The Ontario Securities Commission

OSC Bulletin

January 18, 2008

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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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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

JANUARY 18, 2008

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
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Robert L. Shirriff, Q.C.	—	RLS
Suresh Thakrar, FIBC	—	ST
Wendell S. Wigle, Q.C.	—	WSW

SCHEDULED OSC HEARINGS

January 18, 2008	**Swift Trade Inc. and Peter Beck**
10:00 a.m.	s. 127
	S. Horgan in attendance for Staff
	Panel: JEAT
January 22, 2008	**Global Partners Capital, WS Net Solution, Inc., Hau Wai Cheung, Christine Pan, Gurdip Singh Gahunia**
2:30 p.m.	s. 127
	S. Horgan in attendance for Staff
	Panel: JEAT
January 22, 2008	**Sulja Bros. Building Supplies, Ltd. (Nevada), Sulja Bros. Building Supplies Ltd., Kore International Management Inc., Petar Vucicevich and Andrew DeVries**
3:00 p.m.	s. 127 & 127.1
	J. S. Angus in attendance for Staff
	Panel: JEAT/ST
January 31, 2008	**MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric**
10:00 a.m.	s. 127 & 127(1)
	D. Ferris in attendance for Staff
	Panel: JEAT
February 13, 2008	**FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun**
10:00 a.m.	s. 127
	M. Mackewn in attendance for Staff
	Panel: RLS/ST

February 15, 2008
10:00 a.m.
Land Banc of Canada Inc., LBC Midland I Corporation, Fresno Securities Inc., Richard Jason Dolan, Marco Lorenti and Stephen Zeff Freedman

s. 127

H. Craig in attendance for Staff

Panel: PJL/ST

February 19, 2008
2:30 p.m.
Jose Castaneda

s. 127 and 127.1

H. Craig in attendance for Staff

Panel: WSW/ST

February 22, 2008
10:00 a.m.
Imagin Diagnostic Centres Inc., Patrick J. Rooney, Cynthia Jordan, Allan McCaffrey, Michael Shumacher, Christopher Smith, Melvyn Harris and Michael Zelyony

s. 127 and 127.1

H. Craig in attendance for Staff

Panel: JEAT

February 27, 2008
10:00 a.m.
John Alexander Cornwall, Kathryn A. Cook, David Simpson, Jerome Stanislaus Xavier, CGC Financial Services Inc. and First Financial Services

s. 127 and 127.1

S. Horgan in attendance for Staff

Panel: RLS/DLK/MCH

March 4, 2008
2:30 p.m.
Sunwide Finance Inc., Sun Wide Group, Sun Wide Group Financial Insurers & Underwriters, Wi-Fi Framework Corporation, Bryan Bowles, Steven Johnson, Frank R. Kaplan and George Sutton

s. 127

C. Price in attendance for Staff

Panel: JEAT/MCH

March 25, 2008
10:00 a.m.
Xi Biofuels Inc., Biomaxx Systems Inc., Ronald David Crowe and Vernon P. Smith

s. 127

M. Vaillancourt in attendance for Staff

Panel: JEAT

March 25, 2008
10:00 a.m.
Xiiva Holdings Inc. carrying on Business as Xiiva Holdings Inc., Xi Energy Company, Xi Energy and Xi Biofuels

s. 127(1) & 127(5)

M. Vaillancourt in attendance for Staff

Panel: JEAT

March 28, 2008
10:00 a.m.
Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson

s.127

J. Superina in attendance for Staff

Panel: LER/MCH

March 28, 2008
11:00 a.m.
Saxon Financial Services, Saxon Consultants, Ltd., International Monetary Services, FXBridge Technology, Meisner Corporation, Merchant Capital Markets, S.A., Merchant Capital Markets, MerchantMarx et al

s. 127(1) & (5)

S. Horgan in attendance for Staff

Panel: JEAT/CSP

March 31, 2008
10:00 a.m.
Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton

s. 127

H. Craig in attendance for Staff

Panel: TBA

April 2, 2008
10:00 a.m.

Peter Sabourin, W. Jeffrey Haver, Greg Irwin, Patrick Keaveney, Shane Smith, Andrew Lloyd, Sandra Delahaye, Sabourin and Sun Inc., Sabourin and Sun (BVI) Inc., Sabourin and Sun Group of Companies Inc., Camdeton Trading Ltd. and Camdeton Trading S.A.

s. 127 and 127.1

Y. Chisholm in attendance for Staff

Panel: TBA

April 7, 2008
2:30 p.m.

Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)

s.127 and 127.1

D. Ferris in attendance for Staff

Panel: TBA

May 5, 2008
10:00 a.m.

John Illidge, Patricia McLean, David Cathcart, Stafford Kelley and Devendranauth Misir

S. 127 & 127.1

I. Smith in attendance for Staff

Panel: TBA

May 5, 2008
10:00 a.m.

Norshield Asset Management (Canada) Ltd., Olympus United Group Inc., John Xanthoudakis, Dale Smith and Peter Kefalas

s.127

P. Foy in attendance for Staff

Panel: WSW/DLK

May 27, 2008
2:30 p.m.

Borealis International Inc., Synergy Group (2000) Inc., Integrated Business Concepts Inc., Canavista Corporate Services Inc., Canavista Financial Center Inc., Shane Smith, Andrew Lloyd, Paul Lloyd, Vince Villanti, Larry Haliday, Jean Breau, Joy Statham, David Prentice, Len Zielke, John Stephan, Ray Murphy, Alexander Poole, Derek Grigor and Earl Switenky

s. 127 and 127.1

Y. Chisholm in attendance for Staff

Panel: WSW/DLK

June 24, 2008
2:30 p.m.

David Watson, Nathan Rogers, Amy Giles, John Sparrow, Leasesmart, Inc., Advanced Growing Systems, Inc., The Bighub.com, Inc., Pharm Control Ltd., Universal Seismic Associates Inc., Pocketop Corporation, Asia Telecom Ltd., International Energy Ltd., Cambridge Resources Corporation, Nutrione Corporation and Select American Transfer Co.

s. 127 and 127.1

P. Foy in attendance for Staff

Panel: TBA

July 14, 2008
10:00 a.m.

Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin

s. 127

H. Craig in attendance for Staff

Panel: TBA

November 3, 2008
10:00 a.m.

Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited

s. 127

E. Cole in attendance for Staff

Panel: TBA

TBA	**Yama Abdullah Yaqeen**
	s. 8(2)
	J. Superina in attendance for Staff
	Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell**
	s. 127
	J. Waechter in attendance for Staff
	Panel: TBA
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly**
	s.127
	K. Daniels in attendance for Staff
	Panel: TBA
TBA	**Shane Suman and Monie Rahman**
	s. 127 & 127(1)
	K. Daniels in attendance for Staff
	Panel: TBA
TBA	**Limelight Entertainment Inc., Carlos A. Da Silva, David C. Campbell, Jacob Moore and Joseph Daniels**
	s. 127 and 127.1
	D. Ferris in attendance for Staff
	Panel: JEAT/ST
TBA	**Stanton De Freitas**
	s. 127 and 127.1
	P. Foy in attendance for Staff
	Panel: JEAT/ST
TBA	**Rex Diamond Mining Corporation, Serge Muller and Benoit Holemans**
	s. 127 & 127(1)
	J. Corelli in attendance for Staff
	Panel: WSW/DLK/KJK

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

Andrew Keith Lech

S. B. McLaughlin

Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein, Robert Topol

Andrew Stuart Netherwood Rankin

Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg

Maitland Capital Ltd., Allen Grossman, Hanouch Ulfan, Leonard Waddingham, Ron Garner, Gord Valde, Marianne Hyacinthe, Diana Cassidy, Ron Catone, Steven Lanys, Roger McKenzie, Tom Mezinski, William Rouse and Jason Snow

Euston Capital Corporation and George Schwartz

Al-Tar Energy Corp., Alberta Energy Corp., Eric O'Brien, Bill Daniels, Bill Jakes, John Andrews, Julian Sylvester, Michael N. Whale, James S. Lushington, Ian W. Small, Tim Burton and Jim Hennesy

1.3 News Releases

1.3.1 Canadian Regulators Release Oversight Review Report of the IDA

FOR IMMEDIATE RELEASE
January 15, 2008

CANADIAN REGULATORS RELEASE OVERSIGHT REVIEW REPORT OF THE IDA

Toronto - The Canadian Securities Administrators (CSA) announced today the release of the Oversight Review Report on the performance of the Investment Dealers Association of Canada (IDA).

The review, conducted by the Alberta Securities Commission (ASC), Autorité des marchés financiers, British Columbia Securities Commission, Nova Scotia Securities Commission, Ontario Securities Commission and the Saskatchewan Financial Services Commission focused on the IDA's Registration, Enforcement and Sales Compliance departments, as well as the IDA's membership process.

CSA staff participating in this consolidated report were generally satisfied that the IDA is in compliance with the relevant terms and conditions of its recognition orders as a self-regulatory organization.

The Report outlines staff's findings and identifies some areas for improvement. It also includes the IDA's responses to the recommendations, as well as staff comments and intended follow-up. CSA staff are working with the IDA on areas identified in the course of the review.

The Report is available on various CSA members' websites. The ASC separately released its Oversight Review report of the IDA's Prairie Regional office to address issues specific to that office. The ASC's report is posted on the ASC website, along with the IDA's response.

The CSA, the council of the securities regulators of Canada's provinces and territories, co-ordinates and harmonizes regulation for the Canadian capital markets.

