The Ontario Securities Commission

OSC Bulletin

September 20, 2002

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The Ontario Securities Commission Administers the
Securities Act of Ontario (R.S.O. 1990, c.S.5) and the
Commodity Futures Act of Ontario (R.S.O. 1990, c.C.20)

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Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

SEPTEMBER 20, 2002

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

Unless otherwise indicated in the date column, all hearings will take place at the following location:

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
Suite 1700, Box 55
20 Queen Street West
Toronto, Ontario
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- -

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Mary Theresa McLeod	—	MTM
H. Lorne Morphy, Q.C.	—	HLM
Robert L. Shirriff, Q.C.	—	RLS

SCHEDULED OSC HEARINGS

October 10, 2002 9:00 a.m. - 5:00 p.m.	**Lydia Diamond Explorations of Canada, Jurgen von Anhalt, Emilia von Anhalt**
October 11, 2002 8:00 a.m. - 3:30 p.m.	s. 127 M. Britton in attendance for Staff
October 15, 2002 2:00 p.m. - 6:30 p.m.	Panel: PMM / HLM / MTM
October 16, 2002 8:00 a.m. - 2:30p.m.	
September 25, 2002 10:00 a.m.	**Patrick Lett, Milehouse Investment Management Ltd., Pierrepont Trading Inc., BMO Nesbitt Burns Inc., John Steven Hawkyard and John Craig Dunn** s. 127 K. Manarin in attendance for Staff Panel: PMM
September 26, 2002 9:30 a.m.	**Ricardo Molinari, Ashley Cooper, Thomas Stevenson, Marshall Sone, Fred Elliott, Elliott Management Inc. and Amber Coast Resort Corporation** s. 127 I. Smith in attendance for Staff Panel: HIW
September 26, 2002	**Terry Dodsley** s. 127 K. Manarin in attendance for Staff Panel: HLM / RLS

October 4, 2002 9:30 a.m.	**Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein, Robert Topol** s. 127 in attendance for Staff Panel: HIW
October 21 - 25, 2002 10:00 a.m.	**Malcolm Robert Bruce Kyle & Derivative Services Inc.** S. 8(4) and 21.7 J. Superina in attendance for Staff Panel: HLM / RLS
October 28 to November 8, 2002 10:00 a.m.	**Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.** s. 127 Y. Chisholm in attendance for Staff
November 11 to December 6, 2002 10:00 a.m.	**Brian Costello** s. 127 H. Corbett in attendance for Staff Panel: PMM / KDA / MTM
November 18 to December 4, 2002 10:00 a.m.	**Michael Goselin, Irvine Dyck, Donald Mccrory and Roger Chiasson** s. 127 T. Pratt in attendance for Staff Panel: HLM
November 18 & 25, 2002 9:00 a.m. - 12:00 p.m. November 19, 2002 9:00 a.m. - 3:00 p.m. November 20 - 22, 27 - 29, 2002 9:30 a.m. - 4:30 p.m.	**YBM Magnex International Inc., Harry W. Antes, Jacob G. Bogatin, Kenneth E. Davies, Igor Fisherman, Daniel E. Gatti, Frank S. Greenwald, R. Owen Mitchell, David R. Peterson, Michael D. Schmidt, Lawrence D. Wilder, Griffiths McBurney & Partners, National Bank Financial Corp., (formerly known as First Marathon Securities Limited)** s.127 K. Daniels/M. Code/J. Naster/I. Smith in attendance for staff. Panel: HIW / DB / RWD
March 24, 25, 26 & 27, 2003 10:00 a.m.	**Edwards Securities Inc., David Gerald Edwards, David Frederick Johnson, Clansman 98 Investments Inc. and Douglas G. Murdock** s. 127 A. Clark in attendance for Staff Panel: PMM

ADJOURNED SINE DIE

Buckingham Securities Corporation, Lloyd Bruce, David Bromberg, Harold Seidel, Rampart Securities Inc., W.D. Latimer Co. Limited, Canaccord Capital Corporation, BMO Nesbitt Burns Inc., Bear, Stearns & Co. Inc., Dundee Securities Corporation, Caldwell Securities Limited and B2B Trust

DJL Capital Corp. and Dennis John Little

Dual Capital Management Limited, Warren Lawrence Wall, Shirley Joan Wall, DJL Capital Corp., Dennis John Little and Benjamin Emile Poirier

First Federal Capital (Canada) Corporation and Monter Morris Friesner

Global Privacy Management Trust and Robert Cranston

Irvine James Dyck

Ricardo Molinari, Ashley Cooper, Thomas Stevenson, Marshall Sone, Fred Elliott, Elliott Management Inc. and Amber Coast Resort Corporation

M.C.J.C. Holdings Inc. and Michael Cowpland

Offshore Marketing Alliance and Warren English

Philip Services Corporation

Rampart Securities Inc.

Robert Thomislav Adzija, Larry Allen Ayres, David Arthur Bending, Marlene Berry, Douglas Cross, Allan Joseph Dorsey, Allan Eizenga, Guy Fangeat, Richard Jules Fangeat, Michael Hersey, George Edward Holmes, Todd Michael Johnston, Michael Thomas Peter Kennelly, John Douglas Kirby, Ernest Kiss, Arthur Krick, Frank Alan Latam, Brian Lawrence, Luke John Mcgee, Ron Masschaele, John Newman, Randall Novak, Normand Riopelle, Robert Louis Rizzuto, And Michael Vaughan

S. B. McLaughlin

Southwest Securities

1.1.2 Notice of Request for Comments - Proposed National Instrument 81-106 and Companion Policy 81-106CP Investment Fund Continuous Disclosure, and Form 81-106F1 Contents of Annual and Quarterly Management Reports of Fund Performance

NOTICE OF REQUEST FOR COMMENTS

PROPOSED NATIONAL INSTRUMENT 81-106
AND COMPANION POLICY 81-106CP
INVESTMENT FUND CONTINUOUS DISCLOSURE, AND
FORM 81-106F1
CONTENTS OF ANNUAL AND QUARTERLY
MANAGEMENT REPORTS
OF FUND PERFORMANCE

The Commission is publishing for comment in today's Bulletin:

- National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) which contains Form 81-106F1 *Contents of Annual and Quarterly Management Reports of Fund Performance;*
- Companion Policy 81-106 CP to NI 81-106 (the Policy);
- Notice and Request for Comment regarding NI 81-106, the Form, the Policy and related amendments.

The Notice relating to NI 81-106 also requests comments on

1. proposed amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101);
2. proposed amendments to Companion Policy 81-106CP to NI 81-101;
3. proposed amendments to National Instrument 81-102 *Mutual Funds* (NI 81-102);
4. proposed amendments to Companion Policy 81-102CP to NI 81-102;
5. proposed amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR);*
6. proposed amendment to Commission Rule 41-502 *Prospectus Requirements for Mutual Funds.*

The documents are published in Chapter 6 of the Bulletin.

1.1.3 Amendments to OSC Rule 45-502 and OSC Rule 45-503, and Rescission of OSC Rule 72-501

NOTICE OF
COMMISSION APPROVAL OF
AMENDMENTS TO OSC RULE 45-502 AND
OSC RULE 45-503

AND

RESCISSION OF
OSC RULE 72-501

On September 17, 2002, the Commission made amendments to Rule 45-502 *Dividend or Interest Reinvestment and Stock Dividend Plans* and Rule 45-503 *Trades to Employees, Executives and Consultants*, and revoked Rule 72-501 *Prospectus Exemption for First Trade Over a Market Outside Ontario* under section 143 of the *Securities Act* (the Act) (collectively, the Amendments).

The Amendments were published for comment on September 14, 2001 at (2001) 24 OSCB 5567.

The Amendments were sent to the Minister on September 17, 2001 and are being published in Chapter 5 of the Bulletin.

1.1.4 CSA Staff Notice 31-305 Registration Streamlining System

CANADIAN SECURITIES ADMINISTRATORS
STAFF NOTICE 31-305
REGISTRATION STREAMLINING SYSTEM

Introduction

Staff of the members of the Canadian Securities Administrators (CSA), except staff of the Commission des valeurs mobilières du Québec (CVMQ), issue this notice to explain the Registration Streamlining System (RSS). The Investment Dealers Association of Canada (IDA) is participating in the RSS and is issuing its own notice to its members. This CSA staff notice refers to the participating members of CSA and the IDA collectively as we.

On October 1, 2002, we will adopt a streamlined process that applies to salespersons registering in more than one jurisdiction. By adopting the RSS, we will simplify the administrative processes for salespersons employed by dealers that belong to the IDA, as well as for salespersons employed by dealers that belong to the Mutual Fund Dealers Association of Canada (MFDA). The MFDA will inform its members about the implementation of RSS.

The RSS will make applying for registration with more than one jurisdiction more efficient by reducing and harmonizing as much as possible the paperwork that salespersons submit.

Overview of the Registration Streamlining System

Currently, except in Nova Scotia, a salesperson who wants to conduct registerable activities in more than one jurisdiction must complete a separate form for each registration.

The RSS changes administrative practices, but not regulatory requirements, by allowing salespersons registered with at least one participating CSA member (either directly or through the IDA) to use copies of a registration form to apply for additional registrations. All existing local requirements remain in effect, and each participating CSA member and each IDA district will continue applying them and assessing each individual's suitability for registration. Salespersons will also have to comply with future requirements of participating CSA members and the IDA.

In the RSS, we refer to the participating CSA member or the IDA district through which a salesperson has been continuously registered for the longest period of time as the initial decision maker. For RSS applications to register in additional jurisdictions, a salesperson copies the registration form filed most recently with that salesperson's initial decision maker.

We use the term subsequent decision maker to refer to a participating CSA member or IDA district to which a salesperson applies using the RSS system after being registered with an initial decision maker.

Use of the RSS to register as a salesperson in more than one jurisdiction is voluntary.

Since none of the participating members of the CSA have delegated registration powers to the MFDA, salespersons of MFDA members should submit their RSS applications to the applicable member of the CSA.

Currently, neither the CVMQ nor the Bourse de Montréal Inc. (BDM) is participating in the RSS, although they may participate in the future. Salespersons employed by mutual fund dealers registered by the Bureau des services financiers (BSF) cannot use the RSS to apply for registration in Québec. For information about how Québec salespersons may access the RSS through another CSA jurisdiction to register in additional CSA jurisdictions outside Québec, please see *Dealers with operations in Québec*.

Accessing the Registration Streamlining System

A salesperson submitting an RSS application to a subsequent decision maker must meet all of the following threshold criteria:

1. The salesperson is registered with the initial decision maker.

2. The dealer the salesperson works for belongs to the IDA or to the MFDA.

3. The dealer the salesperson works for is registered with the initial and subsequent decision makers.

How to apply to subsequent decision makers using the Registration Streamlining System

In most provinces and all territories, salespersons apply directly to one of the participating members of the CSA as the subsequent decision maker. However, investment dealer salespersons apply to the appropriate district of the IDA in Alberta, British Columbia, and Ontario.

A. The dealer and salesperson send the subsequent decision maker:

    1. a joint dealer-salesperson letter signed by both the dealer and salesperson

    2. a photocopy of the salesperson's most recently filed registration form[1] and supporting materials (all of which we refer to as the registration form) that contains all of the information required by the initial decision maker, including the completed form and exhibits (but not including photographs or documents relating to courses and examinations)

    3. the registration fee charged by the subsequent decision maker

B. The joint dealer-salesperson letter has a section for the dealer and one for the salesperson.

    1. The dealer's section sets out:

        a. an acknowledgement from the dealer that the salesperson is applying to the subsequent decision maker for registration

        b. who supervises the salesperson's trading activity

        c. the supervisor's business location

    2. The salesperson's section sets out:

        a. a representation that the salesperson is registered with the initial decision maker, including the registration category and any terms and conditions of registration

        b. any changes in the information on the registration form filed on the salesperson's most recent application to the initial decision maker or confirmation that no changes in the information on the registration form have occurred

        c. the name of the subsequent decision maker to which the salesperson is applying

        d. the registration category for which the salesperson is applying

        e. as set out in the section *Submitting to jurisdiction*, the salesperson's agreement to be bound by the courts and tribunals of the province or territory in which the participating CSA member or IDA district that is the subsequent decision maker is located

        f. the salesperson's address for service in the province or territory in which the subsequent decision maker is located

Each subsequent decision maker will decide whether or not to register the applicant. The subsequent decision maker may require the salesperson or dealer to submit additional information. In addition, the subsequent decision maker may impose on the salesperson conditions of registration

[1] Do not submit a copy of a renewal form.

that may be the same as or different from conditions imposed by an initial decision maker.

Applying for registration with more than one subsequent decision maker

A salesperson can apply to more than one subsequent decision maker at the same time. A salesperson who wishes to do that should prepare a separate application package for each subsequent decision maker to which the salesperson applies.

Dealers with operations in Québec

Salespersons employed by dealers, including mutual fund dealers, are not eligible to use the RSS in Québec. Instead, when seeking Québec registration, salespersons must continue applying, as the case may be, directly to the CVMQ, the BDM, or the BSF.

If a Québec-based dealer, including a mutual fund dealer, obtains registration in a province or territory outside Québec, that dealer's salespersons may access the RSS outside Québec through that other jurisdiction. Salespersons will need to apply for registration in one province or territory outside Québec and then use that non-Québec initial registration to access the RSS.

Submitting to jurisdiction

If salespersons carry on registerable activities, then they are subject to the legal jurisdiction of the province or territory in which they conduct those registerable activities. Participating members of the CSA will accept the following wording as an individual's submission to (attornment to) jurisdiction:

> By submitting this application I irrevocably and unconditionally submit to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of each jurisdiction to which I have submitted this application and any administrative proceedings in that jurisdiction, in any action, investigation or administrative, disciplinary, criminal, quasi-criminal, penal or other proceeding (each, a proceeding) arising out of or relating to or concerning my activities as a registrant under the securities legislation of the jurisdiction, and irrevocably waive any right to raise as a defence in any proceeding any alleged lack of jurisdiction to bring that proceeding.

Personal information

When a salesperson uses the RSS, the initial and subsequent decision makers may collect, use, disclose, and share information, including that salesperson's personal information. To determine whether the salesperson is registered and in good standing, each subsequent decision maker may communicate as necessary with the initial decision maker, other members of the CSA, and other organizations including the IDA or MFDA.

Many jurisdictions have enacted legislation governing information collection, use, disclosure, and sharing. Each jurisdiction has different requirements governing personal information. A salesperson making an RSS application for registration should contact the relevant CSA member for more information about local requirements.

Questions

Please refer questions about the RSS to the contact for the appropriate participating CSA member or the IDA:

Alberta
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Alberta Securities Commission
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Manager, Registration and Market Regulation
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Investment Dealers Association of Canada
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September 20, 2002.

1.1.5 Dialogue with the OSC 2002 - "Fostering Capital Markets that are Fair, Efficient and Safe"

Dialogue with the OSC 2002

"Fostering Capital Markets that are Fair, Efficient and Safe"

Thursday October 10th, 2002

SHERATON CENTRE HOTEL
123 QUEEN STREET WEST, TORONTO

Conference Program

8:45 **Introductory Remarks –** *Charlie Macfarlane, Executive Director*

9:00 **Keynote Address –** *David Brown, Chair*

9:30 **Panel of CSA Chairs –** *David Brown (OSC), Doug Hyndman (BCSC), Steve Sibold (ASC). CVMQ representative TBA.*

10:30 *Break*

10:45 *Break-out Session #1*

- **Significant Legal & Regulatory Developments –** *Chair: Susan Wolburgh Jenah, General Counsel*
  The session will include a discussion of the Five Year Review Committee's Draft Report and comments received in response and National Policy 51-201 Disclosure Standards.

- **Fair Dealing Model –** *Co-Chairs: Julia Dublin, Senior Legal Counsel, Capital Markets Branch, and Randall Powley, Chief Economist*
  Members of the Fair Dealing Advisory Group will describe the OSC's new proposals for regulating the relationship between the financial services industry and individual investors.

- **Continuous Disclosure Update –** *Chair: John Hughes, Manager, Continuous Disclosure*
  The session will provide an update on the current focus and scope of the OSC's CD review program, including its review of executive compensation disclosures, and the CSA's CD harmonization initiative.

12:00 **Luncheon Address –** *Randall Powley, Chief Economist*

1:30 **Panel of OSC Vice-Chairs –** *Paul Moore & Howard Wetston*

2:45 *Break-out Session #2*

- **Recent Developments in Enforcement –** *Chair: Michael Watson, Director, Enforcement*
  Topics discussed in the session will include the joint RCMP/OSC Securities Fraud Unit, disclosure issues and financial misrepresentations, temporary orders and current litigation issues, and staff's credit for cooperation policy.

- **Building Investor Confidence in Financial Reporting –** *Chair: John Carchrae, Chief Accountant*
  The session will address the OSC's views on recent regulatory developments affecting financial reporting, and its priorities for continuing reform.

- **New Proposals for Investment Funds –** *Co-Chairs: Rebecca Cowdery, Manager, Investment Funds Regulatory Reform, and Paul Dempsey, Manager, Investment Funds*
  The discussion will include recent proposals regarding investment fund continuous disclosure, fund of funds, point of sale disclosure, and fund governance.

3:45 *Break*

4:00 *Break-out Session #3*

- **Corporate Finance, Mergers & Acquisitions –** *Chair: Ralph Shay, Director, Take-over Bids, Mergers & Acquisitions and Acting Director, Corporate Finance*
  The session will address current issues such as financing using equity lines, income trusts, reporting of equity monetization transactions, and implications of developments regarding poison pills and voting support agreements.

- **Risk-based Approach to Capital Markets Regulation –** *Chair: Randee Pavalow, Director, Capital Markets*
  Staff from the Registration, Compliance and Market Regulation teams will discuss their evolving approaches for more effectively implementing regulatory compliance among market participants.

- **Sarbanes-Oxley Act in a Canadian Context –** *Chair: Susan Wolburgh Jenah, General Counsel*
  The discussion of the recent US legislation will include a comparison to existing Canadian laws, and staff's views on an appropriate Canadian regulatory response.

5:15 **Reception**

Register Now

- Register online at www.osc.gov.on.ca/dialogue
- Or call the Dialogue with the OSC 2002 Hotline at (416) 593-7352 or (800) 360-0493

Registration Fee: $395

The registration fee includes conference materials, luncheon, refreshments and evening reception. GST is included.

1.3 News Releases

1.3.1 OSC Panel Suspends Donnini for 15 Years

FOR IMMEDIATE RELEASE
September 12, 2002

OSC PANEL SUSPENDS DONNINI FOR 15 YEARS

Toronto – An Ontario Securities Commission panel today suspended for 15 years the registration of Piergiorgio Donnini, a former head trader at Yorkton Securities Inc. The tribunal had found on June 11, 2002 that Donnini acted in contravention of the Ontario Securities Act and contrary to the public interest. Specifically, the panel found that in early 2000, Mr. Donnini had knowledge of a potential financing for Kasten Chase Applied Research Limited (KCA) that had not been disclosed to the public. The panel agreed that Mr. Donnini traded in KCA shares while he had this information and as such, he acted contrary to the public interest.

The Commission imposed the following sanctions:

- Donnini's registration under Ontario securities law is suspended for a period of 15 years;
- Donnini must cease trading in securities for a period of 15 years, except that he is permitted to trade in personal accounts in his name in which he has sole beneficial interest, and in registered retirement savings plans in which he, either alone or with his spouse, has sole beneficial interest;
- Donnini must resign all positions that he holds as a director or officer of an issuer that is a registrant, or that directly or indirectly holds more than a 5% interest in a registrant;
- Donnini is prohibited for 15 years from becoming or acting as a director or officer of any issuer that is a registrant, or that directly or indirectly holds more than a 5% interest in a registrant;
- Donnini must pay costs of the Commission in the amount of $186,052.30 in relation to the investigation and conduct of the hearing in this matter.

In explaining the reasons for the sanctions, Paul Moore, Vice-Chair of the OSC and Chair of the panel, said: "Donnini was an experienced trader. He was the fourth-largest shareholder of Yorkton, the senior liability trader and the senior institutional trader of Yorkton. As we previously stated, he was more a chief lieutenant than a common foot soldier. […] He was trading on a massive scale while in possession of confidential material information."

"Donnini was well positioned to recognize the seriousness of the impropriety of trading KCA shares with material undisclosed information contrary to section 76(1) of the Act," concluded Moore.

Staff of the Commission wish to acknowledge the valuable contribution of staff of Market Regulation Services Inc. in identifying this matter and assisting the OSC in its investigation. The cooperation exhibited in this investigation effectively demonstrates how regulators can work together to resolve complex cases that overlap jurisdiction.

A copy of the Commission's Decision and its written reasons in this matter, the Notice of Hearing and Statement of Allegations and the decision of the Commission of June 11, 2002 in respect of this matter, are available at **www.osc.gov.on.ca** or from the Commission, 19th Floor, 20 Queen Street West, Toronto, Ontario.

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1.3.2 OSC Launches Investor Guide Outlining Roles, Rights and Responsibilities of Various Market Participants

FOR IMMEDIATE RELEASE
September 17, 2002

ONTARIO SECURITIES COMMISSION LAUNCHES INVESTOR GUIDE OUTLINING ROLES, RIGHTS AND RESPONSIBILITIES OF VARIOUS MARKET PARTICIPANTS

TORONTO – A new Investor Guide from the Ontario Securities Commission helps investors understand their rights and responsibilities and clearly sets out the role of the Ontario Securities Commission as the investment industry's watchdog.

Roles, Rights and Responsibilities helps investors understand how the Securities Act sets out the rules, policies and procedures that govern the financial markets. It explores the mandate of regulatory bodies that oversee the industry and the responsibilities of companies that issue securities and dealers and advisers. It also stresses to investors that while there are rules and oversight of those rules in place to protect them, there are certain steps they should take to protect themselves.

Roles, Rights and Responsibilities is available free of charge as part of the OSC's Investor Education Kit. It is the sixth in the OSC's Guide for Investors series which also includes *An Investor's Guide to OSC Resources and Services, A Step-by-Step Guide to Making a Complaint*, *Borrowing to Invest: Understanding Leverage*, *Financial Disclosure: What you need to know* and *Dealers and Advisers: With Whom are You Dealing for Your Investment Services?*

Investors can request a free Investor Education Kit by calling 1-877-785-1555 or they can view all OSC investor resources, including the new guide, on the OSC's web site at **www.osc.gov.on.ca**. The new guide can be found on the Required Reading page of the Investor Resources section.

About the Ontario Securities Commission:

The Ontario Securities Commission is the regulatory body for the securities industry in Ontario, administering and enforcing the Ontario Securities Act and Commodity Futures Act. Our mandate is to provide protection to investors from unfair or improper practices and to foster fair and efficient capital markets.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Parkland Income Fund - MRRS Decision

Headnote

MRRS - open-ended investment trust exempt from registration and prospectus requirements in connection with issuance of additional units to existing unitholders pursuant to a distribution reinvestment plan whereby distributions of income are reinvested in additional units of the trust, subject to certain conditions - First trade relief provided, subject to certain conditions.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 53(1) and 74(1).

Applicable Ontario Rules

Rule 45-502 - Dividend or Interest Reinvestment and Stock Dividend Plans.

Applicable Instrument

Multilateral Instrument 45-501 - Resale of Securities - s. 2.6.

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, BRITISH COLUMBIA, MANITOBA,
NEW BRUNSWICK, NEWFOUNDLAND AND
LABRADOR, THE NORTHWEST TERRITORIES,
NOVA SCOTIA, NUNAVUT, ONTARIO,
PRINCE EDWARD ISLAND, QUÉBEC,
SASKATCHEWAN AND THE YUKON TERRITORY

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
PARKLAND INCOME FUND

MRRS DECISION DOCUMENT

1. **WHEREAS** the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and the Yukon Territory (the "Jurisdictions") has received an application from Parkland Income Fund (the "Fund") for a decision under the securities legislation (the "Legislation") of the Jurisdictions that the requirements under the Legislation to be registered to trade in a security (the "Registration Requirement") and to file and obtain a receipt for a preliminary prospectus and a prospectus (the "Prospectus Requirement"), will not apply in respect of certain trades or distributions of securities to be made in connection with a distribution reinvestment plan (the "Plan") relating to units (the "Units") in the Fund;

2. **AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Application (the "System"), the Alberta Securities Commission is the principal regulator for the application;

3. **AND WHEREAS** the Fund has represented to the Decision Makers that:

3.1 Parkland Industries Ltd. ("Parkland") is a corporation incorporated under the *Business Corporations Act* (Alberta);

3.2 Parkland, a wholly owned subsidiary of Parkland and affiliated companies, entered into a plan of arrangement (the "Arrangement") pursuant to which the shareholders of Parkland became holders of Units in the Fund or holders of Class B limited partnership units (the "Rollover LP Units") of Parkland Holdings Limited Partnership ("Holdings LP");

3.3 as a result of the Arrangement, the shares of Parkland were delisted from trading on TSX Inc. ("TSX") and Parkland has made application to cease to be a reporting issuer, or the equivalent, in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario;

3.4 the Fund is an open-ended limited purpose trust formed under the laws of the Province of Alberta under a declaration of trust (the "Fund Declaration of Trust") dated April 30, 2002;

3.5 the Fund is authorized to issue an unlimited number of Units of which there

were 5,196,893 Units outstanding as of July 1, 2002;

3.6 there were also 6,929,820 Rollover LP Units outstanding as of July 1, 2002, each of which is indirectly exchangeable for Units on a one for one basis;

3.7 the Fund holds all of the outstanding units ("Trust Units") and notes ("Trust Notes") of Parkland Investment Trust (the "Trust");

3.8 the Trust owns all of the Class A limited partnership units of Holdings LP;

3.9 Holdings LP holds 99.9% of the participating LP units of Parkland Industries Limited Partnership ("Industries LP"), all of the shares of Parkland and all of the notes of Parkland issued pursuant to the Arrangement;

3.10 Parkland is the general partner of Industries LP and holds a 0.1% equity interest in Industries LP in its capacity as general partner, as well as all of the preferred LP units in Industries LP;

3.11 Industries LP currently carries on the business historically carried on by Parkland and its subsidiaries;

3.12 the Fund is an electronic filer under National Instrument 13-101, SEDAR;

3.13 on the effective date of the Arrangement, June 28, 2002, the Fund became a reporting issuer in British Columbia, Alberta, Saskatchewan, and Ontario;

3.14 the Units are listed for trading on the TSX;

3.15 under the terms of the Fund Declaration of Trust, the Fund will make monthly distributions of distributable income, if any, to the holders ("Unitholders") of Units;

3.16 the amount of cash to be distributed to the Unitholders monthly per Unit will generally be equal to a pro rata share of all amounts received by the Fund in each month, including without limitation, interest payments and principal repayments on the Trust Notes and distributions on or in respect of Trust Units, less:

3.16.1 costs and expenses of the Fund; and

3.16.2 any amounts which have become payable in cash by the Fund relating to the redemption of Units;

3.17 at the option of the trustees of the Fund, the distributions payable may include additional Units or fractions of Units, if necessary;

3.18 the Fund's income is initially expected to consist of the interest income on the principal amount of the Trust Notes and distributions (if any) received on the Trust Units;

3.19 the Fund may make additional distributions in excess of the monthly distributions during the year as the trustees of the Fund may determine;

3.20 a Unitholder may elect at any time to participate in the Plan;

3.21 distributions paid on any Units held within the Plan will be applied to acquire:

3.21.1 additional Units ("Additional Units") from treasury; or

3.21.2 additional Units on the market;

3.22 the acquisition of Units under the Plan will be made either on the market at the prevailing market price or issued from treasury at a price equal to the 10 day weighted average trading price of the Units, whichever price is lower;

3.23 no fees or commissions will be payable by Unitholders in connection with the acquisition of additional Units under the Plan;

3.24 under the Plan, Unitholders do not have the option of making cash payments to purchase Additional Units;

3.25 the Fund may, in its discretion, limit the number of Units available to Unitholders under the Plan;

3.26 a Unitholder may terminate its participation in the Plan at any time by submitting a termination form to the Plan agent (the “Plan Agent”);

3.27 the Fund reserves the right to amend, suspend or terminate the Plan at any time;

3.28 the Plan is open to participation by all Unitholders, other than residents and citizens of the United States of America;

3.29 the Plan Agent will be purchasing Units from the Fund only in accordance with the mechanism described in the Plan;

3.30 the distribution of Additional Units by the Fund under the Plan cannot be made in reliance on certain existing exemptions from the Registration Requirement and Prospectus Requirement contained in the Legislation as the Plan involves the reinvestment of distributions of distributable income of the Fund and not the reinvestment of dividends, interest or distributions of capital gains or out of earnings or surplus;

3.31 the distribution of Additional Units by the Fund under the Plan cannot be made in reliance on exemptions from the Registration Requirement and Prospectus Requirement contained in the Legislation for distribution reinvestment plans of mutual funds, as the Fund is not a "mutual fund" as defined in the Legislation, since the holders of Units are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Fund;

4. **AND WHEREAS** under the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the "Decision");

5. **AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the Jurisdiction to make the Decision has been met;

6. **THE DECISION** of the Decision Makers under the Legislation is that the Registration Requirement and the Prospectus Requirement will not apply to trades and distributions by the Fund of Additional Units under the Plan provided that:

6.1 at the time of the trade or distribution, the Fund is a reporting issuer in a jurisdiction listed in Appendix B of Multilateral Instrument 45-102, *Resale of Securities* ("MI 45-102") and is not in default of any of the requirements of the Legislation;

6.2 no sales charge is payable by the Unitholder in respect of the trade or distribution;

6.3 the Fund has caused to be sent annually to the person or company to whom the Additional Units are issued, not more than 12 months before the trade or distribution, a statement describing:

6.3.1 their right to withdraw from the Plan; and

6.3.2 instructions on how to exercise the right referred to in paragraph 6.3.1 above;

6.4 disclosure of the initial distribution of Additional Units under this Decision is made to the relevant Jurisdictions by providing particulars of the date of the distribution of such Additional Units, the number of such Additional Units and the purchase price paid or to be paid for such Additional Units in:

6.4.1 an information circular or take-over bid circular filed in accordance with the Legislation; or

6.4.2 a letter filed with the Decision Maker in the relevant Jurisdiction by a person or company certifying that the person or company has knowledge of the facts contained in the letter,

when the Fund distributes such Additional Units for the first time and thereafter, not less frequently than annually, unless the aggregate number of Additional Units so traded in any month exceeds 1% of the Units outstanding at the beginning of the month in which the Additional Units were traded, in which case a separate report will be filed in each relevant Jurisdiction in respect of that month within 10 days of the end of such month;

6.5 the first trade in Additional Units acquired under this Decision will be deemed to be a distribution or a primary distribution to the public under the Legislation unless:

6.5.1 except in Québec, the conditions in subsections (3) or (4) of section 2.6 of MI 45-102 are satisfied, except that for the purposes of determining the period of time that the Fund has been a reporting issuer under section 2.6 of MI 45-102 the period of time that Parkland was a reporting issuer immediately

before the Arrangement may be included;

6.5.2 in Québec,

6.5.2.1 the first trade (alienation) of Additional Units is made on an organized market outside of Québec or upon the Fund becoming a reporting issuer in Québec and having, or being deemed to have, complied with the appropriate requirements for more than 12 months immediately preceding the trade or distribution;

6.5.2.2 no unusual effort is made to prepare the market or to create a demand for the Additional Units that are the subject of the trade or distribution;

6.5.2.3 no extraordinary commission or consideration is paid to a person or company in respect of the trade or distribution; and

6.5.3.4 the vendor of the Additional Units, if an insider or officer of the Fund, has no reasonable grounds to believe that the Fund is in default of any requirement of the securities legislation in Québec.

August 28, 2002.

"Glenda A. Campbell" "James E. Allard"

2.1.2 TD Asset Management Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief - Portfolio managers of certain mutual funds granted relief from provision in securities legislation that prohibits them from knowingly causing any investment portfolio managed by them to purchase or sell securities of any issuer from or to the account of a responsible person or its associates, subject to a number of conditions.

Applicable Ontario Statute

Securities Act (Ontario), R.S.O. 1990 c. S.5, as am., ss. 118(2)(b) and 121(2)(a)(ii).

Instruments Cited

National Instrument 33-105 - Underwriting Conflicts; National Instrument 44-101 - Short Form Prospectus Distributions; National Instrument 81-102 - Mutual Funds.

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, QUEBEC, NOVA SCOTIA AND NEWFOUNDLAND & LABRADOR

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

TD ASSET MANAGEMENT INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Ontario, Quebec, Nova Scotia, and Newfoundland & Labrador (the "Jurisdictions") has received an application from TD Asset Management Inc. ("TDAM") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the provision (the "Investment Prohibition") contained in the Legislation, which prohibits a portfolio manager from knowingly causing any investment portfolio managed by it to purchase or sell securities of any issuer from or to the account of a responsible person, any associate of a responsible person or the portfolio manager (collectively, the "Related Persons"), does not apply to TDAM in connection with the purchase or sale (a "Trade") by mutual funds whose investment portfolios are managed by TDAM (collectively, the "Managed Funds") of

i. debt securities issued or fully and unconditionally guaranteed by the federal or provincial governments ("Government Debt Securities"), or

ii. debt securities of an issuer other than the federal and provincial governments ("Corporate Debt Securities");

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System'), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS TDAM has represented to the Decision Makers that:

1. TDAM currently acts as portfolio manager for Managed Funds whose investment objectives permit them to invest in debt securities.

2. The head office of TDAM is in Toronto, Ontario.

3. In recent years, the amount of Government Debt Securities available for investment in Canada has declined significantly due to government deficit reduction programs. As a result, investors in debt securities have had to rely increasingly on Corporate Debt Securities. However, because of the limited supply of Corporate Debt Securities in the primary market, holders of outstanding Corporate Debt Securities have tended not to sell their holdings prior to the maturity date of their Corporate Debt Securities holdings. This has, in turn, led to the limited availability of Corporate Debt Securities in the secondary market. Moreover, because of their limited availability, the Corporate Debt Securities that are available in the secondary market are usually sold at prices that are higher than if they were purchased in the primary market, assuming no change in the markets and in the status of the issuer.

4. The debt securities market is primarily a dealers' market where a dealer provides buy or sell price quotes (as the case may be) and, if the price quotes are accepted, the resulting Trade is effected with the dealer acting as principal.

5. TDAM and its affiliates are principal dealers in the Canadian debt securities market — both primary and secondary.

6. The Investment Prohibition, combined with the circumstances described in paragraphs 3 and 4 above, has made it even more difficult for TDAM to acquire debt securities for the Managed Funds in the secondary market.

AND WHEREAS pursuant to the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the Jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that the Investment Prohibition does not apply so as to enable TDAM to cause the Managed Funds to purchase Government Debt Securities or Corporate Debt Securities from, or sell such debt securities to, the account of a Related Person, other than a mutual fund, in the secondary market,

PROVIDED THAT

1. at the time of causing a Managed Fund to Trade in Government Debt Securities or Corporate Debt Securities pursuant to this Decision, the following conditions are satisfied:

   (a) the Trade

      (i) represents the business judgment of TDAM uninfluenced by considerations other than the best interests of the Managed Fund, or

      (ii) is, in fact, in the best interests of the Managed Fund;

   (b) the Trade is consistent with, or is necessary to meet, the investment objective of the Managed Fund as disclosed in its simplified prospectus;

   (c) the terms of the Trade are better than the terms quoted by one or more dealers who are neither affiliates nor associates of the Related Person (the "Independent Dealers") with whom the Trade is made;

   (d) if the Trade is a purchase of Corporate Debt Securities,

      (i) the purchase is not made from the Related Person during the 60-day period after the distribution of such Corporate Debt Securities, if the Related Person acted

         A. as underwriter in the distribution of the Corporate Debt Securities, or

         B. as a selling group member selling more than 5% of the underwritten securities;

      (ii) the issuer of the Corporate Debt Securities is not a "related issuer" or "connected issuer", as defined in National Instrument 33-105 Underwriting Conflicts, of the Related Person;

(iii) the Related Person is not

A. the issuer of the Corporate Debt Securities, or

B. a promoter of the issuer of the Corporate Debt Securities; and

(iv) the Corporate Debt Securities have been given, and continue to have, an "approved rating" by an "approved rating organization" as such terms are defined in section 1.1 of NI 44-101 - Short Form Prospectus Distributions;

2. prior to effecting any Trade pursuant to this Decision,

(a) the simplified prospectus of the Managed Fund discloses that it may purchase or sell Government Debt Securities or Corporate Debt Securities from or to the account of a Related Person pursuant to this Decision, and

(b) the annual information form of the Managed Fund describes the policies or procedures referred to in paragraph 3 below;

3. prior to effecting any Trade pursuant to this Decision, the Managed Fund has in place written policies or procedures to ensure that,

(a) there is compliance with the conditions of this Decision,

(b) in connection with any Trade in Government Debt Securities or Corporate Debt Securities with a Related Person,

(i) each Managed Fund maintains an itemized daily record of all such Trades showing, for each Trade,

A. the name and principal amount of the debt securities,

B. if the Trade is in Government Debt Securities, the relevant benchmark Canada bond (the "Benchmark Bond"), the bid-ask price of the Benchmark Bond, and the price that was paid or received by the Managed Fund on the Trade,

C. if the Trade is in Corporate Debt Securities,

i. the relevant Benchmark Bond or, in the case of US$-Pay Corporate Debt Securities, the relevant US Treasury Bond,

ii. the bid-ask price of the Benchmark Bond or US Treasury Bond, and

iii. the spread over the Benchmark Bond or US Treasury Bond that was paid or received by the Managed Fund on the Trade,

D. the time and date of the Trade, and

E. the name of the dealer on the Trade;

(ii) TDAM maintains written records of the quotations received from Independent Dealers, and each Managed Fund maintains a daily consolidated record of the quotations (including the price, quantity, time and date) received from one or more Independent Dealers, in respect of each Trade made with a Related Person;

(iii) TDAM conducts a timely review of each Managed Fund's Trades with Related Persons to confirm that each Trade

A. represented the business judgment of TDAM uninfluenced by considerations other than the best interests of the Managed Fund, or

B. was, in fact, in the best interests of the Managed Fund; and

4. the following particulars of each Trade pursuant to this Decision are set out in a report certified by TDAM and filed on SEDAR, in respect of each Managed Fund, no later than 30 days after the end of the month in which one or more such Trades were made:

(a) the issuer of the debt securities,

(b) the principal amount of debt securities purchased or sold by the Managed Fund,

(c) the price at which the purchase or sale was made,

(d) the Related Person with whom the Trade was made, and

(i) in the case of a Trade in Government Debt Securities, the price paid or received by the Managed Fund, or

(ii) in the case of a Trade in Corporate Debt Securities, the spread over the relevant Benchmark Bond or US Treasury Bond that was paid or received by the Managed Fund, and

(e) a certification by TDAM that the Trade

(i) represented the business judgment of TDAM uninfluenced by considerations other than the best interests of the Managed Fund, or

(ii) was, in fact, in the best interests of the Managed Fund; and

5. this Decision, as it relates to the jurisdiction of a Decision Maker, will terminate after the coming into force of any legislation or rule of that Decision Maker dealing with the matters regulated by section 4.2 of NI 81-102.

September 13, 2002.

"Paul M. Moore" "Robert Korthals"

2.1.3 Middlefield Mutual Funds Limited - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief granted to a group of mutual fund trusts from requirement to deliver re-audited annual financial statements.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am. s. 80(b)(iii).

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, QUEBEC, NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR, AND
YUKON

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
Middlefield Growth Class
Middlefield Equity Index Plus Class
Middlefield U.S. Equity Class
Middlefield Income Plus Class
Middlefield Canadian Balanced Class
Middlefield Global Technology Class
Middlefield Alternative Energy Class
(all of which are classes of
Middlefield Mutual Funds Limited)
Middlefield Enhanced Yield Fund
Middlefield Money Market Fund
(collectively the "Funds")

MRRS DECISION

WHEREAS the securities regulatory authority or regulator (the "Decision Maker") in each of the provinces of Canada, and the Yukon Territory, except British Columbia, Nova Scotia and Prince Edward Island (the "Jurisdictions") has received an application from the Funds for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the Funds be exempted from delivering to securityholders of the Funds annual financial statements for the fiscal year ended December 31, 2001 re-audited by Deloitte & Touche LLP;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for the application;

AND WHEREAS the Funds have represented to the Decision Makers that:

1. The Funds are mutual funds whose securities are currently offered by simplified prospectus dated June 15, 2001.

2. On March 7, 2002, the financial statements for each of the Funds for the year or period ended December 31, 2001 were audited by Arthur Andersen LLP (the "Andersen Financial Statements"). On May 21, 2002, the Andersen Financial Statements were filed with Canadian Securities Administrators using SEDAR Project Nos. 00450203, 00450266 and 00450235, and were concurrently delivered to securityholders of the Funds on May 23, 2002.

3. On June 3, 2002, Arthur Andersen LLP announced that it has ceased practising public accounting in Canada.

4. The Funds have been advised that Arthur Andersen LLP will no longer consent to the use of previously issued auditors reports for purposes of their simplified prospectuses.

5. The Funds have had Deloitte & Touche LLP re-audit the financial statements of the Funds for the period or year ended December 31, 2001 (the "Deloitte Financial Statements") for the purpose of obtaining the consent required by Section 13.4 of OSC Rule 41-501.

6. The Deloitte Financial Statements were filed on July 4, 2002 accompanied by a letter which indicated that the Deloitte Financial Statements supersede the earlier Andersen Financial Statements.

7. The Deloitte Financial Statements are identical to the Andersen Financial Statements.

8. The auditors' reports for the Deloitte Financial Statements do not contain any reservation.

9. The auditors' reports refer to December 31, 2000 comparative statements as having been audited by other auditors.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the Funds are exempted in respect of the requirement to deliver annual financial statements for the fiscal year ended December 31, 2001 re-audited by Deloitte & Touche LLP.

September 17, 2002.

"Paul M. Moore" "Robert W. Korthals"

2.1.4 TransForce Inc. and TransForce Income Fund - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from registration and prospectus requirements in connection with a statutory arrangement involving an exchangeable share structure.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am, ss. 25(1), 53(1) and 74(1).

Applicable Instruments

Multilateral Instrument 45-102 Resale of Securities, s. 2.6.

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO
NEW BRUNSWICK, NOVA SCOTIA,
PRINCE EDWARD ISLAND AND
NEWFOUNDLAND AND LABRADOR

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
TRANSFORCE INC. AND
TRANSFORCE INCOME FUND

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "**Decision Maker**") in each of Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the "**Jurisdictions**") has received an application from TransForce Inc. ("**TransForce**") and TransForce Income Fund (the "**Fund**") (collectively, the "**Applicants**") for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that the requirements under the Legislation to be registered to trade in a security (the "**Registration Requirement**") and to file and obtain a receipt for a preliminary prospectus and a prospectus (the "**Prospectus Requirement**") shall not apply to certain trades and distributions of securities to be made in connection with or subsequent to the proposed effective conversion of TransForce into the Fund pursuant to a reorganization agreement among TransForce, the Fund and certain other parties;

AND WHEREAS pursuant to the Mutual Reliance Review System ("**MRRS**") for Exemptive Relief Applications (the "**System**"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS the Applicants have represented to the Decision Makers that:

1. TransForce was incorporated on April 30, 1985 pursuant to the *Companies Act* (Québec) under the name 2320-2351 Québec Inc. On October 19, 1987, TransForce amalgamated with Location Speribel Inc. The Articles were also amended on October 1, 1986 to change the corporate name to Groupe Cabano d'Anjou Inc.; on August 7, 1987 to change the corporate name to Cabano Expeditex Inc.; on December 4, 1990 to change the corporate name to Groupe Transport Cabano Inc./Cabano Transportation Group Inc.; on May 30, 1995 to change the corporate name to Cabano Kingsway Inc.; and on April 23, 1999 to change the corporate name to TransForce Inc. The head office of TransForce is located at 6600 Chemin St-François, Montreal, Quebec H4S 1B7;

2. TransForce's authorized share capital consists of an unlimited number of common shares (the "**Common Shares**") without par value and an unlimited number of preferred shares issuable in series. As at July 31, 2002, there were 51,681,585 Common Shares and no preferred shares issued and outstanding;

3. the Common Shares are listed on the Toronto Stock Exchange (the "**TSX**"). TransForce is a reporting issuer in each of the provinces of Québec and Ontario and is not in default of any of the requirements of the Legislation;

4. TransForce is a leading player in the freight transportation industry in eastern Canada, providing both transport and related logistic services to its clientele. TransForce believes that it directly services more urban centres than any other carrier in Canada;

5. the Fund is an unincorporated open-ended limited purpose trust established pursuant to a declaration of trust dated as of July 31, 2002 under the laws of Québec. The Fund was created for the purpose of acquiring and holding certain investments, primarily units of TFI Operating Trust (the "**Operating Trust**"). The head office of the Fund is located at 6600 Chemin St.-François, Montreal, Québec H4S 1B7;

6. the Fund is authorized to issue an unlimited number of trust units (the "**Trust Units**"), each of which represents an equal undivided beneficial interest in the Fund. The Trust Units are transferable and are redeemable at any time on demand by the holders thereof for a redemption price to be based on the market price of the Trust Units on the principal market on which they are listed for trading on the redemption date. In certain circumstances the redemption price for the Trust Units will be paid and satisfied by the issuance of notes of a wholly-owned subsidiary of

the Fund. It is anticipated that the redemption right described above will not be the primary mechanism for holders of Trust Units to dispose of their Trust Units. Securities that may be distributed in specie to holders of Trust Units in connection with a redemption will not be listed on any stock exchange. As of July 31, 2002, the capitalization of the Fund consists of one Trust Unit which was issued for a consideration of $10.00;

7. in connection with the conversion of TransForce into the Fund (the "**Transaction**"), the Fund will issue Trust Units to shareholders of TransForce (the "**Shareholders**") (other than Shareholders electing to receive units of TFI Holdings Inc. (the "**Tracking Share Units**") indirectly in exchange for their Common Shares of TransForce. The Tracking Share Units are intended to be, to the greatest extent possible, the economic equivalent of the Trust Units. The Tracking Share Units may be exchanged at any time for Trust Units on a one-for-one basis. The Fund has applied to the TSX for the listing on the TSX of the Trust Units issuable in connection with the Transaction. The Trust Units issuable from time to time in exchange for Tracking Share Units will also be listed on the TSX, subject to receipt of final listing approval from the TSX;

8. in connection with the Transaction, the Fund may create and issue voting units to holders of Tracking Share Units ("**Special Voting Units**"). Special Voting Units will give holders of Tracking Share Units one vote at all meetings of unitholders of the Fund (the "**Unitholders**") for each Tracking Share held. Upon exchange of Tracking Share Units for Trust Units, the Special Voting Units will be redeemed for nominal consideration and cancelled;

9. the Fund filed a preliminary prospectus in respect of an initial public offering (the "**Public Offering**") on August 12, 2002. Upon receipt of the MRRS decision document with respect to the prospectus (the "**Prospectus**") for this offering, the Fund will become a reporting issuer (or the equivalent thereof) in each of the Jurisdictions and Québec;

10. TFI Operating Trust (the "**Operating Trust**") is an unincorporated open-ended limited purpose trust to be established under the laws of the Province of Québec. The Operating Trust was created to invest in securities of entities carrying on, directly or indirectly, transportation and related businesses;

11. the Operating Trust is authorized to issue an unlimited number of trust units ("**Operating Trust Units**"). It is not intended that Operating Trust Units be issued or held by any person other than the Fund. Each Operating Trust Unit represents an equal undivided beneficial interest in the Operating Trust. The Operating Trust Units are redeemable and retractable for a price based on the redemption price of the Trust Units of the Fund which is payable in cash, notes or a combination of the two;

12. the Operating Trust is not a reporting issuer (or its equivalent) in any Jurisdiction and there is no intention for the Operating Trust to become one;

13. TFI Holdings will be incorporated under the *Canada Business Corporations Act* solely for the purpose of facilitating the Transaction. All of the shares of TFI Holdings will be owned by the Operating Trust with the exception of the Tracking Shares Units that will be issued in connection with the Transaction;

14. upon the completion of the Transaction, TransForce will be wound up into TFI Holdings;

15. the Transaction will be effected, in part, pursuant to sections 49 and 123.109 of the *Companies Act* (Québec) which requires (i) the adoption of a special resolution of the Shareholders to confirm a by-law to authorize the articles of amendment (the "**Articles of Amendment**"); and (ii) final approval of the said by-law by the Québec Superior Court;

16. pursuant to the Articles of Amendment, all of the issued and outstanding Common Shares will be converted to new shares in the capital of TransForce ("**New Shares**") on a one-for-one basis;

17. the attributes of the New Shares include exchange rights pursuant to which the holders of the New Shares, in connection with the Transaction, must elect to exchange their New Shares for either (i) notes issued by TFI Holdings ("**TFI Holdings Notes**"); or (ii) Tracking Share Units or a combination of Tracking Share Units and TFI Holdings Notes;

18. pursuant to the reorganization agreement; (i) the TFI Holdings Notes will automatically be exchanged for notes issued by the Operating Trust ("**OT Notes**"); and (ii) the OT Notes will automatically be exchanged for Trust Units;

19. any Shareholder who so elects will have his/her shares in an eligible holding company automatically exchanged with TFI Holdings for Tracking Share Units or a combination of TFI Holding Notes and Tracking Share Units;

20. upon the completion of the Transaction, TransForce will be wound up into TFI Holdings. The issued and outstanding capital of the resulting company will be the Common Shares and TFI Holdings Notes held by the Operating Trust as well as Tracking Share Units;

21. Completion of the Transaction is conditional upon, among other things:

    (a) approval of the Articles of Amendment by at least three-quarters of the votes cast by the holders of Common Shares present in person or represented by proxy at the special general meeting of Shareholders to be held on September 12, 2002;

    (b) receipt of a fairness opinion;

    (c) completion of the Public Offering;

    (d) certain necessary consents of regulatory authorities and third parties having been obtained, including the listing of the Trust Units on the TSX; and

    (e) the granting by the Quebec Superior Court of a final order approving the ratification by the Shareholders of a by-law of TransForce authorizing the proposed Articles of Amendment.

