerge Canada and individuals acting on its behalf and to promote compliance by Emerge Canada and the individuals acting on its behalf with securities legislation.

52. As a result of the conduct referred to above, Langley breached her obligations as UDP of Emerge Canada pursuant to s. 5.1 of NI 31-103.

53. Langley was also the CCO of Emerge Canada. As Emerge's CCO, pursuant to s. 5.2 of NI 31-103, Langley had monitoring and reporting obligations in connection with assessing and ensuring Emerge Canada's compliance with securities legislation.

54. As a result of the conduct referred to above, Langley breached her obligations as the CCO of Emerge Canada pursuant to s. 5.2 of NI 31-103.

X. Authorizing, Permitting, or Acquiescing in Breaches of Ontario Securities Law

55. Langley and Alvares, as directors and officers of Emerge Canada, authorized, permitted or acquiesced in the conduct by Emerge Canada described above. As a result, Langley and Alvares are deemed not to have complied with Ontario securities law pursuant to s. 129.2 of the Act.

XI. Emerge IRC's Failure to Deliver its Recommendation

56. Subsection 4.1(1) of NI 81-107 requires an IRC to review and provide its decision on a COI matter that the manager refers to it for review under s. 5.3. Consistent with this obligation, para 4 of the Written Charter of the Independent Review Committee Emerge Canada Prospectus Qualified Mutual Funds, adopted on May 15, 2019 as amended (the **Charter**), states that the Emerge IRC "shall as soon as practicable", among other things, consider and provide a recommendation on any COI matter referred to it by the Manager.

57. Under ss. 4.1 and 5.3(1)(a) of NI 81-107, the Emerge IRC had an obligation to provide a positive or negative recommendation as to whether, in the IRC's opinion after reasonable inquiry, the Manager's proposed action achieved a fair and reasonable result for the Funds.

58. As described above, the Receivable was referred as a COI matter to the Emerge IRC in October 2021. However, and despite initially treating the matter as a referral by making inquiries of the Manager and convening a meeting to discuss the Receivable, the Emerge IRC failed to provide a written recommendation as required under securities law and its Charter.

XII. Emerge IRC's Failure to Disclose the Receivable COI Referral in its Annual Report

59. Pursuant to s. 4.4(1) of NI 81-107, an IRC must prepare, for each financial year, a report to the securityholders "that describes the independent review committee and its activities for the financial year" including but not limited to, (g) "a description of each instance when the manager acted in a conflict of interest matter referred to the independent review committee for which the independent review committee did not give a positive recommendation". Paragraph 15 of the Charter also required the Emerge IRC to prepare an annual report to securityholders in accordance with s. 4.4(1) of NI 81-107.

60. The Receivable was a COI referred to the Emerge IRC in October 2021 for which the Emerge IRC did not give a positive recommendation. However, the Emerge IRC made no disclosure of the Receivable referral or otherwise disclose its activities in response to the Receivable in its next annual report to securityholders (the March 2022 Annual Report).

XIII. Emerge IRC's Breaches of Duties to Investors

61. Subsection 3.9(1) of NI 81-107 requires every member of an IRC, in exercising his or her powers and discharging his or her duties related to the investment fund, to (a) act honestly and in good faith, with a view to the best interests of the investment fund; and (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Paragraph 19 of the Charter also imposed these same duties on the Emerge IRC.

62. The Emerge IRC members failed to act honestly, in good faith and in the best interests of the Funds and/or did not act with the degree of care, diligence and skill of a reasonably prudent person in the circumstances, contrary to s. 3.9(1) of NI 81-107 in that they:

i. failed to report the Receivable and the Emerge IRC's questions and concerns regarding same to the Commission, as permitted under s. 3.11(3) of NI 81-107;

ii. ultimately accepted Emerge Canada's assertions that it had brought the Receivable to the IRC's attention for "informational purposes" only, despite (a) initially treating the matter as a COI referral, and (b) the Emerge IRC's opinion that this was a COI matter that fell within its mandate;

iii. failed to (a) deliver a recommendation with respect to the Receivable, or (b) disclose the Receivable referral in its March 2022 Annual Report, or (c) otherwise disclose the Receivable so that the Funds' unitholders had an opportunity to make an informed decision with respect to same;

iv. treated the matter as closed after Emerge Canada's March 2022 promise to cease the practice underlying the Receivable and pay it back before year-end, and failed to follow-up further on the matter after March 2022 despite (a) their unresolved concerns about the Receivable and the Manager's conduct, (b) that almost immediately after making the promise, Emerge Canada advised that it had only made "limited" progress paying down the Receivable as promised, yet was incurring

additional operating costs to launch a new series of funds, and (c) in 2022 the Emerge IRC members themselves experienced delay in payments being made to them, and the Emerge IRC's secretariat, by the Manager;

v. failed to seek or obtain independent legal advice about their duties and obligations in the circumstances in accordance with s. 3.11(1)(b) of NI 81-107; and

vi. failed to resign after the Manager's conduct frustrated the Emerge IRC's ability to properly review and/or respond to the COI matter, which resignations and the reasons for same the Manager would have been required to report to the Commission under s. 3.10(4) of NI 81-107.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