For more information:

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Barbara Shourounis
Saskatchewan Financial Services Commission
306-787-5842

Frédéric Alberro
Autorité des marchés financiers
514-940-2176

Andrew Poon
British Columbia Securities Commission
604-899-6880

Nicholas A. Pittas
Nova Scotia Securities Commission
902-424-6859

Tamera Van Brunt
Alberta Securities Commission
403-297-2664

1.3.2 OSC Urges Consumers to "Check Before You Invest" - Take the Time to Research Investments This RRSP Season

FOR IMMEDIATE RELEASE
January 16, 2008

OSC URGES CONSUMERS
TO "CHECK BEFORE YOU INVEST"

TAKE THE TIME TO RESEARCH
INVESTMENTS THIS RRSP SEASON

TORONTO — To kick-start a busy investing season, the Ontario Securities Commission (OSC) has re-launched "Check Before You Invest," a campaign encouraging consumers to pay closer attention to their investments and avoid fraud.

"Most consumers make their major financial decisions for the year during RRSP season, so this is a crucial time to get all the information you need before committing to an investment, " said OSC Vice-Chair Lawrence Ritchie. "Being an informed investor is one of the best ways to protect your money, and our resources can help you ask the right questions before you invest."

From January through March, the OSC will reach out to consumers through community presentations, trade show exhibits, transit and radio ads and public service announcements in select communities throughout Ontario. Consumers are encouraged to visit www.checkbeforeyouinvest.ca to read free, educational guides on investing topics and to learn about common types of investment scams and their warning signs.

In addition, the OSC offers these tips to help consumers protect their money:

1. Don't make investment decisions in a hurry.

As the RRSP deadline approaches, you may feel pressured to make investment decisions quickly. Don't be taken in by limited-time offers that look like a great deal, or promises of tax advantages. Take the time to make sure an investment is suitable for your risk tolerance and financial situation.

2. Keep track of your investments.

After you've invested, monitor your progress by reading your financial statements carefully. If you work with an adviser, play an active role in the process and ask lots of questions to understand how your investments work.

3. Be wary of unsolicited investment offers.

Most fraudulent investment offers are made though unsolicited phone calls or e-mails. If strangers approach you to invest, consider that they don't know your financial situation or risk tolerance. They may not have your best interests in mind.

4. Know who you're dealing with.

Scam artists go to great lengths to make a business seem legitimate, such as professional-looking websites and marketing materials, believable sales pitches and friendly 'sales representatives'. In many cases, you can avoid a scam by making sure that the person or company offering an investment is properly qualified and registered. Contact the OSC to check registration and find out whether a person or company has a history of disciplinary action.

5. If you suspect a scam, report it.

Recent studies show that 25% of investment fraud victims are defrauded again. If you suspect you've lost money to a scam, reporting it can help stop the cycle and prevent others from becoming victims. To report a suspected investment fraud, contact the OSC toll-free at 1-877-785-1555 or www.checkbeforeyouinvest.ca.

The OSC first ran its "Check before you invest" campaign from October 2006 until the end of March 2007, resulting in a 10% increase in website visits over the previous year. During that time, OSC staff representatives spoke face-to-face with 11,872 consumers throughout Ontario through trade show exhibits and community presentations.

As Ontario's securities markets regulator, the Ontario Securities Commission (OSC) works to ensure that those markets are fair and efficient, and that investors are protected from improper or fraudulent practices. As part of this mandate, the OSC provides free resources to help Ontarians make informed investment decisions and protect themselves from fraud.

For media inquiries: Wendy Dey
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For investor inquiries: OSC Contact Centre
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1.4 Notices from the Office of the Secretary

1.4.1 David Watson et al.

FOR IMMEDIATE RELEASE
January 10, 2008

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

AND

IN THE MATTER OF
DAVID WATSON, NATHAN ROGERS, AMY GILES, JOHN SPARROW, LEASESMART, INC., ADVANCED GROWING SYSTEMS, INC. (a Florida corporation), PHARM CONTROL LTD., THE BIGHUB.COM, INC, UNIVERSAL SEISMIC ASSOCIATES INC., POCKETOP CORPORATION, ASIA TELECOM LTD., INTERNATIONAL ENERGY LTD., CAMBRIDGE RESOURCES CORPORATION, NUTRIONE CORPORATION AND SELECT AMERICAN TRANSFER CO.

AND

IN THE MATTER OF
STANTON DE FREITAS

TORONTO – Following a hearing held on December 5, 2007, to consider whether it is in the public interest to extend the temporary cease trade order against Stanton De Freitas, the Commission issued its Reasons and Decision in the above noted matter.

A copy of the Reasons and Decision dated January 9, 2008 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.2 Borealis International Inc. et al.

FOR IMMEDIATE RELEASE
January 11, 2008

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

AND

IN THE MATTER OF
BOREALIS INTERNATIONAL INC., SYNERGY GROUP (2000) INC., INTEGRATED BUSINESS CONCEPTS INC., CANAVISTA CORPORATE SERVICES INC., CANAVISTA FINANCIAL CENTER INC., SHANE SMITH, ANDREW LLOYD, PAUL LLOYD, VINCE VILLANTI, LARRY HALIDAY, JEAN BREAU, JOY STATHAM, DAVID PRENTICE, LEN ZIELKE, JOHN STEPHAN, RAY MURPHY, ALEXANDER POOLE, DEREK GRIGOR AND EARL SWITENKY

TORONTO – Following a hearing held today, the Commission issued an Order extending the temporary cease trade order as against all the respondents until May 27, 2008 in the above named matter. This matter is set to return before the Commission on May 27, 2008 at 2:30 p.m.

A copy of the Order dated January 11, 2008 is available at **www.osc.gov.on.ca**.

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JOHN P. STEVENSON
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1.4.3 AiT Advanced Information Technologies Corporation et al.

FOR IMMEDIATE RELEASE
January 14, 2008

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

AND

IN THE MATTER OF
AiT ADVANCED INFORMATION TECHNOLOGIES CORPORATION, BERNARD JUDE ASHE AND DEBORAH WEINSTEIN

TORONTO – Following a hearing held on September 5, 6, 7, 10, 11, 17, 19, 20, 21, 26, 27, 2007 and October 16, 2007 the Commission issued its Reasons and Decision in the above noted matter today.

A copy of the Reasons and Decision dated January 14, 2008 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Toronto Dominion Bank et al. - s. 5.1 of OSC Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions

Headnote

Application for a decision, pursuant to section 5.1 of OSC Rule 48-501, exempting the applicants from trading restrictions imposed by sections 2.1(a) and 2.2 of OSC Rule 48-501. Decision granted.

Rules Cited

Ontario Securities Commission Rule 48-501 – Trading During Distributions, Formal Bids and Share Exchange Transactions.

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

AND
ONTARIO SECURITIES COMMISSION RULE 48-501
TRADING DURING DISTRIBUTIONS, FORMAL
BIDS AND SHARE EXCHANGE TRANSACTIONS
(the Rule)

AND

IN THE MATTER OF
THE TORONTO-DOMINION BANK
THE CANADA TRUST COMPANY
TD ASSET MANAGEMENT INC.
TD WATERHOUSE CANADA INC. ,
TD WATERHOUSE PRIVATE
INVESTMENT COUNSEL INC. AND
TD SECURITIES INC.

DECISION
(Section 5.1 of the Rule)

UPON the Director (as defined in the Act) having received an application (the Application) from The Toronto-Dominion Bank (TD Bank), The Canada Trust Company (TCTC), TD Asset Management Inc. (TDAM), TD Waterhouse Canada Inc. (TDWCI), TD Waterhouse Private Investment Counsel Inc. (TDWPIC) and TD Securities Inc. (TDSI) for a decision (or its equivalent) pursuant to section 5.1 of the Rule exempting certain insiders of TD Bank and TCTC, TDAM, TDWCI and TDWPIC (the Asset Managers), from trading restrictions imposed upon issuer-restricted persons by section 2.2 of the Rule, and exempting TDSI from certain trading restrictions imposed upon dealer-restricted persons by section 2.1(a) of the Rule;

AND UPON considering the Application and the recommendation of staff of the Ontario Securities Commission (the Commission);

AND UPON TD Bank, each of the Asset Managers and TDSI having represented to the Director that:

1. TD Bank is a Schedule I bank under the Bank Act (Canada).

2. Certain insiders of TD Bank (Exempt Insiders) are exempt from insider reporting requirements pursuant to sections 2.1, 2.2, 2.3 and 3.2 of National Instrument 55-101 Insider Reporting Exemptions (NI 55-101).

3. TCTC is a wholly-owned subsidiary of TD Bank. Its principal business is acting as a trustee for personal and corporate clients. It is regulated by the Office of the Superintendent of Financial Institutions Canada.

4. TDAM is a wholly-owned subsidiary of TD Bank that carries on the business of a portfolio manager throughout Canada. It is registered as an adviser in the categories of investment counsel and portfolio manager or their equivalent under the securities legislation of all provinces and territories of Canada, as a limited market dealer under the Act and the Securities Act (Newfoundland and Labrador), and as a commodity trading manager under the Commodity Futures Act (Ontario).

5. TDWCI is a wholly-owned subsidiary of TD Bank. It is registered as an investment dealer or its equivalent in all provinces and territories of Canada, and is a member of the Investment Dealers Association of Canada (IDA) and it is an approved participant of the Montreal Exchange (ME).

6. TDWPIC is registered as an adviser in the categories of investment counsel and portfolio manager or their equivalent under the securities legislation of all provinces and territories of Canada and as a limited market dealer under the Act and the Securities Act (Newfoundland and Labrador).

7. Each of the Asset Managers manages accounts (the Managed Accounts) for their clients on a discretionary basis.

8. TDAM is the manager and/or portfolio adviser of each of the index, and enchanced index, mutual funds that are listed on Schedule A (the Index Funds).