22. the Management Proxy Circular contains prospectus-level disclosure of the business and affairs of TransForce and the Fund (as does the Prospectus) and the particulars of the Transaction;

23. the steps under the Transaction, the terms of the Tracking Share Units and the exercise of certain rights provided for in connection with the Transaction and the Tracking Share Units including the subsequent issuance by the Fund of Trust Units in exchange for Tracking Share Units and the redemption of Trust Units by the Fund involve or may involve a number of trades or potential trades of Common Shares, Tracking Share Units, Special Voting Units, New Shares, TFI Holdings Notes, OT Notes, Trust Units and rights to acquire Trust Units under the Transaction (collectively, the “Trades”) for which there may be no exemption from the Registration and the Prospectus Requirements;

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "**Decision**");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that:

(a) the Registration Requirement and the Prospectus Requirement will not apply to the Trades provided that the first trade in securities acquired under this Decision shall be deemed to be a distribution or primary distribution to the public; and

(b) the Prospectus Requirement will not apply to the first trade in (i) Trust Units and Tracking Share Units acquired by Shareholders under the Transaction; or (ii) Trust Units issued upon the exchange of Tracking Share Units, provided that the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* (“MI 45-102”), with the issuer being the Fund, are satisfied; and provided further that, for the purposes of determining the period of time that the Fund has been a reporting issuer under section 2.6 of MI 45-102, the period of time that TransForce was a reporting issuer in at least one of the jurisdictions listed in Appendix B of MI 45-102 immediately before the Transaction may be included.

September 17, 2002.

"Paul Moore" "R.W. Korthals"

2.2 Orders

2.2.1 Piergiorgio Donnini - ss. 127 and 127.1

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

AND

IN THE MATTER OF
PIERGIORGIO DONNINI

ORDER
(Sections 127 and 127.1)

WHEREAS on May 7, 2002, the Ontario Securities Commission (the "Commission") issued an Amended Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act* (the "*Act*") in respect of Piergiorgio Donnini ("Donnini");

AND WHEREAS the Commission conducted a hearing into this matter on May 13-17, June 11 and July 11, 2002;

AND WHEREAS the Commission was satisfied that Donnini has not complied with Ontario securities law and has not acted in the public interest;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS ORDERED THAT:

(1) pursuant to clause 1 of subsection 127(1) of the *Act*, the registration granted to Donnini under Ontario securities law be suspended for 15 years from the date of this order;

(2) pursuant to clause 2 of subsection 127(1) of the *Act*, trading in any securities by Donnini cease for 15 years from the date of this order, with the exception that Donnini be permitted to trade in securities

  (a) in personal accounts in his name in which he has sole beneficial interest, and

  (b) in registered retirement savings plans in which he, either alone or with his spouse, has sole beneficial interest;

(3) pursuant to clause 7 of subsection 127(1) of the *Act*, Donnini resign all positions that he holds as a director or officer of an issuer that is a registrant, or that directly or indirectly holds more than a 5% interest in a registrant;

(4) pursuant to clause 8 of subsection 127(1) of the *Act*, Donnini is prohibited for 15 years from becoming or acting as a director or officer of any issuer that is a registrant, or that directly or indirectly holds more than a 5% interest in a registrant; and

(5) pursuant to section 127.1 of the *Act*, Donnini pay costs of the Commission in investigating his affairs and of, or related to, conducting the hearing in this matter, in the amount of $186,052.30.

September 12, 2002.

"Paul M. Moore" "Kerry D. Adams" "Harold P. Hands"

2.2.2 Edwards Securities Inc. et al - s. 127

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

AND

IN THE MATTER OF
EDWARDS SECURITIES INC,
DAVID GERALD EDWARDS,
DAVID FREDERICK JOHNSON,
CLANSMAN 98 INVESTMENTS INC. and
DOUGLAS G. MURDOCK

ORDER
(Section 127)

WHEREAS this proceeding was commenced by a Notice of Hearing and related Statement of Allegations dated August 9, 2002;

AND WHEREAS the Commission considers it to be in the public interest to make this order;

IT IS ORDERED THAT Staff and the respondents or their counsel attend a pre-hearing conference on a date or time to be agreed by the parties and fixed by the Secretary to the Commission, or as scheduled by further Order of the Commission;

IT IS FURTHER ORDERED THAT, pursuant to section 21 of *the Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, this matter is adjourned to March 24, 25, 26 and 27, 2003, or such further dates as may be required for the completion of the hearing as may be agreed by the parties and fixed by the Secretary to the Commission, or as scheduled by further Order of the Commission.

September 11, 2002.

"Paul M. Moore"

2.2.3 MGI Software Corp. - ss. 1(6) of the OBCA

Headnote

Issuer has one securityholder - Issuer deemed to have ceased to be a reporting issuer in May 2002 - Issuer deemed to have ceased to be offering its securities to the public under the Business Corporations Act (Ontario).

Applicable Ontario Statutory Provisions

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 1(6).

IN THE MATTER OF
THE BUSINESS CORPORATIONS ACT (ONTARIO)
R.S.O. 1990, c. B.16, AS AMENDED (the "OBCA")

AND

IN THE MATTER OF
MGI SOFTWARE CORP.

ORDER
(Subsection 1(6) of the OBCA)

UPON the application of MGI Software Corp. ("MGI") to the Ontario Securities Commission (the "Commission") for an order pursuant to subsection 1(6) of the OBCA deeming MGI to have ceased to be offering its securities to the public;

AND UPON considering that, by a MRRS Decision Document dated May 28, 2002, MGI was deemed to have ceased to be a reporting issuer under the securities legislation of Alberta, Saskatchewan, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador;

AND UPON considering the application and the recommendation of staff of the Commission;

AND UPON MGI having represented to the Commission that:

1. MGI is a corporation governed by the OBCA;

2. MGI's head office is located in Richmond Hill, Ontario;

3. MGI's authorized capital consists of an unlimited number of common shares (the "Common Shares") of which 43,634,467 Common Shares were issued and outstanding as of January 31, 2002;

4. On January 31, 2002, Roxio, Inc. ("Roxio") through an indirect wholly-owned subsidiary acquired all of the outstanding Common Shares (excluding shares held by or on behalf of Roxio and those shares for which dissent rights were exercised and perfected which were acquired directly by Roxio) pursuant to a plan of arrangement governed by s.182 of the OBCA;

5. The Common Shares were delisted from The Toronto Stock Exchange on February 6, 2002 and no securities of MGI are listed or quoted on any exchange or market;

6. MGI has no securities, including debt securities, outstanding other than the Common Shares; and

7. MGI does not intend to seek public financing by way of an offering of securities.

AND UPON the Commission being satisfied that the test contained in subsection 1(6) of the OBCA that provides the Commission with the jurisdiction to make the Order has been met;

IT IS ORDERED, pursuant to subsection 1(6) of the OBCA, that MGI is deemed to have ceased to be offering its securities to the public for purposes of the OBCA effective as of the date of this Order.

August 6, 2002.

"H. Lorne Morphy" "Harold P. Hands"

2.2.4 Telum International Corporation - s. 144

Headnote

Cease-trade order revoked where the issuer has remedied its default in respect of disclosure requirements under the Act.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127(1)2, 127(5), 127(8), 144.

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

AND

IN THE MATTER OF
TELUM INTERNATIONAL CORPORATION

ORDER
(SECTION 144)

WHEREAS the securities of TELUM INTERNATIONAL CORPORATION ("TELUM INTERNATIONAL CORPORATION") are subject to a Temporary Order (the "Temporary Order") of the Director made on behalf of the Ontario Securities Commission (the "Commission"), pursuant to paragraph 2 subsection 127(1) and subsection 127(5) of the Act, on May 22, 2002 as extended by further order (the "Extension Order" and collectively, the "Cease Trade Order") of the Director, made on June 3, 2002, on behalf of the Commission pursuant to subsection 127(8) of the Act, that trading in the securities of TELUM INTERNATIONAL CORPORATION cease until the Temporary Order, as extended by the Extension Order, is revoked by a further Order of Revocation;

AND UPON TELUM INTERNATIONAL CORPORATION having applied to the Commission pursuant to section 144 of the Act for an Order revoking the Cease Trade Order;

AND UPON TELUM INTERNATIONAL CORPORATION having represented to the Commission that:

1. The Corporation was formed under the Business Corporation Act (Ontario) on April 20, 1964 as Benvan Mines Limited. On June 27, 1997 the Corporation's name was changed to Lasermedia Communications Corp. On August 5, 1999, the name of the company was changed from Lasermedia Communications Corp. to ACTFIT.COM CORPORATION On December 29, 2001, the name of the company was changed from ACTFIT.COM Corporation to TELUM INTERNATIONAL CORPORATION;

2. The authorized capital of an unlimited number of common shares and a maximum of 2,000,000 preference shares of which 36,541,597 common shares and preference shares are issued and outstanding as fully paid and non-assessable;

3. The Temporary Order was issued due to the failure of TELUM INTERNATIONAL CORPORATION to file with the Commission audited annual financial statements for the year ended December 31, 2001 (the "Financial Statements") as required by the Act;

4. The Financial Statements were not filed with the Commission due to delays in preparing the corporation's audited files;

5. The Financial Statements for the year ended December 31, 2001, the interim financial statements for the period ended March 31, 2002 and June 30, 2002 were filed with the Commission via SEDAR on July 25, 2002, August 6, 2002, and August 30, 2002 respectively;

6. TELUM INTERNATIONAL CORPORATION is not considering and is not involved in any discussions relating to a reverse take-over transaction;

7. Except for a Cease Trade Order, TELUM INTERNATIONAL CORPORATION is not otherwise in default of any requirements of the Act or the regulation made thereunder; and

8. TELUM INTERNATIONAL CORPORATION intends to mail the most recent financial statements to the shareholders in connection with the next annual meeting of the shareholders. The financial statements of TELUM INTERNATIONAL CORPORATION are filed and available on the SEDAR web site.

AND UPON considering the application and the recommendation of the staff of the Commission;

AND UPON the Commission being satisfied that TELUM INTERNATIONAL CORPORATION is now current with the continuous disclosure requirements under Part XVIII of the Act and has remedied its default in respect of such requirements;

AND UPON the Commission being of the opinion that to do so would not be prejudicial to the public interest;

IT IS ORDERED pursuant to section 144 of the Act that the Cease Trade Order be and is hereby revoked.

September 12, 2002.

"John Hughes"

2.2.5 BNY ESI & Co., Inc. et al. - s. 211 of Reg. 1015

Headnote

Application for an order pursuant to section 211 of the Regulation exempting the Applicants from the provisions of clause (d) of subsection 208(1) of the Regulation requiring that the Applicants may only trade securities that are foreign securities.

IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990,
CHAPTER S. 5, AS AMENDED (the "Act")

AND

IN THE MATTER OF
ONTARIO REGULATION 1015, R.R.O. 1990,
AS AMENDED (the "Regulation")

AND

IN THE MATTER OF
BNY ESI & CO., INC.,
B-TRADE SERVICES LLC AND
G-TRADE SERVICES LTD.

ORDER
(Section 211 of the Regulation)

UPON the application (the "Application") of BNY ESI & Co., Inc. ("BNY ESI"), B-Trade Services LLC ("B-Trade Services") and G-Trade Services Ltd. ("G-Trade Services") (together, the "Applicants") to the Ontario Securities Commission (the "Commission") for an order (the "Order"), pursuant to section 211 of the Regulation, exempting B-Trade, BNY ESI and G-Trade from the requirement in clause (d) of subsection 208(1) of the Regulation;

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Applicants having represented to the Commission as follows.

1. Each of the Applicants is a subsidiary of The Bank of New York.

2. BNY ESI is a Delaware (U.S.) corporation based in New York, registered with the Commission as an international dealer.

3. B-Trade Services is a Delaware (U.S.) limited liability company based in New York, registered with the Commission as an international dealer.

4. G-Trade Services is a Bermuda limited company based in Bermuda, and is in the process of applying to the Commission for registration as an international dealer.

5. The Bloomberg Tradebook System is an electronic trading system in equity and debt securities. Although approximately 90% of its activity in equity securities is limited to order-routing, it does have an internal order-matching facility which constitutes it as an alternative trading system (an "ATS") under National Instrument 21-101 Marketplace Operation ("NI 21-101").

6. The Bloomberg Tradebook System will route or execute orders in securities, including securities issued by an issuer incorporated, formed or created under the laws of Canada or any province or territory of Canada, that are:

   (a) listed on the Toronto Stock Exchange (TSX),

   (b) interlisted on the TSX and a non-Canadian marketplace, or

   (c) listed on a non-Canadian marketplace but not on the TSX (together, "Bloomberg Tradebook Equity Securities").

7. Bloomberg Tradebook LLC currently offers the Bloomberg Tradebook System in Canada. Once all necessary regulatory approvals have been obtained, the Bloomberg Tradebook System will be offered in Canada by Bloomberg Tradebook Canada Company ("Bloomberg Tradebook Canada").

8. B-Trade Services is the executing broker and BNY ESI is the clearing broker for participants that effect transactions in U.S. equity securities through the Bloomberg Tradebook System, including those securities that are inter-listed on the TSX and a U.S. marketplace and are routed to or executed on a U.S. marketplace.

9. G-Trade Services is the executing and clearing broker for participants that effect transactions in non-U.S. equity securities through the Bloomberg Tradebook System, including those securities that are listed only on the TSX or are inter-listed on the TSX and a non-Canadian marketplace and are routed to the TSX.

10. Subsection 208(1) of the Regulation provides that an international dealer may act as a market intermediary solely for the purposes of, amongst other things, trading with a designated institution in "foreign securities", as defined in subsection 204(1). Whether a security is or is not a "foreign security" does not depend upon where the security is listed. The definition of "foreign security" includes a security issued by an issuer incorporated, formed or created under the laws of a jurisdiction other than Canada, or any province or territory of Canada or a security issued by a country other than Canada or by any political division of the country.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to section 211 of the Regulation, that, in connection with the registration of the Applicants as a dealer under the Act in the category of "international dealer", each of the Applicants is exempt from the provisions of clause (d) of subsection 208(1) of the Regulation requiring that the Applicants may only trade securities that are foreign securities, **provided that** the exemption only applies to Bloomberg Tradebook Equity Securities traded through the Bloomberg Tradebook System.

September 13, 2002.

"H.L. Morphy" "H.P. Hands"

2.2.6 G-Trade Services Ltd. - s. 211 of Reg. 1015

Headnote

Application in connection with application for registration as an international dealer, for an order pursuant to section 211 of the Regulation exempting the Applicant from the requirement in subsection 208(2) of the Regulation that it carry on the business of an underwriter in a country other than Canada to be able to register in Ontario as an international dealer.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5, AS AMENDED (the "Act")

AND

IN THE MATTER OF
R.R.O. 1990, REGULATION 1015,
AS AMENDED (the "Regulation")

AND

IN THE MATTER OF
G-TRADE SERVICES LTD.

ORDER
(Section 211 of the Regulation)

UPON the application (the "Application") of **G-Trade Services Ltd.** (the "Applicant") to the Ontario Securities Commission (the "Commission") for an order (the "Order") pursuant to section 211 of the Regulation, exempting the Applicant from the requirement in subsection 208(2) of the Regulation that the Applicant carry on the business of an underwriter in a country other than Canada, in order for the Applicant to be registered under the Act as a dealer in the category of "international dealer";

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Applicant having represented to the Commission as follows.

1. The Applicant has filed an application for registration as a dealer under the Act in the category of "international dealer" in accordance with section 208 of the Regulation. The Applicant is not presently registered in any capacity under the Act.

2. The Applicant is, a Bermuda corporation having its principal place of business at Crawford House, 23 Church Street, Hamilton, Bermuda, HM 11.

3. The Applicant is a broker/dealer trading member in good standing of the Bermuda Stock Exchange.

4. The Applicant's principal business is executing and clearing trades in non-U.S. equity securities.

5. The Applicant does not currently act as an underwriter in Bermuda. The Applicant does not currently act as an underwriter in any other jurisdiction outside of Bermuda.

6. In the absence of the relief requested in this Application, the Applicant would not meet the requirements of the Regulation for registration as an "international dealer" as it does not carry on the business of an underwriter in a country other than Canada.

7. The Applicant does not now act as an underwriter in Ontario and will not act as an underwriter in Ontario if it is registered under the Act as an "international dealer", despite the fact that subsection 100(3) of the Regulation provides that an "international dealer" is deemed to have been granted registration as an underwriter for the purposes of a distribution which it is permitted to make.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to section 211 of the Regulation, that, in connection with the registration of the Applicant as a dealer under the Act in the category of "international dealer", the Applicant is exempt from the provisions of subsection 208(2) of the Regulation requiring that the Applicant carry on the business of an underwriter in a country other than Canada, **provided that**, so long as the Applicant is registered under the Act as an "international dealer":

(a) the Applicant carries on the business of a dealer in the country other than Canada, and

(b) notwithstanding subsection 100(3) of the Regulation, the Applicant shall not act as an underwriter in Ontario.

September 13, 2002.

"H.L. Morphy" "H.P. Hands"

2.2.7 Credit Suisse Asset Management, LLC and CSAM Capital Inc. - ss. 38(1) of the CFA

Headnote

Subsection 38(1) of the Commodity Futures Act (Ontario)(“CFA”) - relief from the requirements of subsection 22(1)(b) of the CFA in respect of advising certain non-Canadian mutual funds in respect of trades in commodity futures contracts traded on commodity futures exchanges outside Canada and cleared through clearing corporations outside Canada subject to certain terms and conditions, until the date when the funds cease to meet the criteria of 7.10 of Rule 35-502.

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C. 20, AS AMENDED (the "CFA")

AND

REGULATION 90 UNDER
THE COMMODITY FUTURES ACT,
R.R.O. 1990, AS AMENDED (the "REGULATION")

AND

IN THE MATTER OF
CREDIT SUISSE ASSET MANAGEMENT, LLC and CSAM CAPITAL INC.

ORDER
(Subsection 38(1) of the CFA)

UPON the application of Credit Suisse Asset Management, LLC ("CSAM") and CSAM Capital Inc. ("CSAM Capital") to the Ontario Securities Commission (the "Commission") for an order pursuant to subsection 38(1) of the CFA that CSAM and CSAM Capital and their officers are exempt from the requirements of paragraph 22(1)(b) of the CFA in respect of advising certain non-Canadian mutual funds in respect of trades in commodity futures contracts traded on commodity futures exchanges outside Canada and cleared through clearing corporations outside Canada (the “Proposed Advisory Business”);

AND UPON considering the application and the recommendation of staff of the Commission:

AND UPON CSAM and CSAM Capital having represented to the Commission as follows.

1. CSAM is a limited liability company and CSAM Capital is a corporation and an affiliate of CSAM, and both were created under the laws of the State of Delaware.

2. CSAM and CSAM Capital are each registered with the U.S. Commodities Futures Trading Commission (the "CFTC") as a commodity trading operator/ commodity trading adviser and are members of the U.S. National Futures Association (the "NFA").

3. CSAM and CSAM Capital serve as general partners for and/or have entered into certain investment advisory agreements for the purpose of advising certain non-Canadian mutual funds as follows: DLJ Technology - Long/Short Investors Limited, Healthtech Long/Short Investors Limited, Global Diversified Investors Limited, Global Diversified Investors II Limited, International Markets Long/Short Offshore Investors Fund and CSAM Low Volatility Alternative Offshore Fund (the “Existing Funds”) in respect of investments in or the use of commodity futures contracts traded on commodity futures exchanges outside Canada and cleared through clearing corporations outside Canada.

4. CSAM and CSAM Capital may also serve as general partners and/or enter into investment advisory agreements in the future for the purpose of advising other non-Canadian mutual funds (the "Future Funds") in respect of investments in or the use of commodity futures contracts traded on commodity futures exchanges outside Canada and cleared through clearing corporations outside Canada (the Existing Funds and the Future Funds together the “Funds”).

5. As would be required under section 7.10 (Privately Placed Funds Offered Primarily Abroad) of Rule 35-502 of the *Securities Act* (Ontario) all of the Funds are or will be non-Canadian and the securities of the Funds are or will be:

   (1) primarily offered outside of Canada;

   (2) only distributed in Ontario through one or more registrants under the *Securities Act* (Ontario); and

   (3) distributed in Ontario in reliance upon an exemption from the prospectus requirements under the *Securities Act* (Ontario).

6. Prospective investors who are Ontario residents will receive disclosure that includes (a) a statement that there may be difficulty in enforcing legal rights against any of CSAM or CSAM Capital, or the officers of CSAM or CSAM Capital because they are resident outside of Canada and all or substantially all of their assets are situated outside of Canada, and (b) a statement that CSAM and CSAM Capital are not registered with or licensed by any securities regulatory authority in Ontario under the *Commodity Futures Act*, and, accordingly, the protections available to clients of a registered adviser will not be available to purchasers of units of the Funds.

AND UPON being satisfied that it would not be prejudicial to public interest for the Commission to grant the exemptions requested.

IT IS ORDERED pursuant to subsection 38(1) of the CFA that CSAM, CSAM Capital and their officers are not subject to the requirements of paragraph 22(1)(b) of the CFA in respect of the Proposed Advisory Business until the date when the Existing Funds or the Future Funds or both cease to meet the criteria of 7.10 of Rule 35-502 as set forth in paragraph 5 above **provided that:**

(1) CSAM and CSAM Capital continue to be registered with the CFTC as commodity trading advisers and are members of the NFA;

(2) the Funds are invested in futures and options contracts traded on organized exchanges outside of Canada and cleared through clearing corporations located outside of Canada, in other derivative instruments traded over the counter and, to a lesser extent, in securities; and

(3) Prospective investors who are Ontario residents will receive disclosure that includes

(a) a statement that there may be difficulty in enforcing legal rights against any of CSAM or CSAM Capital, or the officers of CSAM or CSAM Capital because they are resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and

(b) a statement that CSAM and CSAM Capital are not registered with or licensed by any securities regulatory authority in Ontario under the *Commodity Futures Act*, and, accordingly, the protections available to clients of a registered adviser will not be available to purchasers of units of the Funds.

September 13, 2002.

"H.L. Morphy" "H.P. Hands"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 Reasons for Decision

3.1.1 Piergiorgio Donnini

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

AND

IN THE MATTER OF
PIERGIORGIO DONNINI

HEARING PURSUANT TO SECTION 127(1) AND 127.1 OF THE SECURITIES ACT

Hearing:	May 13, 14, 15, 16 and 17, June 11 and July 11, 2002	
Panel:	Paul M. Moore, Q.C.	Vice-Chair (Chair of the Panel)
	Kerry D. Adams, FCA	Commissioner
	Harold P. Hands	Commissioner
Counsel:	Johanna Superina Yvonne Chisholm	For the Staff of the Ontario Securities Commission
	Alan Lenczner Graham King Eleni Maroudas Colin Stevenson	For the Respondent

REASONS FOR DECISION

By Vice Chair Moore and Commissioner Adams

I. The Proceeding

[1] This proceeding was a hearing pursuant to sections 127(1) and 127.1 of the *Securities Act*, R.S.O., 1990, c. S.5 (the Act), in the matter of Piergiorgio Donnini, under an amended notice of hearing dated May 7, 2002, and the related amended statement of allegations of staff of the Ontario Securities Commission. At the commencement of the hearing, at the suggestion of counsel for staff and the respondent, it was agreed that the hearing would be held in two parts. The first part, which was held on May 13, 14, 15, 16 and 17, heard evidence and argument on the question of the merits. Our findings and conclusions on the merits were announced orally on June 11, 2002. The second part, which dealt with appropriate sanctions in light of our findings on the merits, was held on July 11, 2002.

II. The Allegations

[2] Staff alleged that, among other things, Donnini's conduct in connection with a second special warrants financing proposal for Kasten Chase Applied Research Limited (KCA) was contrary to the public interest and contrary to section 76(1) of the Act because, while he was in a special relationship with KCA with knowledge of a material fact with respect to KCA that had not been generally disclosed, he purchased and sold shares of KCA.

[3] In addition, staff alleged that, having regard to the foregoing, Donnini's conduct was unbecoming of a registrant and contrary to the public interest.

[4] The notice of hearing, as amended, referred to "such additional allegations as Staff may submit and the Commission may permit." In her opening statement, counsel for staff made it clear that the allegations against Donnini included the allegation that, even if there had been no violation of the Act, and in particular section 76(1), Donnini's conduct was unbecoming that of a registrant and was contrary to the public interest.

III. The Issues

[5] The principal question in this case was whether Donnini had knowledge of a material fact that had not been generally disclosed when he purchased and sold shares of KCA after 2:45 p.m. on February 29, 2000 and on March 1, 2000.

[6] The issues were (i) whether information concerning a proposed second special warrants financing for KCA was material, (ii) whether the information constituted a fact, and (iii) whether Donnini's knowledge of the information was knowledge of a material fact.

[7] A second question was, if Donnini did not have knowledge of a material fact, was his conduct, nevertheless, unbecoming of a registrant and contrary to the public interest.

IV. Evidence

A. Facts Agreed to By Donnini

[8] The facts that Donnini agreed to in respect of the amended statement of allegations dated May 7, 2002, were as follows:

i) KCA is a corporation incorporated under the *Business Corporations Act* (Ontario). KCA develops and applies technology to provide secure remote access to computer networks. KCA was a privately

held company until 1995 at which time Yorkton Securities Inc. structured the reverse take over by KCA of the reporting issuer known as Dysis Corp. KCA is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec. The common shares of KCA are listed and posted for trading on the Toronto Stock Exchange (TSE) under the symbol KCA. Since 1994, Yorkton has acted as underwriter in respect of several financings and private placements for KCA.

ii) In early February 2000, Yorkton and KCA engaged in discussions about a possible financing of KCA. On February 10, 2000, KCA sought "price protection" from the TSE for an offering of special warrants based on the $1.37 closing price of its common shares on February 9, 2000.

iii) On February 11, 2000, KCA executed an engagement agreement with Yorkton under which KCA proposed to raise $5 million by issuing 4 million special warrants priced at $1.25 each. Pursuant to subsections 619(a) and (b) and 622 of the TSE Company Manual, special warrants exchangeable into listed common shares may be issued at a discount to the closing price of the common shares on the TSE on the day before the date on which price protection is sought. Each special warrant was to entitle the holder to acquire one common share of KCA and one-half of one common share purchase warrant at an exercise price equal to $1.75 per common share.

iv) Pursuant to the engagement agreement, Yorkton was entitled to receive an underwriter's commission equal to 8% of the gross proceeds of the offering (or $400,000 in cash) and compensation options to acquire 400,000 units at an exercise price of $1.37 per unit. Each unit was to be exchangeable for one common share of KCA and one-half of one common share purchase warrant at an exercise price equal to $1.75 per common share. Yorkton did not own freely tradeable shares of KCA at this time.

v) The arrangements between Yorkton and KCA set out in the engagement agreement were confirmed in an underwriting agreement dated February 24, 2000. The financing closed on February 24, 2000.

vi) During the pre-marketing of this first special warrants offering, Yorkton's institutional clients expressed a greater demand than the proposed 4 million units available. These clients were prepared to purchase close to 6.5 million units.

vii) On February 11, 2000, Yorkton received sufficient orders to purchase the special warrants that resulted in the offering being oversubscribed.

viii) Among others, a Yorkton institutional client subscribed for 340,000 special warrants and a Yorkton retail client subscribed for 78,000 special warrants.

ix) Each subscriber was required to complete a subscription agreement and a private placement questionnaire and undertaking in a form prescribed by the TSE. Pursuant to the undertaking, each subscriber undertook to the TSE that, except with the "prior consent" of the TSE, it would not "sell or otherwise dispose of any of the said securities so purchased or any securities derived therefrom for the lesser of" six months or the date that a receipt for a final prospectus in respect of those securities was issued by the Commission.

x) The trading price of KCA common shares on the TSE increased substantially from $2.05 per KCA common share at the close of business on February 11, 2000 to $6.75 per common share by the close of business on February 28, 2000. As a result, subscribers for the special warrants enjoyed a substantial unrealized appreciation in value.

xi) Commencing in mid-February 2000, certain Yorkton salespersons spoke with some of the subscribers for the special warrants to determine their interest in realizing a profit by selling some or all of their special warrants. The clients approached were pleased to have the opportunity to sell the special warrants and realize a profit on the sale.

xii) On or about February 28, 2000, Yorkton agreed to purchase from the Yorkton institutional client, for Yorkton's own account, 80,000 of the special warrants at a price of $5.00 per warrant.

xiii) On or about February 29, 2000, Yorkton agreed to purchase from the Yorkton retail client, for Yorkton's own account, 78,000 of the special warrants at a price of $7.65 per warrant.

xiv) On or about February 29, 2000, Yorkton agreed to purchase from the Yorkton institutional client, for Yorkton's own account, 60,000 of the special warrants at a price of $7.00 per warrant and 100,000 special warrants at a price of $7.75 per warrant.

xv) On March 2, 2000, Yorkton sought and obtained the TSE's consent to these purchases of special warrants from the Yorkton institutional client and the Yorkton retail client, conditional upon, among other things, Yorkton filing a questionnaire and the undertaking in the prescribed form.

xvi) Commencing on or about February 15, 2000, with the knowledge of Paterson, who was the chairman and chief executive officer of Yorkton, Donnini began executing short sales of common shares of KCA for Yorkton's own account.

xvii) On or about February 17, 2000, Donnini, on behalf of Yorkton, began to borrow KCA common shares from various registered dealers. Between February 15, 2000 and February 28, 2000, Yorkton sold short for its own account approximately 355,000 common shares of KCA. These transactions were transparent to the market as Donnini traded from Yorkton's inventory account.

xviii) The short sales carried out prior to February 28, 2000 were effected as a part of a strategy to lock in Yorkton's profits in relation to compensation options and special warrants from the first special warrants offering, which could not be freely traded.

xix) By the close of business on February 29, 2000, Donnini had sold short on February 29, 2000 for Yorkton's account approximately 579,400 common shares of KCA, of which 333,500 common shares were jitneyed through another investment dealer. [Jitney: The execution and clearing of orders by one member of a stock exchange for the account of another member. (Source: Canadian Securities Course Textbook Volume 3, September 1998, prepared and published by the Canadian Securities Institute).]

xx) On the morning of March 1, 2000, Milligan, the chief financial officer of KCA, continued to negotiate the terms of a second special warrants offering with Paterson, and by mid-day, KCA had reached an agreement in principle with Yorkton in relation to the following terms of the second special warrants offering (subject to board approval of KCA and negotiation of the engagement letter with Yorkton):

- The pricing of the second special warrants offering;
- The size of the second special warrants offering (including the common share purchase warrants and the exercise period and exercise price of the warrants);
- The commission to be paid to Yorkton in respect of the second special warrants offering, and the number, exercise price and exercise period of the compensation warrants to be issued to Yorkton in respect of the underwriting.

xxi) On March 1, 2000, KCA sought price protection from the TSE for an offering of special warrants at $6.75 per special warrant based on the $6.90 closing price of KCA's common shares on February 29, 2000.

xxii) At the close of the day on March 1, 2000, the board of directors of KCA approved the second special warrants financing.

xxiii) On March 1, 2000, Donnini sold short for Yorkton's account a further 440,200 common shares of KCA, of which over 400,000 shares were jitneyed through another investment dealer. By the close of trading on the TSE on March 1, 2000, Donnini had sold short for Yorkton's account approximately 1,019,600 common shares of KCA for the period February 29 and March 1, 2000. Paterson took no steps to restrict Donnini's trading in KCA common shares.

xxiv) Yorkton's "bought deal" committee approved Yorkton's participation in the second special warrants financing at about 8:00 a.m. on March 2, 2000. KCA and Yorkton then executed an engagement agreement pursuant to which KCA agreed to raise, and Yorkton agreed to underwrite, $10 million by issuing 1.483 million special warrants priced at $6.75 each. Each special warrant was to entitle the holder to

acquire one common share of KCA and one-half of one common share purchase warrant at an exercise price equal to $7.75 per common share.

xxv) Pursuant to the engagement agreement, Yorkton was entitled to receive an underwriter's commission equal to 8% of the gross proceeds of the offering and compensation options to acquire 148,399 units at an exercise price of $6.90 per unit. Each unit was to be exchangeable for one common share of KCA and one-half of one common share purchase warrant at an exercise price equal to $7.75 per common share.

xxvi) After Yorkton's "bought deal" committee approved the financing, KCA was placed on Yorkton's "restricted list," which was distributed by e-mail shortly before markets opened on March 2, 2000.

xxvii) The arrangements between Yorkton and KCA set out in the engagement agreement were formalized in an underwriting agreement dated March 15, 2000. The financing closed on March 15, 2000.

B. Undisputed Facts From the Witnesses' Testimony Regarding February 29 and March 1, 2000

[9] The following additional undisputed facts emerged from the witnesses' testimony.

i) On the morning of February 29, 2000, Paterson telephoned KCA and left a message for Hyde or Milligan to call him back. At 9:42 a.m. Milligan called Paterson back. Paterson proposed a second financing for KCA and mentioned involvement by hedge funds. Milligan was surprised that Paterson would suggest a second financing so soon after the closing of the first special warrants financing and inquired as to what Paterson meant by the involvement of hedge funds. Paterson told Milligan to call Donnini who could explain hedge funds to him. Milligan told Paterson he would be interested in having Temple Ridge (1996) Ltd. (the senior executives' holding company, holding approximately 20% of the shares of KCA) do a secondary offering of KCA shares.

ii) At 10:30 a.m. Milligan telephoned Donnini. The conversation lasted approximately six minutes.

iii) At 12:37 p.m., Milligan called Donnini back to discuss hedge funds further.

iv) Milligan discussed matters with KCA's outside counsel, Fran Guolo, but was unable to explain what Paterson meant by involving hedge funds.

v) Paterson called Milligan back and told him there was no market interest in a secondary offering of KCA shares.

vi) Shortly before 2:24 p.m. Paterson asked McQueen to sit in on a conference call he would be having with Milligan to see how a deal is done and to follow up with a draft engagement letter.

vii) At 2:24 p.m. Paterson, McQueen and Milligan had a conference call for approximately 20 minutes. Paterson did most of the talking and pitched Milligan on a second special warrants financing.

viii) Immediately after the conference call, Paterson called Donnini into his office, and in a three-minute meeting in the presence of McQueen, asked Donnini questions about KCA.

C. Testimony of Individual Witnesses

[10] We heard evidence from six witnesses: Michael John Milligan, the Chief Financial Officer, Executive Vice President, General Counsel and Secretary of KCA at the material time; Mark McQueen, currently the Managing Director of the investment banking group of Yorkton and, at the material time, a Vice President in Yorkton's Corporate Finance group; Brian Campbell, at the material time, Director, Investment Banking, Technology group at Yorkton, and a signing officer of Yorkton; Paul Hyde, the President and Chief Executive Officer of KCA; Gordon Scott Paterson, at the material time registered as a trading officer and the Chairman and Chief Executive Officer of Yorkton; and Donnini.

[11] The following is not a comprehensive account of all the testimony, but merely sets out the testimony which we considered the most salient and influential in reaching our decision on the merits.

1. Milligan

[12] Milligan testified as to the following.

[13] In the 9:42 a.m. telephone call with Paterson on February 29, 2000, he did not say anything to give Paterson the impression that KCA was not interested in pursuing another financing. Given the nature of the condition of the market generally at that point in time, given that KCA had improved its balance sheet, and that Paterson was someone proposing a transaction that could significantly improve the condition of KCA's balance sheet again, Milligan was very interested as chief financial officer of KCA to consider the proposal very seriously. Paterson and Milligan agreed that they would continue the

discussion as to whether there was some interest on the part of KCA in pursuing another financing.

[14] In his 10:30 a.m. telephone call with Donnini on February 29, 2000, Milligan mentioned to Donnini that he had had a conversation with Paterson, that Paterson had proposed a transaction involving a hedge fund, and that Paterson had suggested that Milligan should speak with Donnini so that Donnini could help Milligan understand this kind of transaction. Donnini then indicated to Milligan how this kind of transaction works. Once Milligan heard that the transaction begins with the hedge fund shorting stock of the issuer, Milligan's interest in the conversation quickly dwindled away.

[15] In the afternoon conference call, Paterson and Milligan talked about the possibility of proceeding with the second special warrants financing. There was some brief discussion about the hedge fund structure but Milligan observed that KCA really did not have an interest in doing this, and suggested "why didn't we just get on with doing another special warrants financing." Milligan testified that it would have been easy because KCA had just done one. They could use the same prospectus being prepared to qualify shares under the first special warrants financing, to qualify shares for each transaction. He believed it was just going to be neater and tidier and more efficient and effective from KCA's perspective. Milligan stated that he tried, and that he thought Paterson was amenable, to focus the discussion on a special warrants financing.

[16] Although Milligan could not recall how McQueen was introduced, he testified that it was clear that McQueen was going to be fulfilling a role of shepherding the transaction and administering things that needed to be done to get any transaction that they might decide to do underway. They also discussed, and McQueen got into this part of the conversation, the size of the transaction that KCA could do given the 25% limit that the TSE places on the amount of capital that may be raised by a reporting issuer through a private placement exemption without shareholder approval. They also talked about fees, in terms of what the commission rate would be, what the percentage for broker warrants would be, and what the terms of those broker warrants might be. Milligan stated that the way the first special warrants financing was done was important in connection with the second special warrants financing. Milligan stated, "we knew that our starting point was $6.75, because that was the close on the previous day [February 28]." Milligan knew that when it came to discussing the exercise price for the warrants, it would be something up from that.

[17] Milligan testified that his sense, at the end of the conversation with Paterson and McQueen, was that there were still some issues to be negotiated, that KCA needed to do some talking on its side, and that the parties would pick up the conversation later. He observed that KCA had to determine the size of the transaction in terms of the number of units that would be issued, and that was really going to be the result of the mathematical formula based on TSE limit requirements. They had to conclude on the price of the offering. They had to conclude on the exercise price for the purchase warrants and the compensation warrants and the exercise periods.

[18] Milligan testified that on the morning of March 1, 2000, he and Paterson by telephone settled on the price of $6.75 for the units and the price of $7.75 as the exercise price of the warrants. The closing price of the KCA common shares on February 29, 2000 was $6.90. The discount price of $6.75 from $6.90 resulted in a premium much more significant than the premium in the first special warrants financing. Milligan testified that there seemed to be little flexibility about that.

[19] Milligan testified that prior to the afternoon conference call, he had spoken with Guolo, outside counsel for KCA, about how large a financing KCA could do, given that KCA had just done a special warrants financing. He and Guolo discussed the 25% limit.

[20] With respect to the size of the issue, Milligan testified that he was trying to strike a balance between raising as much money as KCA could through this financing, but being sure that KCA was well within the limit prescribed by the TSE. The parties settled on a $10 million issue.

[21] Milligan testified that he believed the second special warrants financing was a material transaction. The first transaction raised approximately $5 million. Given that KCA had something less at that point in time than $2.75 million in cash, the $5 million transaction was material at that point in time. Using the same rationale for a $10 million transaction, Milligan felt it certainly would be material. He testified that the financing was very, very important to the ongoing operations of KCA. The first special warrants financing provided KCA enough cash resources to get the company refocused. The second special warrants financing put KCA in a position where KCA had the luxury of more time and more options and the benefit of having that cash through the subsequent months and years.

[22] Milligan testified that the first special warrants financing had been presented to KCA by Yorkton with little room for negotiation. It had been agreed to within a day or two of being presented to KCA.

[23] The first special warrants financing contained a restriction on Temple Ridge from dealing with or selling any of the securities of KCA owned by it for a period of 90 days following the filing of a final prospectus, subject to the consent of Yorkton.

[24] Milligan testified that on December 10, 1999, the share price of KCA common shares was 45 cents per share. Volume was sluggish. Through the early part of 2000, and especially in early February, the share price was going up in a remarkable way, reflecting general market circumstances for technology companies at the time. It was a very hot market. It was feverish. KCA volumes were going up quite significantly.

[25] Milligan testified that he and Hyde always consulted each other on important financial matters for KCA. He remembered that he tried to get a hold of Hyde immediately after the first conversation with Paterson on February 29, 2000, and that, although he did not remember, he was quite sure that he must have got hold of Hyde by the end of the day.

2. McQueen

[26] McQueen testified as to the following.

[27] Under Paterson's tenure at Yorkton everyone reported to him in the normal course of the week-to-week business situation. Paterson was a very active and involved chief executive officer and would involve each of the persons in the corporate finance department, and have a direct relationship with everyone, in any given month or week, on transactions, either potential or that actually occurred.

[28] McQueen testified that during the afternoon telephone conference with Milligan on February 29, he observed Paterson outlining a potential offering for KCA. The pitch was a $10 million special warrants financing at $6.75 for units that would have a common share and half a purchase warrant. The exercise price would be at a number higher than $7.00. McQueen believed that Milligan was open to the idea and undertook to go away and think about it and discuss it with his management team and also to check with his board of directors about their interest in pursuing it further. They also discussed issues involving borrowing arrangements and potential sales from Temple Ridge. McQueen confirmed that the $10 million figure was based entirely on the maximum that would be allowed to KCA under the 25% limit in the TSE private placement rules, taking into account the first special warrants financing. Paterson inquired whether or not Temple Ridge would lend to Yorkton free-trading shares of KCA through a term borrowing arrangement. There was some discussion about Temple Ridge selling stock at the same time as the special warrants financing and whether or not those two offerings could be done together.

[29] McQueen's recollection at the end of the conversation was that the parties had a short list of things to go away and pursue and consider: engagement letter to be prepared; borrowing arrangement to be researched; the size of the issue to be determined under the cap; the price of the warrants; and strike price of the purchase warrant. Milligan was going to go away and think about Temple Ridge's considerations in terms of a potential sale from their holdings as well as KCA's own potential issue, and to seek more direction, and to discuss the matter with his management team. Milligan stated that he would talk to his board about the financing on March 1, 2000.

[30] McQueen admitted that at the conclusion of the conference call with Milligan and Paterson there were four possible scenarios: 1) an issue by KCA of common shares, units or warrants; 2) no deal; 3) a Temple Ridge secondary offering of KCA shares and no treasury issue by KCA; and 4) a combination of a KCA treasury issue and a secondary offering by Temple Ridge sold to institutions as a package. McQueen stated, "from where I sat, those four outcomes were possible."

[31] McQueen testified that after the conference call with Milligan, Paterson sent him to get Donnini from his trading post and bring him into Paterson's office. Paterson reported and outlined for Donnini the discussion that Paterson and McQueen had just had with Milligan. Paterson advised Donnini of the potential size of the offering, being $10 million, that the unit price was going to be $6.75 per unit, and that there would be a purchase warrant that would be at a price north of $7.00, yet to be determined. Paterson advised Donnini that Temple Ridge was considering at the same time their own sale from their control block and how that may or may not interplay with the treasury offering by KCA itself. Paterson asked whether or not Donnini thought the treasury offering would work. According to McQueen, the gist of Donnini's response was, "Yes, it would work. It would sell. It would work." Paterson asked Donnini what his current short position was. Donnini responded that it was somewhere between half a million shares and a million shares. Paterson also asked Donnini what the average cost of the short position was. Donnini replied that it was a number that was north of $7.00, higher than $7.00. McQueen reported that Paterson mused aloud about what the appropriate price - the differential - should be between the unit offering of $6.75 and the average price of the short price being over $7.00, and whether or not a number that was larger than 25 cents was appropriate and how that could potentially be shared with KCA.