63. The Commission alleges the following breaches of Ontario securities law and conduct contrary to the public interest:

i. Emerge Canada, as IFM, failed to act honestly, in good faith and in the best interests of the Funds, and/or failed to exercise the degree of care, diligence, and skill that a reasonably prudent person would exercise in the circumstances, contrary to s. 116 of the Act;

ii. Emerge Canada, as PM, knowingly caused an investment portfolio managed by it (*i.e.*, the Funds) to provide a guarantee or loan to a responsible person or an associate of a responsible person (*i.e.*, Emerge Canada and Emerge US), contrary to s. 13.5(2)(c) of NI 31-103;

iii. Emerge Canada failed to comply with its obligations respecting conflicts of interest contrary to ss. 5.1(1) and 5.3(1) of NI 81-107;

iv. Emerge Canada failed to establish, maintain and apply policies and procedures that establish an adequate system of controls and supervision, contrary to s. 32(2) of the Act and s. 11.1 of NI 31-103;

v. Emerge Canada failed to keep and maintain books, records and other documents as required under Ontario securities law, contrary to s. 19(1) of the Act and s. 11.5 of NI 31-103;

vi. Langley, as UDP, breached the duties prescribed by s. 5.1 of NI 31-103, including promoting compliance with securities legislation;

vii. Langley, as CCO, breached the duties prescribed by s. 5.2 of NI 31-103, including monitoring and assessing compliance with securities legislation;

viii. Langley and Alvares, as directors and officers of Emerge Canada, authorized, permitted or acquiesced in Emerge Canada's breaches of the obligations and duties above and are therefore liable for these breaches pursuant to s. 129.2 of the Act;

ix. Rounding, Friesen and Hutchins, as Emerge IRC members, failed to provide a recommendation as required by ss. 4.1(1) and 5.3(1)(a) of NI 81-107;

x. Rounding, Friesen and Hutchins, as Emerge IRC members, failed to disclose the Receivable referral in the March 2022 Annual Report, contrary to s. 4.4(1) of NI 81-107;

xi. Rounding, Friesen and Hutchins, as Emerge IRC members, failed to act honestly, in good faith and in the best interests of the Funds, and/or failed to exercise the degree of care, diligence, and skill that a reasonably prudent person would exercise in the circumstances, contrary to s. 3.9(1) of NI 81-107; and

xii. The Respondents engaged in conduct that is contrary to the public interest.

64. These allegations may be amended, and further and other allegations may be added as counsel may advise, and the Capital Markets Tribunal (the **Tribunal**) may permit.

D. ORDERS SOUGHT

65. The Commission requests that the Tribunal make the following orders as against each of the Respondents:

i. that they cease trading in any securities or derivatives permanently or for such period as is specified by the Tribunal, pursuant to paragraph 2 of s. 127(1) of the Act;

ii. that they be prohibited from acquiring any securities permanently or for such period as is specified by the Tribunal, pursuant to paragraph 2.1 of s. 127(1) of the Act;

iii. that any exemptions contained in Ontario securities law do not apply to them permanently or for such period as is specified by the Tribunal, pursuant to paragraph 3 of s. 127(1) of the Act;

iv. that they be reprimanded, pursuant to paragraph 6 of s. 127(1) of the Act;

v. that they resign any position they may hold as a director or officer of any issuer, pursuant to paragraph 7 of s. 127(1) of the Act;

vi. that they be prohibited from becoming or acting as a director or officer of any issuer permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8 of s. 127(1) of the Act;

vii. that they resign any position they may hold as a director or officer of any registrant, pursuant to paragraph 8.1 of s. 127(1) of the Act;

viii. that they be prohibited from becoming or acting as a director or officer of any registrant permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8.2 of s. 127(1) of the Act;

ix. that they be prohibited from becoming or acting as a registrant or promoter permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8.5 of s. 127(1) of the Act;

x. that they pay an administrative penalty of not more than $1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of s. 127(1) of the Act;

xi. that they disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of s. 127(1) of the Act;

xii. that they pay costs of the investigation and the hearing, pursuant to s. 127.1 of the Act; and/or

xiii. such other order as the Tribunal considers appropriate in the public interest.

DATED this 6th day of March, 2025

ONTARIO SECURITIES COMMISSION
20 Queen Street West, 22nd Floor
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