9. TD Bank is the sponsor and administrator of the Employee Future Builder (EFB) and the Employee Savings Plan (ESP), two voluntary savings programs that are available to all employees of TD Bank and its affiliates that are resident in Canada including, without limitation, insiders of TD Bank that are not Exempt Insiders (Participating Insiders).

10. TDSI is a wholly-owned subsidiary of TD Bank that conducts an institutional brokerage business throughout Canada. It is registered as a dealer in the category of investment dealer or its equivalent under the securities legislation of all provinces and territories of Canada, a member of the IDA and the TSX Venture Exchange, a participating organization of The Toronto Stock Exchange and an approved participant of the ME.

11. TD Bank and Commerce Bancorp, Inc. (Commerce Bancorp) have entered into an Agreement and Plan of Merger (the Merger Agreement) pursuant to which Commerce Bancorp will be acquired by TD Bank. Pursuant to the Merger Agreement, a newly-formed wholly-owned subsidiary of TD Bank will merge with and into Commerce Bancorp with Commerce Bancorp surviving the merger.

12. In connection with TD Bank's acquisition of Commerce Bancorp (the Acquisition), Commerce Bancorp's common shareholders will have the right to receive for each common share of Commerce Bancorp a combination of 0.4142 common shares of TD Bank (Shares) and U.S. $10.50 in cash.

13. The Acquisition is subject to the approval of Commerce Bancorp's shareholders.

14. TDSI has been appointed by TD Bank as TD Bank's advisor in respect of obtaining security holder approval for the acquisition and its compensation for such services is dependant upon the outcome of the acquisition.

15. The Shares that are to be delivered to the shareholders of Commerce Bancorp pursuant to the Merger Agreement are being registered under the Securities Act of 1933 pursuant to a registration statement on Form F-4 that has been filed with the U.S. Securities and Exchange Commission. Commerce Bancorp proposes to mail a proxy statement/prospectus (the Proxy Statement) to its shareholders as soon as practicable following the declaration of the Form F-4s effectiveness. The meeting of Commerce Bancorp's shareholders that is being held to consider the Acquisition will be convened approximately 20 business days following the date of the mailing.

16. TD Bank currently anticipates issuing approximately 80.2 million Shares (the "Merger Distribution") as partial consideration for the shares of Commerce Bancorp that it will acquire pursuant to the Acquisition.

17. As a result of the Merger Distribution, each of the Exempt Insiders, each Participating Insider, the Asset Managers and TDSI is an issuer-restricted person, and TDSI is also a dealer-restricted person, for purposes of the Rule.

18. As an issuer-restricted person, each of the Exempt Insiders, the Participating Insiders and the Asset Managers is subject to trading restrictions (the Trading Restrictions) that prohibit it from purchasing Shares for either its own account or for any account over which it exercises control or direction during the issuer-restricted period applicable to the Merger Distribution (the Restricted Period).

19. The Restricted Period will begin on the date of dissemination of the Proxy Statement and end on the date on which the Proposed Acquisition is approved by the shareholders of Commerce Bancorp or the Proposed Acquisition is terminated.

20. The Shares meet the requirements in the Rule to be considered a "highly-liquid security".

21. As a dealer-restricted person, TDSI is exempt from the Trading Restrictions because the Shares are highly-liquid securities.

22. As a dealer-restricted person, TDSI is prohibited from purchasing Shares for an account which TDSI knows, or reasonably ought to know, is an account of an issuer-restricted person.

23. The Exempt Insiders comprise senior officers of TD Bank and its subsidiaries other than executive officers of TD Bank, directors of TD Bank subsidiaries, and directors and senior officers of issuers that are insiders of TD Bank and the subsidiaries of such issuers that do not in the ordinary course of business receive, or have access to, undisclosed material information concerning TD Bank or its securities. Accordingly, although the Exempt Insiders are therefore removed from the orbit of the executive officers of TD Bank who may have access to undisclosed material information in relation to the Proposed Acquisition, they will be unable to purchase Shares during the Restricted Period for either their own accounts or accounts over which they exercise control or direction that have beneficiaries that would not be prohibited from

purchasing Shares for their own accounts in the absence of the exemption sought on behalf of TD Bank and the Exempt Insiders pursuant to the Application even though the Shares are highly-liquid securities for purposes of the Rule. Any benefit associated with having to monitor the trading activities of the Exempt Insiders throughout the Restricted Period is therefore outweighed by the costs of doing so.

24. In the absence of an exemption from the Trading Restrictions that has been sought on behalf of the Asset Managers pursuant to the Application, each Asset Manager would be unable to purchase Shares during the Restricted Period on behalf of Managed Accounts having holders or beneficiaries at arm's length to TD Bank and its affiliates who have provided the Asset Manager with an unsolicited express written direction to purchase Shares on behalf of the Managed Accounts (the Directed Accounts).

25. In the absence of the exemption sought by the Asset Managers pursuant to the Application, the Asset Managers would be unable to purchase Shares during the Restricted Period on behalf of Managed Accounts having portfolios that are derived from a quantitative investment model that is embedded in proprietary computer software that has been developed by TDAM (Proprietary Model Accounts).

26. As a result of the Trading Restrictions, TDAM will be unable to purchase Shares on behalf of the Index Funds throughout the Restricted Period.

27. The Index Funds that are index mutual funds seek to replicate the performance of a particular index by purchasing each of the securities that comprise the index in close tolerance to the weighting that has been assigned to each security within the index.

28. The Index Funds that are enhanced index mutual funds are similar to the Index Funds that are index mutual funds because they also purchase each of the securities that comprise a particular index. Unlike index mutual funds, however, the Index Funds that are enhanced index mutual funds seek to outperform the underlying index primarily as the result of adjustments that are made to the weightings that have been assigned to the securities that comprise the index.

29. TD Bank is a component of the underlying index for each of the Index Funds with the Shares currently representing no more than 3.7% of any of the indexes underlying the Index Funds. TDAM has therefore obtained: (i) exemptive relief from the Canadian securities regulatory authorities to permit secondary market purchases of Shares by mutual funds managed by TDAM that are not reporting issuers, and (ii) standing instructions from the Independent Review Committee for mutual funds managed by TDAM that are reporting issuers to permit such mutual funds to purchase Shares (the Conflicts Exemptions). It is a condition of the Conflicts Exemptions that purchases of Shares by TDAM on behalf of an Index Fund must be made so that the Index Fund can hold Shares in substantially the weighting that has been assigned to the Shares within the underlying index whether the Index Fund is an index mutual fund or an enhanced index mutual fund.

30. In the absence of the exemption sought by TDAM pursuant to the Application, TDAM would be precluded from discharging its fiduciary obligation to the Index Funds by continuing to manage the Index Funds in accordance with their investment objectives throughout the Restricted Period even though the Shares are highly-liquid securities and TDAM's ability to purchase Shares on behalf of the Index Funds is constrained by the Conflicts Exemptions in the manner described above.

31. As the administrator of the EFB and the EFP (collectively, the Employee Plans), TD Bank pays all administration and investment management fees associated with the execution of the investment options that are selected by Employee Plan participants. TD Bank makes all Share purchases on behalf of the Employee Plans and their participants through TDSI.

32. Each of the Employee Plans is an automatic securities purchase plan for purposes of Part 5 of all NI 55-101.

33. Although TDSI will be able to purchase Shares for its own account or for accounts over which it exercises control or direction throughout the Restricted Period in reliance upon the exemption for highly – liquid securities that is available pursuant to section 3.1(1)(b) of the Rule, it will be unable to purchase Shares on behalf of the Exempt Insiders when they are purchasing Shares for their own accounts and it will be unable to purchase Share on behalf of TD Bank when it is purchasing Shares on behalf of a Participating Insider in the absence of an exemption from section 2.1(a) of the Rule.

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

IT IS THE DECISION of the Director pursuant to section 5.1 of the Rule that for purposes of the Acquisition, the following are exempt from section 2.2 of the Rule:

(a) purchases of Shares by an Exempt Insider for either his or her own account or an account over which the Exempt Insider exercises control or direction;

(b) purchases of Shares by an Asset Manager on behalf of a Directed Account;

(c) purchases of Shares by an Asset Manager on behalf of a Proprietary Model Account;

(d) purchases of Shares by TDAM on behalf of an Index Fund; and

(e) purchases of Shares by TD Bank on behalf of Participating Insiders.

IT IS ALSO THE DECISION of the Director pursuant to section 5.1 of the Rule that for the purposes of the Acquisition, TDSI is exempt from section 2.1(a) of the Rule in respect of any purchases of Shares on behalf of an Exempt Insider who is purchasing the Shares for his or her own account and on behalf of TD Bank when it is purchasing Shares on behalf of a Participating Insider.

December 31, 2007

"Susan Greenglass"
Manager, Market Regulation Branch

SCHEDULE A

TD Index Funds

TD Canadian Index Fund
TD Emerald Canadian Equity Index Fund
TD Emerald Canadian Equity Market Pooled Fund Trust II
TD Emerald Canadian Market Capped Pooled Fund Trust
TD Emerald Enhanced Canadian Equity Pooled Fund Trust
TD Emerald 130/30 Enhanced Canadian Equity Pooled Fund Trust

2.1.2 Sino Gold Mining Limited - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Filer making a securities exchange take-over bid - Filer required to include in the bid circular the information prescribed by the form of prospectus appropriate for the filer - Filer is a "designated foreign issuer" as defined in NI 52-107 - Relief granted from certain prospectus requirements on the basis that these requirements are not consistent with NI 52-107, subject to conditions - Relief from the requirement to deliver historical financial statements of the target to the security holders of the target, subject to conditions - In certain Jurisdictions, first trade of shares of the Filer issued as consideration would be subject to four-month seasoning period - First trade relief granted, subject to conditions.