[32] McQueen testified that when he first learned of the TSE's investigation into trading of KCA shares he was told by a Mr. McNenly, head of compliance at Yorkton, that a mistake had been made by a pro trader, which was not associated with the wholesale or institutional group, or was on a different floor at Yorkton, or in Chicago, who had traded KCA shares by mistake after it had gone on the restricted list, and that the TSE had come across this. This was the first that McQueen learned that regulators were looking into the trading of KCA shares. McQueen testified that he reported some angst to McNenly about being drawn into the investigation by the TSE, and that McNenly reflected McQueen's dissatisfaction to Paterson.

[33] Paterson called McQueen later that day to tell McQueen that there was nothing unusual about the investigation, that pro traders make these mistakes occasionally and that McQueen shouldn't be fussed. Paterson understood from McQueen's days at a bank-owned dealer that this was unusual, but that McQueen shouldn't take it as anything more than a normal course situation. McQueen testified that that message was reinforced by a Mr. Staley, a lawyer who was retained by Yorkton to do a report, when he met with McQueen regarding the investigation.

[34] McQueen testified that he inadvertently became aware of Staley's report during a Sunday board meeting in mid-September, 2001, to which he had been invited as a guest. The report was included in the materials for the

board meeting and was dated May 7, 2001. McQueen testified that he was concerned that there were elements of the report that did not reflect his recollection of the events of February 29, 2000. In particular, he was concerned with the paragraph that read, "Both Donnini and Paterson have advised that they had no discussions with each other about the second KCA warrant financing until after it was announced on March 2, 2000. Donnini told the TSE that he learned of the second warrant financing when an internal announcement was made by e-mail on the morning of March 2, 2000." McQueen approached Alan Schwarz, who was then chief executive officer of Yorkton, and advised him that McQueen would be providing to the Commission later in the month different evidence under oath than had been provided in the report, and that he had witnessed the meeting between Paterson and Donnini on February 29, 2000. McQueen testified, "it was not until I discovered that there was an inaccuracy, that others had not given him [Staley] the truth, as I went on to do, that I realized there was a problem."

[35] McQueen testified with respect to a grey list. When a corporate finance officer becomes privy to material or potentially material non-public information, the person leading that file would put that security on the internal watch list, or grey list, which is for compliance purposes. This allows compliance to be able to track trading in the security. McQueen stated that the grey list is distributed to a very small group of people and does not go to the institutional sales or trading group. McQueen advised that the grey list is a tool. If someone in the corporate finance department is trading intentionally or unintentionally or just by mistake, the compliance department can take steps. McQueen testified that he was not the lead on the second special warrants financing and that he did not put KCA on the grey list. McQueen stated that Paterson, as the lead on the transaction, had the responsibility to put KCA on the grey list.

[36] McQueen testified that a restricted list is used by dealers as follows. Following the announcement of a financing, a security goes on the restricted list. The list is distributed around the wholesale institutional group so that both corporate finance officers as well as traders and certain salesmen would be aware that a stock was now restricted for the purposes of soliciting orders for trading.

[37] McQueen testified that the Yorkton bought deal committee approved the transaction on the morning of March 2, 2000 and right after this, compliance was asked to put KCA on the restricted list and an e-mail announcing the bought deal was sent to the institutional salesmen and retail brokers to sell the deal.

3. Campbell

[38] Campbell testified as to the following.

[39] In February and March 2000, his role and responsibility at Yorkton was head of the technology investment banking group and, specifically, relationship manager for many of the technology companies in Canada, including KCA. Campbell was involved in the first special warrants financing. He was not involved in the second special warrants financing until March 1, because he was out of the office the previous day. On the first special warrants financing, from the time he first contacted Hyde to propose the transaction, to the signing of the deal, there was a very rapid turnaround. He confirmed Milligan's testimony that there were no extensive negotiations as to the terms that were ultimately agreed to.

[40] On March 1, Campbell was approached by McQueen who was seeking help on an engagement letter. McQueen informed him that Paterson and Donnini had been involved in the proposal. Campbell recollected that McQueen informed him that the proposal that had been put together for KCA involved a size of approximately $10 million at a price of $6.75. Campbell signed a draft engagement letter on March 1. Campbell was vague as to the actual day on which he signed the draft engagement letter. When he was presented with documents to assist his recollection in order to place the first conversation he had had with McQueen, he replied that the documents did not really assist his recollection. He stated, however, that he could reconstruct from the documents in front of him that the conversation must have occurred late on March 1, 2000. We know, however, that the first draft of the engagement letter, signed by Campbell, was sent to Milligan at 11:22 a.m. on March 1 and must have been drafted some time before then.

4. Hyde

[41] Hyde testified as to the following.

[42] Hyde relied upon Milligan to negotiate terms of deals during their working relationship. He first heard about the proposed second special warrants financing in the late afternoon on February 29, 2000, and that it would be a $10 million offering, although there was some question as to the number of shares that would be available, because further calculations were required. In response to the question by counsel for staff, "So, as of February 29, 2000, I take it your intention with working through Mr. Milligan was to try and complete the terms of that deal?", Hyde answered, "Yes, over the next couple of days, absolutely, that's correct."

[43] Hyde confirmed that KCA faced a serious financial situation in late 1999 and early 2000. He stated, "There would be no doubt about it. We were certainly holding on." He confirmed that in 1999 KCA reported a net loss of $11.9 million, compared to a loss of $5.3 million in 1998, and that at December 31, 1999 KCA had cash and cash equivalents of $2.8 million compared to $10.1 million as at December 31, 1998. In 1999, operations used cash of $6.5 million compared to $3.5 million in 1998. He confirmed KCA was looking for cash. Hyde also confirmed that KCA was pleased to hear there was a proposal for a second special warrants financing and that he had felt very positively towards completing the deal. Hyde admitted that the second special warrants financing represented a very significant change for KCA going forward.

[44] Hyde stated that sales from Temple Ridge of shares of KCA was something that he and Milligan were always interested in. However, he stated, "I would just hate to paint it in the picture of pre-occupation because history would show that even when our stock reached very significant levels it was never – we never took advantage of those things. This was just an opportunity that presented itself, I think would be fair to say."

[45] With respect to engaging outside counsel, Hyde confirmed that KCA's board of directors was very insistent in involving outside counsel when looking at a financing. He admitted that when KCA involved outside counsel, it was because KCA was very interested in having the matter moved forward. When informed subsequently that on February 29, 2000, Milligan had engaged outside counsel, Hyde stated, "In fact I would have considered it to be an abnormal practice if we hadn't involved her, particularly around the issue of the number of shares available for sale, something that was on the top of our mind."

5. Paterson

[46] Paterson testified as to the following.

[47] He was not involved in the first special warrants financing for KCA but he learned of it shortly after the deal was concluded. He was very aware of KCA's need for cash.

[48] On the morning of February 29, it looked like KCA was going to open a lot higher. It had closed on February 28 at $6.75. He testified, "So my thoughts were to give the company a call, and although it would be extremely unusual to do a second transaction within four days of the first transaction, that they were in a very unique position and should consider doing something. . . . I proposed he [Milligan] talk to Paul Hyde about considering a second financing, given what was happening with the stock." He stated, "I was suggesting that he consider a treasury issue. I thought in light of what was happening with the stock and the unprecedented liquidity, they should seriously consider something." Although Milligan's first reaction was one of surprise and a suggestion that rather than doing a treasury deal, Temple Ridge preferred to do a secondary offering of KCA shares, he discounted Milligan's reaction as not unusual and instinctive in the first instant, testifying, "So his instincts were probably, this is so unusual, my initial instincts are probably to say I might not be interested."

[49] When asked whether Paterson talked with Donnini on February 29, prior to the 2:45 p.m. meeting with McQueen and Donnini, Paterson did not say no. Rather, he carefully replied, "Not in respect of doing a deal with the company, but I was aware that Mr. Donnini was shorting [KCA] stock on our behalf. And so in that connection, we would have had discussions that day or the prior day."

[50] Paterson testified that when he approached McQueen about helping on the transaction, he said something like, "Come on down and see how a deal can be put together." Paterson testified, "He was a young guy and I wanted to instil a sense of how to, hopefully, take a deal from an initial conversation to fruition."

[51] Paterson recollected that the conference call with Milligan and McQueen involved a lot of time concerning what would be the pros and cons if KCA did something on the treasury side, if they did something with Temple Ridge, if they did something together, or if they didn't do anything at all. Paterson talked about the disadvantages of combining a control block sale and a treasury deal relative to the payment of commission and the free-tradeability of shares. Paterson's view was that KCA was a huge beneficiary of what had happened to their stock price in liquidity. Paterson testified, "My instincts were, Paul, or pardon me, Michael, you know, part of the discussion was, there's a whole bunch of money for the company and also sell two million shares for Temple Ridge? Well, I didn't think the company could accomplish that. So on the one hand of the range you had a huge deal. On the other end of the range, if you totally focused on the treasury issue it was all really a function in my mind of how much stock could be borrowed by hedgers. So my instincts were about 10 million I was thinking . . . my view was they had to put the treasury interests ahead of Temple Ridge's interests . . . What I am saying is that I felt reasonably comfortable that we could, on their behalf, complete an underwriting for about $10 million for a treasury issue."

[52] When asked if he had any recollection as to what other terms were discussed with Milligan and McQueen, Paterson replied, "Well, my view was that the price would be in the context of the market obviously, the time we were ready to do a deal. The market at that point was 7 to 7 ¼, and my instincts, the company would probably do something, and we would feel comfortable in the 6 3/4 range where they would have to add half a warrant."

[53] In answer to a question about the complications involved in combining a treasury issue with a sale of from the control block of Temple Ridge, Paterson testified, "If you need to do a unit deal to effectively sell a special warrant deal, you have to get the control block to package a unit for you as well. You can't sell one person free-trading shares and another person a unit that has a hold period. So that's exactly the kind of complication we were talking about when people tried to do both at the same time."

[54] Paterson testified, "I think we ended the conversation by Michael saying he was going to get in touch with Paul Hyde and get back in touch with us."

[55] Paterson testified that immediately after the conference call with Milligan he called Donnini into his office, "and we had a very brief discussion and I told Mr. Donnini what my instincts were with respect to advice I had given the company, and I asked for, solicited his opinion for the marketability or viability of doing *the* deal." [emphasis added] In answer to a question about what he said to Donnini, Paterson testified, "My recollection was, I'm thinking, you know, about this company doing a $10 million deal in the context of the market. You know, look at the market, both aware of the market, and I'm thinking 6 3/4,

what's your view?" Paterson added, "I may have asked him what his short position was. I was aware that we bought back special warrants from the purchasers of the first transaction which had just closed four days earlier. And also aware that we had been, along with all the shareholders of Kasten Chase, very lucky as a firm, because part of our compensation in the first transaction, we had 8% cash fee but we also had compensation options. And on an unrealized basis, we had a very fortuitous position and had a huge unrealized gain. So I was very much behind his decision to be, try to lock in those gains and also hedging the purchases from the special warrant purchasers. So I wanted to know where he was at from that perspective." Elsewhere Paterson testified, "I called our head trader, Mr. Donnini, into my office. And we had a very brief discussion and I told Mr. Donnini what my instincts were with respect to advice I had given the company and I asked for, solicited his opinion, for the marketability or viability of doing the deal... I don't think I got into the multitude of things that we spoke to Mr. Milligan about. Could be wrong but that's not really my recollection."

[56] Paterson testified that Donnini's response was that he thought it would be highly unlikely to clear a deal at that price because he didn't think the buyers would pay up. Paterson continued, "and I immediately said, I'm thinking in terms of hedgers. He said that's probably the only way it will get done." Paterson later in his testimony observed that because Yorkton had been shorting KCA shares and the average price was greater than $7.00, Paterson was willing to pursue the transaction.

[57] In discussing the final pricing of the deal around mid-day on March 1, 2000 Paterson testified, "Well, mid-day I was trying to, you know when you talk within the context of market, as I said earlier, as everybody knows its in the context of the market, if the stock goes down you have to lower the price, if the stock goes up you try to keep it the price you were talking about for the benefit of new shareholders. And so I was still on the same kind of theme, $10 million in the 6 3/4 range."

[58] Paterson testified that Yorkton committed its capital to the deal on March 2, 2000 when its bought deal committee approved the transaction with respect to Yorkton's short position.

[59] Paterson stated that he had discussion with Donnini every day he was putting on short positions. However, at another point in his testimony, Paterson stated that he had no recollection of any conversations with Donnini on March 1, 2000.

[60] With respect to the various scenarios referred to, Paterson said that a prime motivating factor in his discussions with Milligan was to take him through the issues that would need to be addressed based on the various possible scenarios, and to educate him. Paterson testified that he did not remember what Milligan wanted to do with Temple Ridge, with respect to the exact number of shares, but stated, "They could have whatever wish list they wanted. It was going to be a function of what we thought was accomplishable. So they certainly talked big numbers but I don't remember the numbers." In other words, the deal that would be done would be one that Yorkton could place.

[61] Paterson described where he thought buyers for the issue would come from. He testified that, "There would be limited fundamental buyers, the people that actually believed, the market capitalization at $7.50 was $300 million. It was $20 million in December. They lost $12 million in the prior year, burning $10 million a year. So hard to justify the merits of a $300 million market capitalization. The buyers were either going to come out of the woodwork by momentum, fundamental buyers thought there was a lot of momentum. Buyers that buy where there is a significant discount to the market. And that's where pricing in context of the market becomes very important. There are investors that if they see a $7.70 quote, buy at $6.75. They will take a shot because they think they've got a little bit of a buffer. And the buyers I expected to be the biggest buyers would be the hedge funds because for them if they can sell stock at $7.70, buy at 6 3/4 - short stock at $7.70, buy at 6 3/4 and have half a warrant for free, that's the business hedge funds are primarily in. So the context of the market becomes critical."

[62] This, Paterson tried to explain to Milligan. Paterson testified, "It's a very complicated, complex issue and it's important he understood the pros and cons of doing a transaction where we expected it to be mostly hedge funds that bought it. So I believed he had certainly a knowledge at the end of the conversation where I was comfortable moving forward if he chose to move forward at a later date on behalf of the company. But I wouldn't say he completely understood hedge funding strategies."

[63] Paterson testified in the context of before, during and after the conference call with Milligan that, "I didn't believe, as I mentioned earlier, that the company should necessarily do the control block sale at the same time . . . . That's why I had him focus on a treasury deal. But I think the more important answer is, when you try to create a transaction, the same way I went down the hall and found Mark and said something along the lines 'Come and see how to do a deal,' I wanted him to see how building momentum, educating them, the temperament of when you call, how often to call, put in place the notion of let's prepare an engagement letter, let's send it to them because the written word is pretty powerful. So when you get a draft engagement letter it starts your mind turning toward that. So I always employed that type of strategy when someone was contemplating a deal; we tried to make them feel that they were going to take that to fruition. So that was behind the thinking at that point."

[64] Paterson testified that Yorkton bought 650,000 units of the transaction for its own account. That was $4.7 million out of the $10 million. Paterson testified that Yorkton's retail sales persons had received indications of interest from sophisticated retail clients in purchasing a total of 609,500 special warrants. Retail sales were allocated 431,000 of the 1.483 million special warrants that were to be distributed. Except for some hedge fund clients,

Yorkton's institutional clients were not interested in purchasing KCA units in the second special warrants financing. Yorkton purchased as principal the remaining 650,000 special warrants with the result that fewer special warrants were allocated to sophisticated retail clients. Paterson explained that the reason the demand for 609,500 special warrants was cut back to 431,000 special warrants was that the syndication department had experience with a number of brokers who had padded their orders historically and on closing not delivering on behalf of the client and that caused problems. They used their judgement unbeknownst to Paterson and determined who was going to get those shares.

6. Donnini

[65] Donnini testified as to the following.

[66] His number one role at Yorkton was to manage the firm's liability trading on a day-to-day basis. He did not have to get pre-clearance on anything he traded in the firm's liability account.

[67] Donnini testified that he thought the stock price had disconnected from the fundamentals of KCA. It was a company effectively out of cash in early February. He believed the stock price at $6.75 at the market closing on February 28 was "incredible", "unbelievable". Donnini considered that the market during the material time was in a speculative bubble. However, in answer to questions about speculating, Donnini testified that he was shorting as a risk management tool. He stated, "You are technically shorting the stock, because you cannot make good delivery in three days. But what, in effect, you are attempting to do is to make your position 'market neutral' as we refer to it, meaning your balance at the end of the day, your exposure at the end of the day, is as close to zero as you can get it. And that is all that that shorting, in this situation, was attempting to achieve. It wasn't speculating on anything actually."

[68] Donnini testified that he remembered a telephone call from Milligan at 10:30 a.m. on February 29. He had never spoken to Milligan before and the call was out of the ordinary. He stated that they talked about hedge funds, hedging and hedging strategies. He denies there was any discussion of a financing at all. He also remembered a second telephone conversation at 12:37 p.m. when Milligan called him back. Donnini said he had no idea as to why Milligan was interested in the concept of hedging and hedge funds.

[69] Donnini testified that he started using a jitney around 12:40 p.m. on February 29, 2000, shortly after he had spoken to Milligan the second time. He stated that he did this because he was concerned that Milligan might not approve of Yorkton's short selling of the stock. Donnini stated, "I again wanted to make sure I didn't have to have an investment banker come at me angry that we were selling it and having to explain it to an issuer, or me having to field that phone call."

[70] Donnini stated that he did not recall the three-minute conversation with Paterson in the presence of McQueen at 2:45 p.m. on February 29, 2000. Although Donnini said he had no recollection of the conversation, he speculated that it was because, "I would have left with no - with the thoughts there was zero possibility of anything happening or no possibility."

[71] Donnini stated that he was the fourth-largest shareholder of Yorkton Holdings Ltd., the parent company of Yorkton Securities Inc. Donnini also admitted that his relationship with Paterson was more akin to something of a partnership, as it was with all of the other major shareholders of Yorkton.

[72] Donnini admitted he had taken all of the necessary courses to inform himself of his responsibilities as a registrant and the conduct expected of him as a registrant. He also admitted that in his role as head trader, he appreciated the integrity of the capital markets depends on equal access to information by all prospective investors.

[73] Donnini admitted that he first became aware of the first special warrants financing on February 11, 2000 and that at this time he was also aware of KCA's financial difficulties. Donnini stated that the first special warrants financing saved KCA, for sure.

[74] With respect to his first conversation with Milligan, Donnini was asked about the testimony of Milligan. Milligan had stated that the gist of his self-introduction to Donnini was: "I had a conversation with Mr. Paterson; that he had proposed this kind of transaction; I simply referred to it as being a transaction involving a hedge fund and Mr. Paterson suggested that I could speak with you and you could help me understand this kind of transaction." While Donnini stated that he did not remember specifics, and elsewhere in his testimony he denied that there had been any talk of a transaction, he commented that this portion of Milligan's testimony made sense.

[75] Donnini denied that he talked with Paterson on the morning of February 29, 2000 prior to Paterson's call to Milligan, or indeed prior to the 2:45 p.m. meeting with Paterson and McQueen.

V. Submissions

A. Counsel for Staff

[76] Counsel for staff argued that Part XVIII of the Act prescribes continuous disclosure obligations for reporting issuers in Ontario. These obligations differ depending on the nature of the information. In particular, they differ whether the information constitutes a material change or a material fact. Information respecting a material change must be disclosed forthwith. That is dealt with in section 75(1) of the Act. In contrast, the Act does not require forthwith disclosure of information respecting a material fact. However, pursuant to section 76(1) of the Act, there is a prohibition on persons in a special relationship with a reporting issuer from purchasing or selling securities of the reporting issuer with knowledge of a material fact with

respect to the reporting issuer that has not been generally disclosed. Counsel argued that the issue was not whether on February 29, 2000, or March 1, 2000, there had occurred a material change relative to KCA that required immediate disclosure, but rather whether on those dates there existed a material fact of which Donnini had knowledge that had not been generally disclosed which should have restricted Donnini from trading in shares of KCA.

[77] Counsel argued that there were two principal issues we had to decide. First, whether the information, based on an objective, reasonable standard, amounted to a material fact; and second, whether Donnini had knowledge of the material fact at the relevant time.

[78] Counsel argued that there are two alternative tests of materiality in the Act. The first test requires proof that the material fact significantly affects the market price of the security, commonly referred to as the market impact test. The second test requires proof that the material fact would reasonably be expected to have a significant effect on the market price or value of a security. This latter test is based on an objective or reasonable standard as opposed to the first test. Counsel argued that it was open to the Commission, as an expert tribunal, to make a finding of whether the facts were material, based on the second, objective test.

B. Counsel for the Respondent

[79] Counsel for the respondent submitted that we should not make new policy in this hearing. It was a hearing into the conduct of Donnini. While not disputing the fact that we may address matters of public interest, he submitted that we should limit ourselves to applying existing law and policy to the facts of this case and not wander into the area of declaring new policies or procedures through this hearing to the detriment of the respondent.

[80] He argued that although counsel for staff need not prove use as an essential element of the offence under section 76(1), use is important in determining the question of knowledge.

[81] Counsel for the respondent argued that the burden of proof that Donnini violated section 76(1) of the Act was on staff and not the respondent. He also stated that if there is any suggestion of limiting a license of a professional to practice, or revoking a license to practice, or interfering with the opportunity of a person to gain a livelihood, staff has a high burden of proof. He did not suggest it was a criminal burden, which is beyond a reasonable doubt, but it is more than a civil burden, which is beyond a balance of probabilities. He referred us to *Re Rosen* (1991), 14 O.S.C.B. 1091 at 1093 (*Rosen*), where the Commission cited the statement in *Re Coates et al. and Registrar of Motor Vehicle Dealers and Salesmen* (1988), 65 O.R. (2d) 526 at 536 (*Coates*), that, "Nothing short of clear and convincing proof based upon cogent evidence will satisfy at an administrative tribunal in revoking a license to practice medicine or to gain a livelihood in business."

[82] Counsel for the respondent argued that the purpose of section 76(1) of the Act is to punish clear violations where it can be shown that there was a well-established material fact and that the person impugned knew about it. This section is not intended to apply, he argued, where there is a debate about whether the facts are established and where two or more versions of possible events might pertain.

[83] Counsel for the respondent argued that section 76(1) of the Act, while it applies to employees of a person in a special relationship with a reporting issuer, is not aimed principally at such a person. He argued that the level of proof and the level of involvement when you get down to an employee has to be a little greater than when we are dealing with officers or directors.

[84] Counsel for the respondent submitted that Donnini's conduct, at worst, constituted reasonable mistake on his part.

VI. Considerations

[85] In weighing the evidence and assessing the submissions of counsel we considered as follows.

[86] McQueen was very careful in his testimony to distinguish between matters he recollected and matters he did not recollect. McQueen had specific recollection that during the conference call among Paterson, Milligan and McQueen, they talked about pricing of the transaction and specific dollar terms. Milligan's testimony was that there was discussion in terms of discounts to the market, although McQueen did not recollect that. McQueen admitted, however, that it might have been discussed. Milligan had a recollection of a discussion about fees. McQueen had no such recollection. Again, however, he was careful to state that he did not say that fees were not discussed. He admitted only that he did not have a recollection of a discussion about fees. There were other matters that Milligan had a recollection of, such as what percentage Yorkton would get for broker warrants, that McQueen did not recollect. Milligan had a recollection of a discussion of hedging. McQueen stated, "If the phrase 'hedge' was used on that call, I do not recall it. I am not saying it did not happen. It may very well have happened. It was over two years ago."

[87] In September 2001, McQueen inadvertently learned of Staley's report that included details of Yorkton's participation in the second special warrants financing. Some elements of that report conflicted with McQueen's recollection of the events of February 29, 2000 and McQueen so advised Schwartz, Yorkton's chief executive officer at that time. In particular, the original report stated that Paterson and Donnini had advised that they had had no discussions with each other about the second special warrants financing until after it was announced on March 2, 2000. That inaccurate assertion, although subsequently corrected after McQueen came forward, suggested that the participants knew the significance of the meeting at 2:45 p.m. on February 29, 2000.

[88] In agreeing to step forward to testify, McQueen was courageous and did the right thing. We can imagine that he must have experienced many difficult moments as a result of his honourable stance. McQueen has been a great assistance to the Commission.

[89] We found that both McQueen and Milligan were credible witnesses. Each appeared to us to attempt honestly and to the best of his ability to reflect only what he could recollect and not to build on supposition and speculation. For example, Milligan stated that he must have talked to Hyde on February 29 about the proposed transaction. He admitted, however, that he could not recollect specifically speaking with Hyde on that date. Hyde, of course, confirmed that Milligan had spoken with him on that date. We found McQueen to be not only credible but also meticulously careful in giving his answers. While there may have been apparent minor inconsistencies in the testimony of Milligan and McQueen with respect to the conference call on February 29, both McQueen and Milligan were telling what happened as they recollected it. Each remembered points that appeared important to them at the time. Each led us to the conclusion that serious negotiations were then well underway for a proposed transaction for a second special warrants financing of approximately $10 million at a discount to market at approximately $6.75 but that further negotiation would be necessary to come to a definitive deal.

[90] We found Campbell's recollections not to be strong. In addition, Campbell did not answer questions with the same care that Milligan and McQueen showed in their answers. Accordingly, we did not give much weight to specific answers of Campbell where those answers may have suggested different interpretations of events from those evidenced by the documents or other witnesses.

[91] Paterson testified on his feet, addressing his answers with intensity and conviction directly to the Commission. We got a glimpse of how charismatic and persuasive Paterson could be. We were uncomfortable about how serious Paterson viewed the conduct of Donnini, Yorkton and Paterson. Yet we had no reason to believe that Paterson was not being truthful in testifying as to the events of February 29 and March 1, 2000 and as to his insight, instincts and modus operandi at the time. Indeed, we did not find the testimony of Milligan, McQueen or Paterson to be fragile or suspect.

[92] McQueen testified that the kind of question Paterson asked Donnini was, "What would the market appetite be if we did a deal for Kasten Chase?" In view of McQueen's fastidious precision in giving his testimony, it is likely that Paterson used those words, among others. The question is, what else, if anything, went with those words to communicate to Donnini that there was a proposal under serious negotiation for a second special warrants financing.

[93] We accepted Hyde's testimony without difficulty.

[94] We did not have confidence that Donnini was being truthful in all of his testimony. He appeared eager to fill in holes by speculating (for example, as to reasons why he would not have put much stock in what Paterson would have told him had he recollected the conversation, with respect to the probability of a transaction occurring).

[95] Milligan testified that he mentioned to Donnini that he had been talking with Paterson about a potential transaction. It involved hedging or was a hedge transaction. Donnini testified that the discussion with Milligan was about a hedging transaction and was conceptual and not specific to KCA. Milligan confirmed that the discussion was conceptual. Donnini, however, testified that although Milligan had called him out of the blue on the morning of February 29, Donnini had no idea where Milligan got Donnini's name. This contradicts Milligan's testimony that he mentioned to Donnini that he had been speaking with Paterson about a transaction. We accept Milligan's version of the telephone conversation with Donnini.

[96] Counsel for the respondent suggested in his written argument that Donnini did not have the benefit of the 20-minute conversation between Paterson, McQueen and Milligan and that Donnini was not told that there had been such a conversation. However, McQueen testified concerning the three-minute meeting between Paterson and Donnini as follows, "It was about three minutes in length. Mr. Paterson reported - outlined the discussion that we had had with Mr. Milligan.... Mr. Paterson advised Mr. Donnini that Temple Ridge was considering at the same time their own sale from their control block and how that may or may not interplay with the treasury offering by Kasten Chase itself; and he asked whether or not - he asked Mr. Donnini whether or not the treasury offering would work." In addition, Paterson testified concerning his conversation with Donnini, "I called our head trader, Mr. Donnini, into my office. And we had a very brief discussion and I told Mr. Donnini what my instincts were with respect to advice I had given the company and I asked for, solicited his opinion, for the marketability or viability of doing the deal... I don't think I got into the multitude of things that we spoke to Mr. Milligan about. Could be wrong but that's not really my recollection."

[97] McQueen's and Paterson's versions of the conversation that Paterson had with Donnini are consistent, although there are different nuances. McQueen made it clear that Donnini's response was that the transaction would sell. Paterson stated that Donnini's response was that he thought it would be highly unlikely to clear a deal at $6.75 because Donnini did not think the buyers would pay up. Paterson then suggested that he was thinking in terms of hedgers, and, according to Paterson, Donnini said that that's probably the only way it would get done. Donnini did not recollect the meeting at all, although he speculated that if he had been spoken to by Paterson at 2:45 p.m. on February 29 he would not have concluded that a deal was probable. Furthermore, even if we had determined that Donnini's speculation as to how he would have reacted amounted to conflicting testimony, we would not have accepted it over Paterson's and McQueen's. His speculation was self-serving and not reasonable. He knew Paterson made things happen and was a determined visionary who enjoyed having his market instincts lead to a

deal, where his sense of the market indicated it could be done.

[98] With respect to the four scenarios available after the telephone conference among Milligan, Paterson and McQueen:

a) The possibility that Temple Ridge might do a secondary offering had, reading between the lines, been taken off the table by Paterson by mid-day on February 29, 2000. In a discreet telephone call to Milligan prior to the telephone conference, Paterson made it clear that there was no interest for a secondary offering. Besides, such an offering could not take place without Yorkton's consent. Furthermore, Paterson advised Milligan in the telephone conference that KCA directors should put the interests of shareholders in doing a treasury issue ahead of the interests of Temple Ridge in doing a secondary offering. A secondary offering was something that was always on the minds of Milligan and Hyde, but they were not preoccupied with it.

b) Since a secondary offering by Temple Ridge was not really on the table, a combination of a second special warrants financing and a secondary offering by Temple Ridge was not a realistic option.

c) The proposed second special warrants financing was the principal scenario and by far the most probable. The deal that would be done would be the one that Yorkton could place. Milligan confirmed this in his testimony that there was little room for negotiation. KCA needed the cash: it would make KCA's longer-term viability more certain and would open options to it. Market conditions were unbelievably favourable. The underwriter proposing the transaction believed it could be done in spite of the fundamentals of KCA that under normal market conditions would not permit KCA to do such a financing. Given the nature or condition of the markets generally at that point in time, given that KCA had improved its balance sheet by the first transaction, and that it was Paterson who was proposing a transaction that could significantly improve the balance sheet of KCA again, Milligan, as chief financial officer of KCA, was very interested in Paterson's proposal and was considering it very seriously even before the afternoon telephone conference call. Prior to the conference call with Paterson and McQueen, Milligan had engaged outside legal counsel to assist in the transaction. During the call, Milligan indicated that he would take the deal to his board on March 1, 2000. Finally, none of the other options discussed, nor Paterson's desire to borrow shares from Temple Ridge, was a pre-requisite to a second special warrants financing. During the conference call among Paterson, Milligan and McQueen, they talked size, pricing, fees and a similar kind of structure to the first special warrants financing. There was little flexibility from Yorkton on the discussion point of compensation. Milligan's sense at the end of the conversation, which we accepted, was that there were still some issues to be negotiated, that KCA needed to do some talking, and that the parties would pick up the conversation later. In other words, negotiations were seriously underway with a high probability that they would soon lead to an approved deal.

d) There was the possibility of no deal at all. This, we found, was the most remote possibility. It would only be reasonable to believe it would occur if, prior to concluding a deal, an unanticipated event occurred, such as a drastic reversal in the market.

[99] There were conversations on February 29 in which Paterson seemed to suggest to Milligan that the borrowing by Yorkton of KCA shares owned by Temple Ridge be connected with a second special warrants financing. This was not a precondition of Paterson to do the second special warrants financing. Furthermore, Milligan made it clear in the conference call involving Paterson, Milligan and McQueen that he wanted to concentrate on a straight second special warrants financing, and Paterson was amenable to focussing the discussion on a second special warrants financing.

VII. Analysis

A. Standard of Proof

[100] Counsel for the respondent referred us to *Re Seal* (1996), 19 O.S.C.B. 1529 at 1535-1536 (*Seal*), where the Commission stated:

> Mr. Peters reminded us that in a proceeding of this sort, where the licensing or registration of a person or company is at stake, although the required standard of proof is the civil one - i.e. the balance of probabilities, and not the criminal one, the degree of proof required is that the proof must be clear and convincing and based upon cogent evidence which is accepted by the tribunal. He referred us to the decision of the Divisional Court in *Re Bernstein and College of*

Physicians and Surgeons of Ontario (1977), 15 O.R. (2d) 447. In that case, O'Leary, J. (with whom Steele, J. concurred) said the following at page 470:

> "The important thing to remember is that in civil cases there is no precise formula as to the standard of proof required to establish a fact.
>
> In all cases, before reaching a conclusion of fact, the tribunal must be reasonably satisfied that the fact occurred, and whether the tribunal is so satisfied will depend on the totality of the circumstances including the nature and consequences of the fact or facts to be proved, the seriousness of an allegation made, and the gravity of the consequences that will flow from a particular finding.
>
> The grave charge against Dr. Bernstein could not be established to the reasonable satisfaction of the Committee by fragile or suspect testimony. The evidence to establish the charge had to be of such quality and quantity as to lead the Committee acting with care and caution to the fair and reasonable conclusion that he was guilty of the charge. In this case where Dr. Bernstein, a man of good reputation swore that no impropriety occurred between himself and Jo-Anne Johnston it would take very strong evidence to destroy his defence of his reputation."

At page 485, Garrett, J. said the following:

> "I hold that the degree of proof required in disciplinary matters of this kind is that the proof must be clear and convincing and based upon cogent evidence which is accepted by the tribunal. I agree with Mr. Justice Schroeder that the burden of proof is to establish the guilt of the doctor charged by a fair and reasonable preponderance of credible testimony, the tribunal of fact being entitled to act upon the balance of probabilities. I think, however, that the seriousness of the charge is to be considered by the tribunal in its approach to the care it must take in deciding a case which might in fact amount to a sentence of professional death against a doctor."

In *Re Coates et al and Register of Motor Vehicle Dealers and Salesmen*, (1988), 65 O.R. (2d) 526, the Divisional Court again dealt with the matter, and Reid, J., speaking for the court, adopted the *Bernstein* standard. After referring to the passages from *Bernstein* quoted above, he said the following, at page 536:

> "This message is clear and has been consistently adopted by this court. Nothing short of clear and convincing proof based upon cogent evidence will justify an administrative tribunal in revoking a licence to practice medicine or to gain a livelihood in business.
>
> The concept that the standard of proof rises with the gravity of the allegation and the seriousness of the consequences has been reaffirmed in the recent decision of the Supreme Court of Canada in *R*. v. *Oakes* (1986), 26 D.L.R. (4th) 200, 24 C.C.C. (3d) 321, [1986] 1 S.C.R. 103, 53 O.R. (2d) 719*n*. There Chief Justice Dickson said, at p. 226 D.L.R., p. 137 S.C.R.:
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> > "Within the broad category of the civil standard, there exist different degrees of probability depending on the nature of the case: see Sopinka and Lederman, *The Law of Evidence in Civil Cases* (Toronto, 1974), at p. 385. As Lord Denning explained in *Bater* v. *Bater*, [1950] 2 All E.R. 458 at p. 459(C.A.):
> >
> > > "The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion."

> This passage was cited with approval in *Hanes* v. *Wawanesa Mutual Ins. Co.*, [1963] 1 C.C.C. 321 at p. 339, 36 D.L.R. (2d) 718 at p. 733, [1963] S.C.R. 154 at p. 161. A similar approach was put forward by Cartwright J. in *Smith* v. *Smith*, [1952] 3 D.L.R. 449 at p. 463, [1952] 2 S.C.R. 312 at pp. 331-2:
>
> > "I wish, however, to emphasize that in every civil action before the tribunal can safely find the affirmative of an issue of fact required to be proved it must be reasonably satisfied, and that whether or not it will be so satisfied must depend on the totality of the circumstances on which its judgment is formed including the gravity of the consequences . . ." "

[101] The consequence of the orders we are making under section 127 will be to severely interfere with Donnini's ability to earn a livelihood in the securities industry; however, as in the *Gordon Capital* case involving registration, which counsel for the respondent referred us to, the focus of the proceeding has not been to deprive Donnini of anything but to determine whether it is in the public interest to make the orders: *Gordon Capital Corp.* v. *Ontario (Securities Commission)* (1991), 50 O.A.C. 258 at paragraph 36 (Div. Ct.) (*Gordon Capital*), relying on the earlier registration case *Re The Securities Commission and Mitchell*, [1957] O.W.N. 595 at 599 (C.A.). A proceeding under section 127 of the Act is different from a proceeding in the courts under section 76(1). Having stated this, in the case before us, we were firmly convinced well beyond a balance of probabilities, by facts which we found, based on cogent evidence, to be clear and convincing, that Donnini had knowledge of material facts with respect to KCA that had not been generally disclosed when he purchased and sold shares of KCA on February 29 and March 1, 2000.

B. Insider Trading

1. Statutory Framework

[102] Section 76 of the Act provides:

> (1) No person or company in a special relationship with a reporting issuer shall purchase or sell securities of the reporting issuer with the knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed.
>
> (2) A "person or company in a special relationship with a reporting issuer" means,
>
> > (b) a person or company that is engaging in or proposes to engage in any business or professional activity with or on behalf of the reporting issuer...
> >
> > (c) a person who is a director, officer or employee of…a person or company described in...clause (b);
> >
> > (d) a person or company that learned of the material fact or material change with respect to the reporting issuer while the person or company was a person or company described in the clause...(c);

[103] Section 1(1) of the Act defines "material fact" and "material change" as follows.

> "material fact", where used in relation to securities issued or proposed to be issued, means a fact that significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of such securities;
>
> "material change", where used in relation to the affairs of an issuer, means a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer and includes a decision to implement such a change made by the board of directors of the issuer or by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable;

[104] The purposes of the Act are to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets. Among the primary means for achieving these purposes are requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

2. Harm to Investor Confidence in the Capital Markets

[105] Shortly after the introduction of the forerunner to section 76(1), in *Re Kaiser Resources Limited* (1981), 1 O.S.C.B. 13C at 16C (*Kaiser*), the Commission articulated the policy basis for this provision:

> Persons in a special relationship with a reporting issuer are likely to be in a preferential position with respect to material corporate information. Accordingly they are in a unique position to exploit their position to their advantage, and to the disadvantage of other investors not having that opportunity. If the credibility of the capital markets is to be preserved, it is essential that a high level of responsibility be expected and demanded of such persons, and any failure to meet that standard must be regarded with great seriousness. This responsibility, of course, includes the filing of reports by insiders even though this requires the giving up by them of certain of their rights to privacy, and the restrictions by those in a special relationship of their activity in the public markets when they are in possession of undisclosed material information.

[106] In *Re Woods* (1995), 18 O.S.C.B. 4625 at 4627 (*Woods*), the Commission stated,

> The prohibition on 'insider trading', i.e. trading in securities of a reporting issuer with the knowledge of a material fact or material change with respect to the reporting issuer which has not generally been disclosed, is a significant component of the scheme of investor protection and of the fostering of fair and efficient capital markets and confidence in them, that are the cornerstones of the Act. It would be grossly unfair to permit a person who obtains undisclosed material information with respect to a reporting issuer because of his relationship with the issuer to trade with the informational advantage this gives him or her. To quote the striking analogy used by Farley J.:
>
> > "It is not just a question of the house in a casino situation moving the odds in a card game or the dealer counting cards, it is akin to the dealer being able to play with marked cards."
>
> As Farley J. went on to say:
>
> > "when one actually trades with the benefit of inside information, then the seller is not an innocent and lucky winner. Rather the insider trader is a rapacious thief.
>
> As well, such activity, if countenanced, would detract from the credibility of our capital markets and lead to the undermining of investor confidence in those markets. In addition, the prohibition encourages timely disclosure of material changes, enabling investors to make better informed investment decisions. Accordingly, an intentional violation of the prohibition is, and must be regarded by the Commission as being, a very serious matter. It is not for us to punish the offence, the courts have already done that. Having found that Woods was guilty of insider trading, what we now are obliged to consider is whether, and if so to what extent, the public interest requires us to intervene to protect the marketplace, and investors in it, from future improper or illegal activities by Woods.

3. The Essential Elements of Insider Trading

[107] Larry Woods was a director of the Plastic Engine Technology Corporation (Plastic Engine). Woods did not trade for his own account. Instead, he sold Plastic Engine shares for a Mr. Richardson, in an effort to protect Richardson's investment in the company. In *R*. v. *Plastic Engine Technology Corp*. (1991), 15 O.S.C.B. 2637 (Ont. Prov. Div.), Woods was found guilty and convicted of short selling stock while in possession of material information which had not been generally disclosed. In sentencing Woods, Justice Young reiterated his earlier finding that Plastic Engine's dire financial condition was a material fact: *R*. v. *Plastic Engine Technology Corp*. (1991), 15 O.S.C.B. 2651 (Ont. Prov. Div.). Justice Young's finding was upheld by Justice Farley of the Ontario Court of Justice, General Division, in *R*. v. *Plastic Engine Technology Corp*. (1994), 88 C.C.C. (3d) 287 (Ont. Gen. Div.) (*Plastic Engine*), leave to appeal refused (1994), 89 C.C.C. (3d) 499 (Ont. C.A.).

[108] In *Plastic Engine*, at 300, Justice Farley examined the statutory provision on insider trading in its four constituent parts:

a) the respondent is in a special relationship with the reporting issuer;

b) the respondent purchases or sells securities of that reporting issuer;

c) with the respondent having knowledge of material information about the reporting issuer;

d) which material information has not been generally disclosed.

[109] In the case before us, KCA was a reporting issuer at the material time. As soon as Paterson proposed to Milligan in the morning phone call to do a second financing, Yorkton was in a special relationship with KCA. Donnini was an employee of Yorkton and he learned of the proposed second special warrants financing in his capacity as an employee of Yorkton. Therefore, under paragraphs (c) and (d) of section 76(2), Donnini was in a special relationship with KCA. Donnini admitted that he purchased and sold common shares of KCA on February 29 and March 1, 2000. The second special warrants financing was not generally disclosed until March 2, 2000.

[110] The key questions before us were: (i) whether information concerning the second special warrants financing was material, (ii) whether the information constituted a fact, and (iii) whether Donnini's knowledge of the information was knowledge of a material fact. With

respect to the first two questions, however, under the Act there is only one determination: is the information a "material fact"? In making this determination, we considered it useful, as a preliminary step, to analyze the questions of when material information may be considered to be established as a "fact", and what is "material".

4. Use/Benefit

[111] In 1987, the Ontario legislature repealed a statutory defence to section 76(1), which had permitted an individual to prove that she or he did not make use of a material fact of which she or he had knowledge. In *Plastic Engine*, Justice Farley observed at 300-301 that "[t]he offence, then, is in essence *not* a question of *using* insider information *but* of *buying or selling securities* of a company *while possessed of insider information*." [emphasis in the original] He continued: "[t]he critical aspect is not, of course, that insider information is in fact used to make the trading decision, but rather that a person with a special relationship with a reporting issuer cannot trade while possessed of insider information."

[112] In assessing Woods' argument in respect of the statutory interpretation of the insider trading provision of the Act, Justice Farley stated at 310:

> Given the mischief rule and its application, it appears that the mischief to be corrected in the present instance was that of unequal opportunity in the securities market – *i.e.*, someone in a special relationship with a company (a director) might employ insider information to buy or sell shares of the company to the disadvantage of those without such insider information. It does not seem to me that the person in a special relationship must benefit from the misuse of insider information; this is obvious from the prohibition against tipping since the tippee is the one who benefits.

[113] Accordingly, we did not need to find that Donnini used undisclosed material facts, or that he benefited personally from the misuse of inside information. We needed only to find that he traded while in possession of undisclosed material facts.

[114] We were satisfied that the evidence, without taking into account use or benefit, was sufficient for us to find the necessary knowledge. Nevertheless, we also determined that Donnini did, indeed, use undisclosed material facts. His use of undisclosed material facts further confirmed our conclusion that Donnini had the necessary knowledge.

[115] Donnini used the undisclosed material facts as follows. After the 2:45 p.m. meeting in Paterson's office, Donnini continued his trading activities. Donnini testified that he used jitney traders to short KCA shares because he believed, based on his second telephone conversation with Milligan, that Milligan would be upset that Yorkton was shorting the stock. Donnini testified that Yorkton clients did not always understand that Yorkton had the right to mitigate risk, which is how Donnini consistently characterized his trading activities in KCA. The trade orders were large and the evidence showed that in one case a price limit of $6.90 was given for the short sale orders. It does appear that initially Donnini was mitigating the risk of Yorkton's long position in KCA stock held after the completion of the first special warrants financing on February 24, 2000. However, once that initial risk was completely hedged, Donnini continued to short KCA stock subsequent to learning about the second special warrants financing and prior to its public announcement.

[116] Both Donnini and his counsel repeatedly stated that Donnini was not speculating, that he was not shorting the stock outright, but was only mitigating risk. This testimony was very revealing to us. A logical conclusion is that at some point the short positions being placed were to mitigate risk associated with the second special warrants financing. Corroborating evidence supports this conclusion. Yorkton did not require a reconfirmation clause in the second special warrants financing to protect it from overnight risk, a normal "out clause" included in such financings. Evidence showed that the order book was checked before the final engagement letter was signed and the risk mitigating reconfirmation clause was dropped. We noted that such a risk mitigating reconfirmation clause was required in the first special warrants financing. Second, Yorkton retained 650,000 units from the second special warrants financing for its own account despite being unable to fill all client orders.

[117] In short, it appeared from the evidence that from Yorkton's point of view, the second special warrants financing was part of a hedge transaction from the outset. Paterson proposed to Milligan "this kind of transaction involving a hedge fund", and encouraged Milligan to call Donnini for an explanation of hedge transactions. Milligan testified that he lost interest when Donnini explained that "the hedge fund begins the transaction by shorting the stock of the issuer." Donnini testified that he thought Milligan's second telephone call on the morning of February 29, 2000 occurred because Milligan was upset about the shorting activity in KCA stock, whereupon Donnini switched to the use of a Jitney trader for his short trades. The deal that would be done would be the one Yorkton could place. The deal Paterson had in mind all along involved a transaction in which hedgers would be significant purchasers.

