

BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: 2025 BCSECCOM 421

Date: 20250924

Notice of Administrative Penalty

Fulcra Asset Management Inc.

Section 162.01 of the *Securities Act*, RSBC 1996, c. 418

Summary of Alleged Contraventions and Conditional Findings

1. Staff submitted a report (the Report) alleging that Fulcra Asset Management Inc. contravened sections:
 - a. 3.1(1.1)(a)(iii) of National Instrument 33-109 – *Registration Information* (NI 33-109) by failing to notify the regulator of a change to its auditor within 30 days;
 - b. 12.8 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) by failing to direct its auditor in writing to conduct any audit or review required by the regulator and deliver a copy of the direction to the regulator within 10 days after it changed auditor; and
 - c. 11.1(1)(a) of NI 31-103 by failing to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to reasonably assure compliance with securities legislation.

On that basis, staff recommended I impose an administrative penalty on Fulcra under section 162.01 of the *Securities Act*.

2. Based on the information in the Report, and subject to Fulcra's right to dispute the allegations or amount of the penalty under section 162.04 of the Act, I consider that:
 - Fulcra has contravened sections 3.1(1.1)(a)(iii) of NI 33-109 and sections 12.8 and 11.1(1)(a) of NI 31-103, and
 - it is in the public interest to require Fulcra to pay an administrative penalty of \$12,000.

Contraventions

3. Fulcra is a Vancouver-based portfolio manager, investment fund manager and exempt market dealer. As such, it is a “registered firm” as defined in NI 33-109 and NI 31-103.

Contraventions of sections 3.1(1.1)(a)(iii) of NI 33-109 and 12.8 of NI 31-103

4. Under section 3.1(1.1)(a)(iii) of NI 33-109, Fulcra is required to notify the regulator (which is defined in NI 33-109 and NI 31-103 as the executive director) within 30 days of changing auditors:

3.1 Notice of Change To a Firm’s Information

...
(1.1) Subject to subsection (3) or (4), a registered firm must notify the regulator ... of a change to any information previously submitted in Form 33-109F6 or under this subsection as follows:

(a) for a change to information previously submitted in relation to any of the following parts or items of Form 33-109F6, within 30 days of the change:

...
(iii) item 5.12 [Auditor];

5. Section 3.1(2) of NI 33-109 requires the registered firm to give notice of that change “by submitting a completed Form 33-109F5” (F5).

6. In addition, under section 12.8 of NI 31-103, Fulcra:

...must direct its auditor in writing to conduct any audit or review required by the regulator ... during its registration and must deliver a copy of the direction to the regulator ... (b) no later than the 10th day after the registered firm changes its auditor.

7. In a March 31, 2025 email, Fulcra delivered its audited annual financial statements for the year end December 31, 2024 to staff. In an April 11, 2025 email, staff noted that Fulcra had changed its auditor and asked Fulcra to provide the letter of direction required by section 12.8 of NI 31-103 and the completed Form 33-109F5 required under section 3.1 of NI 33-109.

8. On April 14, 2025, Fulcra emailed staff:

- a. a completed Form 33-109F5 dated April 14, 2025, confirming it changed its auditor effective February 11, 2025; and
- b. a copy of a letter of direction to its auditor dated April 14, 2025 confirming its prior direction to the auditor on February 11, 2025 to conduct any audits

of Fulcra as required by the British Columbia Securities Commission, its principal regulator, until further notice.

9. Fulcra changed its auditor on February 11, 2025, but failed to notify the executive director of the change to its registration information within 30 days of the change. Fulcra further failed to deliver to the executive director, by the 10th day after the change of auditor, a copy of its direction to the new auditor to conduct any required audits. Accordingly, I find that Fulcra contravened:

- a. section 3.1(1.1)(a)(iii) of NI 33-109; and
- b. section 12.8 of NI 31-103.

Contravention of section 11.1 NI 31-103

10. Under section 11.1 of NI 31-103:

(1) A registered firm must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to

(a) provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation ...