Applicable Ontario Statutory Provisions

Securities Act,R.S.O. 1990, c. S.5, as am., ss. 53, 74, 104(2).
Regulation 1015, R.R.O. 1990, Reg. 1015, as am., s. 189 and Form 32.

October 19, 2007

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR (the "Jurisdictions")

AND

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

AND

IN THE MATTER OF
SINO GOLD MINING LIMITED

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "**Decision Maker**") in each of the Jurisdictions except New Brunswick (the "**Financial Information Jurisdictions**") has received an application from Sino Gold Mining Limited for a decision pursuant to the securities legislation (the "**Legislation**") of the Financial Information Jurisdictions that:

(a) the Canadian Financial Reporting Requirements (as defined below); and

(b) the requirement to include the Golden China Historical Statements (as defined below) in the Circular (as defined below),

not apply in connection with the proposed securities exchange take-over bid (the "**Offer**") by Sino Gold Mining Limited or its subsidiary (collectively, "**Sino Gold**") for all the issued and outstanding common shares ("**Golden China Shares**") of Golden China Resources Corporation ("**Golden China**") other than those already owned by Sino Gold and its affiliates (the "**Financial Information Relief**").

The Decision Maker in each of Alberta, Saskatchewan, Ontario, New Brunswick, Nova Scotia and British Columbia (the "**Non-Reporting Issuer Jurisdictions**") has received an application from Sino Gold for a decision under the Legislation of the Non-Reporting Issuer Jurisdictions for an exemption from the prospectus requirement as it relates to the first trade of ordinary shares of Sino Gold (the "**Sino Gold Shares**") and the Replacement Convertible Securities (as defined below) distributed in connection with the Offer (including those that may be distributed pursuant to any compulsory acquisition or subsequent acquisition transaction described in the Circular) and of the underlying Sino Gold Shares that may be issued pursuant to such Convertible Securities (the "**First Trade Relief**").

Under the Mutual Reliance Review System for Exemptive Relief Applications (the "**MRRS**"):

(c) the Ontario Securities Commission is the principal regulator for this application, and

(d) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by Sino Gold:

1. Sino Gold is a public company based in Sydney, Australia and incorporated in New South Wales, Australia. Sino Gold explores, evaluates, develops and operates gold mines in China through cooperative joint venture companies with local Chinese partners.

2. Sino Gold Shares are listed on the Australian Securities Exchange ("**ASX**") and the Hong Kong Stock Exchange ("**HKSE**"). Sino Gold does not currently intend to list the Sino Gold Shares on any exchange in Canada.

3. As at August 30, 2007, there were 181,616,415 Sino Gold Shares issued and outstanding. Under the Australian Corporations Act 2001

(Commonwealth of Australia), Australian registered companies do not have an authorized capital.

4. Sino Gold is not currently a reporting issuer or equivalent in any of the Jurisdictions. As a result of the Offer, and by virtue of the definitions of "reporting issuer" contained in the Legislation, the Filer will become a reporting issuer (i) in Quebec and Newfoundland and Labrador (the "**Reporting Issuer Jurisdictions**") upon the filing of the Circular, and (ii) in British Columbia, upon first taking up and paying for Golden China Shares under the Offer. Sino Gold will not become a reporting issuer in the remaining Jurisdictions as a result of filing the Circular or any subsequent take-up and payment for Golden China Shares.

5. Sino Gold does not have knowledge of any material facts with respect to Golden China that has not been generally disclosed.

6. Golden China is incorporated under the *Canada Business Corporations Act* and is a Toronto based mining company principally engaged in a mix of exploration and development, processing, and mining production throughout China.

7. Golden China's authorized share capital consists of an unlimited number of Golden China Shares without nominal or par value, of which 55,330,319 Golden China Shares were issued and outstanding as at August 13, 2007. The Golden China Shares are listed on the Toronto Stock Exchange ("**TSX**") and, via a depository receipt system, the ASX.

8. As at September 25, 2007, Golden China has issued and outstanding the following securities that are convertible into or exerciseable for Golden China Shares:

   (a) warrants to acquire an aggregate of approximately 8,539,286 Golden China Shares expiring between December 8, 2007 and April 27, 2009;

   (b) approximately 241,500 warrants to acquire the option to purchase one Golden China Share and one-half of one warrant of Golden China (each such whole warrant entitling the holder to acquire one Golden China Share), expiring May 23, 2009;

   (c) options to acquire approximately 3,500,000 Golden China Shares expiring August 7, 2012;

   (d) options issued pursuant to certain incentive stock option plans to acquire 3,625,120 Golden China Shares;

   (e) agents' compensation options expiring May 23, 2009 to acquire C$336,000 principal amount of 7% Convertible Senior Secured (Subordinated) Debentures of Golden China due May 23, 2012;

   (f) 758,351 deferred share units ("**DSUs**") representing the right of directors of Golden China to receive one Golden China Share at the earlier of the third anniversary of the date that the DSU was credited to the DSU account and the director's termination date; and

   (g) an aggregate of C$4,800,000 principal amount 7% convertible senior secured debentures due May 24, 2012 (the "**Convertible Debentures**") issued pursuant to a trust indenture dated May 24, 2007 and convertible by the holders thereof into Golden China Shares at a conversion price of C$0.95 per Golden China Share. The aggregate principal amount of Convertible Debentures outstanding is convertible into 5,052,631 Golden China Shares

   (collectively, the "Convertible Securities", as their terms may be amended).

9. Golden China is a reporting issuer in British Columbia, Alberta and Ontario, and to Sino Gold's knowledge, is not in default of its obligations as a reporting issuer under the Legislation in these jurisdictions.

10. On August 13, 2007, Sino Gold Mining Limited and Golden China entered into an agreement (the "**Letter Agreement**") setting out the general terms of the Offer, and issued a joint press release announcing the signing of the Letter Agreement and Sino Gold's intention to make the Offer.

11. Under the Offer, Golden China shareholders would receive 0.2222 of a Sino Gold Share for every one Golden China Share they hold (the "**Exchange Ratio**"), subject to the terms and conditions of the Offer.

12. On September 7, 2007, Sino Gold and Golden China entered into a definitive support agreement (the "**Support Agreement**") and issued a joint press release announcing the signing of the Support Agreement.

13. Sino Gold intends to propose to holders of Convertible Securities that are described in paragraphs 8(a) to (e) above to amend or exchange their securities to give them similar rights, as applicable, to acquire Sino Gold Shares, with the number of underlying shares and the exercise price adjusted to reflect the Exchange

Ratio (the "**Replacement Convertible Securities**"), such exchanges to be conditional on the take-up of Golden China Shares under the Offer.

14. Sino Gold currently intends to commence the Offer by mailing the Circular, together with all related documents, to holders of Golden China Shares whose last address on the books of Golden China is shown as being in Canada, which Circular will describe, among other things, the terms and conditions of the Offer. Sino Gold will also file the Circular on the System for Electronic Document Analysis and Retrieval ("**SEDAR**").

15. To date, Sino Gold has also entered into lock-up agreements with three Golden China shareholders who hold in aggregate approximately 11.4% of the currently outstanding Golden China Shares. In addition, Baker Steel Capital Managers (who own approximately 5.4% of the currently outstanding Golden China Shares) has indicated its non-binding verbal support for the Offer.

16. On September 18, 2007, Golden China issued 5,882,352 common shares at a price of Cdn$0.85 per share on a private placement basis to Sino Gold (the "**Private Placement**"). As a result of the Private Placement, Sino Gold acquired approximately 9.5% of the issued and outstanding Golden China Shares.

17. Because the consideration being offered for the purchase of the Golden China Shares is Sino Gold Shares, the form requirements for a take-over bid circular in the Jurisdictions requires Sino Gold to include in the Circular disclosure as prescribed by the form of prospectus appropriate for Sino Gold (collectively, the "**Form Requirements**").

18. Pursuant to the Form Requirements, Sino Gold will include the following financial statements of Sino Gold in the Circular, all prepared in accordance with Australian generally accepted accounting principles ("**Australian GAAP**") and, where required, audited in accordance with Australian generally accepted auditing standards:

    (a) audited statements of income, retained earnings and cash flows for the years ended December 31, 2006, 2005 and 2004;

    (b) audited consolidated balance sheets as at December 31, 2006 and 2005; and

    (c) interim financial statements for the six-month period ended June 30, 2007

    (the financial statements in (a) to (c) being referred to as the "**Sino Gold Historical Statements**").

19. Pursuant to the Form Requirements:

    (a) The Sino Gold Historical Statements must:

        (i) be prepared or reconciled to Canadian generally accepted accounting principles ("**Canadian GAAP**");

        (ii) be audited in accordance with Canadian generally accepted auditing standards ("**Canadian GAAS**") or foreign generally accepted auditing standards ("**Foreign GAAS**") provided that Foreign GAAS is substantially equivalent to Canadian GAAS;

        (iii) include with the auditor's report a statement by the auditor disclosing the material differences in the form and content of the foreign auditor's report as compared to a Canadian auditor's report and confirming that the auditing standards applied are substantially equivalent to Canadian GAAS; and

        (iv) be accompanied by a foreign auditor's report together with a foreign auditor's proficiency letter;

    (the "**Canadian Financial Reporting Requirements**").

20. Although the Sino Gold Historical Statements will not comply with the Canadian Financial Reporting Requirements, they will comply with the provisions contained in National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* ("**NI 52-107**").

21. As of the date hereof, Sino Gold is a "designated foreign issuer" as such term is defined in NI 52-107, and it is anticipated that Sino Gold will continue to be a "designated foreign issuer" subsequent to the distribution of Sino Gold Shares pursuant to the Offer.