[118] We did not accept the assertion of respondent's counsel that Donnini and Yorkton did not benefit from such trading to the detriment of others. He had material information other traders did not have. Furthermore, hedge funds and other investors who might have wished to short the shares of KCA and to buy under the second special warrants transaction were not provided with the same opportunities that Yorkton had when Donnini, with the material information he had, sold short shares of KCA February 29 and March 1, 2000.

5. Can a Contingent Event be a Fact?

[119] Counsel for the respondent argued that before a fact can become material, it has to be established. He referred us to *Coughlan* v. *Westminer Canada Ltd.* (1993), 120 N.S.R. (2d) 91 (T.D.) (*Amirault*), aff'd (1994), 127 N.S.R. (2d) 241 (C.A.), leave to appeal to the Supreme Court of Canada refused, [1994] S.C.C.A. No. 117. *Amirault* was a Nova Scotia civil case based on facts and issues bearing no resemblance to those before us. The information in question concerned undisclosed preliminary assay results from bulk testing of mineral deposits. The case pre-dates the decision of the Supreme Court of Canada in *Pezim* v. *British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 (*Pezim*). In the court of first instance in *Amirault*, Justice Nunn wrote, at paragraph 563:

> While those involved in the regulatory process may very well wish for everything to be reported, it is my view that such a view is neither reasonable nor practical. Before a fact can become material, it has to be established. Seabright had not reached that point. True, it was getting close but the evidence is clear that it did not occur until after the take-over and perhaps quite some time after, when the recommended assay checks had been completed on the bulk sample. It is easy to say with hindsight that the plaintiffs should have known that there would not be a mine or that there were no reserves or that the grade expected just was not there from the daily information. However, the plaintiffs and all concerned did not have that benefit and they were entitled to proceed as recommended so as to be able to determine just what the actual facts were. Had they not been taken over, the plaintiffs clearly would have been obliged to file a material change report and issue press releases and file material information reports after the final results of the bulk sample were in.

[120] A similar stance was taken by the majority of the British Columbia Court of Appeal in *Pezim* v. *British Columbia (Superintendent of Brokers)* (1992), 96 D.L.R. (4th) 137 (B.C.C.A.) (*Pezim BCCA*). The central issue involved whether assay results constituted a change with respect to or in the companies' assets, and were material for the purposes of the British Columbia Securities Act. The majority of the Court of Appeal disagreed with the British Columbia Securities Commission with respect to the meaning of a material change. Writing for the majority, Justice Lambert stated, at 148, that undisclosed assay results could not constitute a material change:

> In my opinion, geological information of the nature obtained on a continuing basis as a result of a planned drilling program does not constitute a change in the business, the operations, the assets or the ownership of the issuer, no matter what information is obtained from the drilling results. Such information may constitute a basis for a perception that there has been a change in the value of an asset. But that is a far different thing than a change in an asset.

Justice Lambert distinguished between a reporting provision of the British Columbia Securities Act dealing with a material change and another provision, a prohibitory provision, dealing with material facts. Having made the distinction between material facts and material changes, the majority of the Court of Appeal further held that the reporting requirement section of the British Columbia Securities Act does not impose a duty to inquire into material facts prior to engaging in securities transactions.

[121] Speaking for a unanimous Supreme Court of Canada in *Pezim*, at 597-98, Justice Iacobucci reversed the decision of the majority of the Court of Appeal:

> Both "material change" and "material fact" are defined in s. 1 of the Act. They are defined in terms of the significance of their impact on the market price or value of the securities of an issuer. The definition of "material fact" is broader than that of "material change"; it encompasses any fact that can "reasonably be expected to significantly affect" the market price or value of the securities of an issuer, and not only changes in the "business, operations, assets or ownership of the issuer" that would reasonably be expected to have such an effect.
>
> The use of these two terms in the Act also reflects the differences in their scope. For example, a prospectus relating to a public distribution of securities must disclose all material facts relating to the issuer: ss. 44(1), 45(2), 49(1) and 50(1). However, the prospectus need be amended only when an material change occurs: ss. 47(1), (2) and 48(1).
>
> Sections 67 and 68 of the Act also reflect the differences between a material change and a material fact. As Victor P. Alboini points out in *Securities Law and Practice,* 2nd ed., vol. 2 (1984), at p. 18-13, "[t]he concept of 'material change' should be distinguished from that of 'material fact'. Undisclosed material facts concerning a reporting issuer may not require timely disclosure . . . although they do restrict trading." Under the timely disclosure provision of the Act, s. 67, only material changes require that a press release be issued and that a report be filed. In contrast, under the insider trading provision, s. 68, a person who is in a special relationship with a reporting issuer is prohibited from buying or selling securities of the issuer when the person knows of <u>either</u> a material change or a material fact which has not been publicly disclosed. [emphasis in the original]

[122] The U.S. materiality rules, at least prior to the *Sarbanes-Oxley Act of 2002*, Pub. L. No. 107-204, 116 Stat. 745, did not require immediate disclosure of material changes. They did, however, deal with selective disclosure

and disclosure of material facts in documentation that needs to be filed from time to time, e.g. prospectuses, 10Ks, etc. Under our securities law, in contrast, we have a positive disclosure obligation when a material change occurs. In addition, under our securities law, when certain documents are filed, such as prospectuses and continuous disclosure documentation, there is an obligation to disclose material facts. In addition, our law imposes restrictions on certain persons trading with knowledge of either a material fact or material change with respect to reporting issuers before the material fact or material change has been generally disclosed. As indicated in *Pezim*, facts may be a material fact without being a material change. A material change, on the other hand, will always also be a material fact. In the case before us, we were concerned with whether a material fact existed, not with whether the material fact had matured into a material change requiring immediate timely disclosure pursuant to section 75 of the Act.

[123] In *Pezim*, Justice Iacobucci referred to the passage by Justice Lambert quoted above. In rejecting that statement, Justice Iacobucci endorsed the approach to materiality taken by the British Columbia Securities Commission and by Justice Locke of the Court of Appeal in his dissent, and said (at 599-601):

> As already mentioned, the determination of what constitutes a material change for the purposes of general disclosure under s. 67 of the Act is a matter which falls squarely within the regulatory mandate and expertise of the Commission. Consequently, when the majority of the Court of Appeal rejected the Commission's findings on this matter, it fell into error. Furthermore, the majority's view on this point is, in my opinion, clearly wrong and is inconsistent with the economic and regulatory realities the Act sets out to address. . . .
>
> [F]rom the point of view of investors, new information relating to a mining property (which is an asset) bears significantly on the question of that property's value. Accordingly, I agree with the approach taken by the Commission, namely that a change in assay and drilling results can amount to a material change depending on the circumstances. . . .
>
> Consequently, I am of the view, as found by the Commission and Locke J.A., that the assay results constituted a change with respect to or in the companies' assets and is 'material' for the purposes of the Act.

[124] In *Re Bennett*, [1996] 34 B.C.S.C.W.S. 55 at 181-182, the British Columbia Securities Commission held that merger discussions and facts regarding negotiations were material facts:

> During August and September 1998, the fact Merlo and Doman were having serious discussions about a merger and the facts regarding the negotiations, including price and timing and other matters, were all facts that could reasonably be expected to significantly affect the market price of the Doman shares and, therefore, were material facts within the definition of material fact in section 1(1) and were material facts in the affairs of Doman Industries under section 68(1)(b). We already know the effect that the rumours of a take over had on the market price for Doman shares. It is a reality that information related to take over negotiations very often could significantly affect the market price of the shares if disclosed to the market. As a consequence, responsible market participants go to great lengths to ensure confidentiality about negotiations until they are about to announce a deal. They will keep the group who have access to information as small as possible. They will watch the trading in the shares affected, so they will know immediately of any unusual trading. If there is unusual trading, and it appears to be related to the negotiations, they then deal with the unfortunate situation where an announcement may need to be made, notwithstanding that a deal has not been made between the parties. They will watch who trades the shares affected. Most certainly they would have alerted all those involved in the negotiations to the provisions of section 68. Sadly, it appears to us that these negotiations were conducted without these matters in mind.

And further at 182:

> We have found that Doman's June decision to sell Doman Industries was a material fact and a material change under section 68(1)(b). We have also found that the fact that Merlo and Doman were having serious discussions about a merger was a material fact and a material change and the facts regarding the negotiations, including price and timing and other matters, were material facts, all under section 68(1)(b). Are these facts and changes that Doman knew or ought reasonably to have known were material facts and material changes in the affairs of Doman Industries which he knew had not been generally disclosed? Doman was the controlling shareholder and the chief executive officer of Doman Industries. We find that these were facts and changes that Doman knew or ought reasonably to have known were material facts and material changes in the affairs of Doman Industries which he knew had not been generally disclosed.

[125] In *Re Danuke* (1981), 2 O.S.C.B. 31C (*Danuke*), and *Re Royal Trustco Ltd.* (1981), 2 O.S.C.B. 322C (*Royal Trustco*), the Commission held that contingent or unrealized events were material. In *Danuke*, the material fact was an intention to announce the intention to purchase units; in *Royal Trustco*, the material fact was an opinion of

management given by way of verbal assurance that certain entities would not tender to a take-over bid.

[126] *Royal Trustco* involved the conduct of White and Scholes, the President and Chief Executive Officer, and Senior Vice President, respectively, of Royal Trustco. In response to a take-over bid by Campeau Corporation, White and Scholes embarked upon a campaign to persuade "friends" of Royal Trustco to defeat the Campeau bid. As part of their campaign, White and Scholes met with senior officers of the Toronto Dominion Bank, in an effort to persuade them not to tender to the Campeau bid. During this meeting, White and Scholes assured the representatives of the bank that about 60% of the shares of Royal Trustco would not be tendered. The Commission found that this was a material fact which had not been generally disclosed. Accordingly, the Commission held that White and Scholes had tipped, contrary to section 75(1)(b).

[127] The Divisional Court dismissed an appeal taken by White and Scholes: *Re Royal Trustco Ltd. and Ontario Securities Commission* (1983), 42 O.R. (2d) 147 (Div. Ct.). The Court found that the "information disclosed fell easily within the category of material facts within the context of the legislation and in the prevailing circumstances." The Court specifically recognized that, at the relevant time, it was not certain that the "friends" of Royal Trustco would not tender to the Campeau bid. Justice Reid wrote, at 152:

> In my opinion, the information disclosed fell easily within the category of material facts within the context of the legislation and in the prevailing circumstances. That the appellants could not guarantee that the known holders of Trustco's shares would not sell or deposit their shares does not reduce the disclosure to a level less than fact. It was made clearly to encourage the officers of the bank not to sell or deposit the 10% of the outstanding shares of Trustco that it had acquired after earlier representations to it by White and Scholes and it achieved that purpose …. I do not think the term "fact" should be read supercritically. In my opinion, the information was sufficiently factual or a sufficient alteration of circumstances to be a material "change" to fall within the section. In my opinion the Commission was justified in holding that the section had been breached.

[128] *Re Sheridan* (1993), 16 O.S.C.B. 6345 (*Sheridan*) dealt with whether a fact was a material change and whether Sheridan failed to cause a timely disclosure of the change. In the present case, we were not dealing with an alleged material change. Indeed, if we were to determine when a material change occurred, we believe it more likely to have been when the parties reached agreement in principle sometime on March 1, 2000, or, perhaps, on March 2, 2000, after the board of directors of KCA and the bought deal committee of Yorkton had approved the transaction. However, we did not need to decide this question because the matter at issue was not whether and when a material change occurred in the affairs of KCA with respect to the special second warrants financing, but rather whether the information which Donnini had after his meeting with Paterson and McQueen on the afternoon of February 29, 2000 constituted a material fact.

[129] We determined that the negotiations for the second special warrants financing were sufficiently advanced at 2:45 p.m. on February 29, 2000 that the information about the proposed transaction at that time was a fact for purposes of the definition of "material fact" in the Act.

6. Probability/Magnitude Test

[130] In *Sheridan*, in the course of its materiality analysis, the Commission specifically referred to the leading U.S. cases of *Basic Inc. v. Levinson*, 485 U.S. 224 (1988) (*Basic*), and *Securities and Exchange Commission v. Texas Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir. 1968) (*Texas Gulf Sulphur*). Quoting *Texas Gulf Sulphur* at 849, the Commission observed at 6350 that materiality in cases of contingent or speculative developments depends:

> at any given time upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity.

Immediately thereafter, the Commission also quoted J.W. Bagby & J.C. Ruhnka, "The Predictability of Materiality in Merger Negotiations Following *Basic*" (1988) 16 Sec. Reg. L.J. 245 as follows:

> Materiality is reached when some unspecified minimum threshold of both probability and magnitude is reached. Only when there is some probability of the event's occurrence and some magnitude to the event can it be expected that a reasonable investor would consider the disclosure a factor in making an investment decision. Materiality is indicated when there are high probabilities the event will occur and high magnitudes of the event's impact on the registrant . . . . Instead of balancing the two against each other, the materiality analyst will weigh both of them separately and then discount the potential magnitude by the probability of non-occurrence . . .

[131] In *Texas Gulf Sulphur*, in addressing whether a reasonable person would attach importance to the facts in question in determining his or her course of action in the transaction in question, the United States Court of Appeals for the Second Circuit stated at 849 that, "The speculators and chartists of Wall and Bay Streets are also 'reasonable' investors entitled to the same legal protection afforded conservative traders." Therefore, the Court concluded in their next sentence, material facts include not only information in respect of earnings and distributions, but also "facts which affect the probable future of the company and those which may affect the desire of investors to buy, sell or hold the company's securities." After that, at 849-850, the Court articulated the probability/magnitude test:

> In each case, then, whether facts are material within Rule 10b-5 when the facts relate to a particular event and are undisclosed by those persons who are knowledgeable thereof will depend at any given time upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity. Here, notwithstanding the trial court's conclusion that the results of the first drill core, K-55-1, were "too 'remote' to have had any significant impact on the market, i.e. to be deemed material," . . . knowledge of the possibility, which surely was more than marginal, of the existence of a mine of the vast magnitude indicated by the remarkably rich drill core located rather close to the surface (suggesting mineability by the less expensive open-pit method) within the confines of a larger anomaly (suggesting an extensive region of mineralization) might well have affected the price of TGS stock and would certainly have been an important fact to a reasonable, if speculative, investor in deciding whether he should buy, sell or hold.

[132] Since the potential magnitude of the second special warrants financing was highly significant for the value of KCA shares, a lower probability of occurrence than we determined was actually present would still have led us to conclude that each of the financing, the negotiations and the potential price and size of the financing was a material fact.

[133] In *Basic*, in the context of preliminary corporate merger discussions, the United States Supreme Court at 239 explicitly adopted the probability/magnitude test from *Texas Gulf Sulphur*, and endorsed the following approach to the application of that standard:

> Whether merger discussions in any particular case are material therefore depends on the facts. Generally, in order to assess the probability that the event will occur, a factfinder will need to look to indicia of interest in the transaction at the highest corporate levels. Without attempting to catalog all such possible factors, we note by way of example that board resolutions, instructions to investment bankers, and actual negotiations between principals or their intermediaries may serve as indicia of interest…. No particular event or factor short of closing the transaction need be either necessary or sufficient by itself to render merger discussions material.

[134] Hyde testified that he relied on Milligan to negotiate and complete deals from the document perspective. Based on this, and the fact that Milligan was the Chief Financial Officer and Executive Vice President of KCA, we concluded that Milligan had the authority to negotiate for KCA, subject to final approval of Hyde and the board of KCA. Milligan had already engaged outside counsel and intended to go to his board the next day. Paterson wanted to do the deal and had already instructed McQueen to begin to prepare an engagement letter. Accordingly, the second special warrants financing met the test of interest at the highest levels of both KCA and Yorkton by 2:45 p.m. on February 29, 2000.

7. Materiality

[135] As stated in National Policy Statement 40 (Timely Disclosure), materiality is a fact-specific relative concept that varies from issuer to issuer according to size of profits, assets and capitalization, the nature of its operations, and many other factors.

[136] Counsel for staff referred us to the materiality standard used in the United States and quoted the United States Supreme Court in *TSC Industries, Inc. v. Northway*, *Inc.*, 426 U.S. 438 at 449 (1976) (*TSC Industries*):

> An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote . . . . It does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused the reasonable investor to change his vote. What the standard does contemplate is a showing of a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.

[137] The reasonable investor standard referred to in *TSC Industries* is not one that is in our Act. Our Act includes the test of whether a fact "would reasonably be expected to have a significant effect on the market price or value" of securities. In determining what would reasonably be expected to have a significant effect on the market price or value of KCA shares on February 29, 2000, we believe the American test of market interest, i.e. investor and potential investor interest, to be very useful. Although the U.S. and Ontario tests for determining materiality are worded differently, the American test is helpful, if not analogous, in coming to a determination under the Ontario test.

[138] We concluded that there would have been a substantial likelihood on February 29, 2000 that the disclosure of the information that Donnini had about the proposed second special warrants financing would have been viewed by reasonable investors as important information for making a decision to buy, sell or hold shares of KCA after 2:45 p.m. on February 29 and on March 1, 2000.

[139] A material fact is broadly defined in the Act as a fact that significantly affects, or would reasonably be expected to have significant effect on, the market price or value of such securities.

[140] KCA remained a financially challenged company after the first special warrants financing of $5 million closed on February 24,2000. According to Milligan's testimony, the second special warrants financing of $10 million gave KCS more time and options and provided a cushion against running out of cash before the end of the year 2000. The two financings together represented 25% of issued and outstanding shares of the company at the beginning of the year, and were the maximum allowable without shareholder approval under the TSE's private placement rules. We concluded that these facts were sufficient to determine that the magnitude of the second special warrants financing was material from the point of view of both size and impact.

[141] With respect to the market value of KCA shares, we determined that on February 29, 2000, the value of KCA shares with the second special warrants financing would have reasonably been expected to be significantly greater than the value of such securities at such time without the second special warrants financing.

[142] With respect to the market price of KCA shares, paradoxically, to some investors, such information would indicate that the prospect of KCA would be much more secure because it was less likely to run out of cash in the near future and that, for this reason, the share price would reasonably be expected to rise significantly. On the other hand, sophisticated investors, including hedge funds, familiar with the fundamentals of the company, might regard the proposed second special warrants financing, if they were allowed to participate, as providing an opportunity to lock in a profit and short sell the stock. Usually, selling stock brings downward pressure on the stock price. We note that the price of KCA shares had been extremely volatile in the period leading up to February 29, and that market interest, as reflected in volumes of trading of KCA shares, had increased substantially since the beginning of the year.

[143] In conclusion, we have no doubt that it would have been reasonable at the time to conclude that the second special warrants financing would add significantly to the intrinsic value of KCA shares. Furthermore, we determined that under all the circumstances that existed at 2:45 p.m. on February 29, 2000, the fact that KCA and Yorkton were in negotiations for a second special warrants financing with a likely size of $10 million and a likely price of $6.75 per share would have reasonably been expected to have a significant effect on the market price or value of the shares of KCA. As a result, we concluded that each of (i) the proposed second special warrants financing, (ii) the negotiation concerning it and (iii) the proposed price and size of it, were material facts.

8. Donnini's Knowledge

[144] Counsel for the respondent kept stressing that what was at issue here was a three-minute "hallway-type" conversation. We disagreed. In determining the state of Donnini's knowledge, we took into consideration all facts and circumstances.

[145] Donnini, although not an officer or director of Yorkton Securities Inc., was a director and the fourth largest shareholder of Yorkton's parent company. He was more than a common employee or foot soldier of the organization. He was the head liability and head institutional trader at Yorkton. He was a colleague of Paterson. He described their relationship as akin to a partnership. He was a chief lieutenant of Paterson. He was intimately involved in managing Yorkton's exposure to KCA, at least from February 15 on through the material time of February 29 and March 1, 2000. He kept Paterson informed on a daily basis of Yorkton's exposure to KCA and of his risk management activities. He knew that Paterson was a superior dealmaker who made things happen. Paterson was "king" of the corporate finance department at Yorkton. Paterson's instincts were extremely important in ascertaining the probability of what eventually might happen with respect to projects on which Paterson was working. Donnini knew this.

[146] It was not appropriate to exclude from our minds the context of all the other information Donnini had about KCA, Milligan, Paterson and McQueen in addition to what he learned in the three-minute meeting. The two telephone conversations between Milligan and Donnini were relevant to the question of Donnini's knowledge. They confirmed that Donnini knew that Paterson had been speaking to Milligan that day. Furthermore, McQueen, a member of the corporate finance team of Yorkton, went and got Donnini for the 2:45 p.m. meeting and stayed in the room for the meeting. Therefore, in Donnini's mind, Yorkton's corporate finance group was obviously involved with Paterson in moving the second special warrants financing forward.

[147] On June 11, 2002, we announced our findings that Donnini had the following knowledge after the conversation with Paterson in the presence of McQueen on February 29, 2000. Paterson had proposed a second transaction. Milligan was negotiating with Paterson. KCA was cash starved and, by any reasonable standard, could be expected to be enthusiastic about proceeding with the transaction. The market for shares of high technology companies, including shares of KCA, was "unbelievable", "unprecedented" at that time. Paterson was comfortable with proceeding with the transaction. Hedge funds would be the principal purchasers.

[148] As we stated earlier in these reasons, we were satisfied that the evidence, without taking into account Donnini's trading activities, was sufficient for us to find that Donnini had knowledge of the material facts in question. Donnini's trading on February 29 and March 1, 2000 further confirmed our conclusion that Donnini indeed had knowledge of the material facts.

[149] Donnini consistently characterized his trading activities in KCA shares as mitigating risk, and not speculating. However, once Yorkton's initial risk relating to the positions it acquired from the first special warrants financing had been fully mitigated, Donnini continued to short KCA stock subsequent to learning about the second special warrants financing and prior to its public announcement, and went "naked short," *i.e.*, he took a

speculative position. Of course, he would not really have been "naked short" if his true intention (as we believed it was) had been to mitigate risk from an anticipated position of Yorkton in the second special warrants financing. In continuing to short the stock of KCA after the three-minute meeting on February 29 and on March 1, 2000, Donnini acted in the same manner that a hedge fund intending to participate in the second special warrants financing might have behaved. Donnini's pattern of trading gave us no reason to believe that he did not have the necessary knowledge of the material facts. To the contrary, as we stated above, it further confirmed that Donnini did, indeed, have the necessary knowledge.

[150] During the three-minute meeting, when Paterson advised Donnini of the probable size of $10 million and probable price of $6.75, Paterson also asked Donnini about Yorkton's short position in KCA. Thereby, he connected, or juxtaposed the second special warrants offering and Yorkton's short position. Donnini replied that Yorkton was half a million to a million shares short. Paterson then asked the average price of the short position, and when Donnini replied with a number greater than $7.00 a share, Paterson mused aloud about the difference between $6.75 and $7.00 and how anything greater than 25 cents could be shared with KCA. The content of this conversation had a level of specificity that indicated a potential deal was well advanced. It also suggested that the financing had the potential to provide a locked-in profit on a hedge transaction if Yorkton retained a portion of the offering to cover the short position Donnini was putting in place. (This ultimately occurred.)

[151] In summary, we believed that much of the evidence we heard, in addition to the evidence relating to the three-minute meeting between Paterson and Donnini in the presence of McQueen, was relevant in determining the state of Donnini's knowledge.

[152] In *Securities and Exchange Commission v. Mayhew*, 121 F.3d 44 (2d Cir. 1997) (*Mayhew*), the United States Court of Appeals for the Second Circuit applied *Texas Gulf Sulphur*, *TSC Industries* and *Basic* with respect to the probability/magnitude test. Citing *Texas Gulf Sulphur*, the court noted, at 52, that "a major factor in determining whether information was material is the importance attached to it by those who knew about it." *Mayhew* concerned a securities trader who had received inside information in respective of a potential merger and traded on the basis of that information. Based on the facts, the court employed a contextual approach and held, at 52, that, "Although Mayhew was not given the specific details of the merger, a lesser level of specificity is required because he knew the information came from an insider and that the merger discussions were actual and serious." Accordingly, the Court concluded that the information at issue was material. In our case, Donnini may not have been aware of all the specifics of the negotiation but he knew it was being undertaken at the highest level at Yorkton and KCA and that Paterson was keen, while KCA was in need of further financing and interested: he knew that the negotiations were actual and serious.

[153] In conclusion, taking into account the foregoing and based on clear and convincing facts, including the agreed facts, the undisputed facts and the facts found by us based on cogent evidence, we determined that Donnini, after 2:45 p.m. on February 29 and on March 1, 2000, had knowledge of material facts with respect to KCA that had not generally been disclosed.

[154] Finally, in view of the high volume of short sale orders placed on February 29 and March 1, 2000, we concluded that Donnini's actions were deliberate and intentional, and that his trades could not be excused on the basis of reasonable mistake. Accordingly, when Donnini purchased and sold shares of KCA after 2:45 p.m. on February 29 and on March 1, 2000 he breached section 76(1) of the Act.

9. Donnini's Duty as a Registrant

[155] In *Pezim*, at 592-593, the Supreme Court of Canada referred to the protective role of a securities commission, as stated in *Gregory & Co.* v. *Quebec Securities Commission*, [1961] S.C.R. 584 at 588:

> The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by persons therein carrying on such a business.

[156] In *Re Gordon Capital Corp.* (1990), 13 O.S.C.B. 2035 at 2069 (*Re Gordon Capital*), the Commission observed that "[p]ublic investors rightly expect full regulatory compliance by registrants and public confidence in the integrity of the markets is damaged when compliance fails." Affirming the Commission's decision, the Divisional Court, per Justice Craig, said in *Gordon Capital* at paragraph 38:

> As reflected in its decision, the OSC insists that registrants such as Gordon remain abreast of all of the laws and policies governing the securities industry in Ontario and that they abide by them in the operation of all aspects of their businesses. In my opinion, this insistence is imperative in the public interest.

[157] In *Danuke*, the respondents were not "persons in a special relationship" with the reporting issuer. Nevertheless, the Commission ascribed a high duty to the registrants in respect of their use of inside information, observing at 39C-40C:

> The Commission accepts Seitz' evidence that he understood the information to be rumour, being unaware that the source of at least some of the information was an officer of T.D. As the supervisor of some 42 registered salespersons employed by [McLeod Young] in the Toronto

> area, he had a special responsibility to monitor the activities of those salespersons and to protect the interests of [McLeod Young's] nearly 13,000 customers.
>
> These registrants are persons with special training and responsibilities who have demonstrated through the passage of relevant examinations a certain minimum academic competence which permits them, in the case of the sales persons to advise and trade on behalf of customers and, in the case of Seitz, to supervise and give direction to sales persons for whom he is responsible. It is also fundamental to the registration process that persons granted registration be honest and of good reputation. It is the concept of honesty and integrity, of fair dealing as between classes of investors, which is the issue here. It is in the public interest that registrants conduct themselves in accordance with these precepts and not take advantage of inside information.
>
> It is the Commission's view that all registrants ought to understand that they have a duty not to attempt to profit, directly or indirectly, through the use of inside information that they believe is confidential and know or should know came from a person having a special relationship with the source of the information.

[158] In judging Donnini's conduct under the circumstances, none of us was prepared to give Donnini the benefit of sheltering behind his own inaction or his inability (whether real or feigned) to recollect. It is fundamental to the integrity of the capital markets that registrants adhere to the highest standards when dealing with confidential information that could be, or could become, material. As a registrant, Donnini had a duty to adhere to a high standard of conduct. In this regard, Ontario Policy 33-601 (Guidelines for Policies and Procedures Concerning Inside Information), designed to assure the investing public that it may have confidence in a fair marketplace, was available to Donnini as guidance. This policy deals not only with probable, but also possible, transactions that could be material. It is, among other reasons, to prevent their traders generally from being frozen from trading that investment dealers erect Chinese walls and take other precautions to prevent persons outside their corporate finance departments from advertently or inadvertently finding out about potentially material transactions.

[159] Counsel for the respondent argued that Donnini was entitled to rely on being told by Paterson or some other senior officer of Yorkton whether or not the information he had was material information and that he should stop trading. However, Donnini, as a registrant, was ultimately responsible for fulfilling his own duties as a registrant. When led by counsel for staff through the requirements applicable to a registrant and the law on material information, he admitted that he was trained and aware of what his duties were.

[160] Donnini's colleagues McQueen and Campbell both testified that they did not need a restricted list to stop them trading. They did not need anyone to tell them that they had material information, and not to trade.

10. Use of a 'Grey List'

[161] Counsel for the respondent on several occasions referred to the fact that Yorkton did not place KCA on its grey list or, until the second special warrants financing was publicly announced, on its restricted list. There was some confusion during the hearing on the part of the respondent and his counsel regarding the role of a grey list and a restricted list. We did not find this topic to be of much relevance in reaching our conclusions on the merits. However, in view of the amount of time spent on this topic during the hearing, we make the following observations.

[162] A corporation has knowledge when one of its officers, directors, employees or agents has knowledge. Accordingly, if a trader for the corporation without actual knowledge traded shares of a reporting issuer when an officer or director had knowledge of a material fact respecting that reporting issuer, the corporation would be guilty of an infraction of section 76(1) of the Act. Section 175(1) of the regulation under the Act, R.R.O. 1990, Reg. 1015, provides as follows:

> A person or company that purchases or sell securities of a reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed is exempt from subsection 76(1) of the Act and from liability under section 134 of the Act, where the person or company proves that,
>
> (a) no director, officer, partner, employee or agent of the person or company who made or participated in making the decision to purchase or sell the securities of the reporting issuer had actual knowledge of the material fact or material change; and
>
> (b) no advice was given with respect to the purchase or sale of the securities to the director, officer, partner, employee or agent of the person or company who made or participated in making the decision to purchase or sell the securities by a director, partner, officer, employee or agent of the person or company who had actual knowledge of the material fact or the material change,
>
> but this exemption is not available to an individual who had actual knowledge of the material fact or change.

Section 175(3) of the regulation provides:

> In determining whether a person or company has sustained the burden of proof under subsection (1), it shall be relevant whether and to what

> extent the person or company has implemented and maintained reasonable policies and procedures to prevent contraventions of subsection 76(1) of the Act by persons making or influencing investment decisions on its behalf and to prevent transmission of information concerning a material fact or material change contrary to subsection 76(2) or (3) of the Act.

[163] The grey list is a tool that may be implemented and maintained as a reasonable policy and procedure under section 175(3) of the regulation to prevent contraventions of section 76(1) of the Act by persons making or influencing investment decisions on its behalf and to prevent transmission of information concerning a material fact or material change contrary to section 76(2) or (3) of the Act. If a trader, such as Donnini, gains actual knowledge of material information, then notwithstanding that he is unaware of the grey list, if he trades with knowledge of the material information, neither he, nor his firm, has an exemption from section 76 (1) of the Act.

[164] Ontario Policy 33-601 provides general guidelines that registrants may wish to consider in satisfying the requirements of the exemption contained in section 175(1) of the regulation under the Act. The Policy defines a "grey list" to mean a highly confidential list, compiled by a registrant, of issuers about which the registrant has inside information; and defines a "restricted list" to mean a list, compiled by a registrant, of issuers about which the registrant may have inside information. Sections 2.3 to 2.6 of Ontario Policy 33-601 provide in part as follows:

> 2.3 (a)(ii) To limit the unauthorized transmission of inside information, a registrant should consider . . . in the case of a smaller registrant, treating all of its departments as being "behind the wall" so that if the registrant is in receipt of inside information, all trading and advisory activities of the registrant are subject to any restrictions imposed.
>
> 2.4 (2) Policies and procedures commonly used by a registrant to restrict transactions include the use of grey lists and restricted lists.
>
> 2.5 (1) A registrant should normally place an issuer on the grey list when it has received inside information about the issuer; for example, when the registrant has been invited to manage or participate in a possible offering or to act concerning a possible merger or acquisition or other corporate assignment.
>
> (2) A registrant should normally disseminate grey lists only to those employees who require the list to monitor unusual principal or agent trading in the securities by the registrant or its employees and, if necessary, to inquire about or restrict trading.
>
> (3) A registrant should seek legal or other advice before new research materials and opinions concerning securities on the grey list are published or disseminated by it or its employees.
>
> (4) A registrant should normally remove an issuer's name from the grey list when the registrant no longer has inside information regarding the issuer.
>
> 2.6 (1) A registrant should normally move an issuer's name from the registrant's grey list to the registrant's restricted list when the registrant has agreed to act as an underwriter, or banking group member, or to represent the issuer in a merger or acquisition and the transaction in which the registrant is acting has been generally disclosed but the registrant is still in possession of or may gain access to inside information during the course of the transaction.
>
> (2) Trading by the registrant as principal, except for normal market-making or other permitted activities, should cease and the dissemination of research materials should be restricted or stopped for securities of issuers on the restricted list .
>
> (3) A registrant should normally remove an issuer's name from the restricted list when the registrant is no longer in possession of inside information, for example, when that information has been disclosed following completion of a distribution or a merger or acquisition.

[165] It is, among other reasons, to allow traders to continue to trade that investment dealers erect Chinese walls and take other precautions so that persons outside the corporate finance department do not inadvertently or otherwise learn about potential material transactions.

[166] Persons invited behind these walls or in organizations where no such walls exist may enter into a special relationship with an issuer and depending on the facts become subject to the restrictions that apply to insider trading.

[167] Counsel for Donnini argued that it was perfectly legitimate for Paterson to say to Donnini, "Look, I've had some discussion with Kasten Chase, we're talking perhaps about another deal, what do you think the market would do? Would the market take it?" Counsel stated that that goes on every day and suggested that we cannot cut that off because, he suggested, there was no other way for the investment banker to know how to proceed with a deal. We reject the suggestion that it is necessary for the efficient operation of the market to allow, without consequences limiting trading, conversations about potential deals as depicted by respondent's counsel.

[168] When one looks at how investment firms operate, we acknowledge that it is quite often that people in corporate finance departments of investment dealers will talk to people in the trading department to ascertain market tone with respect to an issuer. But in our experience,

reputable firms have Chinese walls and other procedures and take steps to prevent confidential inside information from flowing to those who trade. In some cases, the necessity for obtaining market information may require an investment firm to bring someone over the wall so that the firm can obtain key market advice on the receptivity of a proposed transaction. When that happens, the person brought over the wall obtains confidential inside information and is thereby precluded from trading in the issuer's securities until public disclosure and other procedures have been satisfied.

[169] Firms have Chinese walls and other procedures to prevent information flowing to traders for at least two reasons. First, the law requires it, and the policy statements that have been adopted by the Commission, and good industry practice, suggest that those that want to foster investor confidence in the market should play by these rules. The second reason is one of legitimate self-interest. Investment dealers do not want their traders to be frozen out of normal trading activity by being contaminated with insider knowledge, because, under the law and especially the regulation that applies to insider trading, the investment dealer will be deemed to have the knowledge that its employees have and the exception provided by the regulation would not be available. In our experience, reputable firms meticulously follow the procedures in Ontario Policy 33-601 and are not faced with a set of facts that Mr. Donnini was faced with because of the way that Yorkton appeared to be operating, based on the evidence we saw in this case.

11. No New Policies

[170] In deciding this case, we were mindful of the submission of counsel for the respondent that we should limit ourselves to applying existing law and policy to the facts of this case and not wander into the area of declaring new policies or procedures at the expense of the respondent. We agreed with this submission. We considered that this case is not novel, does not change the way industry is going to have to operate, and really does not clarify the law in any great respect; but it is, rather, a clear example of how the law works. We considered that in this case, we were applying existing principles with respect to materiality and existing policy and industry practice on how confidential inside information by employees of investment dealers in a special relationship with an issuer should act. While this case may be a clear example of how industry should operate, it does not introduce any new elements of law or policy.

VIII. Sanctions

A. Questions Put to Counsel

[171] On June 11, 2002, once we were of the opinion, based on the evidence presented, that Donnini breached section 76(1) of the Act and otherwise acted in a manner unbecoming a registrant, we asked counsel to present additional evidence and submissions as to sanctions, and to address at least the following questions:

1) What relevance should we give to the sanctions imposed under the Yorkton and Paterson settlements? Specifically:

   a) What relevance should we give to the fact that Yorkton and Paterson settled while Donnini did not?

   b) We do not have authority to impose a fine. In comparing sanctions under the Yorkton and Paterson settlements with sanctions we may impose, what proxy value, if any, should we give to the voluntary payments paid by Yorkton and Paterson under their settlements?

2) In addition to considering the sanctions imposed pursuant to the Yorkton and Paterson settlements, should we look at sanctions imposed after other contested hearings and pursuant to other settlements?

3) What emphasis should we give to the effect that sanctions will have on confidence in the capital markets? In particular, what weight should we give to proportionality of sanctions as measured by precedent compared to the impact of sanctions in this case on confidence in the capital markets?

[172] On July 11, 2002, we heard additional evidence from Donnini relating to the issue of appropriate orders that we might make under section 127 and heard submissions from counsel.

B. Submissions

1. Staff Submissions

[173] We were advised by both counsel that Donnini's registration has been under suspension since he resigned from Yorkton in April of 2001. Counsel for staff put into evidence correspondence and a consulting agreement outlining arrangements that had been made by Donnini with another investment firm to provide consulting advice on a contract basis. Counsel for staff suggested this evidence was relevant to demonstrate the level of activity Donnini continued to have in connection with the securities industry over the course of the past year.

[174] Counsel for staff filed a written submission on sanctions, copies of settlement agreements and orders in connection with Yorkton, Paterson and others, and two settlement agreements entered into between Donnini and the Canadian Venture Exchange (CDNX) on one occasion and the TSE on another. The settlement agreements with the CDNX and the TSE related to several events over a

number of days and involved the following violations admitted by Donnini:

(1) between December 1999 and February 2000, Donnini conducted six average price trades, contravening CDNX Rule F.2.01(2)

(2) on January 14, 2000, Donnini failed to move the market in an orderly manner or to seek directions from the TSE prior to executing a trade that caused a change greater than $1.00 in the price of a security that was selling below $20.00, contrary to Part XXIII of the Rulings and Directions of the TSE Board;

(3) on January 24, 2000, Donnini through his personal account purchased 25,000 shares of Book4Golf, off the CDNX from a U.S. broker/dealer, contravening CDNX Rule C.2.01 by conducting the trade within Canada without any of the exemptions found in CDNX Rule C.2.01 applying;

(4) on September 14, 2000, Donnini improperly triggered a Registered Trader's Minimum Guaranteed Fill (MGF) requirement of the TSE by splitting a single client order to buy shares of a listed security into several smaller orders and entering these orders as MGF-eligible orders, contrary to section 11.20 of the TSE General By-Law and the TSE Ruling relating to the MGF facilities; and

(5) on January 3, 2001, Donnini received a client order to sell less than 5,000 shares of a listed security and executed the order in a principal transaction at a price that was not higher than the price of any order on any Canadian stock exchange on which the security was listed, contrary to Rule 4-502(2) of the TSE Rules.

Sanctions for those violations included the payment by Donnini of $20,000 to the TSE, plus $5,000 in costs, as well as CDNX fines totalling $35,000, plus $6,000 in costs. Yorkton made restitution in the amount of $77,128 to clients harmed by Donnini's conduct.

[175] In her written submission, counsel for staff also referred us to National Policy 34-201, which indicates that a registrant's breach of the by-laws, rules or practices of a stock exchange or other self-regulatory organization "may be considered by the securities regulatory authority to be prejudicial to the public interest and to affect the fitness for registration or continued registration of the applicant or registrant."

[176] Counsel for staff submitted that the circumstances of this case permit the Commission to set the precedent for future cases that may come before the Commission and the precedent which will send a clear and unambiguous signal to the public of the Commission's strong denunciation of the conduct engaged in by Donnini. She suggested it was imperative that the sanctions adequately serve as a general deterrent for those who may contemplate engaging in illegal insider trading. She stated that our capital markets, and the public who invest in them, must depend on those in a position of trust, such as registrants holding senior positions in a firm, performing their duties in good faith, with honesty and integrity. It is the responsibility of the Commission, she argued, to make it clear that the consequences will be serious for those who choose to depart from the standard. We agree with these submissions.

[177] Counsel for staff suggested that, taking everything into account, a minimum of 15 years for a cease trade order, with no carve-outs for Donnini's personal account or RRSPs, would be appropriate as a minimum. She referred us, for comparison, to the sanctions imposed in *Woods*. She commended the approach in *Woods* and submitted that the sanctions imposed in that case were more consistent with current public interest requirements in capital markets than sanctions imposed in some of the earlier cases.

[178] As a matter of general deterrence, counsel for staff suggested the addition of 10 years to the 15-year period in *Woods*, for a total of 25 years. She submitted that the Commission can take general deterrence into account and referred us to *Re Dornford* (1998), 21 O.S.C.B. 7499 at 7505, where the Commission stated:

> In our view, taking into account general deterrence, in the case before us, would not be for the purpose of punishing Dornford, as argued by Mr. Douglas, but rather for a prophylactic purpose, the future protection of the marketplace not only from actions by Mr. Dornford but also from breaches of trust by others. Although *Mithras* speaks of deterring future improper conduct of a respondent, it does note that the Commission is "here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient." It seems to us that *Warnes* does not in any way indicate that general deterrence can be taken into account for punitive purposes, but rather, in the securities law context, that it can be taken into account in determining what is necessary to restrain conduct by others that is likely to be prejudicial to the public interest in having capital markets that are fair and efficient.

2. Respondent Submissions and Testimony by Donnini

[179] As precedents for sanctions, counsel for the respondent referred us to *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600; *Re Gordon Capital*, affirmed in *Gordon Capital*; *Re Aatra Resources Ltd.* (1990), 13 O.S.C.B. 5109; *Re Belteco Holdings Inc.* (1998), 21

O.S.C.B. 7743 (*Belteco*); *Seal*; *Re Riley* (1999), 22 O.S.C.B. 3549; and *Committee for the Equal Treatment of Asbestos Minority Shareholders* v. *Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 (*Asbestos*).

[180] Counsel for the respondent objected to the following statement in our decision on the merits that we rendered orally on June 11, 2002:

> Donnini was not a credible witness. He has been unrepentant and unwilling to acknowledge that his conduct was unbecoming a registrant and contrary to the public interest.

[181] He stated that before he called Donnini as a witness with respect to sanctions, we needed to level the playing field. He submitted that what we had done with the statement was to go into sanctions as part of our reasons for our decision on the merits. Counsel wanted to make it clear, in calling Donnini to the stand, that Donnini had every right to defend himself and that it was only after the decision on the merits had been made that Donnini could come forward and express his contrition. The fact he defended himself should not be taken against him.

[182] We advised counsel that this statement did not preclude him from putting Donnini on the stand in the sanctions part of the hearing and testifying that he was repentant. As we stated in rendering our decision on June 11, 2002, "In order to give counsel guidance in presenting evidence, if any, and argument as to appropriate sanctions, we will now give a brief outline of our principal findings and conclusion." We felt it was necessary to inform counsel of our finding as to Donnini's credibility and state of remorse, based on the evidence we had heard in the merits portion of the hearing. Our decision of June 11 was not our reasons. As we stated on June 11, "We will issue reasons for our decision after we have made a decision as to appropriate sanctions." We assured counsel that we would listen attentively to anything Donnini had to say in the sanctions portion of the hearing and that we would take that into account in coming to a decision as to appropriate sanctions.

[183] Donnini testified at the sanctions portion of the hearing that the press coverage of the hearing to date had been devastating to him. It had placed tremendous stress on his family. He believed the relentless coverage had probably permanently damaged his ability to seek comparable employment in the only industry that he has ever worked in.

[184] While we do not believe it appropriate for us to place any stock in newspaper articles reporting on events at the hearing, we permitted to be entered as Exhibit 21 a bundle of newspaper articles taken from the Internet, and we understand the point that was made by Donnini and his counsel that as a result of this case it will be difficult for Donnini to obtain comparable employment in the securities industry in the future.

[185] Donnini assured us that he would not repeat his contravention of the Act or engage in any other contravention of the Act in the future. He stated, "I think it would be inconceivable and beyond belief that every action, from answering to a phone call to having a casual conversation in an elevator with any individual I would ever deal with will not be - coloured is the wrong word - but guided by what I have gone through here and what I've learned to be the Commission's position." In answer to the question, "So, in future, if and when you go back in the industry, how will you deal with information like this?" he replied, "I will take the strictest interpretation possible of any securities regulation and apply it appropriately." We would have been surprised had Donnini answered otherwise.

[186] Donnini described his infractions of CDNX and TSE regulations, described in the settlement agreements, as regrettable, or inexcusable, but of a technical nature. They occurred, according to Donnini, because persons at Yorkton were ill prepared to deal with the unprecedented volumes that they had to deal with. Yet Donnini had received warnings from the TSE's market surveillance department on three prior occasions for violations of the TSE's client-principal trading rule. Donnini's infractions of CDNX and TSE regulations were advertent and not inadvertent. We would not classify the infractions as technical in nature. The infractions included the purchase of 25,000 shares of Book4Golf, listed on CDNX, in off-floor transactions at a discount to the market, and the dividing up of a client order to trigger the TSE's MGF requirement. Donnini also admitted to contravening Rule XXIII of the TSE. The intent of the rule at issue was to ensure a fair and orderly market by allowing market participants a sufficient amount of time to react to significant price changes caused by a particular trade or put-through. One of the purposes of that rule is to prevent market manipulation. Other trades referred to in the settlement agreements involved trades for a number of clients at Yorkton's inventory account whereby Yorkton received the benefit that properly belonged to the clients.

[187] In addition, on March 30, 2001, Yorkton reprimanded and fined Donnini for a trading infraction that occurred in March 2000 relating to trading of shares in a company that was on Yorkton's restricted list. Donnini indicated that it was not the TSE that took action. He seemed to believe that it was relevant to the matters we were considering that it was only Yorkton, his employer, and not the TSE, a regulator, that reprimanded and fined Donnini for this trading infraction. We find the following exchange indicative of the reasons why we felt a certain discomfort with the testimony of Donnini, not only in the sanctions part of the hearing, but also in the part on the merits:

> Question: There's also a reference to the fact that on March 30, 2001, Yorkton reprimanded and fined you for a trading infraction which occurred in March 2000 relating to a trade while trading of that company's shares was restricted?
>
> Answer: Yes. Yorkton did, but the TSE did not.

Question: Yes, but Yorkton, the registrant, had to take action to deal with it?

Answer: But the TSE did not.

Question: I'm not saying that they did.