11. The Companion Policy to NI 31-103 provides non-binding guidance on some of the specific elements of an effective compliance system. On page 28, the Companion Policy states that “[t]he firm should have detailed written policies and procedures that ... clearly outline who is expected to do what, when and how...”.
12. In response to a production order, on June 25, 2025, Fulcra provided a copy of its current Policies and Procedures Manual (PPM). It explained that section 16 of the PPM addressed its obligation to notify the Commission of a change of auditor. Section 16 of the PPM sets out a list of changes to Fulcra’s business that must be reported by submitting a Form 33-109F5 to the Commission. However, it fails to identify a change of auditor as one of the changes that must be reported.
13. The PPM also fails to identify or discuss the firm’s obligations under 12.8 of NI 31-103 to direct its auditor in writing to conduct any audit required by the regulator and deliver a copy of that written direction to the regulator.
14. Fulcra advised that this section of its PPM had not changed since April 15, 2020.
15. By omitting PPM provisions that set out Fulcra’s obligations to report changes of auditor and submit a copy of its direction to its auditor to conduct audits required by the

executive director, I find that Fulcra failed to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the firm complies with securities legislation. As a result, I find that Fulcra contravened 11.1(1)(a) of NI 31-103.

Administrative Penalty

16. Under section 162.01 of the Act, if I consider that Fulcra has contravened the regulations and consider it to be in the public interest, I may give written notice requiring the firm to pay an administrative penalty. Under section 162.01(1) of the Act, in determining the amount of the penalty, I must consider the factors set out in the headings below.

Past Conduct

17. Fulcra has no formal disciplinary history.
18. However, as set out in the Report, Fulcra changed its auditor effective January 1, 2019 but did not report the change and submit a copy of the required direction to its new auditor until April 15, 2020. This was after staff flagged the change in Fulcra's audited financial statements for the year ended December 31, 2019. Both filings were late.
19. Fulcra changed its auditor again effective January 1, 2020. On March 31, 2021, it reported the change of auditor through an F5 filing and submitted the required direction to its new auditor. Both filings were again late. On April 16, 2021, the Commission's Manager, Adviser/IFM Compliance advised Fulcra by letter that it had breached section 12.8 of NI 31-103 a second time. The letter stated:

As a registrant, Fulcra is required to understand all the applicable regulatory requirements. Repeat deficiencies are a serious breach and could affect a registrant's ongoing suitability for registration. Despite the breaches, we do not intend to take further administrative action at this time. However, we reserve the right to revisit this matter if we receive further information, which changes our present understanding of the facts.

Fulcra responded that it took the warning very seriously and would ensure it didn't happen again.

Seriousness of the Conduct

20. Fulcra's conduct is at the low or low to medium end of the spectrum of seriousness.
21. In assessing the seriousness of the conduct, I agree with staff that it is helpful to look at the purpose of the requirement. I further agree with staff that the purpose of the requirement to notify the executive director of a change to a firm's auditor is to provide staff with an opportunity to assess whether the change indicates there are financial or other risks at the firm that might require monitoring or intervention by staff in order to

prevent or address investor harm. By filing late, Fulcra delayed staff's ability to assess the impact of the change of auditor. It was also the third time Fulcra filed late. On the other hand, staff did not provide evidence that the change of auditor was an indicator of any risks at the firm, nor is there any evidence of investor harm. Fulcra quickly made the filing when staff identified the issue. Overall, I consider Fulcra's contraventions of sections 3.1(1.1)(a)(iii) of NI 33-109 and section 12.8 of NI 31-103 to be at the lower end of the spectrum of seriousness.

22. Fulcra's contravention of section 11.1(1)(a) of NI 31-103 is more serious. The requirement to establish and apply policies and procedures that establish an adequate system of controls and supervision is a key part of the registrant regulatory regime.
23. On June 25, 2025, in response to a production order, Fulcra provided a copy of its PPM and confirmed that it had not changed the section that deals with changes to firm registration information since April 15, 2020. In other words, approximately two months after making late change of auditor filings for the third time, Fulcra had still not updated its PPM with a view to ensuring it complies going forward. This may suggest that Fulcra is either not taking its obligation to report changing its auditor seriously, or that it lacks the capacity to establish appropriate policies and procedures in this area. This is more serious than the late filings. That said, there is still no evidence of financial or other risks at the firm or investor harm arising from the contravention of section 11.1(1)(a) of NI 31-103.