22. The Offer constitutes a "significant probable acquisition of a business" under OSC Rule 41-501 – *General Prospectus Requirements* ("**Rule 41-501**"). Consequently, pursuant to the Form Requirements, in addition to the Sino Gold Historical Statements, Sino Gold is also required to include in the Circular the following financial statement disclosure in connection with the proposed acquisition of Golden China:

(a) audited consolidated statements of income, retained earnings and cash flows of Golden China for the financial year ended June 30, 2007 and 2006; and

(b) audited consolidated balance sheet as at June 30, 2007 and 2006;

in each case prepared in accordance with Canadian GAAP, and audited in accordance with Canadian GAAS, with the financial statements for the most recently completed interim period and fiscal year being reconciled to Australian GAAP (the financial statements in (a) to (b) being referred to as the "**Golden China Historical Statements**");

(c) an unaudited *pro forma* balance sheet of Sino Gold as at June 30, 2007 to give effect to the acquisition of Golden China as if it had taken place as at June 30, 2007 and, in accordance with NI 52-107, prepared in accordance with Australian GAAP;

(d) unaudited *pro forma* income statements of Sino Gold for (i) the year ended December 31, 2006 and (ii) the six months ended June 30, 2007, each to give effect to the acquisition of Golden China as if it had taken place on January 1, 2006, being the beginning of the most recently completed financial year of Sino Gold for which audited financial statements are included in the Circular, and in accordance with NI 52-107, each prepared in accordance with Australian GAAP, and *pro forma* earnings per share based on the *pro forma* statement of income prepared;

(the financial statements in (c) to (d) being referred to as the "**Pro Forma Statements**"); and

(e) a compilation report.

23. Because Golden China is a reporting issuer in British Columbia, Alberta, and Ontario and has been subject to the continuous disclosure requirements in National Instrument 51-102 *Continuous Disclosure Obligations*, including the obligation to file annual audited financial statements, interim unaudited financial statements, and annual and interim MD&A on SEDAR, shareholders of Golden China have been provided with and have access to the Golden China Historical Statements.

24. The Circular will prominently refer readers to SEDAR for copies of the Golden China Historical Statements, MD&A and other continuous disclosure of Golden China that may be of interest to Golden China shareholders.

25. The Circular will contain (i) the Pro Forma Financial Statements giving effect to the exchange of the securities contemplated by the Offer as required for the dates and periods required by OSC Rule 41-501, including (ii) a reconciliation note for the Golden China financial information contained therein (from Canadian GAAP to Australian GAAP), and (iii) a compilation report, all of which will provide shareholders of Golden China with the relevant information to evaluate the combined company. The Pro Forma Statements, the reconciliation note, and the compilation report will comply with NI 52-107.

26. With the exception of the Golden China Historical Statements, the Circular will provide prospectus-level disclosure for Sino Gold.

27. The distribution of the Sino Gold Shares and the amendment of the Convertible Securities in connection with the Offer will be exempt from the registration and prospectus requirements in all Canadian jurisdictions pursuant to the Legislation.

28. Pursuant to section 2.6 of National Instrument 45-102 *Resale of Securities* ("**NI 45-102**"), the first trade in securities acquired pursuant to a securities exchange take-over bid is deemed to be a distribution, unless certain conditions are met. Where the issuer is not a "qualifying issuer" at the distribution date, security holders are generally subject to a four month seasoning or hold period.

29. The first trade of Sino Gold Shares issued to shareholders of Golden China in the Jurisdictions (other than Manitoba) will be subject to Section 2.6 of NI 45-102, with the result that such Sino Gold Shares will be subject to a four-month seasoning period following Sino Gold becoming a reporting issuer in those jurisdictions, unless an exemption from the requirements of that section is available.

30. The first trade of Replacement Convertible Securities held by securityholders of Golden China and the underlying Sino Gold Shares issued under the terms of the Replacement Convertible Securities in the Jurisdictions (other than Manitoba) will be subject to Section 2.6 of NI 45-102, with the result that such Sino Gold Shares will be subject to a four-month seasoning period following Sino Gold becoming a reporting issuer in those jurisdictions, unless an exemption from the requirements of that section is available.

31. Pursuant to Section 2.11 of NI 45-102, first trades that would otherwise be subject to Section 2.6 of NI 45-102 are exempt from the seasoning period provided that, among other things, a securities exchange take-over bid circular relating to the

distribution of the security was filed by the offeror on SEDAR and the offeror was a reporting issuer on the date the securities of the offeree issuer were first taken up under the bid.

32. The differences between the definitions of "reporting issuer" in the Jurisdictions and the operation of Section 2.11 of NI 45-102 will result in: (i) shareholders of Golden China in the Reporting Issuer Jurisdictions receiving Sino Gold Shares that are freely-tradeable (however, shareholders of Golden China in British Columbia will only receive Sino Gold Shares that are freely-tradeable if Sino Gold takes up and pays for the Golden China Shares it first takes up under the Offer on the same day, which is not expected to occur) and (ii) shareholders of Golden China in the Non-Reporting Issuer Jurisdictions receiving Sino Gold Shares that are subject to a four-month seasoning period.

33. Following the completion of the Offer, the financial reports, proxy materials and other materials currently distributed to the holders of Sino Gold Shares pursuant to the securities laws of Australia and Hong Kong will be provided to the holders of Sino Gold Shares resident in Canada in accordance with applicable corporate and securities laws in the Jurisdictions.

34. Because there is no market for the Sino Gold Shares based in Canada and none is expected to develop, it is expected that any resale of the Sino Gold Shares by Canadian residents will be effected through the facilities of the ASX or HKSE in accordance with their respective requirements.

Decision

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 in the Financial Information Jurisdictions under the Legislation is that the Financial Information Relief is granted provided that the Circular:

(a) includes the Sino Gold Historical Statements;

(b) prominently refers readers to SEDAR for copies of the Golden China Historical Statements, MD&A and other continuous disclosure of Golden China;

(c) contains (i) the Pro Forma Statements, including (ii) a reconciliation note for the Golden China financial information contained therein (from Canadian GAAP to Australian GAAP), and (iii) a compilation report; and

(d) complies with NI 52-107.

The decision of the Decision Makers in the Non-Reporting Issuer Jurisdictions under the Legislation of the Non-Reporting Issuer Jurisdictions is that the First Trade Relief is granted, provided that such trades are made through an exchange or a market outside of Canada and that such trades are not control distributions, as defined in the Legislation.

"James E.A. Turner"
Ontario Securities Commission

"Suresh Thakrar"
Ontario Securities Commission

2.1.3 frontier*Alt* Funds Management Limited and frontier*Alt* All Terrain Canada Fund - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Approval of fund merger despite differences in investment objectives – statements of continuing fund not required to be sent to unitholders of the terminating fund provided information circular sent in connection with the unitholder.

January 9, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND AND NEWFOUNDLAND AND LABRADOR
(the "Jurisdictions")

AND

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

AND

IN THE MATTER OF
FRONTIER*ALT* FUNDS MANAGEMENT LIMITED
(the "Manager")

AND

FRONTIER*ALT* ALL TERRAIN CANADA FUND
(the "Terminating Fund")

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "**Decision Maker**") in each of the Jurisdictions has received an application from the Manager and the Terminating Fund (together, the "**Filers**") for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") for:

(a) approval of the merger (the "**Merger**") of the Terminating Fund into the frontier*Alt* All Terrain World Fund (the "**Continuing Fund**") under clause 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* ("**NI 81-102**"); and

(b) approval of any merger, after the date of this decision, of funds managed by the Manager that meet all of the criteria for pre-approval of mergers under section 5.6 of NI 81-102 except for the financial statement delivery requirements of subparagraph 5.6(1)(f)(ii) of NI 81-102 (the "**Future Mergers**").

Under the Mutual Reliance Review System for Exemptive Relief Applications

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

"Fund" or **"Funds"** means, individually or collectively, the Terminating Fund and the Continuing Fund.

Representations

This decision is based on the following facts represented by the Filers:

1. The Manager is a corporation established under the laws of Ontario. The Manager is the manager of each of the Funds.

2. The Terminating Fund is an open-ended mutual fund trust established under the laws of the Province of Ontario pursuant to a certain trust agreement.

3. Units of the Funds are currently qualified for sale in all of the provinces of Canada by a simplified prospectus and an annual information form, each dated June 7, 2007.

4. Each of the Funds is a reporting issuer under the applicable securities legislation of each province of Canada and is not in default of any requirements of applicable securities legislation.

5. The net asset value of each Fund is calculated on a daily basis on each day that the Manager is open for business.

6. The Manager proposes to merge the Terminating Fund into the Continuing Fund on a tax-deferred basis.

7. The proposed Merger of the Terminating Fund into the Continuing Fund will be structured substantially as follows:

   (i) The Terminating Fund will transfer all of its assets and liabilities to the Continuing Fund for an amount equal to the net value of the assets transferred, which amount will be satisfied as described in (ii) below.

   (ii) The Continuing Fund will issue units of the Continuing Fund to the Terminating

Fund having a net asset value equal to the net value of the assets transferred by the Terminating Fund.

(iii) The Terminating Fund will redeem its outstanding units and pay the redemption price for these units by distributing units of the Continuing Fund to the Terminating Fund's unitholders.

(iv) Units of the Continuing Fund received by the unitholders of the Terminating Fund will have an aggregate net asset value equal to the aggregate net asset value of the units of the Terminating Fund which are being redeemed.

(v) As soon as reasonably practicable after the distribution of units of the Continuing Fund by the Terminating Fund, the Terminating Fund will be wound-up.

8. The assets of the Terminating Fund are acceptable to the portfolio manager of the Continuing Fund and are, or will be, consistent with the investment objectives of the Continuing Fund.

9. The units of the Continuing Fund received by a unitholder of the Terminating Fund will have the same fee structure as the units of the Terminating Fund held by that unitholder.