Answer: That's fine. And I'm saying that they didn't.

Chair: Mr. Donnini, you don't deny that the infraction – or maybe it doesn't admit that the infraction occurred.

Answer: It doesn't. I paid a fine. We settled it like that. It was an internal matter, basically, Mr. Commissioner.

[188] Counsel for staff suggested that the conclusions to be drawn from Donnini's evidence in connection with the facts surrounding KCA, and the TSE and CDNX settlement agreements entered into by him, as well as the disciplinary matter resulting in a reprimand and fine of Donnini by Yorkton were that, at best, Donnini displayed an ignorance of someone in a very responsible position who failed to appreciate the significance of his role as a registrant and the various rules in place to protect the integrity of the market; at worst, it represented a cavalier and dishonest temperament of an individual who was prepared to break whatever rules suited him in order to get the job done. We believe the proper conclusion involves elements of both.

[189] Considering all of Donnini's conduct in its entirety, we concluded that he did not appreciate, at the time of his conduct or during the hearing, that his conduct has been egregious and abusive of the capital markets. In the final analysis, notwithstanding Donnini's assurances that he would interpret Ontario securities law strictly in the future, we were left with the concern, based on his past conduct, that Donnini may continue to exhibit a disregard for Ontario securities law and the principles underlying it.

C. Analysis

1. Paterson / Yorkton Settlements

[190] In response to the first part of the first question we posed to counsel on June 11, 2002, counsel for staff submitted that we should not give much relevance, if any, to the sanctions imposed under the Paterson and Yorkton settlements.

[191] Pursuant to the Paterson settlement agreement, the Commission ordered that the registration of Paterson be suspended for two years; that trading in securities by Paterson cease for six months, with the exception of any sale of his interest in Yorkton; that Paterson be reprimanded; and that Paterson pay $100,000 of the Commission's costs with respect to the matter. In addition, Paterson agreed to make a voluntary payment to the Commission in the amount of $1,000,000, to be allocated by the Commission for purposes that will benefit Ontario investors; not to be an officer or director of a registrant for two years; not to directly or indirectly own any interest in a registrant for two years, with the exception of his current interest in Yorkton; and to take necessary and reasonable steps to sell all or a portion of his current interest in Yorkton; during the time in which he owns any interest in Yorkton, not to exercise voting rights, control or otherwise influence or attempt to influence management of Yorkton or the affairs of Yorkton for two years, except as may result from the sale of his current interest in Yorkton; and not to purchase any additional shares of Yorkton for two years.

[192] Pursuant to the Yorkton settlement agreement, the Commission ordered that as terms and conditions on its registration, Yorkton require each officer and employee of Yorkton to execute an undertaking as a condition to continued employment with Yorkton, and report to Commission staff if Yorkton receives information that any officer or employee of Yorkton has breached or is in breach of the undertaking; that Yorkton implement the proposed amendments to IDA Regulation 1300 and any amendments thereto; that Yorkton retain, at its sole expense, the Regulatory Compliance group of PricewaterhouseCoopers LLP (PwC) to conduct a independent review of the plan adopted by Yorkton to ensure satisfactory implementation of the plan, and to provide a report to Yorkton and Commission staff as to the results of the review; that the PwC report be completed within a reasonable time frame to be set out by PwC, in consultation with Yorkton and Commission staff; that Yorkton be reprimanded; and that Yorkton pay $200,000 of the Commission's costs with respect to the matter. In addition, Yorkton agreed to make a voluntary payment to the Commission in the amount of $1,250,000, to be allocated by the Commission for purposes that will benefit Ontario investors, and to cooperate with the Commission and its staff with any additional investigation conducted by staff in relation to matters concerning other persons and companies, including former and current employees of Yorkton.

[193] Counsel for the respondent argued that Paterson engaged in the same events as Donnini, and that, in fact, Paterson was the instigator who initiated the transactions and the deal: Donnini was never part of it. However, as counsel for staff pointed out, Paterson did not engage in the illegal insider trading, and there was no evidence before the Commission in the Paterson settlement hearing that Paterson encouraged or instructed Donnini to do so. There was nothing wrong in Paterson's instigating and promoting the second special warrants financing or in seeking Donnini's input. Paterson's failure, according to the settlement agreement, was a failure in management and supervisory functions. We find Paterson's conduct as admitted in the settlement agreement, and Donnini's conduct as evidenced in the case before us, very different in degree and nature. As for Yorkton, it admitted that it failed to properly supervise Paterson and Donnini, and permitted a culture of non-compliance in connection with the second special warrants financing. Staff did not allege, nor did Yorkton admit, in the Yorkton settlement a breach of section 76(1). The Commission panel that heard the Yorkton settlement was not privy to the evidence that was presented to us in the case before us.

[194] Counsel for staff submitted that where a party agrees to settle, such action could be taken into account to give a lesser sanction than might otherwise be appropriate. However, she argued that the Commission should not make sanctions more severe than they otherwise might be just because Donnini, unlike Paterson and Yorkton, did not agree to settle this matter.

[195] We agree with the arguments of counsel for staff that the Paterson and Yorkton settlements are not of much relevance for the case before us, and that Donnini should not receive more severe sanctions than otherwise appropriate just because he did not agree to settle the case against him.

2. Proxy Value of Voluntary Payments

[196] Counsel for staff submitted that we should not give any proxy value to the monetary payments that Yorkton and Paterson agreed to pay in their settlement agreements. We agree.

3. Other Precedents

[197] Counsel for staff acknowledged that although looking at other cases, including settlements, may be helpful in determining appropriate sanctions, each case is very fact specific. We agree with that observation.

[198] We are of the opinion that of all the precedents that have been referred to, the present case comes closest to *Woods*. In *Woods*, Woods sold securities with knowledge of a material fact or material change which had not been generally disclosed. Woods had been convicted of insider trading and imprisoned for 90 days. Unlike Donnini, Woods was not a registrant, although he had arranged financings for others, was considered by the Commission to be a professional in the marketplace, and was an active trader. Woods used insider information illegally when he traded for the account of his friend and, like Donnini, he obtained no direct benefit for himself. Woods was relatively young. However, unlike Donnini, Woods did not act for the benefit of his employer, and did not stand to profit as a shareholder of his employer, or by enhancing his performance as a liability trader with his employer.

[199] In arriving at an appropriate sanction in *Woods*, the Commission observed, at 4630,

> Woods is still a relatively young man and, in the normal course, could be a participant in the capital markets for a good many years. It could certainly be argued that an order for a limited period would not be appropriate since, if he has not yet learned that what he did was, to use a neutral term, inappropriate, it may not be likely that he will do so as a result of his removal from the marketplace for a limited period.
>
> However, it appears that permanent clause 3 orders have heretofore generally been made, after a hearing, in situations in which there has been a course of conduct involving protracted and continued breaches of the Act. This is not such a case. Without deciding that it is only in such circumstances that a permanent order should be made, we have concluded such an order should not be made here.
>
> We have concluded that, in all the circumstances of this case, an order for a lengthy, but definite, period is required, and that a 15-year period is appropriate.

In light of all the circumstances of the case, the Commission concluded that exemptions contained in Ontario securities law would not apply to Woods for a period of 15 years, with certain exceptions.

4. Investor Confidence

[200] Counsel for staff argued that the Commission should consider an infraction of the insider trading prohibition as a matter of particular concern insofar as it impacts the confidence that investors place in a fair and efficient marketplace.

[201] In *Asbestos*, at paragraph 42, Justice Iacobucci emphasized the protective and preventive nature of section 127 and its focus on future harm:

> [I]t is important to recognize that s. 127 is a regulatory provision. In this regard, I agree with Laskin J.A. that "[t]he purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventive, intended to be exercised to prevent likely future harm to Ontario's capital markets" (p. 272). This interpretation of s. 127 powers is consistent with the previous jurisprudence of the OSC in cases such as *Canadian Tire, supra*, aff'd (1987), 59 O.R. (2d) 79 (Div. Ct.); leave to appeal to C.A. denied (1987), 35 B.L.R. xx, in which it was held that no breach of the Act is required to trigger s. 127. It is also consistent with the objective of regulatory legislation in general. The focus of regulatory law is on the protection of societal interests, not punishment of an individual's moral faults: see *R*. v. *Wholesale Travel Group Inc*., [1991] 3 S.C.R. 154, at p. 219.

[202] In *Re M.C.J.C. Holdings Inc. and Michael Cowpland* (2002), 25 O.S.C.B. 1133 at 1135 (*M.C.J.C.*), the Commission said:

> We have a duty to take steps to make sure that manipulative or other improper practices in the financial marketplace are not tolerated and that there is a reason for confidence in that marketplace.
>
> Illegal insider trading by its very nature is a cancer that erodes public confidence in the capital markets. It is one of the most serious diseases our capital markets face. If we do not

> act in the public interest by sending an appropriate message in appropriate circumstances, then we fail in doing our duty.

[203] Where a registrant, who after all is a part of the market system, trades illegally while in possession of confidential material information obtained through his employment, the potential harm to investor confidence in a fair marketplace is all the more serious.

5. Relevant Considerations

[204] In *Belteco*, at 7746, the Commission set out a series of factors to consider when setting sanctions:

> [I]n determining both the nature of the sanctions to be imposed as well as the duration of such sanctions, we should consider the seriousness of the allegations proved; the respondent's experience in the marketplace; the level of a respondent's activity in the marketplace; whether or not there has been a recognition of the seriousness of the improprieties; and whether or not the sanctions imposed may deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets.

[205] In *M.C.J.C.*, at 1136, the Commission referred to the importance of assessing impact on a respondent when determining the appropriateness of sanctions as being in the public interest:

> In determining impact, we need to consider all relevant factors in proportion to circumstances relevant to a respondent to be sure sanctions are proportionately appropriate. Such factors may include in varying importance the following: the size of any profit (or loss avoided) from the illegal conduct; the size of any financial sanction or voluntary payment when considered with other factors; the effect any sanction might have on the livelihood of the respondent; the restraint any sanction may have on the ability of the respondent to participate without check in the capital markets; the respondent's experience in the marketplace; the reputation and prestige of the respondent; the shame, or financial pain, that any sanction would reasonably cause to the respondent; and the remorse of the respondent. These are some of the factors that we believe may be relevant in various degrees. There may be others, and perhaps all of the factors we have mentioned would not be relevant in this or another particular case.

[206] We consider the factors mentioned in *Belteco* and *M.C.J.C.* to be useful and have taken them into account in deciding what sanctions are appropriate in the present case.

[207] Donnini was an experienced trader. He was the fourth-largest shareholder of Yorkton, the senior liability trader and the senior institutional trader of Yorkton. As we previously stated, he was more a chief lieutenant than a common foot soldier. His activity in the marketplace was influential. On February 29, 2000, Donnini traded 1,094,120 KCA shares, or 29.3% of the total volume for KCA that day. On March 1, 2000, Donnini traded 437,200 KCA shares, or 24.2% of the total volume for KCA that day. He was trading on a massive scale while in possession of confidential material information.

[208] Donnini was well positioned to recognize the seriousness of the impropriety of trading KCA shares with material undisclosed information contrary to section 76(1) of the Act. He admitted to counsel for the staff in cross-examination that:

a) he had taken all the necessary courses to inform himself about his responsibilities as a registrant, and the conduct expected of him as a registrant;

b) in his role as head trader, he appreciated that the integrity of the capital markets depended on equal access to information by all prospective investors;

c) as head trader, information gathering, in terms of knowing what to trade in and how to conduct trading strategies, was part of his job;

d) he understood the concept of a level playing field for all investors having equal access to information;

e) he agreed that if the rules were not abided by, if an investor traded in material undisclosed information, the integrity of the markets would break down; and

f) he understood and recognized that as a head trader, he had a responsibility not to trade on material undisclosed information, and to ensure that those he supervised did not do so.

[209] Donnini's entire working experience has been in the securities industry. He is approximately half-way through a typical 35-year working life in the securities industry. Securities trading by house professionals is becoming more and more a career for younger persons.

D. Conclusions on Sanctions

[210] In *Asbestos*, at paragraph 43, Justice Iacobucci endorsed *Mithras*, where the Commission emphasized, at 1610-1611:

> [T]he role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant –

> those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing, we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.

[211] We are of the opinion that a period of 15 years for a suspension of Donnini's registration and for restrictions on trading and acting as a director or officer of a registrant, is appropriate for protective and preventive purposes, considering Donnini's market conduct, including his infractions of CDNX and TSE requirements and his violation of Yorkton's internal procedures, and in view of his lack of appreciation of the seriousness of his conduct. The 15-year period is appropriate to keep Donnini out of the securities industry and unable to repeat his conduct for most of his remaining working years.

[212] The conduct of Donnini at issue in the case before us – trading while in possession of undisclosed material facts – arose in his capacity as a liability trader for his employer and not while trading for his own account. (We note, however, that his January 24, 2000 violation of the CDNX's off-floor trading rule involved the purchase by Donnini of 25,000 shares of Book4Golf through his personal account. This violation of the off-floor trading rule did not have the same gravamen as illegal insider trading, and it was dealt with by the CDNX.) The restrictions on his registration and trading for others will have a severe impact on him. Therefore, we do not believe it necessary to restrict trading for his own account.

[213] In selecting a 15-year period for protective and preventive purposes, the sanctions will also, incidentally, serve as general deterrence; we do not believe it necessary or appropriate to lengthen the 15-year period for general deterrence purposes as suggested by counsel for staff.

[214] We accept the truth of Donnini's testimony, in the sanctions part of the hearing, that the findings announced on June 11, 2002, and reported in the press have had a devastating impact on him. However, the sanctions we are ordering are still necessary to have the appropriate impact on Donnini and deter him from violating Ontario securities law when he trades for his own account or if, in the future, he becomes involved in the securities industry again.

[215] Counsel for staff suggested that we consider whether it is desirable in this case to prohibit Donnini from serving as an officer or director of any public company. She made no recommendations about this. In light of the specific facts of this case, we determined that the disciplines of the marketplace and the procedures followed by public companies in selecting and electing directors and appointing officers should be adequate to address public interest concerns if the opportunity for Donnini to serve as an officer or director of a public company should arise. Accordingly, we are not prohibiting Donnini from acting as a director or officer of any public company.

[216] Counsel for staff requested that we reprimand Donnini. The Commission will frequently issue a reprimand under clause 6 of section 127(1) to send the message that a respondent's conduct has been unacceptable. In the case before us, we believe the message will be sent by the severity of the sanctions we are ordering and the words we have used in commenting on Donnini's conduct, which serve as a sufficient reprimand. A further reprimand would be anti-climactic, if not redundant.

E. Orders

[217] Accordingly, being of the opinion that it is in the public interest to do so, we are ordering that:

(1) pursuant to clause 1 of section 127(1) of the Act, the registration granted to Donnini under Ontario securities law be suspended for 15 years;

(2) pursuant to clause 2 of section 127(1), trading in any securities by Donnini cease for 15 years, with the exception that Donnini be permitted to trade in securities

  (a) in personal accounts in his name in which he has sole beneficial interest, and

  (b) in registered retirement savings plans in which he, either alone or with his spouse, has sole beneficial interest;

(3) pursuant to clause 7 of section 127(1), Donnini resign all positions that he holds as a director or officer of an issuer that is a registrant, or that directly or indirectly holds more than a 5% interest in a registrant; and

(4) pursuant to clause 8 of section 127(1), Donnini is prohibited for 15 years from becoming or acting as a director or officer of an issuer that is a registrant, or that directly or indirectly holds more than a 5% interest in a registrant.

IX. Costs

1. Matters Considered

[218] Section 127.1 of the Act gives the Commission the discretion to order a person to pay the costs of an investigation and a hearing if the Commission is satisfied that the person has not complied with the Act or has not acted in the public interest. In this regard, section 127.1(4) of the Act permits the Commission, in ordering the payment of costs, to include, without limitation, costs incurred in respect of services provided by persons appointed or engaged under sections 5, 11 or 12 of the Act, costs of matters preliminary to the hearing, costs for time spent by

the Commission or staff, any fees paid to a witness, and costs of legal services provided to the Commission.

[219] Counsel for staff submitted a bill of costs in the amount of $186,052.30. Counsel for the respondent objected that staff's bill of costs merely sets out the number of hours that counsel and the investigator had incurred with a suggested hourly rate for each of them, but did not contain docket details. Relying on his experience before the courts and how a solicitor's bills are taxed, he suggested that counsel for staff should provide dockets giving details of the hours spent and what the hours are for. He submitted that the court would always have a full docket record so that at the very least on the first level, one could make submissions about whether the work performed was in relation to the matter, whether it was necessary, and whether a lot of work was unnecessary. Without such detail, counsel for the respondent suggested, he had no means of testing the claim for costs.

[220] Counsel for staff observed that we are not the Superior Court of Ontario, which would have regard to the *Courts of Justice Act*, the sections and legislative objectives of that scheme, the related rules of civil procedure and the Ontario grid that was submitted as Exhibit 20. Our discretion under Section 127 is not one to punish or penalize the respondent, but is a public interest one. She submitted that, as with other administrative bodies, the Commission has the authority under section 127.1 to consider costs in relation to what the legislation provides and what is put before the Commission. She suggested that it would not be appropriate and would not meet the regulatory objectives of efficiency for the Commission to be turned into taxing officers to scrutinize dockets. She argued that, as we all know, the securities industry supports and funds the Commission through fees that it pays. The objective of our legislation, she argued, is to allow for the Commission to impose a costs order so that there can be recovery of costs. That is not, she argued, what the *Courts of Justice Act* and related rules are designed to do. They are designed to control costs, to allow litigants in private disputes where there is a profit element, to have some sense of whether or not they are going to continue on with litigation or bear the costs of litigation. She submitted it would be wrong to try to import that system into our system.

[221] She went on to say that none of the time spent prior to January 14, 2002 or subsequent to June 24, 2002, was included in the bill of costs. In other words, no claim has been made for a portion of costs incurred prior to January 14, 2002, in connection with the investigations and efforts relating to Yorkton and Paterson and that undoubtedly were also related, at least in part, to the proceeding against Donnini. We also note that no costs have been included for the time of the Commission panel hearing this matter.

[222] We were advised by counsel for staff that the bill of costs also does not include the work performed by two law clerks who were involved in the file. While we were not provided with docket entries, we were advised by counsel that the senior litigation counsel on the case in the enforcement branch of the Commission, who was called to the bar in 1990, had carriage of and primary responsibility for the litigation in respect of Yorkton, including the Donnini proceedings. Her involvement included: obtaining and reviewing information in documents; making disclosure of 46 volumes of material; preparing for and conducting interview of witnesses; and all aspects of preparing for and attending the hearing. The other litigation counsel in the enforcement branch was called to the Bar in 1995. She was assigned to the Donnini case on April 22, 2002. Her primary role was to research, review and prepare written submissions on the law. To this end, she conducted a detailed review of Canadian and U.S. law, prepared written submissions and compiled the necessary cases and statutory authorities. She also assisted senior litigation counsel in the weeks leading up to the hearing and attended the hearing. Written legal submissions drafted by her were: An Overview of the Law (dealing with the statutory regime, in Canadian and U.S. cases in respective insider trading and materiality); Evidentiary Principles and Cases under the *Statutory Powers Procedure Act*; The Separation of the Liability and Sanction Phases; supplementary submissions (in response to the respondent's submissions and cases, which were provided to staff on Thursday, May 16, 2002); and submissions on sanctions. The staff investigator obtained and reviewed information and documents; assisted in the disclosure process; prepared for and conducted witness interviews; and conducted detailed analyses of the trades carried out by Donnini (including preparation of the chart marked as Exhibit 11).

[223] Counsel for the respondent also questioned the methodology used by staff in preparing its bill of costs. He suggested that costs incurred by the Commission should not be determined by applying an hourly rate to the hours incurred by salaried employees of the Commission, and that perhaps only a proportion of the time spent should be so included. He argued, for example, that if an investigator on the file spent 200 hours, and one would expect that his or her yearly number of hours would be 1800, the appropriate amount would be 1/9 of his or her annual salary. Counsel for the respondent suggested another way to go about dealing with costs, other than taking a proportion of each salaried employee's salary based on time spent on this matter in comparison with the average number of hours that the employee would be expected to expend in a year. That other way was to look at the recent costs grid put out by the courts.

[224] We do not agree with counsel for the respondent that the methodology of applying an appropriate dollar amount to the hours incurred by staff is inappropriate. The Commission incurs overhead through rent, administration and other legitimate costs, a portion of which can be cost accounted for each matter. We believe that an hourly rate applied to time expended by persons involved in a case is a meaningful methodology to determine costs. We note, and counsel for the respondent does not dispute the fact, that the hourly rates applied in the bill of costs are not out of line with the partial indemnity scale suggested for the courts as evidenced by Exhibit 20.

[225] Taking into account all the exhibits that have been filed in this case, and the reports and investigations that are evidenced by the materials, the number of hours claimed for each of the three persons since January 14, 2002, did not raise a red flag in our minds suggesting that there might be some padding. We did not believe it desirable in this case to examine dockets or a summary of dockets for staff. We were satisfied, especially in view of the January 14, 2002 start date, and the fact that time has been included for only three persons, and in view of the hourly rates selected for the three persons, that staff's bill of costs did not overstate the costs incurred by the Commission in this matter, taking into account the parameters set out in section 127.1 of the Act.

[226] We agree with counsel for staff that cost recovery is the purpose of section 127.1, and that over time, costs recovered by the Commission indirectly reduce the level of fees that the Commission would otherwise need to extract from the securities industry to pay for the Commission's enforcement activities. Cost recovery is fair to other participants in the capital markets. In *Asbestos*, at paragraph 41, Justice Iacobucci emphasized the importance of the Commission considering the efficiency of the capital markets when exercising its public interest discretion. We do not see any reason, in exercising our discretion regarding costs, to arbitrarily cut the recovery level to an amount lower than what is stated in the bill of costs before us. The bill of costs does not include all of the Commission's costs in this matter, and as we indicated earlier, there is no reason to believe that the hours claimed in the bill of costs are overstated.

2. Order Regarding Commission Costs

[227] Accordingly, we are ordering that Donnini pay $186,052.30 as costs of the Commission in investigating his affairs and of, or related to, conducting the hearing in this matter.

September 12, 2002.

"Paul M. Moore" "Kerry D. Adams"

By Commissioner Hands

[228] I concur with the detailed review of the evidence, considerations and analysis of the key issues in this case as expressed by Commissioners Moore and Adams. I differ only on the conclusion that on February 29 and March 1, 2000, Donnini knew, or ought to have known, that the information which he had received about a possible $10 million financing by KCA was a material fact.

[229] I agree with counsel for the respondent that in a charge as serious as insider trading, there should be a high burden of proof upon staff to demonstrate "clear and convincing proof based upon cogent evidence" (*Coates*, cited in *Rosen*) that the respondent knew he was in possession of an undisclosed material fact when he continued to trade KCA shares after 2:45 p.m. on February 29 and up to the release of the material fact to the public on March 2, 2000. After reviewing the testimony presented in this case, I am not satisfied that any of Paterson, McQueen or Milligan clearly conveyed to Donnini during their conversations the fact that by 2:45 p.m. on the afternoon of February 29, 2000, there was a very high probability that the proposed $10 million treasury financing by KCA would proceed. As a result, I did not conclude that Donnini's actions in trading KCA shares constituted a breach of section 76(1) of the Act.

[230] However, I am satisfied that the information that Donnini possessed concerning KCA at the end of his conversation with Paterson and McQueen should have raised sufficient red flags that it could be a material fact that he should have made further enquiries of Paterson or others before continuing to trade KCA shares. Donnini remembers having two conversations earlier on February 29 with Milligan, the chief financial officer of KCA, a man who was previously unknown to him. After the second conversation he changed the method of his KCA short sales to a jitney arrangement so that KCA could not trace the short sales to Yorkton. A few hours later, Paterson and McQueen asked for his views on the market's capacity to accept a $10 million treasury offering which Paterson had proposed to KCA. I am satisfied that the conversation took place, although Donnini has no recollection of it. As a registrant who was the senior liability trader and head institutional trader at Yorkton, Donnini had a duty to be vigilant not to buy or sell KCA shares until he had made further enquiries to determine the significance of the non-public information that he had learned about KCA that day. His failure to exercise proper due diligence to avoid a possible breach of section 76(1) was contrary to the public interest.

[231] As a result of the decisions reached by Commissioners Moore and Adams, it is not necessary for me to determine what sanctions and costs would have been appropriate to impose on Donnini for his failure to exercise the due diligence which represented conduct contrary to the public interest.

September 12, 2002.

"Harold P. Hands"

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Extending & Rescinding Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/Expire
3D Visit Inc.	17 Sep 02	27 Sep 02		
Asset Management Software Systems Corp.	18 Sep 02	30 Sep 02		
FW Omnimedia Corp.	06 Sep 02	18 Sep 02		13 Sep 02
Proprietary Industries Inc.	18 Sep 02	30 Sep 02		
Seahawk Minerals Ltd.	09 Sep 02	20 Sep 02		
Teddy Bear Valley Mines, Limited	06 Sep 02	18 Sep 02		20 Sep 02
Triangle Multi-Service Corporation	06 Sep 02	18 Sep 02	18 Sep 02	
Vindicator Industries Inc.	06 Sep 02	18 Sep 02		
WavePOINT Systems Inc.	13 Sep 02	25 Sep 02		

4.2.1 Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Asset Management Software Systems Corp.	23 Jul 02	02 Aug 02	02 Aug 02		18 Sep 02

4.3.1 Issuer CTO's Revoked

Company Name	Date of Revocation
Telum International Corporation	12 Sept 2002

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Chapter 5

Rules and Policies

5.1.1 OSC Rule 45-502 Dividend or Interest Reinvestment and Stock Dividend Plans, OSC Rule 45-503 Trades to Employees, Executives and Consultants and OSC Rule 72-501 Prospectus Exemption for First Trade over a Market Outside Ontario

NOTICE OF AMENDMENTS TO
RULE 45-502 DIVIDEND OR INTEREST
REINVESTMENT AND STOCK DIVIDEND PLANS

AND TO

RULE 45-503 TRADES TO EMPLOYEES,
EXECUTIVES AND CONSULTANTS

AND

THE RESCISSION OF RULE 72-501
PROSPECTUS EXEMPTION FOR
FIRST TRADE OVER A MARKET OUTSIDE ONTARIO

Notice of Rule

The Commission has made amendments to Rule 45-502 *Dividend or Interest Reinvestment and Stock Dividend Plans* and Rule 45-503 *Trades to Employees, Executives and Consultants*, and has revoked Rule 72-501 *Prospectus Exemption for First Trade Over a Market Outside Ontario* under section 143 of the *Securities Act* (the Act) (collectively, the Amendments).

The Amendments and the material required by the Act to be delivered to the Minister of Finance were delivered on September 17, 2002. If the Minister does not reject or return the Amendments to the Commission for further consideration, the Amendments will come into force on December 1, 2002.

On September 14, 2001, we published the Amendments for comments. We received submissions from three commentators. None of the revisions to the Amendments, as a result of the comments received, are material. Accordingly, the Amendments are not subject to a further comment period. For a summary of these comments and our response to them, please see Appendix A to this Notice.

Substance and Purpose of the Amendments

The Amendments are being made to reflect the new resale regime in Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102) and to eliminate certain frequently-occurring discretionary relief applications. As such, the Amendments address narrow and specific issues with the various rules and do not result from an overall reassessment of the instruments themselves. A number of Canadian securities regulatory authorities, including Ontario, are currently working on a harmonized employee, executive and consultant instrument, which should be published for comment later this year and which will address the broader issues.

To ensure that the amendments necessary for MI45-102 are implemented in a timely manner and to assist stakeholders by eliminating frequently-occurring applications, we have decided to forward the Amendments for approval at this time.

Summary of Changes to the Amendments

There were no substantive changes to the Amendments from the version published on the September 14, 2001. We have made minor changes based on comments received and upon further deliberations, including the following:

- changing the definitions of “listed issuer” and “foreign-listed issuer” in Rule 45-503,
- adding legal representatives and beneficiaries to the group of individuals that are exempted from the registration requirements in sections 2.4 and 3.5 of Rule 45-503,

- updating the reference in section 7.1 of Rule 45-503 to refer to the closely-held issuer exemption rather than the private company exemption,

- including an exemption from the prospectus requirements for first trades if the trade is a trade referred to in sections 6.1 or 8.1 of Rule 45-503, and

- deleting the requirement under Part 5 of Rule 45-502 and Part 10 of Rule 45-503 to make disclosure of the initial exempt trade by the issuer.

For details on these changes, please see Appendix A to this Notice.

Authority for the Amendments

The following sections of the Act provide the Commission with authority to make the Amendments. Paragraph 143(1)8 of the Act authorizes us to make rules that, among other things, provide for exemptions from the registration requirement of the Act. Paragraph 143(1)20 of the Act authorizes us to make rules that, among other things, provide for exemptions from the prospectus requirement of the Act. Paragraph 143(1)28 authorizes us to make rules that, among other things, regulate issuer bids. Paragraph 143(1)48 authorizes us to make rules that specify the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution.

Text of Amendments

The text of the Amendments follows.

September 17, 2002.

APPENDIX A

Summary of Comments Received on Amendments to Rule 45-502 Dividend or Interest Reinvestment and Stock Dividend Plans and to Rule 45-503 Trades to Employees, Executives and Consultants, and the Revocation of Rule 72-501 Prospectus Exemption for First Trade over a Market Outside Ontario under section 143 of the Securities Act (the Act)

A. Introduction

On September 14, 2001, the Commission published proposed amendments to Rule 45-502 *Dividend or Interest Reinvestment and Stock Dividend Plans* (Rule 45-502) and Rule 45-503 *Trades to Employees, Executives and Consultants* (Rule 45-503), and the proposed revocation of Rule 72-501*Prospectus Exemption for First Trade Over a Market Outside Ontario* (Rule 45-501)(the proposed amendments to Rule 45-502 and Rule 45-503, as well as the proposed rescission of Rule 72-501 are collectively referred to as the Proposed Amendments). The comment period ended December 13, 2001.

We received submissions from three commentators (listed in Schedule A). The Commission has considered all submissions received and would like to take this opportunity to thank each of the commentators for their views on the Proposed Amendments.

As noted in the September 14, 2001 publication, the Proposed Amendments are being made to reflect the new resale regime in Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102) and to eliminate certain frequently-occurring discretionary relief applications. As such, the amendments address narrow and specific issues with the various rules and do not result from an overall reassessment of the instruments themselves. Some of the comments raised go beyond the scope of the amendments and question more fundamental concepts of Rule 45-503. A number of Canadian securities regulatory authorities, including Ontario, are currently working on a harmonized employee, executive and consultant instrument, which should be published for comment later this year and which will address the broader issues. Therefore, while we have provided responses to all comments raised, those comments which deal with the more fundamental issues will be considered further in the context of the harmonized instrument.

B. General Comments

The commentators are generally supportive of the Proposed Amendments.

None of the commentators raised any comments on the proposed amendments to Rule 45-502 or the proposed rescission of Rule 72-501.

All commentators expressed their support for the Commission's decision to make amendments to Rule 45-503 that would enhance the regulatory framework by reducing the need for applications in many circumstances.

C. Specific Comments on the Proposed Amendments to Rule 45-503

Comment (i): One commentator noted that the issuer bid exemption in new section 10.1 would address many of the problems associated with the requirements of determining "fair market value" as prescribed under Ontario securities law. The commentator suggested, however, that the issuer bid exemption should be expanded to allow the repurchase, in the event of a change of control of the issuer, of options issued under a stock incentive plan without triggering the issuer bid requirements.

Response: We agree that the new issuer bid exemption will reduce the number of applications for discretionary relief. However, we do not agree that the exemption should be expanded to include change of control situations. If an option plan contains provisions permitting an issuer to automatically re-acquire options in exchange for the difference between the offering price and exercise price, then one of the exemptions under clauses 93(3)(a), (b) or (c) of the Securities Act should be available. If the repurchase of options is not contemplated in the plan, we do not believe that we should address change of control situations in the rule because it could result in option holders being treated differently.

Comment (ii): Two of the commentators suggested that Rule 45-503 should be amended to provide relief from the registration requirements where the first trade is being effected by the legal personal representative or the beneficiaries of the estate of a deceased employee or executive.

Response: Sections 2.4 and 3.5 have been modified to incorporate these suggestions.

Comment (iii): One commentator noted that there is no exemption from the registration requirement where an employee acquires an option while he or she was employed by the issuer, exercises the option after leaving the employment and then trades the underlying security.

Response: Sections 2.4 and 3.5 have been modified to provide registration relief for a former employee, consultant or executive trading underlying securities acquired on exercise of options acquired during his/her period of employment.

Comment (iv): One commentator suggested that Rule 45-503 should be broadened to provide exemptions where there is no direct employee relationship between the issuer of the securities and the employees; for example where a third party, such as a government-mandated fund or an employee trust, issues securities to the company's employees.

Response: Many third party funds and trusts are highly complex and leveraged vehicles that may not be appropriate or suitable for some employees. Accordingly, we are not prepared to extend the rule to those situations and believe that they are more appropriately dealt with on a case-by-case basis.

Comment (v): One commentator is of the view that the interpretation of *de minimis* in the new subsection 1.2(7) is too restrictive and a higher threshold for Canada would be preferable. The commentator also suggested that any beneficial ownership test should be based on knowledge since, in the commentator's opinion, it is generally difficult to determine beneficial ownership.

Response: The *de minimis* standard reflects the current standard adopted in MI 45-102. We note that section 1.14 of the Companion Policy to MI 45-102 provides helpful guidance on how to determine beneficial ownership.

Comment (vi): One commentator suggested that the definition of "listed issuer" should be updated to reflect recent changes to the names of certain Canadian stock exchanges.

Response: The definition of "listed issuer" has been modified accordingly. The definition of "foreign-listed issuer" has also been modified.

Comment (vii): One commentator expressed concern that Rule 45-503 is too complex and too constraining on non-public companies. In the commentator's view, non-public companies should not be subject to the public company-like restrictions imposed by section 3.2 of Rule 45-503 for stock-based executive compensation arrangements. Alternatively, they should not be required to incur the cost and expense associated with obtaining prior shareholder approval for these types of arrangements in order to be exempted from the registration and prospectus requirements. The commentator recommended that section 2.1 be repealed and that clause 72(1)(n) of the Securities Act (Ontario) (the Act) should be reenacted. Alternatively, the commentator suggested that section clause 72(1)(n) of the Act should be made available to non-public companies.

Response: We note that prior shareholder approval is only required if certain thresholds are exceeded. These thresholds are sufficiently high to reduce the number of non-listed companies that would be subject to the prior shareholder requirement. In addition, all companies, whether they are "public" or "non-public", must hold annual general meetings under corporate law and must also prepare and deliver information circulars to their shareholders in connection with the annual general meetings. Accordingly, any additional costs to non listed-issuers imposed by the conditions set out in section 3.2 would be further limited to situations where a plan is introduced or amended and securities are issued after the annual general meeting has taken place.

Comment (viii): One commentator questioned whether a trade could be done through a plan administrator where the trade originates from an employee in the context of exercising options. The commentator noted that the language in section 2.2, which exempts "...trades **by** an issuer **to** any employee...", suggests that the trade must originate with the issuer and not the employee. In context of exercising options facilitated by a plan administrator, the commentator expressed concerns that the plan administrator could not rely on Rule 45-503.

Response: We believe that section 8.1 is sufficiently broad to provide an exemption to the administrator in this situation.

Comment (ix): One Commentator suggested that if an issuer uses a broker or dealer registered in the U.S. as its plan administrator, the administrator would be a "market intermediary" as defined by section 2.4 of the Regulation made under the Securities Act.

Response: Where a U.S. registered administrator is acting solely in the capacity as an administrator on behalf of and for the benefit of employees consultants or executives in connection with a service provider plan, an incentive plan, or other plan designed to align the interests of employees, consultants or executives with other shareholders through the issuance of securities, including opening and maintaining accounts in the name of employees, consultants or executives and facilitating the executions of trades in accordance with administering a plan, the administrator is not a acting as an market intermediary in Ontario.

Comment (x): One commentator suggested that the meaning of the term "voluntary" in Rule 45-503 needs to be clarified, particularly in the context of an option plan.

Response: We disagree and note that subsection 1.2(5) of the rule provides a sufficient interpretation of the meaning of the word "voluntary".

Schedule A - List of Commentators

1. Fasken Martin DuMoulin LLP by letter dated December 13, 2001

2. Baker & McKenzie by letter dated December 21, 2001*

3. Simon Romano by letter dated January 8, 2002*

* These letters were received following the expiry of the comment period.

AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 45-502
DIVIDEND OR INTEREST REINVESTMENT
AND STOCK DIVIDEND PLANS

PART 1 AMENDMENTS

1.1 Amendments - Rule 45-502 Dividend or Interest Reinvestment and Stock Dividend Plans is amended by

(a) adding the definition ""MI 45-102" means Multilateral Instrument 45-102 Resale of Securities;";

(b) deleting section 1.2;

(c) deleting clause 3.1(a)(ii) and substituting for that clause

"(ii) an issuer other than a reporting issuer and the class of securities is listed and posted for trading, traded, or quoted, on

(A) Bourse de Montréal Inc.,

(B) the TSX Venture Exchange Inc.,

(C) the New York Stock Exchange, Inc.,

(D) the American Stock Exchange LLC,

(E) Nasdaq National Market,

(F) Nasdaq SmallCap Market,

(G) the London Stock Exchange plc, or

(H) a successor to any of the entities listed in subclauses (A) through (G); and";

(d) deleting clauses 3.1(b)(ii) and (iii) and substituting for those clauses

"(ii) at the time of the trade, residents of Canada

(A) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series; and

(B) did not represent in number more than 10 percent of the total number of owners directly or indirectly of the class or series.";

(e) deleting section 4.1 and substituting for that section

"4.1 **Restrictions on First Trade of Securities Distributed under Section 2.1 or 3.1** - If a security was distributed under an exemption from the prospectus requirement in section 2.1 or 3.1, the first trade in that security is subject to section 2.6 of MI 45-102.";

(f) deleting Part 5; and

(h) renumbering Part 6 as Part 5, section 6.1 as section 5.1, Part 7 as Part 6 and section 7.1 as section 6.1.

PART 2 EFFECTIVE DATE

2.1 Effective Date - These Amendments come into force on December 1, 2002.

AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 45-503
TRADES TO EMPLOYEES, EXECUTIVES
AND CONSULTANTS

PART 1 AMENDMENTS

1.1 Amendments - Rule 45-503 Trades to Employees, Executives and Consultants is amended by

(a) adding the definition ""convertible security" means a security of an issuer that is convertible into, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of the same issuer;";

(b) adding the definition ""exchangeable security" means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of another issuer;";

(c) deleting the definition "foreign-listed issuer" and substituting for that definition ""foreign-listed issuer" means an issuer any of the securities of which are listed and posted for trading, or traded, on the American Stock Exchange LLC, the New York Stock Exchange, Inc. or the London Stock Exchange plc or quoted on Nasdaq National Market or Nasdaq SmallCap Market or a successor to any of those entities;";

(d) deleting the definition of "hold period";

(e) deleting the definition of "listed issuer" and substituting for that definition ""listed issuer" means an issuer any of the securities of which are listed and posted for trading, or traded, on the Toronto Stock Exchange, the TSX Venture Exchange Inc., or Bourse de Montréal Inc. or a successor to any of those entities;";

(f) adding the definition ""MI 45-102" means Multilateral Instrument 45-102 Resale of Securities;";

(g) adding the definition ""multiple convertible security" means a security of an issuer that is convertible into, or exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a convertible security, an exchangeable security or another multiple convertible security;";

(h) deleting the definition "underlying security" and substituting for that definition ""underlying security" means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security.";

(i) deleting subsection 1.2(5) and substituting for that subsection

"(5) In this Rule, references to “current” and “former” refer to the status at the time of a trade by the individual employee, the individual executive and, in the case of a consultant, the status of the individual consultant or the consultant’s company or consultant partnership.”;

(j) deleting subsection 1.2(7) and substituting for that subsection

"(7) In this Rule, an issuer is considered to have a *de minimis* Canadian market with respect to a class or series of securities of the issuer if, at the relevant time, residents of Canada

(a) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series; and

(b) did not represent in number more than 10 percent of the total number of owners directly or indirectly of securities of the class or series.";

(k) deleting section 2.4 and substituting for that section

"2.4 ***De Minimis* Registration Exemption for Trades by Employees, Former Employees, Consultants, Former Consultants and Administrators** - Section 25 of the Act does not apply to a trade by an employee, former employee, consultant or former consultant of an issuer (including a personal representative of, or a beneficiary under, the estate of any of these individuals), or an employee administrator of an issuer on behalf of an employee, former employee, consultant or

former consultant (including a personal representative of, or a beneficiary under, the estate of any of these individuals), in a security of the issuer's own issue, if

(a) in the case of a trade by a former employee, former consultant or administrator on behalf of a former employee or former consultant (including a personal representative of, or a beneficiary under, the estate of any of these individuals), the security, or in the case of a trade of an underlying security, the convertible security, exchangeable security or multiple exchangeable security, was distributed to the former employee, former consultant or administrator of the issuer under an exemption from the prospectus requirement in section 2.2, 5.1 or 8.1;

(b) the issuer was not a reporting issuer at the time of the acquisition of the security, or in the case of an underlying security at the time of the acquisition of the convertible security, exchangeable security or multiple exchangeable security;

(c) at the time of the acquisition of the security, or in the case of an underlying security at the time of the acquisition of the convertible security, exchangeable security or multiple exchangeable security, the issuer had a *de minimis* Canadian market for the security; and

(d) the trade is made

(i) through an exchange, or a market, outside of Canada, or

(ii) to a person or company outside of Canada.";

(l) deleting paragraph 3.2(a) and substituting for that paragraph

"(a) in the case of the issue of a security as an incentive,

(i) prior shareholder approval has been obtained for the incentive or the incentive plan under which the incentive is being issued, including any amendments thereto, if the incentive or the incentive plan, in each case together with all of the issuer's other previously established or proposed incentives or incentive plans, could result, at any time, in

(A) the number of shares reserved for issuance under stock options granted to related persons exceeding 10 percent of the outstanding issue,

(B) the issuance to related persons, within a 12 month period, of a number of shares exceeding 10 percent of the outstanding issue,

(C) the number of shares reserved for issuance under stock options granted to any one related person and the related person's associates exceeding five percent of the outstanding issue, or

(D) the issuance to any one related person and the related person's associates, within a 12 month period, of a number of shares exceeding five percent of the outstanding issue, or

(ii) prior shareholder approval has been obtained for the incentive or the incentive plan under which the incentive is being issued, irrespective of whether any amendments are made subsequent to shareholder approval, if

(A) the incentive or the incentive plan, in each case together with all of the issuer's other previously established or proposed incentives or incentive plans, could result, at any time, in

I. the number of shares reserved for issuance under stock options granted to related persons exceeding 10 percent of the outstanding issue,

II. the issuance to related persons, within a 12 month period, of a number of shares exceeding 10 percent of the outstanding issue,

III. the number of shares reserved for issuance under stock options granted to any one related person and the related person's associates exceeding five percent of the outstanding issue, or

IV. the issuance to any one related person and the related person's associates, within a 12 month period, of a number of shares exceeding five percent of the outstanding issue, and

(B) the amendments made subsequent to the shareholder approval could not result in the number of shares reserved for issuance, or issued with a 12 month period, exceeding the applicable percentage referred to in clause (A).

(m) deleting clause 3.3 (b)(ii) and substituting for that clause

"(ii) at the time of the trade, the issuer has a *de minimis* Canadian market for the security; and";

(n) deleting section 3.5 and substituting

"3.5 ***De Minimis* Registration Exemption for Trades by Executives, Former Executives and Administrators** - Section 25 of the Act does not apply to a trade by an executive or former executive of an issuer (including a personal representative of, or a beneficiary under, the estate of any of these individuals), or an executive administrator of an issuer on behalf of an executive or former executive (including a personal representative of, or a beneficiary under, the estate of any of these individuals), of a security of the issuer's own issue, if

(a) in the case of a trade by a former executive or an executive administrator on behalf of a former executive (including a personal representative of, or a beneficiary under, the estate of a former executive), the security, or in the case of a trade of an underlying security, the convertible security, exchangeable security or multiple exchangeable security, was distributed to the former executive or executive administrator of the issuer under an exemption from the prospectus requirement in section 3.1, 3.2, 3.3, 5.1 or 8.1;

(b) the issuer was not a reporting issuer at the time of the acquisition of the security, or in the case of an underlying security at the time of the acquisition of the convertible security, exchangeable security or multiple exchangeable security;

(c) at the time of the acquisition of the security, or in the case of an underlying security at the time of the acquisition of the convertible security, exchangeable security or multiple convertible security, the issuer had a *de minimis* Canadian market for the security; and

(d) the trade is made through

(i) an exchange, or a market, outside of Canada, or

(ii) to a person or company outside of Canada.";

(o) deleting section 7.1 and substituting for that section

"7.1 **Removal of Certain Exemptions for Trades of Securities of Certain Companies –** The exemption contained in section 2.1 of Ontario Securities Commission Rule 45-501 Exempt Distributions is not available for a trade in a security of a subsidiary company of an employee or an executive, or a consultant company, if the company has acquired securities under an exemption contained in this Rule and at the time of the trade holds the securities, unless a trade of the securities acquired by the company to the purchaser would have been permitted under section 9.1.

(p) deleting subsection 8.1(2);

(q) deleting section 9.1 and substituting for that section

"9.1 **Restrictions on First Trades of Securities Distributed under Exemptions in Rule**

(1) If a security is distributed to a person or company, other than an associated consultant or an investor consultant of the issuer of the security, under an exemption from the prospectus

requirement in section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1, the first trade in that security is subject to section 2.6 of MI 45-102.

(2) If a security was distributed to an associated consultant or investor consultant of the issuer of the security under an exemption from the prospectus requirement in section 2.2, 5.1 or 8.1, the first trade in that security is subject to section 2.5 of MI 45-102.

(3) If a convertible security, exchangeable security or multiple convertible security was distributed to an associated consultant or investor consultant of the issuer of the underlying security under an exemption from the prospectus requirement in section 2.2, 5.1 or 8.1, the first trade in the underlying security is subject to section 2.5 of MI 45-102.