Mitigating Factors

24. There are no mitigating factors.

Demonstrating Consequences for, and Deterring, Inappropriate Conduct

25. I find that the factors in sections 162.02(1)(d) and (e) can be considered together.
26. I agree with staff that the repeat nature of the contravention calls for a consequence beyond another warning letter, in order to deter Fulcra from further contraventions. A penalty will also deter Fulcra and other registrants from contravening the auditor change reporting and policies and procedures requirements in NI 33-109 and NI 31-103.

Orders Made in Similar Circumstances

27. Staff were not able to refer me to any Commission orders made for contraventions of the auditor change reporting requirements in NI 33-109 and NI 31-103.
28. That said, I agree with staff that the Notice of Administrative Penalty in *Re Capstone Asset Management*, 2023 BCSECCOM 537 is relevant. In that case, I imposed a \$12,000 penalty on another relatively small registered firm for its failure to:
 - a. maintain the required insurance coverage for prescribed business risks in contravention of section 12.5(2) of NI 31-103; and

- b. establish adequate policies and procedures on insurance coverage in contravention of section 11.1(1) of NI 31-103.

29. As in this case, the contraventions were of relatively low seriousness, the firm had received a warning for a prior contravention, and its policies and procedures failed to establish an adequate system of controls and supervision.

Any Other Matter Relevant to the Public Interest

30. I have not identified any other factors relevant to determining the appropriate penalty in the public interest.

31. In addition to reviewing the above factors, staff submitted that the general principles that guide the Commission's orders under sections 161 and 162 of the Act apply equally to the exercise of my authority under section 162.01. Staff referred me to a recent summary of these principles from paras. 11 to 14 of *Re Stock Social, 2023 BCSECCOM 372*, which I would further summarize as follows:

- a. Orders should be protective and preventative and intended to prevent future harm
- b. I must aim to protect investors, promote the fairness and efficiency of the capital markets, and preserve public confidence in those markets
- c. Sanctions should be sufficient to deter misconduct while remaining proportionate to the misconduct
- d. I may consider both specific and general deterrence, keeping in mind that general deterrence should not lead to a crushing or unfit penalty.

32. The financial statements of Fulcra provided to me by staff suggest a penalty in the thousands of dollars would be significant for it. I do not think a larger penalty is required to ensure that Fulcra complies with the auditor change and policies and procedures requirements going forward.

33. On the other hand, general deterrence requires that the sanction be significant enough to deter other industry participants from non-compliance.

34. Taking into account all of the above factors and sanctioning principles, I agree with staff that the appropriate penalty amount is \$12,000 for all contraventions.

Requirement to Pay or Dispute the Administrative Penalty

35. Under section 162.01 of the Act, and subject to Fulcra's right to dispute the alleged contraventions or penalty amount under section 162.04 of the Act, I consider it in the public interest to require Fulcra to pay a total administrative penalty of \$12,000 for the alleged contraventions.

36. Under section 162.04(1) of the Act, by November 7, 2025, Fulcra must:

- pay the administrative penalty; or
- give me written notice requesting an opportunity to be heard to dispute the alleged contraventions or the amount of the administrative penalty.

37. Under section 162.04(2.1) of the Act, Fulcra will be deemed to have contravened sections 3.1(1.1)(a)(iii) of NI 33-109 and sections 12.8 and 11.1(1)(a) of NI 31-103, and the administrative penalty set out in this notice will be payable to the commission, if Fulcra:

- pays the administrative penalty; or
- fails to pay the full amount of the administrative penalty, or request an opportunity to be heard to dispute the alleged contraventions or the amount of the administrative penalty, by November 7, 2025.

September 24, 2025

Peter J. Brady
Executive Director