10. Unitholders of the Terminating Fund will continue to have the right to redeem units of the Terminating Fund at any time up to the close of business immediately before the effective date of the Merger.

11. Any automatic reinvestments of distributions, purchases under pre-authorized chequing plans and automatic withdrawal plans in effect prior to the Merger for the Terminating Fund will be re-established in the Continuing Fund unless the investor advises the Manager otherwise.

12. The costs attributable to the Merger (consisting primarily of legal, proxy solicitation, printing and mailing costs) will be borne by the Manager and will not be borne by the Terminating Fund or the Continuing Fund.

13. At a special meeting of unitholders of the Terminating Fund to be held on January 29, 2008, unitholders of the Terminating Fund will be asked to approve the Merger. A notice of meeting and a management information circular will be mailed to unitholders of the Terminating Fund and filed on SEDAR in accordance with applicable securities legislation.

14. Approval of the Merger is required because the Merger does not satisfy all of the criteria for pre-approved reorganizations and transfers set forth in section 5.6 of NI 81-102 because the Merger involves the merger of funds that do not, in the opinion of the Manager, have "substantially similar investment objectives". In addition, the Manager proposes to indicate to unitholders of the Terminating Fund the manner in which the annual and interim financial statements of the Continuing Fund may be obtained rather than delivering such statements.

15. The primary difference between the fundamental investment objectives of the Terminating Fund and the Continuing Fund is that the Continuing Fund invests principally in equity securities of companies around the world rather than the more limited number of securities which meet the Terminating Fund's criteria of investing primarily in Canadian issuers. However, the Filers submit that the Merger will reduce duplication between the Funds, thereby increasing operational efficiency as costs of the Continuing Fund will be spread across a greater pool of assets, also allowing for greater diversification and ensuring that the Continuing Fund remains a viable, long-term, attractive investment vehicle for existing and potential investors.

16. The most recent annual and interim financial statements of the Continuing Fund will not be sent to unitholders of the Terminating Fund but, instead, the Manager will prominently disclose in the information circular sent to unitholders of the Terminating Fund that they can obtain the most recent interim and annual financial statements of the Continuing Fund by accessing the frontier*Alt* and SEDAR websites, by toll-free number, by fax or by e-mail.

17. The Filers submit that if a unitholder is interested in reading the financial statements of the Continuing Fund, he or she would take the time to access them by one of the means available. There would be cost savings if the Manager did not have to include the financial statements in the proxy packages sent to unitholders of the Terminating Fund.

18. Except as noted above, as at the time of the Merger, the Merger will meet all of the other conditions necessary for mutual funds to complete a merger without regulatory approval as prescribed by section 5.6 of NI 81-102.

Decision

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 the Merger and the Future Mergers are approved provided that:

(a) the information circular sent to unitholders with respect to the Merger or Future Merger provides sufficient information about the applicable merger to permit unitholders to make an informed decision about that merger;

(b) the information circular sent to unitholders in connection with the Merger or a Future Merger prominently discloses that unitholders can obtain the most recent interim and annual financial statements of the Continuing Fund and a future continuing fund by accessing the frontier*Alt* and SEDAR websites, upon request and at no cost by calling toll-free, by fax or by e-mail;

(c) upon request by a unitholder for financial statements, the Manager will make best efforts to provide the unitholder with financial statements of the Continuing Fund and a future continuing fund in a timely manner so that the unitholder can make an informed decision regarding the Merger or a Future Merger; and

(d) the Terminating Fund, the Continuing Fund and any mutual fund involved in a Merger or a Future Merger has, or will have, an unqualified audit report in respect of its last completed financial period.

This Decision, as it relates to the jurisdiction of a Decision Maker, will terminate one year after the publication in final form of any legislation or rule of that Decision Maker dealing with matters in paragraph 5.5(1)(b) of NI 81-102.

"Leslie Byberg"
Investment Funds Branch
Ontario Securities Commission

2.1.4 Sino Gold Mining Limited - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Proposed private placement of shares issued from treasury following announcement of offeror's intention to make a take-over bid - Filer requires relief from restriction on acquisition provisions which provide that offeror may not enter into an agreement to acquire shares that are subject to a take-over bid (otherwise than pursuant to the take-over bid) on and from the day that the offeror announces its intention to make the take-over bid until its expiry - Proposed private placement purchases are akin to permitted pre-bid purchases and, but for timing constraints, could have been made without triggering disclosure requirements - Filer will not be receiving a benefit solely because it will in effect acquire a "toe-hold" by way of treasury acquisitions during the bid as opposed to acquisitions before the announcement of the Offer - Requested relief granted.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 94(2), 94(4), 104(2)(c).

September 17, 2007

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR
(the "Jurisdictions")

AND

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

AND

IN THE MATTER OF
SINO GOLD MINING LIMITED

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "**Decision Maker**") in each of the Jurisdictions has received an application from Sino Gold Mining Limited, in connection with the proposed offer (the "**Offer**") by Sino Gold Mining Limited or its subsidiary (collectively, "**Sino Gold**") to acquire all of the issued and outstanding common shares (the "**Golden China Shares**") of Golden China Resources Corporation ("**Golden China**"), other than Golden China Shares already owned by Sino Gold and its affiliates, on the basis of 1 ordinary share of Sino Gold (a "**Sino Gold Share**") for every 4.5 Golden China Shares, for a decision pursuant to the securities legislation of the Jurisdictions

(the "**Legislation**") that the Private Placement (as defined below) may be consummated notwithstanding the prohibition that an offeror shall not offer to acquire, or make or enter into, an agreement, commitment or understanding to acquire shares that are subject to a take-over bid otherwise than pursuant to the take-over bid on and from the day that the offeror announces its intention to make the take-over bid until its expiry (the "**Requested Relief**").

Under the Mutual Reliance Review System for Exemptive Relief Applications (the "**MRRS**"):

(a) the Ontario Securities Commission (the "**OSC**") is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by Sino Gold:

1. Sino Gold is a public company based in Sydney, Australia and incorporated in New South Wales, Australia. Sino Gold explores, evaluates, develops and operates gold mines in China through cooperative joint venture companies with local Chinese partners.

2. Sino Gold Shares are listed on the Australian Securities Exchange ("**ASX**") and the Hong Kong Stock Exchange ("**HKSE**") (ASX: SGX and HKSE: 1862). Sino Gold does not currently intend to list the Sino Gold Shares on any exchange in Canada.

3. As at August 30, 2007, there were 181,616,415 Sino Gold Shares issued and outstanding. Under the Australian Corporations Act 2001 (Commonwealth of Australia), Australian registered companies do not have an authorized capital.

4. Sino Gold is not currently a reporting issuer or equivalent in any of the Jurisdictions.

5. Sino Gold does not have knowledge of any material facts or material change with respect to Golden China that has not been generally disclosed.

6. Golden China is incorporated under the *Canada Business Corporations Act* and is a Toronto based mining company principally engaged in a mix of exploration and development, processing, and mining production throughout China. The common shares of Golden China ("**Golden China Shares**") are listed on the Toronto Stock Exchange ("**TSX**") and, via a depository receipt system, the ASX (ASX and TSX: GCX).

7. Golden China's authorized share capital consists of an unlimited number of Golden China Shares without nominal or par value, of which 55,330,319 Golden China Shares were issued and outstanding as at August 13, 2007.

8. Golden China is a reporting issuer in British Columbia, Alberta and Ontario, and to Sino Gold's knowledge, is not in default of its obligations as a reporting issuer thereunder.

9. On August 13, 2007, Sino Gold Mining Limited and Golden China entered into an agreement (the "**Letter Agreement**") setting out the general terms of the Offer, and issued a joint press release announcing the signing of the Letter Agreement and Sino Gold's intention to make the Offer.

10. Under the Offer, Golden China shareholders would receive one Sino Gold Share for every 4.5 Golden China Shares they hold, subject to the terms and conditions of the Offer.

11. Pursuant to the Letter Agreement, Sino Gold and Golden China agreed to negotiate in good faith and to use their best efforts to enter into a definitive support agreement on or before September 10, 2007 on customary terms to provide for the making and support of the Offer.

12. On September 7, 2007, Sino Gold and Golden China entered into the definitive support agreement (the "**Support Agreement**") providing for the making and support of the Offer.

13. The Support Agreement also provides that, subject to regulatory approval, Sino Gold will subscribe for 5,882,352 Golden China Shares, at Cdn$0.85 per share, or approximately 9.5% of the issued and outstanding Golden China Shares (including the Golden China Shares to be issued to Sino Gold) to fund the operations of Golden China (the "**Private Placement**").

14. Following the completion of the Private Placement, Sino Gold currently intends to commence the Offer by mailing the Circular, together with all related documents, to holders of Golden China Shares whose last address on the books of Golden China is shown as being in Canada, which Circular will describe, among other things, the Offer. Sino Gold will also file the Circular on the System for Electronic Document Analysis and Retrieval ("**SEDAR**").

15. To date, Sino Gold has also entered into lock-up agreements with three Golden China shareholders who hold in aggregate approximately 11.4% of the

currently outstanding Golden China Shares. In addition, Baker Steel Capital Managers (who own approximately 5.4% of the currently outstanding Golden China Shares) has indicated its verbal support for the Offer.

16. The Legislation provides that (a) an offeror shall not enter into an agreement to acquire shares that are subject to a take-over bid otherwise than pursuant to the take-over bid on and from the day that the offeror announces its intention to make the take-over bid until its expiry (the "**Restriction On Acquisitions**"), and (b) where a take-over bid is made by an Offeror, and within the period of ninety days immediately preceding the bid, the Offeror or a person or company acting jointly or in concert with the offeror acquired beneficial ownership of securities of the class subject to the bid pursuant to a transaction not generally available on identical terms to holders of that class of securities, the offeror shall offer consideration for securities deposited under the bid at least equal to (and in some of the Jurisdictions in the same form) as the highest consideration that was paid on a per security basis under any of such prior transactions or the offeror shall offer at least the cash equivalent of such consideration and for at least the same percentage (the "**Pre-Bid Integration Requirements**").