(4) If the trade is a trade referred to in section in section 6.1 or section 8.1, the trade is not subject to the prospectus requirement."; and

(r) deleting Part 10 and substituting for that Part

"PART 10 - ISSUER BID EXEMPTIONS

10.1 **Issuer Bid Exemptions** - Sections 95, 96, 97, 98 and 100 of the Act, section 203.1 of the Regulation and Rule 61-501 Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions do not apply to the acquisition by an issuer of securities of the issuer from an employee, former employee, executive, former executive, consultant or former consultant of the issuer, or an administrator of the issuer on behalf of an employee, former employee, executive, former executive, consultant or former consultant to fulfil withholding tax obligations in respect of the employee, former employee, executive, former executive, consultant or former consultant of the issuer, or as payment of the exercise price of a stock option by the employee, former employee, executive, former executive, consultant or former consultant of an issuer, or an administrator of the issuer on behalf of the employee, former employee, executive, former executive, consultant or former consultant if

(a) in the case of an acquisition from a former employee, former executive, former consultant or an administrator of the issuer on behalf of a former employee, former executive or former consultant, the security, or in the case of an underlying security, the convertible security, exchangeable security or multiple exchangeable security, was distributed to the former employee, former executive, former consultant or an administrator of the issuer under an exemption from the prospectus requirement in section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1;

(b) the acquisition is made in accordance with the terms of a service provider plan that specifies how the value of the securities acquired by the issuer shall be determined;

(c) in the case of securities acquired as payment of the exercise price of a stock option, the date of exercise of the option is chosen by the option holder; and

(d) the aggregate number, or, in the case of debt securities that are convertible securities, exchangeable securities or multiple exchangeable securities, the aggregate principal amount, of securities acquired by the issuer within a 12 month period under this section does not exceed five percent of the outstanding securities of the class or series at the beginning of the period."

PART 2 EFFECTIVE DATE

2.1 Effective Date - These Amendments come into force on December 1, 2002.

RESCISSION OF
ONTARIO SECURITIES COMMISSION RULE 72-501
PROSPECTUS EXEMPTION FOR FIRST TRADE OVER A MARKET
OUTSIDE ONTARIO

PART 1 RESCISSION

1.1 Rescission - Rule 72-501 Prospectus Exemption for First Trade Over a Market Outside Ontario is rescinded.

PART 2 EFFECTIVE DATE

2.1 Effective Date - This rescission comes into force on December 1, 2002.

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Chapter 6

Request for Comments

6.1.1 Notice of Request for Comments - Proposed National Instrument 81-106 and Companion Policy 81-106CP Investment Fund Continuous Disclosure, and Form 81-106F1 Contents of Annual and Quarterly Management Reports of Fund Performance

NOTICE OF REQUEST FOR COMMENTS

PROPOSED NATIONAL INSTRUMENT 81-106
AND COMPANION POLICY 81-106CP
INVESTMENT FUND CONTINUOUS DISCLOSURE, AND
FORM 81-106F1
CONTENTS OF ANNUAL AND QUARTERLY MANAGEMENT REPORTS
OF FUND PERFORMANCE

Introduction

The Canadian Securities Administrators (the "CSA"), with this Notice, are publishing for comment proposals that would implement a new regulatory regime governing the continuous disclosure provided by investment funds. The proposed regulatory regime attempts to address the need to provide more timely and useful ongoing financial and non-financial information about an investment fund to investors and advisers.

It is anticipated that the form of financial disclosure prescribed by the proposed National Instrument will allow an average investor to better assess an investment fund's performance, position and future prospects. Improving the quality and timeliness of financial disclosure should increase the likelihood that investors, or potential investors, will use the information to compare investments and to make appropriate investment decisions. Likewise, it is expected that the proposed form of financial disclosure will assist advisers in selecting and recommending appropriate investments that are consistent with their clients' goals. Further, the adoption of the proposed regulatory regime on a national basis will serve to harmonize reporting requirements for investment funds across the jurisdictions.

The proposed National Instrument and Form are expected to be adopted as a rule in each of British Columbia, Alberta, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador, as a Commission regulation in Saskatchewan and as a policy in all other provinces and territories. The proposed Companion Policy is expected to be implemented as a policy in all provinces and territories.

The implementation of the proposed National Instrument will also include certain consequential amendments (the "Consequential Amendments") to National Instrument 81-101 Mutual Funds Prospectus Disclosure ("NI 81-101") and its related forms, Companion Policy 81-101CP ("81-101CP"), National Instrument 81-102 Mutual Funds ("NI 81-102"), Companion Policy 81-102CP ("81-102CP"), National Instrument 13-101 - System for Electronic Document Analysis and Retrieval (SEDAR) ("NI 13-101") and OSC Rule 41-502 - Prospectus Requirements for Mutual Funds ("OSC Rule 41-502").

Substance and Purpose of Proposed National Instrument, Form and Companion Policy

The key features of the proposed National Instrument, Form and Companion Policy are: (i) the introduction of annual and quarterly management reports of fund performance, (ii) the revision and updating of the requirements relating to annual and interim financial statements and (iii) changes to current filing and delivery requirements.

The proposed National Instrument is intended to apply to all types of investment funds, including but not limited to, mutual funds, labour sponsored investment funds ("LSIFs"), exchange traded funds, split share corporations, closed end funds and scholarship plans.

Summary of Proposed National Instrument, Form and Companion Policy

Annual and Quarterly Management Reports of Fund Performance

To address the concern expressed about the timeliness and relevance of financial information provided by investment funds, the CSA are proposing the introduction of annual and quarterly management reports of fund performance. These reports, required to be prepared in accordance with Form 81-106F1, will present both quantitative and qualitative information about the fund in a

concise and plain language manner. It is intended that quarterly reporting will provide investors and advisers with current information about the investment fund without all the details of full interim or annual financial statements.

A key element of the management reports of fund performance is the Management Discussion of Fund Performance ("MDFP"). MDFP is an analysis and explanation that is designed to supplement an investment fund's financial statements. It addresses two main topics - past performance and the strategic position of the fund going forward. Past performance is analysed within the framework of a fund's investment objectives and strategies. The MDFP should highlight those aspects of the objectives or strategies that had material impacts on performance. Any changes to the level of risk of the fund are required to be identified. Discussion of the strategic position of the fund going forward should focus on known material trends, commitments, events, risks or uncertainties that might reasonably be expected to affect a fund's future performance or investment activities.

The annual management report of fund performance will provide financial highlights for a fund for the past year, but will not include the full, traditional financial statements. The quarterly management reports of fund performance will contain less detailed information than an annual management report of fund performance and will serve to highlight significant changes from the information in the last annual management report of fund performance of the fund. The investment fund's auditor will be expected to follow the requirements of Section 7500 of the CICA Handbook with respect to their involvement with the annual management report of fund performance.

Financial Statement Requirements

The proposed National Instrument contains revised and updated content requirements for the annual and interim financial statements of investment funds. The aim is to have a consistent set of rules governing financial statement disclosure for investment funds across Canada and to update the current requirements to improve the usefulness of these financial statements.

Part 7 of the proposed National Instrument requires specified disclosure in the annual and interim financial statements of an investment fund on securities lending, repurchase and reverse repurchase transactions. Note that this part of the proposed National Instrument restates the requirements currently contained in Part 14 of 81-102CP. In addition, Part 7 of the proposed National Instrument provides guidance on the accounting of incentive and performance fees, costs of continuous distribution of securities and trailing commissions.

Part 8 of the proposed National Instrument contains provisions setting out when financial and performance information relating to more than one investment fund and to multiple class mutual funds may be bound into one document. Note that management reports of fund performance for more than one investment fund are prohibited from being bound together. In addition, Part 8 sets out certain specific accounting requirements for LSIFs and scholarship plans. In particular, it should be noted that LSIFs have the option of not disclosing the fair value of securities for which a market value is not readily available in their statement of investment portfolio, provided the LSIF has obtained and filed a formal valuation prepared in accordance with Part 9 of the proposed National Instrument. Any formal valuation obtained in accordance with Part 9 must have been prepared by an independent valuator having appropriate qualifications.

Filing and Delivery Requirements

The National Instrument proposes to give security holders the option of choosing whether to receive any or all of a fund's financial statements and management reports of fund performance. This presents a departure from the current regime which requires that the annual financial statements required to be filed with the regulators also be delivered to all security holders. The CSA are proposing this change in recognition of the cost involved in the delivery of financial statements. In addition, given the public availability of financial statements on the SEDAR website (www.sedar.com) as well as on the manager's website (if any), the mandated delivery of such documents to investors does not seem necessary to ensure full disclosure.

Accordingly, the National Instrument requires an investment fund to ask investors on an annual basis whether they would like to receive any or all of the fund's annual and quarterly management reports of fund performance, and interim and annual financial statements. Delivery of these documents is only required to be made to those holders who specifically request them. However, the transitional provision in Part 18 of the proposed National Instrument requires that the first annual management report of fund performance that is prepared by an investment fund must be sent to all investors.

Finally, the proposed National Instrument shortens the time periods for the filing of annual and interim financial statements with the regulators. The time for filing annual financial statements is reduced from 140 days after year end to 90 days after year end, while the time for filing interim financial statements is reduced from 60 days to 45 days after the end of the interim period. Management reports of fund performance are required to be filed at the same time as financial statements. The time periods for filing have been reduced in order to improve the timeliness of financial information such that the information will be more current and relevant and useful to investors and advisers in their investment decisions.

The shortened time periods for the filing of annual and interim financial statements are consistent with the time periods set out in proposed National Instrument 51-102 Continuous Disclosure Obligations ("NI 51-102") for senior issuers. Investment funds are distributed both through primary distributions, generally on a continuous basis, and on an exchange. The CSA believes that disclosure in accordance with the shortened time periods is necessary for information to be relevant and useful to investors.

Other Continuous Disclosure Obligations

Part 11 of the proposed National Instrument provides that if a material change (in the case of a non NI 81-102 investment fund) or a significant change (in the case of a NI 81-102 investment fund) occurs, an investment fund is required to promptly issue and file a news release disclosing the nature and substance of the change and to post such news release on the website of the investment fund or fund manager. In addition, a material change report containing the information required by Form 51-102F3 is required to be filed no later than 10 days after the date on which the change occurs. This reporting requirement replaces the significant change requirement for mutual funds currently in NI 81-102.

Finally, it should be noted that the proposed National Instrument requires investment funds to comply with certain parts of NI 51-102 as if those parts of the rule applied to investment funds, eg. the solicitation of proxies (Part 12), restricted share disclosure (Part 13) and change of auditor (Part 14).

Summary of the Proposed Consequential Amendments

Proposed Amendments to NI 81-101 Mutual Fund Prospectus Disclosure

The CSA are proposing a change to NI 81-101 to allow for the incorporation of the annual and quarterly management reports of fund performance into the simplified prospectus by reference. Corresponding changes are made to the introductory language required to be made in a prospectus by Item 3 of Part A of Form 81-101F1, and to a related discussion in section 2.4 of 81-101CP.

The most significant change to NI 81-101 is the deletion of the top ten holdings, past performance and financial highlights information (Items 8, 11 and 13.1 of Part B) from Form 81-101F1. This information is being deleted from the simplified prospectus for the reason that it would otherwise be duplicated by the financial highlights, past performance and summary of portfolio investments information which is proposed to be disclosed in the annual and quarterly management reports of fund performance in accordance with Form 81-106F1. In addition, given the frequency with which management reports of fund performance will be produced, investors and advisers will be provided with more current and therefore more useful financial highlights, past performance, and holdings data on which to base their investment decisions.

Finally, an instruction is proposed to be added to Item 15 of Form 81-101F2 to indicate that the disclosure concerning executive compensation for management functions carried out by employees of a mutual fund may be made in accordance with the disclosure requirements of NI 51-102**,** specifically Form 51-102F6 Statement of Executive Compensation.

Proposed Amendments to NI 81-102 Mutual Funds

The CSA are proposing the following amendments to NI 81-102:

1. amending the definition of "report to securityholders" to include annual and quarterly management reports of fund performance;

2. amending the definition of "sales communication" so as to include annual and quarterly management reports of fund performance to the list of documents which are not considered to be "sales communications";

3. deleting section 5.10 relating to significant changes as it is replaced by the provisions of Part11 of the proposed National Instrument;

4. deleting Part 17 relating to financial statement requirements as it is replaced by the provisions of Part 7 of the proposed National Instrument; and

5. deleting the discussion on financial statement requirements for securities lending, repurchase and reverse repurchase transactions from Part 14 of 81-102CP.

Proposed Amendment to NI 13-101 System for Electronic Document Analysis and Retrieval

An amendment is proposed to NI 13-101 so as to add annual and quarterly management reports of fund performance to the list of mandated electronic filings for mutual funds and other issuers in Appendix A of NI 13-101.

Proposed Amendments to OSC Rule 41-502 Prospectus Requirements for Mutual Funds

Section 10.1 of OSC Rule 41-502, which provides an exemption from the requirement to file an AIF in accordance with subsection 81(2) of the *Securities Act* (Ontario), is deleted. This change is being made because the same exemption is being provided for in Part 10 of the proposed National Instrument. As a result, the exemption from the requirement to file an AIF, which is currently only exists on a local (Ontario only) level, is being made available on a national level.

Withdrawal of Staff Accounting Communique 52-708 - Initial Offering Costs of Closed-End Investment Funds

The Commission will withdraw Staff Accounting Communique 52-708 - Initial Offering Costs of Closed-End Investment Funds upon the coming into force of the proposed National Instrument.

Specific Questions of the CSA Concerning Proposed NI 81-106.

1. Management Reports of Fund Performance

Proposed Part 6 of NI 81-106 requires all investment funds that are reporting issuers to prepare, file and make available to those who request it, a quarterly management report of fund performance. The purpose of the quarterly management report of fund performance is to provide up-to-date information about the fund to current and prospective investors and to advisers and dealers who analyze funds and recommend them to their clients. It is expected that the quarterly management reports of fund performance will be approximately two pages in length.

Since quarterly updated financial information will be available in the quarterly management report of fund performance, it is proposed that NI 81-101 be amended to remove the financial highlights, top 10 holdings and performance data from the simplified prospectus.

The CSA invite comments as to whether the quarterly management reports of fund performance will achieve the goals that they are intended to achieve. Should there be more or less frequent disclosure of fund performance information and why? Should there be quarterly reporting for all investment funds? Does the proposed type of information allow an investor or an adviser to make informed investment decisions?

2. Financial Statements

The purpose of the annual and interim financial statements of an investment fund is to communicate information that is useful to investors, advisers and other users in making their investment allocation decisions and/or assessing management stewardship.[1] The users of an investment fund's financial statements include: investors, advisers and dealers, financial analysts, management, regulators and creditors.

A key characteristic of financial statements is comparability. With over 2000 investment funds in Canada, investors and advisers need to be able to compare the financial information of different types of investment funds. A certain level of detail within the financial statements is considered necessary to assist comparability and consistency of financial information.

The CSA invite comment on whether the financial statement requirements set out in the proposed Rule meet the needs of the users of the financial statements? Does the amount of detail provided in the proposed National Instrument assist with the preparation, consistency and comparability of the financial statements? Is the proposed National Instrument too detailed? Is more detail or specific direction necessary?

The majority of investment funds currently prepare and file six month interim financial statements. Should all investment funds be required to prepare and file quarterly financial statements in addition to the proposed quarterly management reports of fund performance?

3. Disclosure of Risk and Volatility

Investors and advisers require information to assess the risk of an investment. The proposed management reports of fund performance would include disclosure of how material or significant changes to the investment fund have affected the overall level of risk associated with an investment in the fund. The concepts of risk and volatility are also reflected in the required disclosure of financial highlights, performance data and the summary of the investment portfolio.

The CSA invite comments on whether alternative methods of disclosing risk and volatility should be used. For example, should there be disclosure of the fund's best and worst quarter returns or disclosure of the correlation of the fund to a benchmark index? Is there additional disclosure that would provide useful information to the investors and advisers?

[1] CICA Handbook, paragraph 1000.15

Authority for the Proposed National Instrument (Ontario)

In those jurisdictions in which the proposed National Instrument and Form are to be adopted or made as a rule or regulation, the applicable securities legislation provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the proposed National Instrument and Form.

In Ontario, the following provisions of the *Securities Act* (Ontario) (the "Act") provide the Ontario Securities Commission (the "Commission") with authority to make the proposed National Instrument and Form.

Paragraph 143(1)10 of the Act authorizes the Commission to prescribe requirements in respect of books, records and other documents required by subsection 19(1) of the Act to be kept by market participants, including the form in which the books, records and other documents are to be kept.

Paragraph 143(1)22 authorizes the Commission to prescribe requirements in respect of the preparation and dissemination, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act, including requirements in respect of annual reports and supplemental analysis of financial statements. Paragraph 143(1)24 authorizes the Commission to make rules requiring issuers to comply with Part XVIII (Continuous Disclosure) of the Act or rules made under paragraph 143(1)22.

Paragraph 143(1)25 authorizes the Commission to prescribe requirements in respect of financial accounting, reporting and auditing, including defining accounting principles and auditing standards acceptable to the Commission, requirements in respect of a change in auditor and a change in year end or reporting status.

Paragraph 143(1)31 authorizes the Commission to make rules regulating mutual funds, including varying the application of Parts XV (Prospectuses - Distribution) or XVIII (Continuous Disclosure) of the Act by prescribing additional disclosure requirements and requiring or permitting the use of particular forms or types of documents in connection with the funds and prescribing requirements in respect of the calculation of the net asset value of mutual funds.

Paragraph 143(1)34 authorizes the Commission to make rules regarding commodity pools, including varying the application of Parts XV (Prospectuses - Distribution) or XVIII (Continuous Disclosure) of the Act to prescribe additional disclosure requirements and requiring or permitting the use of particular forms or types of documents in connection with commodity pools.

Paragraph 143(1)35 permits the Commission to regulate or vary the Act in respect of derivatives, including prescribing disclosure requirements and requiring the use of particular forms or types of documents and prescribing requirements that apply to mutual funds and commodity pools.

Paragraph 143(1)37 authorizes the Commission to regulate LSIFs, including prescribing disclosure requirements for or in respect of their securities.

Paragraph 143(1)39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules and all documents determined by the regulations or rules to be ancillary to the documents, including interim financial statements and financial statements.

Paragraph 143(1)47 authorizes the Commission to regulate scholarship plans.

Paragraph 143(1)56 authorizes the Commission to make rules prescribing or varying any of the time periods in the Act.

Alternatives Considered

While developing the regime contained in the proposed National Instrument, the following alternatives were also considered:

Status Quo

Currently, mutual funds are required to prepare audited annual financial statements that are to be delivered to investors within 140 days of the mutual fund's fiscal year end. Mutual funds are also required to prepare unaudited semi-annual interim financial statements that are to be delivered and filed within 60 days of the period end. Many mutual funds utilize the exemptive provisions of National Policy 41 - Shareholder Communications that sets out an exemption from delivering interim financial statements subject to the maintenance of a supplementary mailing list.

This alternative does not address either of the issues of timeliness and usefulness of financial information or harmonization of financial disclosure requirements.

Implement Reporting requirements similar to non-mutual fund reporting issuers

Non-mutual fund reporting issuers have the same annual audited financial statement requirements as mutual funds. However, non-mutual fund reporting issuers are also required to file and deliver quarterly interim financial statements and management discussion and analysis (MD&A).

This approach would address the issue of timeliness by requiring information to be provided on a quarterly rather than semi-annual basis. However, it was felt that this approach would not address the issues of the usefulness of the information or the harmonization of regulation. Indeed, concerns have been expressed in the media and elsewhere that the investment funds industry continues to offer products that many people find difficult to understand. Traditional financial statements do not adequately capture the business of investment funds. The investment funds industry focuses on assets carried at market value and the performance and risk of those assets. Therefore, it was decided that the needs of investors would not be well met by simply requiring traditional financial statements more frequently.

Related Amendments

Related Consequential Amendments are proposed to be made to NI 81-101 (including Forms 81-101F1 and 81-101F2), 81-101CP, NI 81-102, 81-102CP, NI 13-101 and OSC Rule 41-502.

Unpublished Materials

In proposing the National Instrument, Form and Companion Policy, the CSA have not relied on any significant unpublished study, report, decision or other written materials.

Anticipated Costs and Benefits

The proposed National Instrument, Form and Companion Policy are designed to promote the readability and usefulness of continuous disclosure documents to investors and advisers. The information to be included in management reports of fund performance will be organized in a clear, concise and standardized manner, which will increase the effectiveness of the information, as well as mitigate the risk of selective disclosure. The management report of fund performance will bring a qualitative aspect to continuous disclosure by providing management insight and perspective into a fund's performance. Consequently, it is expected that the proposed regime will better equip investors and advisers to make informed investment decisions.

The CSA acknowledge that the disclosure system outlined in the proposed National Instrument may result in new costs to industry participants because of the introduction of the requirement to prepare and file annual and quarterly management reports of fund performance. However, it is anticipated that these costs will be more than offset by the fact that delivery of financial statements and management reports of fund performance to all securityholders will not be mandatory (other than the first annual management report of fund performance for an investment fund), but rather will only be required at the request of the securityholder. As the proposed Companion Policy indicates, the annual document request forms to be sent to securityholders can be sent together with other mailings or electronically. As such, the annual notice requirement should not add significant additional cost.

In addition, the CSA expect that there will be significant cost savings by the removal of the financial highlights, performance data and top ten holdings from the simplified prospectus.

The CSA do not anticipate that the option for LSIFs to prepare and file a formal valuation in a prescribed manner should create additional costs for most LSIFs as certain provincial legislation governing LSIFs already require an independent valuation.

The CSA have prohibited the consolidation of management reports of fund performance for more than one investment fund. The CSA understand that the technology to prepare and print such reports individually already exists and is being used by a number of funds. Any additional costs that some fund managers may incur in the short run to modify their systems are expected to be offset in subsequent years. The CSA believe the benefit to investors of receiving only that information that pertains to their investment outweighs any potential costs.

On balance, the CSA are of the view that the benefits to investors and also to the investment fund industry that are expected by the proposed National Instrument and Form will outweigh any costs to industry participants.

Regulations to be Amended or Revoked (Ontario)

The Commission proposes to revoke sections 83 to 94 and paragraph 240(2)9 of the Regulation made under the Act in conjunction with the making of the proposed National Instrument as a rule.

Comments

Interested parties are invited to make written submissions with respect to the proposed National Instrument, Form and Companion Policy. Submissions received by December 19, 2002 will be considered.

Submissions should be sent to all of the Canadian securities regulatory authorities listed below, in care of the Ontario Securities Commission, as indicated below:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Securities Administration Branch, New Brunswick
Office of the Attorney General, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Government of Yukon
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
E-mail: jstevenson@osc.gov.on.ca

Submissions should also be addressed to the Commission des valeurs mobilières du Québec care of:

Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
800 Victoria Square, Stock Exchange TowerP.O. Box 246, 22nd Floor
Montréal, Québec H4Z 1G3
e-mail: consultation-en-cours@cvmq.com

If you are not sending your comments by e-mail, please send us two copies of your letter, together with a diskette containing your comments (in either Word or WordPerfect format).

We cannot keep submissions confidential as securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions may be referred to any of:

Noreen Bent
Manager and Senior Legal Counsel
British Columbia Securities Commission
Tel: (604) 899-6741
or 1-800-373-6393 (in B.C. and Alberta)
nbent@bcsc.bc.ca

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September 20, 2002.

6.1.2 National Instrument 81-106 Investment Fund Continuous Disclosure, Companion Policy 81-106CP and Form 81-106F1 Contents of Annual and Quarterly Management Report of Fund Performance

NATIONAL INSTRUMENT 81-106
INVESTMENT FUND CONTINUOUS DISCLOSURE

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NATIONAL INSTRUMENT 81-106
INVESTMENT FUND CONTINUOUS DISCLOSURE

PART 1 DEFINITIONS AND APPLICATIONS

1.1 Definitions - In this Instrument

"AIF" means an annual information form filed under section 10.1 of this Instrument;

"annual financial statement filing requirement" means the provision in securities legislation that requires the filing of annual financial statements by

(a) a reporting issuer other than a mutual fund, or

(b) a mutual fund in the jurisdiction;

"annual financial statements" means the financial statements required to be filed under the annual financial statement filing requirement;

"annual management report of fund performance" means a document prepared in accordance with Part B of Form 81-106F1;

"current value" means, for a portfolio asset held by, or a liability of, an investment fund,

(a) for restricted securities, the value determined in accordance with section 13.4 of NI 81-102 Mutual Funds,

(b) for derivatives, the value determined in accordance with section 13.5 of NI 81-102 Mutual Funds,

(c) the market value of the portfolio asset or liability, or,

(d) if the market value of the portfolio asset or liability is not readily available, the fair value of the portfolio asset or liability;

"designation" means,

(a) for an equity security, the class of the security,

(b) for a debt security not referred to in paragraph (c), an identification of the security that includes, as a minimum,

(i) the name of the security,

(ii) the interest rate of the security,

(iii) the maturity date of the security,

(iv) if the security is convertible or exchangeable, disclosure of that fact, and

(v) if the security is ordinarily identified by reference to its priority, disclosure of that priority; and

(c) for a security referred to in the definition of "money market fund" in National Instrument 81-102 Mutual Funds,

(i) the name of the security,

(ii) the interest rate of the security, and

(iii) the maturity date of the security,

(d) for any other type of security,

(i) the name or type of security, and

(ii) any material terms and conditions of the security commonly used commercially in describing the security;

"education savings plan" means an agreement between one or more persons and another person or organization, in which the other person or organization agrees to pay or cause to be paid, to or for one or more beneficiaries designated in connection with the agreement, scholarship awards to further the beneficiaries' education;

"exchange traded investment fund" means an investment fund whose securities are listed and posted for trading, or quoted on, a marketplace;

"fair value" means, for a portfolio asset or liability of an investment fund, the amount of the consideration that would be agreed upon in a transaction of purchase and sale of the portfolio asset or liability between knowledgeable, willing parties who are under no compulsion to act and who are not affiliates or associates of one another;

"financial quarter" means, for an investment fund,

(a) if the investment fund has not completed its first financial year,

(i) a period, no longer than three months in duration, beginning on the date of incorporation or organization of the investment fund and ending nine, six or three months before the end of the first financial year of the investment fund, or

(ii) a three month period ending nine, six or three months before the end of the first financial year, and

(b) if the investment fund has completed its first financial year, a three month period ending three, six or nine months after the end of the most recently completed financial year of the investment fund;

"formal valuation" means a valuation of either or both of the assets and liabilities of an investment fund that contains the opinion of a qualified and independent valuator as to the current value of the assets or liabilities, and that is prepared in accordance with Part 9;

"group scholarship plan" means a scholarship plan the securities of which entitle the beneficiaries, who are designated in connection with the acquisition of the securities that have the same year of maturity, to a scholarship award proportionate to the value of the securities in respect of which they are designated, on or after maturity of the securities;

"independent valuator" means, for an investment fund, a valuator that is independent of the investment fund, as determined in accordance with section 9.1;

"interim financial statements" means the financial statements required to be filed by an investment fund under the interim financial statement filing requirement;

"interim financial statement filing requirement" means the provision in securities legislation that

(a) for a reporting issuer that is not a mutual fund, requires the filing of interim financial statements on a quarterly basis, and

(b) for a mutual fund in the jurisdiction, requires the filing of interim financial statements on a semi-annual basis;

"interim period" means a period required to be covered by interim financial statements under the interim financial statement filing requirement;

"investment fund" means a mutual fund, a non-redeemable investment fund or a scholarship plan;

"labour sponsored fund" means an investment fund that is

(a) a labour sponsored investment fund corporation under provincial legislation, or

(b) a registered or prescribed labour sponsored venture capital corporation as defined in the ITA;

"management fees" means the total fees paid or payable by an investment fund to its manager or one or more portfolio advisers, excluding audit fees, directors' fees, custodial fees and legal fees, but including incentive or performance fees;

"management report of fund performance" means an annual management report of fund performance or a quarterly management report of fund performance;

"market value" means,

(a) for a portfolio asset held by an investment fund, the amount obtainable from the sale of the portfolio asset in an active market, excluding transaction costs, and

(b) for a liability of an investment fund, the amount payable on the acquisition of the portfolio asset in an active market, excluding transaction costs;

"material contract" means, for an investment fund, a document that the investment fund would be required to list in an annual information form under Item 16 of Form 81-101F2 Contents of Annual Information Form if the investment fund filed a simplified prospectus under National Instrument 81-101 Mutual Fund Prospectus Disclosure;

"mutual fund in the jurisdiction" means an incorporated or unincorporated mutual fund that is a reporting issuer in, or that is organized under the laws of, the local jurisdiction;

"National Instrument 54-101" means National Instrument 54-101 Communications with Beneficial Owners of Securities of a Reporting Issuer;

"net asset value" means, for an investment fund as at a specific date, the current value of the portfolio assets of the investment fund less the current value of the total liabilities of the investment fund, as at that date;

"non redeemable investment fund" means an issuer

(a) whose primary purpose is to invest money provided by its securityholders,

(b) that does not invest for the purpose of exercising effective control, seeking to exercise effective control or being actively involved in the management of the issuers in which it invests, other than mutual funds or other non-redeemable investment funds, and

(c) that is not a mutual fund;

"quarterly management report of fund performance" means a document prepared in accordance with Part C of Form 81-106F1;

"related party" means, in relation to a mutual fund, a person or company listed in section 4.2 of National Instrument 81-102 Mutual Funds;

"restricted shares" has the meaning ascribed to that term in National Instrument 51-102 Continuous Disclosure Obligations;

"scholarship award" means any amount, other than a refund of contributions, that is paid or payable directly or indirectly to further the education of the beneficiaries designated under an education savings plan;

"scholarship plan" means an investment fund the securities of which

(a) constitute or represent an interest in an education savings plan, and

(b) are referable to a portfolio of assets pertaining to more than one education savings plan;

"securityholder" means, for a security, the registered holder of the security, the beneficial owner of the security, or both, depending upon the context;

"significant change" means

(a) a change in the business, operations or affairs of an investment fund that would be considered important.

(i) by a reasonable investor in determining whether to purchase securities of the investment fund, or

(ii) by a reasonable securityholder of the investment fund in determining whether to continue to hold securities of the investment fund, or

(b) a decision to implement a change referred to in a paragraph (a) made

(i) by senior management of the investment fund who believe that confirmation of the decision by the board of directors of the investment fund is probable, or

(ii) by senior management of the manager of the investment fund who believe that confirmation of the decision by the board of directors of the manager of the investment fund is probable;

"subject securities" has the meaning ascribed to that term in National Instrument 51-102 Continuous Disclosure Obligations;

"valuation date" means the date of the investment fund's financial year end; and

"venture investment" means an investment in a private company or an investment made in accordance with the requirements of provincial labour sponsored fund legislation or the ITA.

1.2 Application

(1) This Instrument applies to

(a) an investment fund, other than a mutual fund, that is a reporting issuer;

(b) a mutual fund in the jurisdiction; and

(c) a person or company in respect of activities pertaining to an investment fund referred to in paragraph (a) or a mutual fund referred to in paragraph (b).

(2) This Instrument applies to

(a) annual financial statements and annual management reports of fund performance for financial years of an investment fund beginning on or after • [date Instrument comes into force]; and

(b) interim financial statements and quarterly management reports of fund performance for interim periods in financial years of an investment fund beginning on or after • [date Instrument comes into force].

(3) Part 6 of this Instrument does not apply to scholarship plans.

(4) Parts 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of this Instrument do not apply to investment funds that are not reporting issuers.

(5) Section 8.3 and Part 9 of this Instrument do not apply in British Columbia.

(6) Subsections 1.3(3), (4) and (5) of this Instrument do not apply in Quebec.

1.3 Interpretation

(1) Each section, part, class or series of a class of securities of an investment fund that is referable to a separate portfolio of assets is considered to be a separate investment fund for purposes of this Instrument.

(2) Terms defined in National Instrument 14-101 Definitions, National Instrument 21-101 Marketplace Operation and National Instrument 81-102 Mutual Funds and used in this Instrument have the respective meanings ascribed to them in those Instruments.

(3) In this Instrument, a person or company is an affiliate of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company, or if each of them is controlled by the same person or company.

(4) In this Instrument, a person or company is considered to be controlled by a person or company if

(a) in the case of a person or company

(i) voting securities of the first-mentioned person or company carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and

(ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;

(b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than 50 percent of the interests in the partnership; or

(c) in the case of a limited partnership, the general partner is the second-mentioned person or company.

(5) In this Instrument, a person or company is considered to be a subsidiary entity of another person or company if

(a) it is controlled by

(i) that other, or

(ii) that other and one or more persons or companies, each of which is controlled by that other, or

(iii) two or more persons or companies, each of which is controlled by that other; or

(b) it is a subsidiary entity of a person or company that is that other's subsidiary entity.

1.4 Language of Documents

(1) An investment fund must file a document required to be filed under this Instrument in either French or English or both.

(2) If an investment fund files a document in French or English, there is a translation of the document in the other language, and the translation is delivered to securityholders, the investment fund must file the translated document.

(3) In Quebec, the linguistic obligations and rights prescribed by Quebec law must be complied with.

PART 2 ANNUAL FINANCIAL STATEMENTS

2.1 Filing of Annual Financial Statements - The annual financial statement filing requirement is varied as it applies to an investment fund to require that an investment fund file its annual financial statements within 90 days, rather than 140 days, from the end of its last financial year.

2.2 Delivery of Annual Financial Statements

(1) An investment fund shall send annually, for each of its financial years, a request form to each registered holder and beneficial owner of its securities under which the securityholder may request, at no cost to the securityholder, to receive the investment fund's annual financial statements for that financial year.

(2) An investment fund shall send the request form referred to in subsection (1) to the beneficial owners of its securities in accordance with the requirements of National Instrument 54-101.

(3) An investment fund shall maintain, for each of its financial years, a supplemental mailing list that sets out the registered holders and beneficial owners of its securities who have requested to receive the investment fund's annual financial statements for that financial year by returning a completed request to the investment fund.

(4) An investment fund shall send its annual financial statements to the registered holders and beneficial owners of its securities on the supplemental mailing list required by subsection (3) concurrently with the filing of those annual financial statements.

(5) An investment fund that complies with subsections (1) to (4) is exempt from the requirements of securities legislation to send its annual financial statements for a financial year to registered holders of its securities.

2.3 Contents of Annual Financial Statements

(1) The annual financial statements of an investment fund shall contain,

(a) a statement of net assets as at the end of the most recently completed financial year of the investment fund and a comparative statement of net assets as at the end of the immediately preceding financial year;

(b) a statement of operations for the most recently completed financial year of the investment fund and a comparative statement of operations for the immediately preceding financial year;

(c) a statement of investment portfolio as at the end of the most recently completed financial year of the investment fund;[1]

(d) a summary of portfolio investments as at the end of the most recently completed financial year of the investment fund, prepared in accordance with Item 3 of Form 81-106F1;

(e) if required by the Handbook to be prepared, a statement of cashflows for and as at the end of the most recently completed financial year of the investment fund and a comparative statement of cashflows for the immediately preceding financial year;

(f) if a statement of cashflows is not required by the Handbook to be prepared, a statement of changes in net assets for the most recently completed financial year of the investment fund and a comparative statement of changes in net assets for the immediately preceding financial year;

(g) a statement of financial highlights prepared in accordance with Form 81-106F1; and

(h) notes to the annual financial statements.

(2) An investment fund shall file an auditor's report on the financial statements filed under subsection (1).

2.4 Approval of Annual Financial Statements

(1) The board of directors of an investment fund that is a corporation shall approve the annual financial statements of the investment fund, before those financial statements are filed or made available to holders, or potential purchasers, of securities of the investment fund; and

(2) The manager or the trustee or trustees of an investment fund that is a trust, or another person or company authorized to do so by the constating documents of the investment fund, shall approve the annual financial statements of the investment fund, before those financial statements are filed or made available to holders, or potential purchasers, of securities of the investment fund.

2.5 Auditor's Report

(1) An auditor's report required by section 2.3 must be prepared by a person or company that is expressly permitted to sign an auditor's report under the laws of the jurisdiction in which the report is signed.

(2) Subject to subsection (3), for the purposes of section 2.3, an investment fund must file an auditor's report that is prepared in accordance with Canadian GAAS and does not contain a reservation.

(3) An auditor's report required under section 2.3 must identify all audited financial periods presented for which the auditor has issued an auditor's report. Where the issuer has changed its auditor and comparative periods presented in the financial statements were audited by a different auditor, the auditor's report must refer to the former auditor's report on the comparative periods.

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[1] The CSA note that a statement of investment portfolio and the summary statement of investment portfolio need not be comparative.

PART 3 INTERIM FINANCIAL STATEMENTS

3.1 Filing of Interim Financial Statements

(1) The interim financial statement filing requirement is varied as it applies to an investment fund to require that an investment fund file its interim financial statements within 45 days, rather than 60 days, after the end of the interim period.

(2) An investment fund is not required to prepare or file interim financial statements for any period that is less than three months.

3.2 Delivery of Interim Financial Statements

(1) An investment fund shall annually follow the same procedures in connection with its interim financial statements and a supplemental mailing list as is required by section 2.2 in connection with its annual financial statements and a supplemental mailing list and shall send its interim financial statements to registered and beneficial owners of its securities on the supplemental mailing list concurrently with the filing of those interim financial statements.

(2) An investment fund that complies with subsection (1) is exempt from the requirements of securities legislation to send its interim financial statements for a financial year to registered holders of its securities.

3.3 Contents of Interim Financial Statements - The interim financial statements of an investment fund shall contain,

(a) a statement of net assets as at the end of the most recently completed interim period of the investment fund and a comparative statement of net assets as at the end of the corresponding period in the immediately preceding financial year;

(b) a statement of operations for the most recently completed interim period of the investment fund and a comparative statement of operations for the corresponding period in the immediately preceding financial year;

(c) a statement of investment portfolio as at the end of the most recently completed interim period of the investment fund;[2]

(d) a summary of portfolio investments as at the end of the most recently completed interim period of the investment fund, prepared in accordance with Item 3 of Part B of Form 81-106F1;

(e) if required by the Handbook to be prepared, a statement of cashflows for and as at the end of the most recently completed interim period of the investment fund and a comparative statement of cashflows for the corresponding period in the immediately preceding financial year;

(f) if a statement of cashflows is not required by the Handbook to be prepared, a statement of changes in net assets for the most recently completed interim period of the investment fund and a comparative statement of changes in net assets for the corresponding period in the immediately preceding financial year;

(g) a statement of financial highlights prepared in accordance with Item 2 of Part B of Form 81-106F1; and

(h) notes to the interim financial statements.

3.4 Review of Interim Financial Statements - The persons referred to in each subsection of section 2.4, as applicable, shall review the interim financial statements of the investment fund before those financial statements are filed or made available to holders, or potential purchasers, of securities of the investment fund.

PART 4 FINANCIAL DISCLOSURE REQUIREMENTS

4.1 Generally Accepted Accounting Principles

(1) The financial statements required to be filed under section 2.1 and 3.1 and any other financial statements an investment fund included in a document required by this Instrument must be prepared in accordance with Canadian GAAP.

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[2] The CSA note that a statement of investment portfolio and the summary statement of investment portfolio need not be comparative.

(2) An investment fund must use the same accounting principles to prepare the financial information for all the periods presented in the financial statements referred to in subsection (1).

4.2 Statement of Net Assets - The statement of net assets of an investment fund shall disclose the following as separate line items:

1. cash, term deposits and, if not included in the statement of investment portfolio, short term debt instruments.
2. investments at current value.
3. accounts receivable relating to shares or units sold.
4. accounts receivable relating to portfolio assets sold.
5. accounts receivable relating to margin paid or deposited on standardized futures or forward contracts.
6. any other class of assets representing more than five percent of the total assets of the investment fund.
7. amounts receivable and/or payable in respect of specified derivatives transactions.
8. accrued expenses.
9. liabilities for portfolio assets purchased.
10. liabilities for shares or units redeemed.
11. income tax payable.
12. any other class of liability that represents more than five percent of total liabilities of the investment fund.
13. total net assets and shareholders' or unitholders' equity.
14. net asset value per security.

4.3 Statement of Operations - The statement of operations of an investment fund shall disclose the following information as separate line items:

1. dividend revenue.
2. interest revenue.
3. revenue from specified derivatives.
4. revenue from securities lending.
5. management fees, excluding incentive or performance fees.
6. incentive or performance fees.
7. audit fees.
8. directors' or trustees' fees.
9. custodial fees.
10. legal fees.
11. securityholder information costs.

12. any other item of expense that represents more than five percent of total expenses of the investment fund.

13. capital tax.

14. net investment income (loss) before taxes.

15. amounts that would otherwise have been payable by the investment fund that were waived or paid by the manager or a portfolio adviser of the investment fund.[3]

16. provision for income tax, if applicable.

17. net investment income (loss) for the period.

18. realized gains or losses.

19. unrealized gains or losses.

20. increase (decrease) in net assets from operations.

4.4 Statement of Investment Portfolio

(1) The statement of investment portfolio of an investment fund shall disclose the following:

1. the name of the issuer of each security held.

2. the designation of each security held.

3. the number or aggregate face value for each designation of securities held.

4. the cost for each designation of securities held.

5. the current value for each designation of securities held.

(2) Despite subsection (1), the information referred to in subsection (1) may, at the option of the investment fund, be provided only in the aggregate for those short term debt instruments that are issued by a bank listed in Schedule 1, 2 or 3 to the *Bank Act* (Canada) or a loan corporation or trust corporation registered under the laws of a jurisdiction, or that have achieved an investment rating within the highest or next highest categories of ratings of each approved credit rating organization.

(3) If an investment fund discloses short term debt instruments as permitted by subsection (2),

(a) the investment fund shall break down the disclosure by currency of issue, and

(b) shall disclose separately the aggregate short term debt instruments denominated in any currency for each currency that represents more than five percent of the net assets of the fund.

(4) If an investment fund holds positions in derivatives, the investment fund shall disclose in the statement of investment portfolio or the notes to that statement:[4]

1. for long positions in clearing corporation options, the number of options, the underlying interest, the strike price, the expiration month and year, the cost and the current value.

2. for long positions in options on futures, the number of options on futures, the futures contracts that form the underlying interest, the strike price, the expiration month and year of the option on futures, the delivery month and year of the futures contract that forms the underlying interest of the option on futures, the cost and the current value.

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[3] The amount of fund expenses waived or paid by the manager or portfolio adviser of the investment fund excludes those amounts waived or paid due to an expense cap that would require securityholder approval to change.

[4] This section is currently section 17.1 of National Instrument 81-102 which will be revoked once this National Instrument comes into force.

3. for clearing corporation options written by the investment fund, the particulars of the deferred credit account, indicating the number of options, the underlying interest, the strike price, the expiration month and year, the premium received and the current value.

4. for options purchased by the investment fund that are not clearing corporation options, the number of options, the credit rating of the issuer of the options, whether the rating has fallen below the approved credit rating, the underlying interest, the principal amount or quantity of the underlying interest, the strike price, the expiration date, the cost and the current value.

5. for options written by the investment fund that are not clearing corporation options, the particulars of the deferred credit account, indicating the number of options, the underlying interest, the principal amount or quantity of the underlying interest, the exercise price, the expiration date, the premium received and the current value.

6. for positions in standardized futures, the number of standardized futures, the underlying interest, the price at which the contract was entered into, the delivery month and year and the current value.

7. for positions in forward contracts, the number of forward contracts, the credit rating of the counterparty, whether the rating has fallen below the approved credit rating level, the underlying interest, the quantity of the underlying interest, the price at which the contract was entered into, the settlement date and the current value.

8. for debt-like securities, the principal amount of the debt, the interest rate, the payment dates, the underlying interest, the principal amount or quantity of the underlying interest, a description of whether the derivative component is an option or a forward contract with respect to the underlying interest, the strike price in the case of an options component and the set price in the case of a forward component, and the current value.

9. for positions in swaps, the number of swap contracts, the credit rating of the counterparty, whether the rating has fallen below the approved credit rating, the underlying interest, the principal or notional amount, the payment dates, and the current value.

(5) If applicable, the statement of investment portfolio included in the annual and interim financial statements of the investment fund, or the notes to the statement of investment portfolio, shall identify by an asterisk or other notation the underlying interest that is being hedged by each position taken by the investment fund in a specified derivative.

(6) The information required by subsection (1) about mortgages may be omitted from a statement of investment portfolio if, the statement of investment portfolio instead discloses

(a) the total number of mortgages held;

(b) the total current value of mortgages held;

(c) a breakdown of mortgages, by reference to number and current value among mortgages insured under the *National Housing Act* (Canada), insured conventional mortgages and uninsured conventional mortgages;

(d) a breakdown of mortgages, by reference to number and current value, among mortgages that are pre-payable and those that are not pre-payable; and

(e) a breakdown of mortgages, by reference to number, current value, amortized cost and outstanding principal value, among groups of mortgages having contractual interest rates varying by no more than one quarter of one percent.

4.5 Statement of Changes in Net Assets - The statement of changes in net assets of an investment fund shall disclose the following as separate line items:

1. net assets at the beginning of the period to which the statement applies.

2. increase or decrease in net assets from operations.

3. proceeds from the issuance of securities of the investment fund.

4. the aggregate redemption amount for which securities of the investment fund were redeemed.

5. distributions by the investment fund, including distributions that were immediately reinvested.

6. net assets at the end of the period reported upon.

4.6 Statement of Cashflows - The statement of cashflows of an investment fund shall disclose the following as separate line items:

1. net investment income (loss).

2. proceeds on disposition of investments.

3. purchase of investments.

4. proceeds from issue of securities of the investment fund.

5. amounts paid on redemption of securities of the investment fund.

6. if applicable, compensation paid in respect of the sale of securities of the investment fund.

4.7 Notes to Financial Statements

(1) The notes to the financial statements of an investment fund shall disclose the following:

1. the basis for determining current value and cost of portfolio assets, and, if a method of determining cost other than by reference to the average cost of the portfolio assets is used, disclosure of the method used.

2. details of portfolio transactions with related parties of the investment fund, including the dollar amount of commission that the investment fund paid to any related party in connection with a portfolio transaction.

3. if the investment fund has outstanding more than one class or series of securities ranking equally against its net assets, but differing in other respects,

   (a) the number of authorized securities of each class or series,

   (b) the number of securities of each class or series that have been issued and are outstanding.

   (c) the differences between the classes or series, including differences in sales charges, and management fees.

   (d) the method used to allocate income and expenses, and realized and unrealized capital gains and losses, to each class;

   (e) the fee arrangements for any class-level expenses paid to affiliates; and

   (f) transactions involving the issue or redemption of securities of the investment fund undertaken in the period for each class of securities to which the financial statements pertain.