17. In order to complete the proposed Private Placement, Sino Gold requires relief: (i) from the Restriction On Acquisitions in all Jurisdictions and (ii) from the Pre-Bid Integration Requirements in certain Jurisdictions.

18. The price for the Golden China Shares to be purchased under the Private Placement was negotiated in connection with the terms of the Letter Agreement at Cdn$0.85 per share, representing the closing price of the Golden China Shares on the TSX on August 10, 2007 – the last trading day prior to announcement of the Letter Agreement and Sino Gold's intention to make the Offer. On August 16, 2007, Golden China received conditional approval from the TSX for the Private Placement.

19. The Private Placement was negotiated at arm's length, on customary terms in advance of the announcement of Sino Gold's intention to make the Offer. The terms of the Private Placement, as set out in the Letter Agreement and superseded by the Support Agreement, were approved unanimously by Golden China's Board of Directors in advance of the announcement of Sino Gold's intention to make the Offer.

20. Due to timing constraints and other factors, including the need to obtain conditional approval from the TSX for the Private Placement, Sino Gold and Golden China were unable to consummate the Private Placement in advance of the announcement of Sino Gold's intention to make the Offer.

21. The Private Placement was proposed and required as a term of the Offer by Golden China to meet Golden China's immediate cash requirements and will be undertaken for valid business purposes. The funds from the Private Placement are to be used by Golden China to support the development of Golden China's gold properties and for general corporate purposes.

Decision

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 in the Jurisdictions under the Legislation is that the Requested Relief is granted.

"Suresh Thakrar"
Ontario Securities Commission

"Robert L. Shirriff"
Ontario Securities Commission

2.1.5 GMP Private Client LP - MRRS Decision

Headnote

Application pursuant to section 144 of Securities Act (Ontario) (Act) to revoke a decision previously granted to the filer dated November 30, 2005.

Application pursuant to section 147 of the Act for an exemption from the requirement in section 36 of the Act to provide a written confirmation of any trade in securities for transactions that the filer and/or the sub-advisers conduct on behalf of the clients with respect to transactions under the filer's managed account program.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 36, 144, 147.

December 7, 2007

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUÉBEC, NOVA SCOTIA,
NEWFOUNDLAND AND LABRADOR,
NEW BRUNSWICK AND PRINCE EDWARD ISLAND
(The Jurisdictions)

AND

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

AND

IN THE MATTER OF
GMP PRIVATE CLIENT LP
(The Filer)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for:

1. an order revoking a previous MRRS decision document dated November 30, 2005 (the **Existing Relief**);

2. except in Ontario and Québec, an exemption from the requirement in the Legislation to be registered as an adviser for certain investment advisers (each a **Sub-Adviser**) who provide investment counselling and portfolio management services to the Filer for the benefit of its clients (each a **Client**) who are resident in the Jurisdictions where the Sub-Advisers are not registered (the **Registration Relief**); and

3. except in Prince Edward Island, an exemption for the Filer from the requirement in the Legislation that a registered dealer send to its clients a written confirmation of any trade in securities for transactions that the Filer and/or the Sub-Advisers conduct on behalf of the Clients with respect to transactions under the Filer's managed account program (the **Confirmation Relief**).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

1. the British Columbia Securities Commission is the principal regulator for this application; and

2. this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by the Filer:

1. the Filer is a limited partnership established under the laws of Manitoba;

2. the Filer is currently registered under the Legislation as an investment dealer or its equivalent and is a member of the Investment Dealers Association of Canada (the **IDA**);

3. the Filer is authorized to act as an adviser, without registering as an adviser under exemptions in the Legislation;

4. the Filer offers its Clients a managed account program (the **Managed Account Program**) comprised of three different types of managed accounts:

   (a) accounts that will be fully managed by a portfolio manager of the Filer (the **PM Program**);

   (b) accounts that will be invested by a portfolio manager of the Filer in a model portfolio(s) of a Sub-Adviser(s), which has entered into a sub-advisory agreement with the Filer (the **Model Portfolio Program**); and

   (c) accounts that will be invested by a Sub-Adviser in accordance with the Model Portfolio Program of that Sub-Adviser;

5. to participate in the Filer's Managed Account Program, a Client:

   (a) enters into a written agreement (the Managed Account Agreement) with the Filer establishing an account and setting out the terms and conditions and the respective rights, duties and obligations of the Client and the Filer; and

   (b) with the assistance of the Filer, completes an investment policy statement that outlines the Client's investment objectives and level of risk tolerance;

6. under the Managed Account Agreement:

   (a) the Client grants full discretionary trading authority to the Filer and authorizes the Filer to make investment decisions and to trade in securities on behalf of the Client's account without obtaining the specific consent of the Client to individual trades;

   (b) the Client agrees to pay a flat annual fee and an annual fee calculated on the basis of the assets in the Client's account, which is payable monthly or quarterly in arrears, and is not based on transactions effected in the Client's account; and

   (c) unless otherwise requested, the Client waives receipt of trade confirmations as required under the Legislation;

7. for a Client that participates in the Filer's Model Portfolio Program, the Filer will, based on the Client's investment policy statement, choose which model portfolios that Client's account (a **Model Portfolio Account**) will track;

8. each model portfolio has its own investment focus and will be comprised of a portfolio of securities compiled and maintained by a Sub-Adviser;

9. based on the portfolio manager's assessment of which model portfolio(s) is appropriate for a Client, the portfolio manager and in certain instances, a Sub-Adviser, will invest the Client's Model Portfolio Account in accordance with the securities and weightings used in that model portfolio;

10. a portfolio manager at the Filer will review a Sub-Adviser's model portfolio at least monthly to ensure that it is still appropriate for each Client that is invested in or is tracking such model portfolio based on that Client's investment objectives and investment restrictions. The Filer's administrative staff will also review each trade in the Sub-Adviser's model portfolio between such reviews by the portfolio manager to ensure the Sub-Adviser's model portfolio complies with the investment mandate of the portfolio;

11. Sub-Advisers are selected by the Filer based on a variety of criteria developed by the Filer for determining their suitability for specific investment mandates;

12. in retaining the Sub-Advisers, the Filer complies with the requirements of Section 7.3 of Ontario Securities Commission Rule 35-502 *Non-Resident Advisers* (**OSC Rule 35-502**) and, accordingly:

   (a) the obligations and duties of each Sub-Adviser will be set out in a written agreement between the Sub-Adviser and the Filer;

   (b) the Filer contractually agrees with each Client on whose behalf investment counselling or portfolio management services are to be provided by a Sub-Adviser, to be responsible for any loss that arises out of the failure of the Sub-Adviser:

      (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Client(s) for whose benefit the investment counselling or portfolio management services are to be provided, or

      (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances; and

   (c) the Filer will not be relieved by its Clients from its responsibility for loss under paragraph 12(b) above;

13. Sub-Advisers may or may not be resident in Canada; each Sub-Adviser that is resident in a province or territory of Canada is registered as an adviser under the securities legislation of that province or territory; each Sub-Adviser that is not resident in Canada is licensed or otherwise legally permitted to provide investment advice and portfolio management services under the applicable laws of the jurisdiction in which it resides;

14. if there is any direct contact between a Client and a Sub-Adviser, a representative of the Filer, duly registered to provide portfolio management and investment counselling services in the Jurisdiction where the Client is resident, will be present at all times, either in person or by telephone;

15. a Sub-Adviser that provides investment counselling or portfolio management services to the Filer for the benefit of its Clients would be considered to be acting as an "adviser" under the Legislation and, in the absence of the Registration Relief or an existing exemption, would be subject to the adviser registration requirement;

16. Sub-Advisers who are not registered in Ontario are not required to register as advisers under the *Securities Act* (Ontario) as they rely on the exemption from registration in section 7.3 of OSC Rule 35-502;

17. the Filer sends each Client participating in its Managed Account Program, who has waived receipt of trade confirmations, a statement of account, not less than once a month;

18. the monthly statement of account will identify the assets being managed on behalf of that Client, including for each trade made during that month the information that the Filer would otherwise have been required to provide to that Client in a trade confirmation in accordance with the Legislation, except for the following information (the **Omitted Information**):

    (a) the day and the stock exchange or commodity futures exchange upon which the trade took place;

    (b) the fee or other charge, if any, levied by any securities regulatory authority in connection with the trade;

    (c) the name of the salesman, if any, in the transaction;

    (d) the name of the dealer, if any, used by the Filer as its agent to effect the trade; and

    (e) if acting as agent in a trade upon a stock exchange the name of the person or company from or to or through whom the security was bought or sold;

19. the Filer maintains the Omitted Information with respect to a Client in its books and records and will make the Omitted Information available to the Client on request.