4. details of the total commission paid to dealers by the investment fund for its portfolio transactions during the period reported upon, including dollar amount of commissions paid and soft dollar transactions.

5. the basis for calculating the management fees paid by the investment fund and the services received in consideration of the management fees.

(2) An investment fund that borrows money shall disclose in a note to the financial statements and in the management reports of fund performance,

1. the minimum and maximum amount borrowed during the period;

2. the percentage of net assets of the investment fund that the borrowing represented as of the end of the period;

3. how the borrowed money was used; and

4. details of the terms of the borrowing arrangements.

4.8 Inapplicable Line Items - Despite the requirements of this Part, an investment fund need not include in annual or interim financial statement a line item for any matter that is not applicable to the investment fund or for which there is nothing for the investment fund to disclose.

PART 5 ANNUAL MANAGEMENT REPORT OF FUND PERFORMANCE

5.1 Filing of Annual Management Report of Fund Performance - An investment fund shall file its annual management report of fund performance for each financial year at the same time that it files its annual financial statements for that financial year.

5.2 Delivery of Annual Management Report of Fund Performance - An investment fund shall annually follow the same procedure in connection with its annual management report of fund performance and a supplemental mailing list as is required by section 2.2 in connection with its annual financial statements and a supplemental mailing list and shall send its annual management report of fund performance to registered and beneficial owners of its securities concurrently with the filing of that annual management report of fund performance.

5.3 Contents of Annual Management Report of Fund Performance - The annual management report of fund performance of an investment fund shall be prepared in accordance with Form 81-106F1.

5.4 Approval of Annual Management Report of Fund Performance

(1) The board of directors of an investment fund that is a corporation shall approve the annual management report of fund performance of the investment fund before the annual management report of fund performance is filed or made available to holders, or potential purchasers, of securities of the investment fund; and

(2) The manager or the trustee or trustees of an investment fund that is a trust, or another person or company authorized to do so by the constating documents of the investment fund, shall approve the annual management report of fund performance of the investment fund before the annual management report of fund performance is filed or made available to holders, or potential purchasers, of securities of the investment fund.

5.5 Plain Language and Presentation

(1) An annual management report of fund performance shall be prepared using plain language and a format that assists in readability and comprehension.

(2) An annual management report of fund performance shall

(a) present all information briefly and concisely;

(b) present the items listed in Part B of Form 81-106F1 in the order stipulated in that part;

(c) use the headings and sub-headings stipulated in Form 81-106F1, and may use sub-headings in items for which no sub-headings are stipulated; and

(d) not incorporate by reference into the annual management report of fund performance, from any other document, information that is required to be included in an annual management report of fund performance.

PART 6 QUARTERLY MANAGEMENT REPORT OF FUND PERFORMANCE

6.1 Filing of Quarterly Management Report of Fund Performance - The investment fund shall file its quarterly management report of fund performance for each financial quarter of the investment fund within 45 days after the end of the financial quarter.

6.2 Delivery of Quarterly Management Report of Fund Performance - An investment fund shall annually follow the same procedure in connection with its quarterly management reports of fund performance and a supplemental mailing

list as is required by section 2.2 in connection with its annual financial statements and a supplemental mailing list and shall send its quarterly management reports of fund performance to registered and beneficial owners of its securities concurrently with the filing of those quarterly management reports of fund performance.

6.3 Contents of Quarterly Management Report of Fund Performance - A quarterly management report of fund performance of an investment fund shall be prepared in accordance with Form 81-106F1.

6.4 Review of Quarterly Management Report of Fund Performance - The persons referred to in each subsection of section 2.4, as applicable, shall review the quarterly management reports of fund performance of the investment fund before those management reports of fund performance are filed or made available to holders, or potential purchasers, of securities of the investment fund.

6.5 Plain Language and Presentation

(1) A quarterly management report of fund performance shall be prepared using plain language and in a format that assists in readability and comprehension.

(2) A quarterly management report of fund performance shall

(a) present all information briefly and concisely;

(b) present the items listed in Part C of Form 81-106F1 in the order stipulated in that part;

(c) use the headings and sub-headings stipulated in Form 81-106F1, and may use sub-headings in items for which no sub-headings are stipulated; and

(d) not incorporate by reference into the quarterly management report of fund performance, from any other document, information that is required to be included in a quarterly management report of fund performance.

6.6 Exemption for Short Periods - Despite the requirements of this Part, a quarterly management report of fund performance need not be prepared for a financial period of an investment fund that is less than three months.

PART 7 SPECIFIC FINANCIAL STATEMENT REQUIREMENTS

7.1 Securities Lending Transactions[5]

(1) An investment fund shall disclose, in the statement of investment portfolio included in the annual and interim financial statements of the investment fund, or in the notes to the financial statements

(a) the aggregate dollar value of securities that were lent in the securities lending transactions of the investment fund that remain outstanding as at the date of the financial statements; and

(b) the type and aggregate amount of collateral received by the investment fund under securities lending transactions of the investment fund that remain outstanding as at the date of the financial statements.

(2) The statement of net assets of an investment fund that has received cash collateral in securities lending transactions that remain outstanding as of the date of the financial statements shall present

(a) the cash collateral received by it as an asset; and

(b) the obligation to repay the cash collateral as a liability.

(3) The asset and liability referred to in subsection (2) shall be shown as separate line items in the statement of net assets.

(4) The statement of operations of an investment fund shall present income from securities lending transactions as revenue and not as deductions from expenses.

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5 This section is currently section 14.3 of the Companion Policy 81-102 CP which will be revoked once this National Instrument comes into force.

7.2 Repurchase Transactions

(1) An investment fund, in the statement of investment portfolio included in the annual and interim financial statements of the investment fund, or in the notes to that statement, shall, for the repurchase transactions of the investment fund that remain outstanding as at the date of the statement, disclose the date of the transaction, the expiration date of the transaction, the name of the counterparty of the investment fund, the nature and current value of the securities sold by the investment fund, the amount of cash received, the repurchase price to be paid by the investment fund and the current value of the sold securities as at the date of the statement.

(2) The statement of net assets of an investment fund that has entered into a repurchase transaction that remains outstanding as of the date of the statement of net assets shall present the obligation of the investment fund to repay the collateral as a liability.

(3) The liability referred to in subsection (2) shall be shown as a separate line item in the statement of net assets.

(4) The statement of operations of an investment fund shall present income from the use of the cash received on repurchase transactions as revenue and not as a deduction from expenses incurred in connection with the repurchase transaction.

(5) The information required by this section may be presented on an aggregate basis.

7.3 Reverse Repurchase Transactions

(1) An investment fund, in the statement of investment portfolio included in the annual and interim financial statements of the investment fund, or in the notes to that statement, shall for each reverse repurchase transaction of the investment fund that remains outstanding as at the date of the statement, disclose the date of the transaction, the expiration date of the transaction, the name of the counterparty of the investment fund, the total dollar amount paid by the investment fund, the nature and value or principal amount of the securities received by the investment fund and the current value of the purchased securities as at the date of the statement.

(2) The statement of net assets of an investment fund that has entered into a reverse repurchase transaction that remains outstanding as of the date of the financial statements shall present the reverse repurchase agreement relating to the transaction as an asset at current value.

(3) The asset referred to in subsection (2) shall be shown as a separate line item in the statement of net assets.

(4) The statement of operations of an investment fund shall present income from reverse repurchase transactions as revenue and not as a deduction from expenses incurred in connection with the reverse repurchase transaction.

(5) The information required by this section may be presented on an aggregate basis.

7.4 Incentive or Performance Fees

(1) The statement of net assets of an investment fund shall recognize as a liability of the investment fund an accrual of incentive or performance fee compensation based on the current value of the underlying as of the date of the statement.

(2) The statement of operations of an investment fund shall recognize changes in the amount of the liability referred to in subsection (1) as an expense.

(3) The calculation of the management expense ratio shall include, as an expense of the investment fund, an incentive or performance fee change referred to in subsection (2).

7.5 Costs of Distribution of Securities - All costs and expenses associated with the issue and distribution of securities of an investment fund that distributes its securities on a continuous basis shall be recognized as expenses in the statement of operations of the investment fund in the period in which they were incurred.

7.6 Trailing Commissions - An investment fund that is permitted to pay costs associated with securityholders holding securities of the investment fund shall recognize those costs as an expense of the investment fund in the period in which they were incurred.

PART 8 GENERAL PROVISIONS

8.1 Binding of Financial Statements

(1) Annual and interim financial statements pertaining to more than one investment fund may be bound into one document, if all information for an investment fund is presented together, and not interspersed with information for any other investment fund.

(2) Despite subsection (1), notes to financial statements or discussion of accounting policies that are similar for more than one investment fund may be combined.

(3) The information contained in a management report of fund performance for an investment fund shall not be bound with the information contained in a management report of fund performance for another investment fund.

8.2 Multiple Class Investment Funds

(1) An investment fund that has more than one class or series of security outstanding that is referable to a single portfolio, may, at its option,

(a) prepare separate financial statements and management reports of fund performance for each class or series; or

(b) combine the information concerning all of the classes or series into one set of financial statements and annual and quarterly management reports of fund performance.

(2) An investment fund that combines information concerning all of its classes or series of securities in one set of financial statements and management reports of fund performance shall disclose in those materials any distinctions between the classes or series of securities.

8.3 Labour Sponsored Funds

(1) Despite section 4.4, a labour sponsored fund may, in its statement of investment portfolio, or summary statement of investment portfolio,

(a) for securities for which a market value is readily available, provide the details of the securities as required by paragraphs 4.4(1) 1 to 5 ; and

(b) for securities for which a market value is not readily available,

(i) provide the details of the securities as required by paragraphs 4.4(1) 1 to 4 if the statement of investment portfolio groups those securities by industry, type or stage of development and discloses the cost amount of each security, with an aggregate adjustment from cost to current value, for each group, and

(A) for a statement of investment portfolio contained in annual financial statements, the labour sponsored fund has obtained and filed a formal valuation relating to the information contained in those annual financial statements in accordance with Part 9, concurrently with the filing of the annual financial statements containing the statement of investment portfolio; or

(B) for a statement of investment portfolio contained in interim financial statements, the labour sponsored fund has obtained and filed a formal valuation relating to the information contained in the most recent annual financial statements of the labour sponsored fund in accordance with Part 9, and

(ii) disclose that a formal valuation has been obtained as of the year end date.

8.4 Commodity Pools[6] - In addition to the requirements of section 4.3, the statement of operations of a commodity pool shall include,

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6 This section is currently section 8.3 of proposed National Instrument 81-104 Commodity Pools and this section will be revoked once that National Instrument comes into force.

a) the total amount of realized net gain or net loss on positions liquidated during the period;

b) the change in unrealized net gain or net loss on open positions during the period;

c) the total amount of net gain or net loss from all other transactions in which the commodity pool engaged during the period, including interest; and

d) the total amount of all brokerage commissions paid during the period.

8.5 Group Scholarship Plans - In addition to the requirements of Part 2 and Part 3, a group scholarship plan shall disclose, as a separate statement or schedule to the financial statements,

(a) a summary of scholarship agreements and units by year of eligibility; and

(b) a statement of scholarships paid to qualified students.

PART 9 FORMAL VALUATIONS

9.1 Independence of Valuator

(1) Every formal valuation prepared under this Instrument shall be prepared by an independent valuator having appropriate qualifications.

(2) It is a question of fact as to whether a valuator

(a) is independent of an investment fund; and

(b) has appropriate qualifications.

9.2 Disclosure Concerning Valuator - An investment fund that obtains a formal valuation of its venture investment assets shall include, in the statement of investment portfolio contained in its annual financial statements, or the notes to the annual financial statements,

(a) a statement by the directors or trustees of the fund that the valuator is qualified and independent;

(b) a description of any past, present or anticipated relationship between the valuator and the investment fund or its manager or portfolio adviser;

(c) a description of the compensation paid or to be paid to the valuator;

(d) the basis for determining that the valuator is qualified; and

(e) the basis for determining that the valuator or the person or company is independent.

9.3 Subject Matter of Formal Valuation - A formal valuation under this Instrument shall provide, as of the year end, the valuation, in aggregate, of all venture investment assets of the investment fund, other than those venture investment assets whose current value is readily available and whose current value has been disclosed separately.

9.4 Filing of Formal Valuation - Subject to section 9.5 an investment fund that obtains a formal valuation shall file a copy of the formal valuation concurrently with the filing of its annual financial statements.

9.5 Valuator's Consent - An investment fund obtaining a formal valuation shall

(a) obtain the valuator's consent to its filing; and

(b) include a statement, signed by the valuator, in substantially the following form:

"We refer to the formal valuation dated •, which we prepared for (indicate name of the person or company) for (briefly describe the venture investments for which the formal valuation was prepared). We consent to the filing of the formal valuation with the securities regulatory authorities."

PART 10 ANNUAL INFORMATION FORM

10.1 Requirement to File an Annual Information Form

(1) Subject to subsection (2), an investment fund must file an AIF.

(2) An investment fund is not required to file an AIF if

(a) the investment fund has a current prospectus prepared and filed under National Instrument 81-101 Mutual Fund Prospectus Disclosure; or

(b) the investment fund is in continuous distribution of its securities and has a current prospectus prepared and filed under securities legislation other than National Instrument 81-101 Mutual Fund Prospectus Disclosure.

10.2 Filing Deadline for an AIF - An investment fund shall file an AIF required to be filed under section 10.1 no later than 90 days after the end of its most recently completed financial year.

10.3 Preparation of an AIF

(1) An AIF required to be filed under section 10.1 shall be prepared as of the end of the most recently completed financial year of the investment fund to which it pertains.

(2) An AIF required to be filed under section 10.1 shall be prepared in accordance with Form 81-101F2, except that:

(a) General Instructions (3), (10), (11), (12) and (14) of Form 81-101F2 are not applicable;

(b) Subsections (3) and (6) of Item 1.1 of Form 81-101F2 are not applicable;

(c) Item 1.2 of Form 81-101F2 is not applicable;

(d) Item 5 of Form 81-101F2 shall be completed in connection with all of the securities of the investment fund;

(e) Item 15 of Form 81-101F2 is not applicable to an investment fund that is a corporation; and

(f) Items 19, 20, 21 and 22 of Form 81-101F2 are not applicable.

(3) An AIF for an investment fund may not be consolidated, combined or bound with, an AIF for another investment fund.

PART 11 MATERIAL/SIGNIFICANT CHANGE REPORTS

11.1 Publication of Material Change or Significant Change

(1) If a material or significant change occurs in the affairs of an investment fund, that investment fund must:

(a) promptly issue and file a news release that is authorized by an executive officer of the manager of the investment fund and that discloses the nature and substance of the material change or significant change;

(b) post all disclosure made under paragraph (a) on the website of the investment fund or the investment fund manager;

(c) as soon as practicable, but in any event no later than 10 days after the date on which the change occurs, file a report containing the information required by Form 51-102F3, except that a reference in Form 51-102F3 to:

(i) “material change” shall be read as a reference to “significant change”, if applicable;

(ii) “paragraph 7.1(1)(a) of National Instrument 51-102” in Item 3 shall be read as a reference to “paragraph 11.1(1)(c) of National Instrument 81-106”;

(iii) "subsection 7.1(2) of National Instrument 51-102" in Item 6 shall be read as a reference to "subsection 11.1(2) of National Instrument 81-106";

(iv) "subsection 7.1(4) of National Instrument 51-102" in Item 6 shall be read as a reference to "subsection 11.1(3) of National Instrument 81-106"; and

(v) "executive officer of your company" in Item 8 shall be read as a reference to "officer of the investment fund or of the manager of the investment fund".

(d) file an amendment to its prospectus or simplified prospectus that discloses the significant change in accordance with the requirements of securities legislation as if the amendment were required to be filed under securities legislation[7].

(2) The requirements of paragraph (1)(a) and (b) do not apply to investment funds that immediately file a report containing the information required by Form 51-102F3 marked "Confidential" together with written reasons why a news release under paragraph (1)(a) should not be issued and information posted to the website, if

(a) in the opinion of the investment fund, the issuance of the news release required by subsection (1) would be unduly detrimental to its interest; or

(b) the material change or the significant change

(i) consists of a decision to implement a change made by senior management of the manager of the investment fund who believe that confirmation of the decision by the directors or trustee is probable; and

(ii) senior management of the manager of the investment fund has no reason to believe that persons with knowledge of the material change or significant change have made use of that knowledge in purchasing or selling securities of the investment fund.

(3) The requirements of subsection (2) do not apply in Quebec if senior management of the investment fund has reasonable grounds to believe that disclosure would be seriously prejudicial to the interests of the investment fund and that no transaction in securities of the investment fund has been or will be carried out on the basis of the information not generally known. The investment fund must comply with subsection (2) when circumstances that justify non-disclosure have ceased to exist.

(4) If a report has been filed under subsection (2), the investment fund must advise the applicable regulator or securities regulatory authority by letter marked "Confidential", within 10 days of the date of filing the report and every 10 days thereafter, that it believes that the report should continue to remain confidential, until the material change or significant change is generally disclosed in the manner referred to in subsection (1).

(5) Despite the filing of a report with the applicable regulatory or securities regulatory authority under subsection (2), an investment fund must disclose promptly and generally the material change or the significant change in the manner referred to in subsection (1) upon the investment fund becoming aware or having reasonable grounds to believe that persons or companies are purchasing or selling securities of the investment fund with knowledge of the material change or the significant change that has not been generally disclosed.

PART 12 PROXY SOLICITATION AND INFORMATION CIRCULARS

12.1 Sending of Proxies and Information Circulars

(1) If management of an investment fund or the manager of an investment fund gives or intends to give notice of a meeting to securityholders of the investment fund, management or the manager must, at the same time as or before giving that notice, send to each securityholder who is entitled to notice of the meeting a form of proxy for use at the meeting.

(2) A person or company that solicits proxies from securityholders of an investment fund shall:

(a) in the case of a solicitation by or on behalf of management of the investment fund, send with the notice of meeting to each securityholder whose proxy is solicited a completed Form 51-102F5; or

[7] This section is currently section 5.10 of NI 81-102 Mutual Funds, which will be revoked once this National Instrument comes into force.

(b) in the case of a solicitation by or on behalf of any person or company other than management of the investment fund, concurrently with or before the solicitation, send a completed Form 51-102F5 and a form or proxy to each securityholder whose proxy is solicited.

12.2 Exemption

(1) Paragraph 12.1(2)(b) does not apply to a solicitation if the total number of securityholders whose proxies are solicited is not more than 15.

(2) For the purposes of subsection (1), two or more persons or companies who are joint registered owners of one or more securities are considered to be one securityholder.

12.3 Compliance with National Instrument 51-102 - A person or company that solicits proxies under section 12.1 shall do so in compliance with the requirement of Sections 9.3 and 9.4 of National Instrument 51-102 Continuous Disclosure Obligations as if those Sections applied to the person or company, and as if references in those Sections to "a reporting issuer" were references to "an investment fund".

PART 13 RESTRICTED SHARE DISCLOSURE REQUIREMENTS

13.1 Restricted Share Disclosure Requirements - An investment fund that has restricted shares, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted shares or subject securities shall comply with Part 10 of National Instrument 51-102.

PART 14 CHANGE OF AUDITOR

14.1 Change of Auditor - An investment fund shall not change its auditor unless it complies with section 4.14 of National Instrument 51-102 as if that section applied to the investment fund, and as if

(a) references in that section to "a reporting issuer" were references to "an investment fund"; and

(b) references in that section to the "board of directors" were references to the "board of directors of the investment fund, or the board of directors of the manager of the investment fund, as applicable,".

PART 15 FINANCIAL STATEMENTS – GENERAL

15.1 Books and Records - An investment fund shall maintain books and records in accordance with the requirements of securities legislation including all portfolio transactions undertaken by the investment fund.

15.2 Documents Available on Request

(1) An investment fund shall deliver or send to any person or company, on request, the most recent annual or interim financial statements of the investment fund and the most recent annual or quarterly management reports of fund performance, unless the investment fund has previously delivered or sent those financial statements or management reports of fund performance to that person or company.

(2) An investment fund shall deliver or send, free of charge, all documents requested under this section within three business days of receipt of the request.

15.3 Toll-Free Telephone Number or Collect Telephone Calls - An investment fund shall have a toll-free telephone number for, or accept collect telephone calls from, persons or companies that want to receive a copy of any or all of the most recent annual or interim financial statements or the quarterly or annual management reports of fund performance of the investment fund.

PART 16 ADDITIONAL FILING REQUIREMENTS

16.1 Additional Filing Requirements

(1) An investment fund must file a copy of any material information that it sends to its securityholders.

(2) An investment fund must file the document referred to in subsection (1) on the same date as, or as soon as practicable after, the date on which the investment fund sends the document to its securityholders.

PART 17 FILING OF MATERIAL CONTRACTS

17.1 Filing of Material Contracts - An investment fund that is not subject to National Instrument 81-101 Mutual Fund Prospectus Disclosure or securities legislation that imposes a similar requirement shall file a copy of any material contract of the investment fund not previously filed, or any amendment to any material contract of the investment fund not previously filed

(a) with the final prospectus of the investment fund; or

(b) upon the execution of the material contract or amendment.

PART 18 TRANSITION

18.1 Transition Year - Despite section 5.2, an investment fund must deliver to each securityholder the annual management report of fund performance for the first financial year end of the investment fund after the effective date of this Instrument together with an explanation of the new financial disclosure requirements.

18.2 Comparative Information - Despite any provision of this Instrument, an investment fund is not required to provide comparative information in its financial statements for the financial year, and for interim periods in the financial year, in which the investment fund is first subject to this Instrument if

(a) it is impracticable to present prior period information on a basis consistent with this Instrument;

(b) the prior period information that is available is presented; and

(c) the prior period information that is presented has not been prepared in accordance with this Instrument and this fact is disclosed.

PART 19 EXEMPTIONS

19.1 Exemption

(1) The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario only the regulator may grant an exemption from any part of this Instrument, except Parts 11 and 12.

PART 20 EFFECTIVE DATE

20.1 Effective Date - This Instrument comes into force on •.

COMPANION POLICY 81-106CP TO NATIONAL INSTRUMENT 81-106
INVESTMENT FUND CONTINUOUS DISCLOSURE

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COMPANION POLICY 81-106CP TO NATIONAL INSTRUMENT 81-106 INVESTMENT FUND CONTINUOUS DISCLOSURE

PART 1 PURPOSE AND APPLICATION OF THE COMPANION POLICY

1.1 Purpose

The purpose of this Companion Policy is to provide guidance to assist investment funds in complying with their obligations under National Instrument 81-106 Investment Fund Continuous Disclosure (the "Instrument").

1.2 Application

(1) Section 1.2 of the Instrument states that the Instrument applies, to investment funds, which includes scholarship plans and non-redeemable investment funds. These funds have similar characteristics to mutual funds and so are appropriately subject to similar reporting requirements.

(2) In addition, the Instrument applies to a mutual fund in the jurisdiction, which is defined in the Instrument as "a mutual fund that is a reporting issuer in, or that is organized under the laws of, the local jurisdiction". Market participants are reminded that the definition of mutual fund may include mutual fund securities distributed by private placement (so-called "pooled funds") if organized under the laws of the local jurisdiction.

1.3 Plain Language Principles

The Canadian securities regulatory authorities believe that plain language will help investors understand an investment funds' disclosure documents so that they can make informed investment decisions. Investment funds are encouraged to adopt the following plain language principles in preparing documents filed under the Instrument:

- use short sentences
- use definite, concrete, everyday language
- use the active voice
- avoid unnecessary words
- organize the document into clear, concise sections, paragraphs and sentences
- avoid legal or business jargon
- use strong verbs
- use personal pronouns to speak directly to the reader
- avoid reliance on glossaries and defined terms unless it helps to understand the disclosure
- avoid vague boilerplate wording
- use concrete terms or examples
- avoid excessive detail
- avoid multiple negatives.

If technical or business terms are required, clear and concise explanations should be used.

1.4 Signature and Certificates

The directors of an investment fund or the manager or the trustee of an investment fund are not required to file signed or certified continuous disclosure documents. The directors or the manager or trustee of an investment fund are responsible for the information in the investment funds disclosure documents whether or not a document is signed or certified, and it is an offence under securities legislation to file a document that contains a misrepresentation.

1.5 Filings on SEDAR

Investment funds are reminded that all documents required to be filed under the Instrument must be filed in accordance with National Instrument 13-101 – System for Electronic Document Analysis and Retrieval (SEDAR).

PART 2 FINANCIAL STATEMENTS

2.1 Interrelationship of Financial Statements with Canadian GAAP

(1) Investment funds are required to prepare their annual and interim financial statements and their annual and quarterly management reports of fund performance in accordance with both Canadian GAAP and the Instrument.

(2) Canadian GAAP provides some general requirements for the preparation of financial statements that are applicable to investment fund financial statements. Investment funds are required to comply with those requirements.

(3) However, Canadian GAAP does not contain detailed requirements applicable to the contents of investment fund financial statements. The Canadian securities regulatory authorities believe that certain information should properly be contained in the financial statements of investment funds in order to provide full disclosure, and require that this information be included.

(4) The information required by the Instrument to be included in financial statements, or an annual or interim management report of fund performance, is minimum information only. Persons preparing these documents should include any other additional information required to ensure that all material information concerning the financial position or results of the investment fund is disclosed.

2.2 Timing and Content of Interim Financial Statements

(1) Interim financial statements are also required to be prepared in accordance with both Canadian GAAP and the requirements of the Instrument. For example, Section 1751 Interim Financial Statements of the Handbook requires that the interim financial statements include, at a minimum: each of the headings and subtotals included in the most recent annual financial statements; and the specific disclosures required by Section 1751. Investment funds must ensure that interim financial statements comply with both Section 1751 of the Handbook and the Instrument. Separate fourth quarter interim financial statements are not required.

2.3 Auditor's Report

(1) An auditor's report required by section 2.3 of the Instrument may not contain a reservation of opinion unless exemptive relief is granted under 19.1. The Canadian securities regulatory authorities would have serious concerns where the reservation is:

(a) due to a departure from Canadian GAAP; or

(b) due to a limitation in the scope of the auditor's examination that:

(i) results in the auditor being unable to form an opinion on the financial statements as a whole because of a limitation in the scope of the audit;

(ii) is imposed or could reasonably be eliminated by management; or

(iii) could reasonably be expected to be recurring.

(2) The Canadian securities regulatory authorities encourage investment funds to file their financial statements as soon as practicable after the date of the audit report.

2.4 Auditor's Report - Multiple Class Funds

(1) As provided in section 8.2 of the Instrument, an investment fund that has more than one class or series of securities outstanding that are referable to a single portfolio, may, at its option, prepare separate financial statements and annual and quarterly management reports of fund performance for each class or series, or may consolidate the information concerning all of the classes or series into one set of financial statements and management reports of fund performance.

(2) To satisfy the requirement to produce audited annual financial statements, an investment fund that has more than one class or series outstanding must ensure that the annual financial statements for each class or series are audited. If the investment fund is preparing separate financial statements for each class or series, it should ensure that the auditor's report for each set of financial statements pertains specifically to the relevant class or series, but also indicates that the investment fund as a whole has been reported on for the same period without reservation.

(3) It is expected that once an investment fund makes an initial decision as to whether to prepare separate or consolidated financial statements or management reports of fund performance for its classes or series of securities, it will continue with the same approach for subsequent financial periods in order to ensure that the financial statements and management reports of fund performance for different financial periods are easily comparable. The Canadian securities regulatory authorities believe investment funds should explain, in notes to financial statements or in a management report of fund performance, the reasons for any change in approach taken from one financial period to another.

2.5 Auditor's Involvement with the Annual Management Reports of Fund Performance

Investment funds' auditors are expected to comply with section 7500 – The Auditor's Involvement with the Annual Reports, of the Handbook[1], in connection with the preparation of the annual management reports of fund performance required by the Instrument.

2.6 Delivery of Financial Statements

(1) Prior to the implementation of the Instrument, securities legislation of most Canadian jurisdictions required investment funds to deliver annual and, in certain circumstances, interim financial statements to securityholders concurrent with filing. The Instrument eliminates this mandated delivery, replacing it with a requirement that an investment fund must deliver annual and interim financial statements only to those securityholders who request them subject to the annual notice requirement. Investment funds are reminded that they remain subject to all applicable corporate law requirements that may still require delivery of annual financial statements to securityholders.

(2) Eliminating the delivery requirement enables investment funds governed by either the CBCA or provincial corporate statute to take advantage of provisions in these statutes that allow companies not to deliver annual financial statements to securityholders who have elected not to receive them.

(3) The Instrument requires the delivery of various notices to securityholders by investment funds. Investment funds are reminded of the provisions of National Policy 11-201 Delivery of Documents by Electronic Means. In particular, it is noted that the notices required to be given under sections 2.2, 3.2, 5.2 and 6.2 of the Instrument may be given in electronic form and may be combined into one or more notices. Such notices may alternatively be sent with account statements or other materials sent to securityholders by an investment fund as is convenient to the investment fund.

2.7 Change in Ending Date of Financial Year

Where an investment fund changes the ending date of its financial year, the investment fund should refer to National Policy Statement 51 Changes in the Ending Date of a Financial Year and in Reporting Status for guidance concerning reporting periods, filing deadlines and notification procedures.

PART 3 OTHER PROVISIONS

3.1 Accounting for Securities Lending Transactions

(1) Section 7.1 of the Instrument imposes certain reporting requirements on investment funds in connection with any securities lending transactions entered into by the investment fund. These requirements were included to ensure that all securities lending transactions are accounted for on the same basis. The general accounting principle concerning whether a given transaction is a recordable transaction is based on determining whether risk and rewards have transferred in the transaction. The substance of a securities lending transaction is that the portfolio adviser treats the original securities as if they have never been lent. The investment fund must be able to call the original securities back at any time, and the securities returned must be the same or substantially the same as the original securities. These conditions reduce the risk of the investment fund not

[1] "Handbook" is defined in the NI 14-101 Definitions to mean the Handbook of the Canadian Institute of Chartered Accountants.

being able to transact the original securities. The original securities remain on the books of the investment fund.

(2) The accounting treatment of the collateral in a securities lending transaction depends on the ability of the lender to control what happens with the collateral. If non-cash collateral is received by the investment fund, the collateral is not reflected on the statement of net asset of the investment fund if the non-cash collateral cannot be sold or repledged. If cash collateral is received by the investment fund lender, the investment fund has the ability to either hold or reinvest the cash. The lender has effective control over the cash, even though it uses an agent to effect the reinvestment on its behalf. The cash collateral, and subsequent reinvestment, and an obligation to repay the collateral are recorded on the books of the investment fund.

3.2 Costs of Distribution of Securities

(1) Section 7.5 of the Instrument provides that all costs and expenses associated with the issue and distribution of securities of an investment fund on a continuous basis shall be recognized as expenses in the statement of operations of the investment fund in the period in which they were incurred.

(2) Section 3.3 of National Instrument 81-102 Mutual Funds prohibits a mutual fund from paying for the costs of incorporation or organization of the mutual fund. However, apart from this restriction, a mutual fund may pay security issue costs for renewal prospectuses, which may include costs associated with legal fees relating to the preparation of a prospectus, costs associated with the distribution of the securities of the mutual fund, including underwriting, agency or similar costs, the cost of printing a prospectus, any fees that may be paid to have the securities of an exchange traded fund listed or quoted on a marketplace, and the cost of tax opinions relating to the issue of securities.

(3) The Canadian securities regulatory authorities consider it important that investors fully understand the costs associated with the ownership of securities of an investment fund. For this reason, section 7.5 of the Instrument has been implemented in order to ensure that costs associated with the continuous distribution of securities are shown as expenses of the investment fund on the statements of operations for the financial period in which they are incurred, and are not deferred and amortized to retained earnings, or charged directly to capital.

(4) Non redeemable investment funds that offer their securities on a one time offering basis should account for the initial offering costs as a capital transaction in accordance with Capital Transactions, Section 3610 of the Handbook. The amount of the costs should be disclosed separately in the financial statements of the fund for at least the period in which the relevant costs are incurred. Initial offering costs are all costs incurred to complete an offering, including costs of preparing and printing the prospectus, legal expenses, marketing expenses and agents' fees. In CSA staff's view, it is not appropriate for such costs to be deferred and recognized as an asset to be amortized to either income or retained earnings over the life of the fund.

3.3 Trailing Commissions - Trailing fees or commissions are those fees paid to dealers over time based on the client assets maintained in the fund. The Manager normally pays these fees however exemptions have been given to certain labour sponsored funds for the fund to pay these fees. Section 7.6 of the Instrument provides that any trailing fees paid by an investment fund, by way of an exemptive order, must be accounted for as an expense.

PART 4 FORMAL VALUATIONS

4.1 Formal Valuations

Part 8 of the Instrument is designed to address the concerns raised by labour sponsored funds that disclosing a fair value for its venture investments may potentially disadvantage the private companies in which it invests.

Section 8.3 permits alternative disclosure by labour sponsored funds of its statement of investment portfolio.

Labour sponsored funds must disclose the individual securities in which they invests, however, the labour sponsored fund may aggregate all changes from costs of the venture investments, thereby only showing an aggregate adjustment from cost to fair value for these securities.

This alternative disclosure is only permitted if the labour sponsored fund has obtained a formal valuation in accordance with Part 9 of the Instrument. The CSA are of the view that a report on Compliance with stated valuation policies and practices cannot take the place of a formal valuation.

(1) An investment fund obtaining a formal valuation should, at the request of the valuator, promptly furnish the valuator with access to the investment fund manager and its advisers and to all material information in their possession relevant to the formal valuation. The valuator is expected to use that access to perform a comprehensive review and analysis of information upon which the formal valuation is based. The valuator should form its own independent views of the reasonableness of this information, including any forecasts or projections or other measurements of the expected future performance of the enterprise, and of any of the assumptions upon which it is based, and adjust the information accordingly.

(2) The disclosure in the valuation of the scope of review should include a description of any limitation on the scope of the review and the implications of the limitation on the valuator's conclusion.

(3) The person or company responsible for obtaining a formal valuation should work in co-operation with the valuator to ensure that the requirements of the Instrument are satisfied.

4.2 Independent Valuators

(1) Except in certain prescribed situations, the Instrument provides that it is a question of fact as to whether a valuator is independent of the investment fund. In determining the independence of the valuator from the investment fund, a number of factors may be relevant, including whether

(a) the valuator or an affiliated entity of it has a material financial interest in future business in respect of which an agreement, commitment or understanding exists involving the investment fund or a person or company listed in paragraph (2)(a);

(b) the valuator or an affiliated entity of it is a lender of a material amount of indebtedness to any of the issuers of the investment fund's illiquid investments.

(2) The Canadian securities regulatory authorities would generally consider a valuator to not be independent of an investment fund where

(a) the valuator or an affiliated entity of the valuator is

(i) the manager of the investment fund,

(ii) a portfolio adviser of the investment fund,

(iii) an insider of the investment fund,

(iv) an associate of the investment fund,

(v) an affiliated entity of the investment fund, or

(vi) an affiliated entity of any of the persons or companies named in this clause (a);

(b) the compensation of the valuator or an affiliated entity of the valuator depends in whole or in part upon an agreement, arrangement or understanding that gives the valuator, or an affiliated entity of the valuator, a financial incentive in respect of the conclusions reached in the formal valuation;

(c) the valuator or an affiliated entity of the valuator has a material investment in the investment fund or a portfolio asset of the investment fund.

PART 5 MATERIAL/SIGNIFICANT CHANGE

5.1 Material/Significant Change

The Canadian securities regulatory authorities are of the view that in order for an investment fund to file a confidential material/significant change report under subsection 11.1(3) of the Instrument, the investment fund or its manager must advise insiders of the prohibition against trading during the filing period of a confidential material change report and also must take steps to monitor trading activity.

PART 6 INFORMATION CIRCULARS

6.1 Sending of Proxies and Information Circulars

The Canadian securities regulatory authorities remind that an investment fund is required to send the proxy-related materials referred to in section 12.1 of the Instrument to its securityholders in accordance with the requirements of National Instrument 54-101.

NATIONAL INSTRUMENT 81-106
INVESTMENT FUND CONTINUOUS DISCLOSURE
FORM 81-106F1
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NATIONAL INSTRUMENT 81-106
INVESTMENT FUND CONTINUOUS DISCLOSURE
FORM 81-106F1
CONTENTS OF ANNUAL AND QUARTERLY MANAGEMENT REPORT OF FUND PERFORMANCE

GENERAL INSTRUCTIONS

General

(1) *This Form describes the disclosure required in an annual and quarterly management report of fund performance of an investment fund. Each item of this Form outlines disclosure or format requirements. Instructions to help you comply with these requirements are printed in italic type.*

(2) *Terms defined in National Instrument 81-101 Mutual Fund Prospectus Disclosure, National Instrument 81-102 Mutual Funds, National Instrument 14-101 Definitions and National Instrument 81-106 Investment Fund Continuous Disclosure and used in this Form have the meanings that they have in those national instruments.*

(3) *An annual and quarterly management report of fund performance shall state the required information concisely and in plain language. Reference should be made to Part 1 of Companion Policy 81-106CP for a discussion concerning plain language and presentation.*

(4) *Respond as simply and directly as is reasonably possible and include only as much information as is necessary for an understanding of the matters for which disclosure is provided. Persons preparing an annual and quarterly management report of fund performance should strive for maximum clarity and simplicity to assist readers.*

(5) *National Instrument 81-106 requires that an annual and quarterly management report of fund performance be presented in a format that assists its readability and comprehension. This Form generally does not mandate the use of a specific format to achieve those goals, except in the case of disclosure of financial highlights and past performance, as required by Item 2 of each of Parts B and C of this Form; that disclosure must be presented in the formats specified in this Form. In addition, the annual and quarterly management report of fund performance are required to present items in the order required by this Form. Within this framework, investment funds are encouraged to use, as appropriate, tables, captions, bullet points or other organizational techniques that assist in presenting the required disclosure clearly and concisely.*

(6) *National Instrument 81-106 or this Form do not prohibit the inclusion of information beyond what is required by this Form; this is unlike the requirements of National Instrument 81-101, which strictly limits the type of information that may be included in a simplified prospectus to what is mandated by that national instrument or Form 81-101F1. Therefore, an investment fund may include in its annual and quarterly management report of fund performance, artwork and educational material (as defined in National Instrument 81-101). However, care should be taken to ensure that the inclusion of such material does not obscure the information that is required to be provided by this Form.*

(7) *Investment funds should also ensure that the inclusion of additional information does not lengthen the management report of fund performance excessively. It is expected that, under normal circumstances, the text of an annual management report of fund performance will be approximately 4 pages in length and that the text of a quarterly management report of fund performance will be approximately 2 pages in length.*

Management Discussion of Fund Performance ("MDFP")

(8) *MDFP is an analysis and explanation that is designed to supplement an investment fund's financial statements. MDFP provides the manager of an investment fund with the opportunity to discuss the investment fund's current financial results, position and future prospects. MDFP is intended to give a reader the ability to look at the investment fund through the eyes of management by providing both a historical and prospective analysis of the investment activities and operations of the investment fund. Coupled with the financial highlights, this information should enable readers to better assess the investment fund's performance, position and future prospects.*

(9) *Focus the MDFP on material information about the performance of the investment fund, with particular emphasis on known material trends, commitments, events, risks or uncertainties that are reasonably expected to have a material effect on the investment fund's future performance or investment activities. This information may be provided on a general or fund-specific basis.*

(10) *Investment funds are not required to disclose information that is not material. Materiality is a matter of judgement in particular circumstances and should generally be determined in relation to an item's significance to investors and other users of the information. . This concept of materiality is consistent with the definition of significant change in National Instrument 81-102. An item of information, or an aggregate of items, is considered material in the context of an investment fund if it is probable that its omission or misstatement would influence or change an investment decision with respect to the investment fund's securities, or for exchange traded funds, the price of the security. In determining whether information is material, take into account both quantitative and qualitative factors.*

(11) *The nature of the disclosure required under the MDFP section is intentionally general. This Form contains a minimum of specific instructions in order to allow, as well as encourage, investment funds to discuss their investments in the most appropriate manner and to tailor their comments to their individual circumstances.*

Forward looking Information

(12) *You are encouraged to provide forward-looking information provided you have a reasonable basis for doing so. Preparing your MDFP necessarily involves some degree of prediction or projection. For example, MDFP requires a discussion of known trends or uncertainties that have had or that the investment fund reasonably expects will have favourable or unfavourable effects on performance.*

All forward-looking information must contain a statement that the information is forward-looking, a description of the factors that may cause actual results to differ materially from the forward-looking information, your material assumptions and appropriate risk disclosure and cautionary language.

You must discuss any forward-looking information disclosed in MDFP for a prior period which in light of intervening events and absent further explanations, may be misleading. Forward looking statements may be considered misleading when they are unreasonably optimistic or aggressive, or lack objectivity, or are not adequately explained.

Presentation of Information

(13) *Part 8 of National Instrument 81-106 prohibits the binding together of information pertaining to an investment fund in an annual or quarterly management report of fund performance with information pertaining to another investment fund. Therefore, each annual or quarterly management report of fund performance must present all information about the investment fund to which it pertains separately from that information in relation to other investment funds.*

PART A GENERAL

Item 1 General Requirements

(1) An annual management report of fund performance shall contain

(a) a MDFP concerning the investment fund for the financial year to which the annual management report of fund performance pertains, prepared in accordance with Item 1 of Part B of this Form;

(b) financial highlights of the investment fund for the financial year to which the annual management report of fund performance and its past performance, prepared in accordance with Item 2 of Part B of this Form; and

(c) a summary of portfolio investments of the investment fund as at the end of the financial year to which the annual management report of fund performance pertains, prepared in accordance with Item 3 of Part B of this Form.

(2) A quarterly management report of fund performance shall contain

(a) a MDFP concerning the investment fund for the financial quarter to which the quarterly management report of fund performance pertains, prepared in accordance with Item 1 of Part C of this Form;

(b) financial highlights of the investment fund for the financial quarter to which the quarterly management report of fund performance and its past performance, prepared in accordance with Item 2 of Part C of this Form; and

(c) a summary of portfolio investments of the investment fund as at the end of the financial quarter to which the quarterly management report of fund performance pertains, prepared in accordance with Item 3 of Part C of this Form.

Item 2 Front Page Disclosure

(3) The front page of an annual management report of fund performance shall contain disclosure in substantially the following words:

"This annual management report of fund performance contains financial highlights but does not contain the complete annual financial statements of the fund. You can get a copy of the annual financial statements at your request, and at no cost, by calling [toll-free/collect call telephone number], by writing to us at [insert address] or by visiting our website at [insert address]."

(4) The front page of a quarterly management report of fund performance shall contain disclosure in substantially the following words:

"This quarterly management report of fund performance contains financial highlights, but does not contain either interim or annual financial statements of the fund. You can get a copy of the interim or annual financial statements at your request, and at no cost, by calling [toll-free/collect call telephone number], by writing to us at [insert address] or by visiting our website at [insert address]."

PART B CONTENT REQUIREMENTS FOR ANNUAL MANAGEMENT REPORT OF FUND PERFORMANCE

Item 1 Management Discussion of Fund Performance

1.1 Fundamental Investment Objectives

Provide a brief summary of the fundamental investment objectives and strategies of the investment fund.

INSTRUCTION:

The disclosure of the fundamental investment objective is to provide investors with a reference point in order to assess the information contained in management's report of fund performance. It should be concise summary of the fundamental investment objectives of the investment funds, and not merely copied from the prospectus.

1.2 Results of Operations

Provide a summary of the results of operations of the investment fund for the financial year to which the MDFP pertains, including, if applicable, a discussion of

(a) how the composition and changes throughout the financial year to the composition of the investment portfolio of the investment fund relate to the investment fund's fundamental investment objectives and strategies or to changes in the economy, markets or unusual events;

(b) any material changes in investments in specific securities and overall asset mix from the previous period.

(c) unusual trends such as higher than usual redemptions or sales and the effect of these on the investment fund;

(d) significant components and significant changes to the components of revenue and expenses;

(e) changes in results of operations of the investment fund from the previous financial year;

(f) risks, events, uncertainties, trends and commitments likely to have a material effect on future performance;

(g) details of any transactions involving related parties to the investment fund;

(h) how the portfolio advisers or the manager of the investment fund voted on matters relating to issuers of portfolio assets of the investment fund, other than routine business of those issuers;

(i) any other material information or information required to be disclosed pursuant to an order or exemption received by the fund; and

(j) An investment fund that borrows money shall disclose,

(i) the minimum and maximum amount borrowed during the period;

(ii) the percentage of net assets of the investment fund that the borrowing represented as of the end of the period;

(iii) how the borrowed money was used; and

(iv) details of the terms of the borrowing arrangements.

1.3 Risk

Discuss how any material or significant changes to the investment fund over the financial year affected the overall level of risk associated with an investment in the fund.

INSTRUCTION:

Ensure that the discussion is not merely a repeat of information contained in the prospectus of the investment fund, but rather a discussion that reflects any changes in risk level of the investment fund over the financial year.

1.4 Performance

Provide a discussion of the performance of the investment fund during the financial year to which the MDFP pertains, including a discussion of the significant components of, and changes to, the statement of financial highlights and past performance.

INSTRUCTION:

Provide an analysis of any ratios reported in the statement of financial highlights, and discuss any changes to those ratios since the previous MDFP.

1.5 Recent Developments

Provide a discussion of the developments affecting the investment fund during the financial year to which the MDFP pertains, including, if applicable, a discussion of

(a) unusual or infrequent events or transactions, economic changes and relevant market conditions that affected performance;

(b) estimated effects of changes in accounting policies adopted subsequent to year end;

(c) any changes to, or change of control of, the manager of the investment fund or a portfolio adviser of the investment fund; and

(d) any reorganizations, mergers or similar transactions affecting the fund.

1.6 Forward-Looking Information

Provide forward-looking information, including

(a) strategic position of the investment fund going forward; and

(b) any known material trends, commitments, events or uncertainties that might reasonably be expected to affect the investment fund; and

(c) the effects of any planned mergers or other material transactions.

INSTRUCTION:

A forward-looking MDFP explains past events, decisions, circumstances and performance in the context of whether they are reasonably likely to have a material impact on future performance. It also describes not only anticipated future

events, decisions, circumstances, opportunities and risks that management considers reasonably likely to materially impact future performance, but also matters such as management's vision, strategy and targets.

Forward-looking disclosure involves anticipating a future trend or event or anticipating a less predictable effect of a known event, trend or uncertainty. This other forward-looking information is to be distinguished from presently known information that is reasonably expected to have a material effect on future performance.

Item 2 Financial Highlights

2.1 Financial Highlights

(1) Include selected financial highlights for the investment fund from the audited financial statements in the form of the following tables, appropriately completed, and introduced using the following words:

"The following tables show selected key financial information about the Fund and are intended to help you understand the Fund's financial performance for the past [insert number][1] years. Certain information is derived from the Fund's audited annual financial statements. Please see the front page for information about how you can obtain the Fund's annual or interim financial statements."

The Fund's Net Asset Value per [Unit/Share]

	[*insert year*]	[*insert year*]	[*insert year*]	[*insert year*]	[*insert year*]
Net Asset Value, beginning of year	$	$	$	$	$
total revenue	$	$	$	$	$
total expenses	$	$	$	$	$
realized gains (losses) for the period	$	$	$	$	$
unrealized gains (losses) for the period	$	$	$	$	$
Total increase (decrease) from operations[2]	$	$	$	$	$
Distributions:					
From net income	$	$	$	$	$
From dividends	$	$	$	$	$
From realized gain	$	$	$	$	$
Return of capital	$	$	$	$	$
Total Annual Distributions[(1)]	$	$	$	$	$
Net asset value at [insert last day of financial year] of year shown	$	$	$	$	$

(1) *Distributions were [paid in cash/reinvested in additional [units/shares] of the Fund].*

Ratios and Supplemental Data

	[*insert year*]	[*insert year*]	[*insert year*]	[*insert year*]	[*insert year*]
Net assets (000's)[(1)]	$	$	$	$	$
Number of [units/shares] outstanding[(1)]					
Management expense ratio[(2)]	%	%	%	%	%
Portfolio turnover rate[(3)]	%	%	%	%	%

(1) *This information is provided as at [insert date of end of financial year] of the year shown.*

(2) *Management expense ratio is based on total expenses for the stated period and is expressed as an annualized percentage of daily average net assets during the period.*

(3) *The Fund's portfolio turnover rate indicates how actively the Fund's portfolio adviser manages its portfolio investments. A portfolio turnover rate of 100% is equivalent to the Fund buying and selling all of the securities in its portfolio once in the course of the year. The*

1 Provide financial information to a maximum of five years.

2 The first six rows of this table are new and are included to provide investors or potential investors with sufficient information to understand the MDFP.

higher a fund's portfolio turnover rate in a year, the greater the trading costs payable by the fund in the year, and the greater the chance of an investor receiving taxable capital gains in the year. There is not necessarily a relationship between a high turnover rate and the performance of a fund.

(2) Derive the selected financial information in the tables referred to in subsection (1) from the audited annual financial statements of the investment fund.

(3) The table should be appropriately modified for corporate investment funds.

(4) Realized and unrealized gains and losses should distinguish between gains or losses from securities versus gains or losses from foreign exchange.

(5) The selected financial information must be shown individually for each class, if a multi-class fund.

(6) Provide per unit or per share amounts to the nearest cent, and provide percentage amounts to two decimal places.

(7) Provide the selected financial information required by this Item in chronological order for each of the five most recently completed financial years of the investment fund for which audited financial statements have been filed, with the information for the most recent financial year in the first column on the left[3] of the table.

(8) If the investment fund has merged with another fund, include in the table only the financial information of the continuing fund.

(9) Calculate the management expense ratio of the investment fund as required by Part 16 of National Instrument 81-102. Include a brief description of the method of calculating the management expense ratio.

(10) If the basis of the calculation of the management fees or of the other fees, charges or expenses that are charged to the investment fund is changed or is proposed to be changed or a new fee is introduced or proposed to be introduced, and if the change would have had an effect on the management expense ratio for the last completed financial year of the investment fund if the change had been in effect throughout that financial year, disclose the effect of the change on the management expense ratio in a note to the appropriate table.

(11) Do not include disclosure concerning portfolio turnover rate for a money market fund.

INSTRUCTIONS:

(1) *Calculate the investment fund's portfolio turnover rate by dividing the lesser of the amounts of the cost of purchases and proceeds of sales of portfolio securities for the financial year by the average of the value of the portfolio securities owned by the investment fund in the financial year. Calculate the monthly average by totalling the values of portfolio securities as at the beginning and end of the first month of the financial year and as at the end of each of the succeeding 11 months and dividing the sum by 13. Exclude from both numerator and denominator amounts relating to all securities having a remaining term to maturity on the date of acquisition by the investment fund of one year or less.*

Item 3 Past Performance

3.1 General

(1) In responding to the requirements of this Item, an investment fund shall comply with sections 15.2, 15.3, 15.9, 15.10, 15.11 and 15.14 of National Instrument 81-102 Mutual Funds as if those sections applied to the annual management report of fund performance.

(2) Despite the specific requirements of this Item, performance data shall not be provided for any period if the investment fund was not a reporting issuer at all times during the period.

(3) Set out in footnotes to the chart or table required by this Item the assumptions relevant to the calculation of the performance information, and include a statement of the significance of the assumption that distributions are reinvested for taxable investments.

[3] Direction of table changed from left to right.

(4) Despite subsection (1), investment funds that are not mutual funds in the jurisdiction shall not make the assumption that all distributions made by the fund in the period shown were reinvested in additional securities of the fund.

(5) In the introduction to the chart or table required by this Item, or in a general introduction to the "Past Performance" section, indicate, as applicable, that

(a) the returns or performance information shown assume that all distributions made by the investment fund in the periods shown were reinvested in additional securities of the mutual fund;

(b) the return or performance information do not take into account sales, redemption, distribution or other optional charges that would have reduced returns or performance; and

(c) how the investment fund has performed in the past does not necessarily indicate how it will perform in the future.

(6) The disclosure required in subsection (5) should be appropriately modified for investment funds that are not mutual funds in the jurisdiction.

(7) Use a linear scale for each axis of the bar chart required by this Item.

(8) The y-axis for the bar chart shall start at 0.

3.2 Year-by-Year Returns

(1) Provide a bar chart, under the heading "Past Performance" and under the sub-heading "Year-by-Year Returns", that shows, in chronological order with the most recent year on the right of the bar chart, the annual total return, calculated as provided under subsection (2), of the investment fund for the lesser of

(a) each of the ten most recently completed financial years; and

(b) each of the completed financial years in which the investment fund has been in existence and which the investment fund was a reporting issuer.

(2) Calculate the annual total return of the investment fund for a year in accordance with the requirements of Part 15 of National Instrument 81-102.

(3) Provide an introduction to the bar chart that

(a) indicates that the bar chart shows the investment fund's annual performance for each of the years shown, and illustrates how the investment fund's performance has changed from year to year; and

(b) indicates that the bar chart shows, in percentage terms, how much an investment made on [first day of financial year] in each financial year would have grown or decreased by [last day of financial year] in that year.

3.3 Annual Compound Returns

(1) If the investment fund is not a money market fund, disclose, in the form of a table, under the sub-heading "Annual Compound Returns"

(a) the investment fund's past performance for the 10, five, three and one year periods ended on the last day of the fund's financial year; and

(b) if the investment fund was a reporting issuer for more than one and less than ten years, the investment fund's past performance since the inception of the investment fund.

(2) Calculate the compound total return in accordance with the requirements of Part 15 of National Instrument 81-102.

Item 4 Summary of Portfolio Investments

(1) Include, in the form of a table, a summary of portfolio investments as at the end of the financial year of the investment fund to which the annual management report of fund performance pertains.

(2) The summary of portfolio investments

(a) shall break down the entire portfolio of the investment fund into appropriate subgroups, and shall show the percentage of the aggregate net asset value of the investment fund constituted by each subgroup;

(b) shall disclose the current value of securities in any one issuer if more than one percent of the aggregate net asset value of the investment fund is invested in securities of that issuer; and

(c) may disclose the current value of securities in any one issuer if less than one percent of the aggregate net asset value of the investment fund is invested in securities of that issuer.

(3) Provide disclosure of

(a) the number of securities held as of end of the financial year;

(b) the number of securities that individually comprise more than five percent of the aggregate net asset value of the investment fund; and

(c) the number of securities that individually comprise more than one percent of the aggregate net asset value of the investment fund.

(4) At the option of the investment fund, supplementary disclosure of the investment portfolio may be included.

INSTRUCTIONS:

(1) *The summary of portfolio investments is designed to allow the reader an easily accessible snapshot of the portfolio of the investment fund as at the end of the financial year for which the annual management report of fund performance is prepared. As with the other components of the annual management report of fund performance, care should be taken to ensure that the information in the summary of portfolio investments is presented in an easily accessible and understandable way.*

(2) *The Canadian securities regulatory authorities have not prescribed the names of the categories into which the portfolio should be broken down. An investment fund should use the most appropriate categories given the nature of the fund. If appropriate, an investment fund may use more than one breakdown, for instance showing the portfolio of the investment fund broken down according to security type, industry, geographical locations, etc. However, each categorization shall be complete, showing 100 percent of the aggregate net assets of the investment fund.*

(3) *In addition to the table, the disclosure may also be presented in the form of a pie chart.*

(4) *If a top fund invests substantially all of its assets directly or indirectly (through the use of specified derivatives) in one bottom fund or one RSP clone fund, only list the largest holdings of the bottom fund by percentage of net assets of the bottom fund, as of the period end of the top fund, and state the percentage of the net assets of the bottom fund that are invested in each of those holdings. Such listing shall be accompanied by a warning to the effect that the information contained in the list may change due to the ongoing portfolio transactions of the bottom fund and a statement on how more current information may be obtained by investors, if available.*

(5) *If the investment fund is a top fund that invests in other investment funds, a statement must be made to the effect that the simplified prospectus and other information about the other investment funds are available on the internet at www.sedar.com."*

Item 5 Other Material Information

Provide any other material information relating to the investment fund not otherwise required to be disclosed by this Part.

PART C CONTENT REQUIREMENTS FOR QUARTERLY MANAGEMENT REPORT OF FUND PERFORMANCE

Item 1 Management Discussion of Fund Performance

1.1 Results of Operations

Provide an update of the analysis of the investment fund's results of operation provided in the MDFP in the most recent annual or quarterly management report of fund performance. Discuss any material changes to any of the components listed in paragraphs (a) to (h) in Item 1.2 of Part B of Form 81-106F1.

1.2 Performance

Discuss the performance of the investment fund over the financial quarter to which the quarterly management report of fund performance pertains, including, but not limited to, a discussion of the significant components of and changes to the statement of financial highlights and past performance.

1.3 Significant Developments

If there have been any significant developments affecting the investment fund since the most recent annual or quarterly management report of fund performance, discuss those developments and their impact on the investment fund.

1.4 Forward-Looking Information

If the manager of the investment fund believes that the forward-looking information contained in the most recent annual or quarterly management report of fund performance of the investment fund is not accurate, provide an update of that information.

INSTRUCTIONS:

(1) *The general discussion concerning the nature of MDFP contained in the General Instructions to Form 81-106F1 is applicable to the MDFP provided under this Form in a quarterly management report of fund performance. Generally speaking, the Canadian securities regulatory authorities expect the MDFP contained in a quarterly management report of fund performance to be briefer than that contained in an annual management report of fund performance. The MDFP in a quarterly management report of fund performance is intended to update the reader on developments since the date of the most recent annual or quarterly management report of fund performance, and it is not necessary to restate all of the information contained in the most recent annual MDFP.*

(2) *The MDFP in a quarterly management report of fund performance should deal with the financial quarter to which the quarterly management report of fund performance pertains.*

Item 2 Financial Highlights

2.1 Financial Highlights

(1) Provide the disclosure required by Item 2.1 of Part B of this Form for

(a) the financial quarter to which the quarterly management report of fund performance pertains,

(b) the current year to date total, and

(c) the previous financial year end.

(2) Update any significant changes in the portfolio turnover rate from the information contained in the most recent annual or quarterly management report of fund performance of the investment fund.

INSTRUCTIONS:

Present the disclosure for each period listed in (1) in the order presented, with the information from the financial quarter to which the quarterly management report of fund performance pertains at the left.

Investment funds are reminded that the management expense ratio must be calculated on a 12-month basis, and so updates of the management expense ratio over a partial financial year of an investment fund are not permitted by Part 16 of NI 81-102.

Item 3 Past Performance

Include a bar chart prepared in accordance with Item 3 of Part B of this Form, except that the period covered by the bar chart shall end at the end of the financial quarter of the investment fund to which the quarterly management report of fund performance pertains, rather than at the period end required by Item 3 of Part B of this Form.

Item 4 Summary of Portfolio Investments

(1) Include a summary of portfolio investments as at the end of the financial quarter of the investment fund to which the quarterly management report of fund performance pertains.

(2) The summary of portfolio investments shall be prepared in accordance with Item 3 of Part B of this Form.

Item 5 Other Material Information

Provide any other material information relating to the investment fund in the financial quarter not otherwise required to be disclosed by this Part.

6.1.3 Amendment to National Instrument 81-101 Mutual Fund Prospectus Disclosure, Form 81-101F1 Contents of Simplified Prospectus, Form 81-101F2 Contents of Annual Information Form and Companion Policy 81-101CP

AMENDMENT TO
NATIONAL INSTRUMENT 81-101
MUTUAL FUND PROSPECTUS DISCLOSURE,
FORM 81-101F1 CONTENTS OF SIMPLIFIED PROSPECTUS AND
FORM 81-101F2 CONTENTS OF ANNUAL INFORMATION FORM

PART 1 AMENDMENTS TO NATIONAL INSTRUMENT 81-101 MUTUAL FUND PROSPECTUS DISCLOSURE

1.1 Amendments to National Instrument 81-101 Mutual Fund Prospectus Disclosure

(1) National Instrument 81-101 Mutual Fund Prospectus Disclosure is amended by this Part of this Instrument.

(2) Section 3.1 is amended by the addition of the following after paragraph 3 :

"4. The most recently filed annual management report of fund performance of the mutual fund, filed either before or after the date of the simplified prospectus.

5. The most recently filed quarterly management report of fund performance of the mutual fund that was filed before or after the date of the simplified prospectus and that pertains to a period after the period to which the annual management report of fund performance then incorporated by reference in the simplified prospectus pertains.".

PART 2 AMENDMENTS TO FORM 81-101F1 CONTENTS OF SIMPLIFIED PROSPECTUS

2.1 Amendments to Form 81-101F1 Contents of Simplified Prospectus

(1) Form 81-101F1 Contents of Simplified Prospectus is amended by this Part of this Instrument.

(2) Item 3.1 of Part A is amended by the deletion of the third bullet point of Item 3.1 and the substitution of the following:

"• Additional information about the Fund is available in the following documents:

- the Annual Information Form,
- the most recently filed annual financial statements,
- any interim financial statements filed after those annual financial statements,
- the most recently filed annual management report of fund performance, and
- any quarterly management report of fund performance filed after that annual management report of fund performance.

These documents are incorporated by reference into this Simplified Prospectus, which means that they legally form part of this document just as if they were printed as a part of this document. You can get a copy of those documents, at your request, and at no cost, by calling [toll-free/collect] [insert the toll-free telephone number or telephone number where collect calls are accepted, as required by section 3.4 of the Instrument], or from your dealer.".

(3) Item 3.2 of Part A is amended by the deletion of the third bullet point of Item 3.2 and the substitution of the following:

"• Additional information about each Fund is available in the following documents:

- the Annual Information Form,
- the most recently filed annual financial statements,
- any interim financial statements filed after those annual financial statements,

- the most recently filed annual management report of fund performance, and
- any quarterly management report of fund performance filed after that annual management report of fund performance.

These documents are incorporated by reference into this document, which means that they legally form part of this document just as if they were printed as a part of this document. You can get a copy of those documents, at your request, and at no cost, by calling [toll-free/collect] [insert the toll-free telephone number or telephone number where collect calls are accepted, as required by section 3.4 of the Instrument], or from your dealer.".

(4) Items 8 and 11 of Part B are deleted.

(5) Item 13 of Part B is amended by :

(a) the deletion of Item 13.1; and

(b) the deletion of subsection 13.2(1) and the substitution of the following:

"(1) Under the heading "Fund Expenses Indirectly Borne by Investors", provide an example of the share of the expenses of the mutual fund indirectly borne by investors, containing the information and based on the assumptions described in (2).".

PART 3 AMENDMENTS TO FORM 81-101F2 CONTENTS OF ANNUAL INFORMATION FORM

3.1 Amendments to Form 81-101F2 Contents of Annual Information Form

(1) Form 81-101F2 Contents of Annual Information Form is amended by this Part of this Instrument.

(2) Item 15 is amended by the addition of the following Instruction at the end of that Item:

"INSTRUCTION:

The disclosure required under Item 15(1) regarding executive compensation for management functions carried out by employees of a mutual fund may be made in accordance with the disclosure requirements of Form 51-102F6 Statement of Executive Compensation."

PART 4 EFFECTIVE DATE

4.1 Effective Date

This Instrument comes into force on the date that National Instrument 81-106 Investment Fund Continuous Disclosure comes into force.

AMENDMENT TO
COMPANION POLICY 81-101CP
MUTUAL FUND PROSPECTUS DISCLOSURE

PART 1 AMENDMENTS

1.1 Amendments

(1) Companion Policy 81-101CP Mutual Fund Prospectus Disclosure is amended by this Amendment.

(2) Section 2.4 is deleted and substituted by the following :

"**2.4 Financial Statements and Management Reports of Fund Performance** – The Instrument contemplates that the mutual fund's most recently audited financial statements, and any interim statements filed after those audited statements, as well as the mutual fund's most recently filed annual management report of fund performance, and any quarterly management report of fund performance filed after that annual management report, will be provided upon request to any person or company requesting them. Like the annual information form, these financial statements and management reports of fund performance are incorporated by reference into the simplified prospectus. The result is that future filings will be incorporated by reference into the simplified prospectus, while superseding the financial statements and management reports of fund performance previously filed."

PART 2 EFFECTIVE DATE

2.1 Effective Date

This Amendment comes into force on the date that National Instrument 81-106 Investment Fund Continuous Disclosure comes into force.

6.1.4 Amendment to National Instrument 81-102 Mutual Funds and Companion Policy 81-102CP

AMENDMENT TO
NATIONAL INSTRUMENT 81-102
MUTUAL FUNDS

PART 1 AMENDMENTS

1.1 Amendments

(1) National Instrument 81-102 Mutual Funds is amended by this Instrument.

(2) Section 1.1 is amended by

(a) the deletion of the definition of "significant change" and the substitution of the following:

""significant change" has the meaning ascribed to that term in National Instrument 81-106 Investment Fund Continuous Disclosure;";

(b) the deletion of the definition of "report to securityholders" and the substitution of the following:

""report to securityholders" means a report that includes annual or interim financial statements, or an annual or quarterly management report of fund performance, and that is delivered to securityholders of a mutual fund;";

(c) the addition of the following as Item 6 to paragraph (b) of the definition of "sales communication":

"6. Annual or quarterly management report of fund performance;"; and

(d) the deletion of the definition of "timely disclosure requirements".

(3) Section 5.6 is amended by the deletion of paragraph 5.6(1)(g) and the substitution of the following:

"(g) the mutual fund has complied with Part 11 of National Instrument 81-106 Investment Fund Continuous Disclosure in connection with the making of the decision to proceed with the transaction by the board of directors of the manager of the mutual fund or of the mutual fund;".

(4) Section 5.10 is deleted.

(5) Part 17 is deleted.

PART 2 EFFECTIVE DATE

2.1 Effective Date

This Instrument comes into force on the date that National Instrument 81-106 Investment Fund Continuous Disclosure comes into force.

AMENDMENT TO
COMPANION POLICY 81-102CP
MUTUAL FUNDS

PART 1 AMENDMENTS

1.1 Amendments

(1) Companion Policy 81-102CP is amended by this Amendment.

(2) Subsection 3.2(3) is amended by deleting the words “section 5.10 of the Instrument” in the last sentence of the subsection and substituting the words “Part 11 of National Instrument 81-106 Investment Fund Continuous Disclosure”.

(3) Subsection 7.3(2) is amended by deleting the words “paragraph 5.1(g) and section 5.10 of the Instrument” in the last sentence of the subsection and substituting the words “paragraph 5.1(g) of the Instrument and Part 11 of National Instrument 81-106 Investment Fund Continuous Disclosure”.

(4) Section 7.4 is deleted.

(5) Sections 14.2, 14.3, 14.4 and 14.5 are deleted.

PART 2 EFFECTIVE DATE

2.1 Effective Date

This Amendment comes into force on the date that National Instrument 81-106 Investment Fund Continuous Disclosure comes into force.

6.1.5 Amendment to National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR)

AMENDMENT TO
NATIONAL INSTRUMENT 13-101
SYSTEM FOR ELECTRONIC DOCUMENT ANALYSIS AND RETRIEVAL (SEDAR)

PART 1 AMENDMENTS

1.1 Amendments

(1) National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) is amended by this Instrument.

(2) Appendix A is amended by

(a) the deletion of the following item from part I B. and part II B.(a):

"8.	Annual Filing of a Reporting Issuer (Form 28 – British Columbia, Alberta, Ontario, Nova Scotia and Form 26 – Saskatchewan)"	BC, Alta, Sask, Ont and NS

and the substitution of the following to part I B. and part II B.(a):

"8(a). Annual Management Report of Fund Performance

8(b). Quarterly Management Report of Fund Performance"; and

(b) the addition of the following to part I B.:

"14.	Report of Management Company – Transactions with related persons or companies (Form 81-903F – British Columbia, Form 38 – Alberta and Ontario, Form 36 – Saskatchewan, Form 39 – Nova Scotia, and Form 37 – Newfoundland)".	BC, Alta, Sask, Ont, NS and Nfld

PART 2 EFFECTIVE DATE

2.1 Effective Date

This Instrument comes into force on the date that National Instrument 81-106 Investment Fund Continuous Disclosure comes into force.

6.1.6 Amendment to Ontario Securities Commission Rule 41-502 Prospectus Requirements for Mutual Funds

AMENDMENT TO
ONTARIO SECURITIES COMMISSION RULE 41-502
PROSPECTUS REQUIREMENTS FOR MUTUAL FUNDS

PART 1 AMENDMENTS

1.1 Amendments

Rule 41-502 Prospectus Requirements for Mutual Funds is amended by deleting Part 10.

PART 2 EFFECTIVE DATE

2.1 Effective Date

This Amendment comes into force on the date that National Instrument 81-106 Investment Fund Continuous Disclosure comes into force.

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

Exempt Financings

The Ontario Securities Commission reminds issuers and other parties relying on exemptions that they are responsible for the completeness, accuracy, and timely filing of Forms 45-501F1 and 45-501F2, and any other relevant form, pursuant to section 27 of the *Securities Act* and OSC Rule 45-501 ("Exempt Distributions").

REPORTS OF TRADES SUBMITTED ON FORM 45-501F1

Transaction Date	Purchaser	Security	Total Purchase Price ($)	Number of Securities
23-Aug-2002	Catherine Cunningham	Acuity Pooled High Income Fund - Trust Units	100,000.00	6,808.00
23-Aug-2002	Rosemary Lavelle Jim Lavelle	Acuity Pooled High Income Fund - Trust Units	350,000.00	23,828.00
26-Jun-2002 6/26/02	Account 1037605	Acuity Pooled High Income Fund - Trust Units	50,000.00	3,375,846.00
19-Aug-2002	Margaret Arnold	Acuity Pooled High Income Fund - Trust Units	50,000.00	3,871.00
08-Aug-2002	1053720 Ontario Ltld	Acuity Pooled High Income Fund - Trust Units	300,000.00	20,683.00
31-Jul-2002	GATX/MM Venture Finance Partnership	Alterna Technologies Group Inc. - Warrants	650,000.00	1,237,734.00
21-Aug-2002	Roger Moss	Amerigo Resources Ltd. - Common Shares	8,000.00	40,000.00
16-Aug-2002	4 Purchasers	Anaconda Gold Corp. - Common Shares	620,400.00	4,135,999.00
09-Aug-2002 8/16/02	4 Purchasers	Arrow Ascendant Arbitrage Fund - Trust Units	300,918.00	29,625.00
09-Aug-2002	Nevins Enterprises Limited	Arrow Epic Capital Fund - Trust Units	26,375.11	2,389.00
09-Aug-2002	Massoumeh Mozaffari;Estate of Moezeddin Mozaffari	Arrow Global Multi-Strategy Fund - Trust Units	161,973.90	16,045.00
16-Aug-2002	1504603 Ontario Inc.	Arrow Goodwood Fund - Trust Units	56,250.00	6,194.00
02-Aug-2002	Peter Lo	BPI Global Opportunites III Fund - Units	40,000.00	458.00
02-Aug-2002	William Brubacher	BPI Global Opportunites III Fund - Units	162,194.20	1,858.00

31-Jul-2002	University Of Guelph	Brighter Future CSBIF (II) Funds Inc. - Common Shares	33.00	33.00
31-Jul-2002	University of Guelph	Brighter Future CSBIF (I) Funds Inc. - Common Shares	33.00	33.00
01-Aug-2002	Trilon Securities Corporation	Bushmills Energy Corporation - Common Shares	690,000.00	600,000.00
23-Aug-2002	ARC Canadian Energy Venture Fund 2	Canadian Renewable Energy Corporation - Common Shares	2,000,000.00	4,000,000.00
19-Aug-2002	Dynamic Canadian Precious Metal Fund	Candente Resource Corp. - Common Shares	1,200,000.00	1,200,000.00
07-Aug-2002	7 Purchasers	Cantera Mining Limited - Warrants	1,580,000.00	1,580,000.00
13-Aug-2002	16 Purchasers	CMS Group Inc. - Common Shares	1,439,022.00	38,875,177.00
22-Aug-2002	4 Purchasers	Consolidated Puma Minerals Corp. - Common Shares	48,000.00	107,500.00
16-Aug-2002	Jennifer Jewison-Snyder	Consulta Canadian Energy Venture Fund II L.P. - Limited Partnership Units	100,000.00	10,000.00
22-Aug-2002	Peter and Wanda Hafichuk	Discovery Biotech Inc. - Common Shares	15,000.00	5,000.00
22-Aug-2002	Joe Ferreira	Discovery Biotech Inc. - Common Shares	1,500.00	500.00
22-Aug-2002	Paul H. Post	Discovery Biotech Inc. - Common Shares	3,000.00	1,000.00
22-Aug-2002	Impact Auto Parts Inc.	Discovery Biotech Inc. - Common Shares	3,000.00	1,000.00
22-Aug-2002	Amarelo Holdings Inc.	Discovery Biotech Inc. - Common Shares	3,000.00	1,000.00
22-Aug-2002	Gordon Wood	Discovery Biotech Inc. - Common Shares	3,000.00	1,000.00
22-Aug-2002	Reg Wylie	Discovery Biotech Inc. - Common Shares	9,000.00	3,000.00
22-Aug-2002	James Thornton	Discovery Biotech Inc. - Common Shares	1,500.00	500.00
22-Aug-2002	John Taylor	Discovery Biotech Inc. - Common Shares	1,500.00	500.00
22-Aug-2002	Karen Walker	Discovery Biotech Inc. - Common Shares	3,900.00	1,300.00
22-Aug-2002	Allan Lee	Discovery Biotech Inc. - Common Shares	15,000.00	5,000.00
22-Aug-2002	Julius Losonci	Discovery Biotech Inc. - Common Shares	15,000.00	5,000.00

22-Aug-2002	Terry Polkinghorne	Discovery Biotech Inc. - Common Shares	1,500.00	500.00
22-Aug-2002	Mike Ducross	Discovery Biotech Inc. - Common Shares	3,000.00	1,000.00
22-Aug-2002	Bob Mahon	Discovery Biotech Inc. - Common Shares	4,500.00	1,500.00
22-Aug-2002	Brian Bickerton	Discovery Biotech Inc. - Common Shares	6,000.00	2,000.00
22-Aug-2002	Pierre Paul Maurice	Discovery Biotech Inc. - Common Shares	6,000.00	2,000.00
22-Aug-2002	Bob Thompson	Discovery Biotech Inc. - Common Shares	3,000.00	1,000.00
22-Aug-2002	Raymond Switzer	Discovery Biotech Inc. - Common Shares	30,000.00	10,000.00
22-Aug-2002	Krew Investment Corporation	Discovery Biotech Inc. - Common Shares	9,000.00	3,000.00
22-Aug-2002	William A. Kemper	Discovery Biotech Inc. - Common Shares	3,000.00	1,000.00
22-Aug-2002	Walter Sinai	Discovery Biotech Inc. - Common Shares	3,000.00	1,000.00
22-Aug-2002	Angelo Ricciuto	Discovery Biotech Inc. - Common Shares	1,500.00	500.00
22-Aug-2002	Bernard & Madeleine Summerville	Discovery Biotech Inc. - Common Shares	9,000.00	3,000.00
22-Aug-2002	Paul Arnold	Discovery Biotech Inc. - Common Shares	3,000.00	1,000.00
22-Aug-2002	Joy Bowman	Discovery Biotech Inc. - Common Shares	9,000.00	3,000.00
22-Aug-2002	Paul Hunter	Discovery Biotech Inc. - Common Shares	3,000.00	1,000.00
22-Aug-2002	Robert McAteer	Discovery Biotech Inc. - Common Shares	3,000.00	1,000.00
22-Aug-2002	Gerry Landmesser	Discovery Biotech Inc. - Common Shares	6,000.00	2,000.00
09-Apr-2002	Jerry White	Dundee Wealth Management Inc. - Common Shares	275,670.00	50,000.00
26-Aug-2002	10 Purchasers	Dunsmuir Ventures Ltd. - Units	122,500.00	490,000.00
22-Aug-2002	Andrew A. Foti/Karen Foti;Sharon Kelly	D.A-Test Inc. - Common Shares	14,999.84	26,752.00
15-Aug-2002	7 Purchasers	Electricity Distributors Finance Corporation - Debentures	131,500,000.00	131,500,000.00

07-Aug-2002	Richard Goldstein	Endless Energy Corp. - Flow-Through Shares	39,900.00	133,000.00
31-Jul-2002	Steven Cawley	Gladiator Limited Partnership - Limited Partnership Interest	25,000.00	0.00
13-Aug-2002	Dynatec Corporation	Highwood Resources Ltd. - Common Shares	285,000.00	1,694,444.00
15-Aug-2002	The Equitable Life Insurance Company of Canada	Incubed Ltd. - Debentures	3,000,000.00	3,000,000.00
21-Jun-2002	Pyxis Real Estate Equities Inc.	Infowave Software, Inc. - Common Shares	15,000.00	50,000.00
16-Aug-2002	Canada Pension Plan Investment Board	International Life Sciences Fund III - Limited Partnership Interest	78,025,000.00	500.00
13-Aug-2002	ASC Central America	Intrepid Minerals Corporation - Common Shares	150,000.00	221,730.00
12-Aug-2002	6 Purchasers	ITF Optical Technologies Inc. - Common Shares	0.00	1376
12-Aug-2002	Ontario Teachers Pension Plan Board;Celtic House International Corporation	ITF Optical Technologies Inc. - Common Shares	13,984,270.24	3,953,240.00
12-Aug-2002	Kingmer Holdings Inc.	KBSH Private - Canadian Equity - Units	70,000.00	5,315.00
12-Aug-2002	Kingmer Holdings Inc.	KBSH Private - Fixed Income - Units	93,000.00	9,014.00
09-Aug-2002	Jamie Biluk	KBSH Private - Global Leading Companies Fund - Units	150,000.00	18,057.06
12-Aug-2002	Kingmer Holdings Inc.	KBSH Private - International Fund - Units	93,000.00	11,082.00
09-Aug-2002	Jamie Biluk	KBSH Private - Money Market - Units	1,134,800.00	113,480.00
12-Aug-2002	Kingmer Holdings Inc.	KBSH Private - U.S. Equity Fund - Units	74,167.99	8,861.00
02-Aug-2002	Bruce Hunter	Landmark Global Opportunities Fund - Units	140,264.78	1,285.00
09-Aug-2002	Patricia Currie	Landmark Global Opportunities Fund - Units	14,559.27	133.00
09-Aug-2002	Wally Elliott;Ronald Greenhorn	Landmark Global Opportunities Fund - Units	50,153.35	458.00
02-Aug-2002	Lucy Cicciarella	Landmark Global Opportunities RSP Fund - Units	27,115.94	268.00
19-Aug-2002	Wayne Young	Legal Services Plan Inc. - Common Shares	1,000.00	1,000.00

19-Aug-2002	Yu Chunhua	Legal Services Plan Inc. - Common Shares	1,000.00	1,000.00
14-Aug-2002	Arnold Schroeder	Legal Services Plan Inc. - Common Shares	1,000.00	1,000.00
14-Aug-2002	Mabel Hill	Legal Services Plan Inc. - Common Shares	10,000.00	10,000.00
14-Aug-2002	Sinclair McKerchar	Legal Services Plan Inc. - Common Shares	6,000.00	6,000.00
09-Aug-2002	Ian A. Kwan	Legal Services Plan Inc. - Common Shares	2,000.00	2,000.00
08-Aug-2002	Ralph Macleod	Legal Services Plan Inc. - Common Shares	3,300.00	3,300.00
07-Aug-2002	Norman J. Ball	Legal Services Plan Inc. - Common Shares	1,000.00	1,000.00
12-Aug-2002	Ontario Teachers' Pension Plan Board	Macquarie Communications Infrastructure Trust - Units	16,984.00	10,000,000.00
01-Aug-2002	Gowlings Canada Inc.	Mitel Networks Corporation - Common Shares	4,084.00	1,021.00
16-Aug-2002	37 Purchasers	Mitel Networks Corporation - Convertible Debentures	1,615,000.00	1,615,000.00
13-Aug-2002	8 Purchasers	MSA Capital Corp - Common Shares	181,200.00	1,509,999.00
22-Aug-2002	7 Purchasers	Mythum Interactive Inc. - Common Shares	112,500.00	112,500.00
25-Jun-2002	N/A	Northcott Gold Inc. - Common Shares	250,000.00	500,000.00
02-Jul-2002	Thomas Judson Emo	Nuinsco Resources Limited - Common Shares	500,000.00	2,500,000.00
01-Aug-2002	Ontario Teachers Pension Plan Board	Numeric Small Cap aggressive Offshore Market Neutral fund - Limited Partnership Interest	7,932,200.00	5,000,000.00
07-Aug-2002	Kelly Zweep	PhotoChannel Networks Inc. - Units	44,200.00	442,000.00
28-Jan-2002	6 Purchasers	Plasma Environmental Technologies Inc. - Units	82,200.00	548,000.00
02-Aug-2002	Peter Lo	Trident Global Opportunities Fund - Units	40,000.00	376.00
09-Aug-2002	Irene Morrison	Trident Global Opportunities Fund - Units	20,463.95	187.00
09-Aug-2002	412977 Ont. Ltd.	Trident Global Opportunities Fund - Units	25,000.00	227.00
16-Aug-2002	CIGL Holdings ltd.;Trilon Bancorp Inc.	Trilon Opportunity Fund - Limited Partnership Interest	37,500,000.00	37,500,000.00

16-Aug-2002	CIGL Holdings Ltd.;Trilon Bancorp Inc.	Trilon Opportunity Fund - Limited Partnership Units	20.00	20.00
21-Aug-2002	Creststreet Resource Fund Limited	TUSK Energy Inc. - Common Shares	145,000.00	100,000.00
22-Aug-2002	J.A. Montgomery	Watch Resources Ltd. - Units	1,500.00	2,000.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Manulife Financial Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated September 10th, 2002
Mutual Reliance Review System Receipt dated September 11th, 2002
Offering Price and Description:
$5,000,000,000 - Debt Securities, Class A Shares, Class B Shares and Common Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #479688

Issuer Name:
The Manufacturers Life Insurance Company
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated September 10th, 2002
Mutual Reliance Review System Receipt dated September 11th, 2002
Offering Price and Description:
$5,000,000,000 - Debt Securities, Class A Shares and Class D Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #479692

Issuer Name:
TSX Group Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 12th, 2002
Mutual Reliance Review System Receipt dated September 12th, 2002
Offering Price and Description:
$ * * Common Shares
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Goldman Sachs Canada Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
Merrill Lynch Canada Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
Griffiths McBurney & Partners
Raymond James Ltd.
Yorkton Securities Inc.
Promoter(s):
-
Project #480106

Issuer Name:
Saxon Diversified Value Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 11th, 2002
Mutual Reliance Review System Receipt dated September 12th, 2002
Offering Price and Description:
$ * (Maximum)
* Series 2012 Units
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
Raymond James Ltd.
HSBC Securities (Canada) Inc.
Yorkton Securities Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Promoter(s):
Skylon Advisors Inc. and Skylon Capital Corp.
Project #479951

Issuer Name:
Royal Balanced Growth Fund
Royal Balanced Fund
Royal Select Conservative Portfolio
Royal Select Balanced Portfolio
Royal Select Growth Portfolio
Royal Select Choices Conservative Portfolio
Royal Select Choices Balanced Portfolio
Royal Select Choices Growth Portfolio
Royal Select Choices Aggressive Growth Portfolio
Royal European Equity Fund
Royal Canadian Equity Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated September 10th, 2002
Mutual Reliance Review System Receipt dated September 11th, 2002
Offering Price and Description:
Series A and F Shares, Series and F Units and Advisor Series Units
Underwriter(s) or Distributor(s):
Royal Mutual Funds Inc.
RBC Dominion Securities Inc.
Promoter(s):
RBC Funds Inc.
Project #479650

Issuer Name:
GGOF Monthly High Income Fund II
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated September 11th, 2002
Mutual Reliance Review System Receipt dated September 12th, 2002
Offering Price and Description:
Mutual Fund Units and F Class Units
Underwriter(s) or Distributor(s):
Guardian Group of Funds Ltd.
Promoter(s):
-
Project #480032

Issuer Name:
Fidelity North American Equity Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated September 16th, 2002
Mutual Reliance Review System Receipt dated September 16th, 2002
Offering Price and Description:
Series A and F shares Fidelity North American Equity Class
Underwriter(s) or Distributor(s):
Fidelity Investments Canada Limited
Promoter(s):
Fidelity Investments Canada Limited
Project #480682

Issuer Name:
Fidelity RSP North American Equity Fund
Fidelity North American Equity Fund
Fidelity American Value Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated September 13th, 2002
Mutual Reliance Review System Receipt dated September 13th, 2002
Offering Price and Description:
Series A, Series F and Series O units
Underwriter(s) or Distributor(s):
Fidelity Investments Canada Limited
Promoter(s):
Fidelity Investments Canada Limited
Project #480429

Issuer Name:
TimberWest Forest Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated September 16th, 2002
Mutual Reliance Review System Receipt dated September 17th, 2002
Offering Price and Description:
* % Senior Debentures due *, 2007 (unsecured)
Underwriter(s) or Distributor(s):
Merrill Lynch Canada Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Promoter(s):
-
Project #480944

Issuer Name:
Canadian Medical Discoveries Fund II Inc.
(Formerly CMDF Venture Fund Inc.)
(Class A Shares)
Type and Date:
Amendment #2 dated September 10th, 2002 to Final Prospectus
dated December 27th, 2001
Receipted on the 16th day of September, 2002
Offering Price and Description:
Class A Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #398518

Issuer Name:
CIBC Canadian T-Bill Fund
CIBC Premium Canadian T-Bill Fund
CIBC Money Market Fund
CIBC U.S. Dollar Money Market Fund
CIBC High Yield Cash Fund
CIBC Canadian Short-Term Bond Index Fund
CIBC Mortgage Fund
CIBC Canadian Bond Index Fund
CIBC Canadian Bond Fund
CIBC Monthly Income Fund
CIBC Global Bond Index Fund
CIBC Global Bond Fund
CIBC Balanced Fund
CIBC Dividend Fund
CIBC Canadian Index Fund
CIBC Core Canadian Equity Fund
Canadian Imperial Equity Fund
CIBC Capital Appreciation Fund
CIBC Canadian Small Companies Fund
CIBC Canadian Emerging Companies Fund
CIBC U.S. Equity Index Fund
CIBC U.S. Index RRSP Fund
CIBC U.S. Small Companies Fund
CIBC Global Equity Fund
CIBC International Index Fund
CIBC International Index RRSP Fund
CIBC European Index RRSP Fund
CIBC European Index Fund
CIBC European Equity Fund
CIBC Japanese Index RRSP Fund
CIBC Japanese Equity Fund
CIBC Emerging Markets Index Fund
CIBC Emerging Economies Fund
CIBC Asia Pacific Index Fund
CIBC Far East Prosperity Fund
CIBC Latin American Fund
CIBC International Small Companies Fund
CIBC Financial Companies Fund
CIBC Canadian Resources Fund
CIBC Energy Fund
CIBC Canadian Real Estate Fund
CIBC Precious Metals Fund
CIBC North American Demographics Funds
CIBC Nasdaq Index RRSP Fund
CIBC Nasdaq Index Fund
CIBC Global Technology Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated September 9th, 2002 to Prospectus and
Annual Information Form dated August 9th, 2002
Mutual Reliance Review System Receipt dated 13th day of September, 2002
Offering Price and Description:
Mutual Fund Securities Net Asset Value
Underwriter(s) or Distributor(s):
CIBC Securities Inc.
Promoter(s):
Canadian Imperial Bank of Commerce
Project #432357

Issuer Name:
Imperial Money Market Pool
Imperial Short-Term Bond Pool
Imperial Canadian Bond Pool
Imperial International Bond Pool
Imperial Canadian Equity Pool
Imperial Registered U.S. Equity Index Pool
Imperial U.S. Equity Pool
Imperial Registered International Equity Index Pool
Imperial International Equity Pool
Imperial Emerging Economies Pool
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated September 9th, 2002 to Simplified Prospectus
and Annual Information Form dated August 9th, 2002
Mutual Reliance Review System Receipt dated 13th day of September, 2002
Offering Price and Description:
Mutual Fund Securities Net Asset Value
Underwriter(s) or Distributor(s):
CIBC Securities Inc.
Promoter(s):
Canadian Imperial Bank of Commerce
Project #439024

Issuer Name:
TD Canadian Bond Fund
TD Short Term Monthly Income Fund
TD Canadian Money Market Fund
TD Premium Money Market Fund
Principal Regulator - Ontario
Type and Date:
Amendment #6 dated September 13th, 2002 to Simplified Prospectus and
Annual Information Form dated October 19th, 2001
Mutual Reliance Review System Receipt dated 16th day of September, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
TD Investment Services Inc.
Promoter(s):
TD Asset Management Inc.
Project #383561

Issuer Name:
TD Canadian Bond Fund
TD Canadian Money Market Fund
Principal Regulator - Ontario
Type and Date:
Amendment #5 dated September 6th, 2002 to Simplified Prospectus and
Annual Information Form dated November 2nd, 2001
Mutual Reliance Review System Receipt dated 16th day of September, 2002
Offering Price and Description:
Mutual Funds Net Asset Value
Underwriter(s) or Distributor(s):
TD Investment Services Inc.
Promoter(s):
-
Project #390460

Issuer Name:
TD Select Canadian Growth Index Fund
TD Select Canadian Value Index Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated September 6th, 2002 to Long Form Prospectus dated November 22nd, 2001
Mutual Reliance Review System Receipt dated 13th day of September, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
TD Asset Management Inc.
Promoter(s):
-
Project #387698

Issuer Name:
TD S&P/TSX Composite Index Fund
(Formerly TD TSE 300 Index Fund)
TD S&P/TSX Capped Composite Index Fund
(Formerly TD TSE 300 Capped Index Fund)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated September 6th, 2002 to Long Form Prospectus dated November 2nd, 2001
Mutual Reliance Review System Receipt dated 13th day of September 13, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
TD Asset Management Inc.
Promoter(s):
-
Project #413350

Issuer Name:
Canico Resource Corp.
Principal Regulator - British Columbia
Type and Date:
Amendment #1 dated September 13th, 2002 to Preliminary Prospectus dated June 11th, 2002
Mutual Reliance Review System Receipt dated 16th day of September, 2002
Offering Price and Description:
Price $ * per Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Research Capital Corp.
Haywood Securities Inc.
Promoter(s):
J. Michael Kenyon
Dr. Roman Shklanka
Anthonie Leteijn
Jonathan A. Rubenstein
Paul B. Sweeney
Jonathan A. Rubenstein
Paul B. Sweeney
Project #458900

Issuer Name:
Viracocha Energy Inc.
Principal Regulator - Alberta
Type and Date:
Amended and Restated Preliminary Prospectus dated September 11th, 2002
Mutual Reliance Review System Receipt dated 12th day of September, 2002
Offering Price and Description:
7,000,000 Common Shares Issuable upon the Exercise of Special Warrants
and 120,000 Common Shares pursuant to the Secondary Offering
Underwriter(s) or Distributor(s):
Griffiths McBurney & Partners
Promoter(s):
Robert Zakersky
Shawn Kirkpatrick
Robert Jepson
Greg Fisher
Sean Monaghan
Project #470919

Issuer Name:
EPCOR Preferred Equity Inc.
Principal Regulator - Alberta (ASC)
Type and Date:
Final Prospectus dated September 12th, 2002
Mutual Reliance Review System Receipt dated 13th day of September, 2002
Offering Price and Description:
$200,000,000.00 - Cumulative Redeemable First Preferred Shares, Series I
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
TD Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
National Bank Financial Inc.
Promoter(s):
Epcor Utilities Inc.
Project #472249

Issuer Name:
Lorus Therapeutics Inc.
Type and Date:
Final Short Form Shelf Prospectus dated September 10th, 2002
Receipted on 11th day of September, 2002
Offering Price and Description:
Cdn - $20,000,000 Common Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #476377

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	The Jitney Group Inc. Attention: Sylvain Perrault 360 St-Jacques Street West 16th Floor Montreal QC H2Y 1P5	Investment Dealer Equities Options Futures Commission Merchant	Sep 12/02
New Registration	G-Trade Services Ltd. Attention: W. Ross F. McKee Box 25, Commerce Court West 199 Bay Street, Suite 2800 Toronto ON M5L 1A9	International Dealer	Sep 16/02
New Registration	Westwind Partners Inc. Attention: Keith Raymond Harris 70 York Street 10th Floor Toronto ON M5J 1S9	Broker/Investment Dealer Equities	Sep 17/02
Change in Category/ Categories	Nomura Canada Inc. Attention: Rose Haggarty, Securities Law Clerk c/o Blake, Cassels & Graydon LLP Barristers & Solicitors Box 25, Commerce Court West 199 Bay Street Toronto ON M5L 1A9	From: Investment Dealer To: Limited Market Dealer	Sep 16/02
Suspension of Registration	The Properties Group Ltd.	Limited Market Dealer	Sep 11/02

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