Decision

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:

1. the Existing Relief is revoked;

2. except in Ontario and Québec, the Registration Relief is granted, provided that:

    (a) the obligations and duties of each Sub-Adviser are set out in a written agreement between the Sub-Adviser and the Filer;

    (b) the Filer contractually agrees with each Client on whose behalf investment counselling or portfolio management services are to be provided by a Sub-Adviser, to be responsible for any loss that arises out of the failure of the Sub-Adviser:

        (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Client(s) for whose benefit the investment counselling or portfolio management services are to be provided, or

        (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;

    (c) the Filer is not relieved by its Clients from its responsibility for loss under paragraph (b) above;

    (d) each Sub-Adviser that is resident in a province or territory of Canada will be registered as an adviser under the securities legislation of that province or territory;

    (e) each Sub-Adviser that is not resident in Canada will be licensed or otherwise legally permitted to provide investment advice and portfolio management services under the applicable laws of the jurisdiction in which it resides;

    (f) a Sub-Adviser will not have any direct and personal contact with a Client residing in New Brunswick if the Sub-Adviser is not registered under the securities legislation of New Brunswick; and

    (g) in Manitoba, the Registration Relief is available only to Sub-Advisers who are not registered in any Canadian jurisdiction;

3. except in Prince Edward Island, the Confirmation Relief is granted provided that:

   (a) the Client has previously informed the Filer that the Client does not wish to receive trade confirmations for the Client's accounts under the Managed Account Program; and

   (b) in the case of each trade for an account under the Managed Account Program, the Filer sends to the Client the corresponding statement of account that includes the information for the trade referred to in representation 18.

"Sandy Jakab"
Director, Capital Markets Regulation
British Columbia Securities Commission

2.1.6 Brompton 2007 Flow-Through LP and Brompton Funds Management Limited - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Exemptions granted to flow-through limited partnerships from the requirements in National Instrument 81-106 Investment Fund Continuous Disclosure to file an annual information form, to maintain and prepare an annual proxy voting record, to post the proxy voting record on their website, and to provide it to securityholders upon request – Flow-though limited partnerships are short-term investment vehicles formed solely to invest its available funds in flow-through shares of resource issuers – The securities of flow-through limited partnerships are not redeemable and there is no readily available secondary market for the securities – A flow-through limited partnership's other continuous disclosure documents will provide all relevant information necessary for investors to understand the its investment objectives and strategies, financial position and future plans.

Rules Cited

National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 9.2, 10.3, 10.4, 17.1.

January 10, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR, YUKON, NORTHWEST TERRITORIES AND NUNAVUT
(the "Jurisdictions")

AND

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

AND

IN THE MATTER OF
BROMPTON 2007 FLOW-THROUGH LP
(the "2007 Partnership") AND
BROMPTON FUNDS MANAGEMENT LIMITED
("Brompton") (collectively, the "Filers")

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from the Filers on behalf of the 2007 Partnership and each future limited partnership that is identical to the 2007 Partnership in all material respects (the "Future Partnerships", and together with the 2007

Partnership, the "Partnership Filers") for a decision under the securities legislation of the Jurisdictions (the "Legislation") granting an exemption from:

(i) the requirement in Section 9.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure* ("NI 81-106") to prepare and file an annual information form ("AIF");

(ii) the requirement in Section 10.3 of NI 81-106 to maintain a proxy voting record (the "Proxy Voting Record"); and

(iii) the requirements in Section 10.4 of NI 81-106 to prepare a Proxy Voting Record on an annual basis for the period ending June 30 of each year, to post the Proxy Voting Record on Brompton's website no later than August 31 of each year, and to send the Proxy Voting Record to the limited partners of the Partnership Filers (the "Limited Partners") upon request.

((i), (ii) and (iii) are collectively, the "Requested Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications ("MRRS"):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) this MRRS decision document evidences the decision of each Decision Maker, as applicable to Brompton and the Partnership Filers.

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by the Filers:

1. The principal office of the Filers is located at Bay Wellington Tower, Brookfield Place, 181 Bay Street, Suite 2930, Toronto, Ontario, M5J 2T3.

2. Brompton is the manager of the 2007 Partnership and will also act as manager to the Future Partnerships. In its capacity as manager, Brompton will provide or arrange for the provision of all administrative services required by the Partnership Filers. Brompton is a member of the Brompton Group of Companies, which provides specialized financial products and services to clients.

3. Morrison Williams Investment Management LP ("Morrison Williams") has been engaged by Brompton as the portfolio manager to the 2007 Partnership (the "Portfolio Manager"). Brompton may engage portfolio managers other than Morrison Williams to act as portfolio manager to the Partnership Filers.

4. The Partnership Filers were or will be formed to provide Limited Partners with the opportunity for capital appreciation by investing, on a tax-advantaged basis, in a diversified portfolio of companies involved primarily in oil and gas and mining exploration and development ("Resource Issuers") engaged in the oil and gas and mining sectors. Each Partnership Filer will seek to achieve its investment objective by investing in certain flow-through securities ("Flow-Through Securities") and other securities of Resource Issuers such that Limited Partners will be entitled to claim certain deductions from their taxable income. The Partnership Filers are not, and will not be, operating businesses. Each Partnership Filer is or will be a short-term special purpose vehicle that will be dissolved within approximately two years of its formation. Investors generally purchase limited partnership units of the Partnership Filers (the "Units") primarily to obtain the significant tax benefits that accrue to the Limited Partners when Resource Issuers renounce resource exploration and development expenditures to the Partnership Filer through the Flow-Through Securities.

5. The 2007 Partnership is a limited partnership formed pursuant to the provisions of the *Limited Partnerships Act* (Ontario) on August 21, 2007. The 2007 Partnership became a reporting issuer in each Jurisdiction on September 28, 2007, the date of the receipt for its (final) prospectus dated September 27, 2007 (the "Prospectus"), offering for sale up to 1,200,000 limited partnership units at a price of $25.00 per Unit. On or about September 30, 2009, the 2007 Partnership will be dissolved and its limited partners will receive their *pro rata* share of the net assets of the 2007 Partnership.

6. It is the current intention of Brompton and Brompton Flow-Through Management Limited, the general partner of the 2007 Partnership (the "General Partner") that the 2007 Partnership will transfer its assets to an existing mutual fund corporation or one to be created prior to September 30, 2009 (the "Mutual Fund Corporation") in exchange for redeemable shares of the Mutual Fund Corporation (the "Rollover Transaction"). The Mutual Fund Corporation will be established and managed by the Manager and is expected to be advised by the Portfolio Manager. Within 60 days after such transfer, upon the dissolution of the 2007 Partnership, the shares of the Mutual Fund Corporation will be distributed to Limited Partners, *pro rata*, on a tax-deferred basis. The Rollover Transaction is subject, *inter alia*, to the necessary regulatory and other approvals, and in the event that it is not

implemented prior to September 30, 2009, the 2007 Partnership may: (i) be dissolved and its net assets distributed *pro rata* to the Limited Partners; or (ii) subject to approval by extraordinary resolution of the Limited Partners, the 2007 Partnership may choose to pursue a liquidity alternative that is proposed by the General Partner. It is Brompton's current intention that any Future Partnership will be terminated approximately two years after it was formed on the same basis as the 2007 Partnership.

7. The Units are not and will not be listed or quoted for trading on any stock exchange or market. The Units are not redeemable by the Limited Partners. Generally, Units are not transferred by Limited Partners since Limited Partners must be holders of the Units on the last day of each fiscal year of a Partnership Filer in order to obtain the desired tax deduction.

8. Since its formation, the 2007 Partnership's activities have been limited to (i) completing the issue of the Units under its prospectus, (ii) investing its available funds in accordance with its investment objectives and (iii) incurring expenses as described in its prospectus. Any Future Partnerships will be structured in a similar fashion.

9. By subscribing for Units offered by the 2007 Partnership under the Prospectus, each of the Limited Partners has agreed to the irrevocable power of attorney contained in Article 3.5 of the Amended and Restated Limited Partnership Agreement dated as of November 19, 2007. The power of attorney authorizes the General Partner to apply for exemptions from reporting obligations under the Legislation.

10. Given the limited range of business activities to be conducted by the Partnership Filers, the short duration of their existence and the nature of the investment of the Limited Partners, the preparation and filing of an AIF by the Partnership Filer will not be of any benefit to the Limited Partners and may impose a material financial burden on the Partnership Filer. Upon the occurrence of any material change to the Partnership Filer, Limited Partners would receive all relevant information from the material change reports the Partnership Filer is required to file with the Decision Makers.

11. Pursuant to NI 81-106, investors purchasing Units of the Partnership Filer were provided with a prospectus containing written policies on how the Flow-Through Securities held by the Partnership Filer are voted (the "Proxy Voting Policies"), and had the opportunity to review the Proxy Voting Policies before deciding whether to invest in Units.

12. The Proxy Voting Policies prescribe that the Partnership Filer exercise its voting rights in respect of securities of Resource Issuers with a view to the best interests of the Partnership Filer and its Limited Partners.

13. Given the short lifespan of the Partnership Filer, the production of a Proxy Voting Record would provide Limited Partners with very little opportunity for recourse if they disagreed with the manner in which the Partnership Filer exercised or failed to exercise its proxy voting rights, as the Partnership Filer would likely be dissolved by the time any potential change could materialize.

14. Preparing and making available to Limited Partners a Proxy Voting Record will not be of any benefit to Limited Partners and may impose a material financial burden on the Partnership Filer.

Decision

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 the Requested Relief is granted.

"Vera Nunes"
Assistant Manager, Investment Funds
Ontario Securities Commission

2.1.7 Katanga Mining Limited - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – potential take-over bid in Ontario by foreign reporting issuer of a target that is not a reporting issuer – number of target shareholders in Canada de minimis – to the best of the target's knowledge, one beneficial holder of target shares may be resident in Canada – exemption from formal take-over bid requirements provided, subject to conditions – in the event that no beneficial holders are resident in jurisdiction, prospectus and registration relief granted to permit distribution of offeror securities to target shareholders, subject to conditions – offeror must holder meeting and circulate information circular to approve share issuance – exemption from requirements to provide three years of financial information regarding target issuer provided in information circular, in accordance with CSA Staff Notice 42-303.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74, 95, 96, 97, 98, 99, 100, 104(2)(c).
National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1, Item 14.2 of Form 51-102F5.

January 3, 2008

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

AND

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

AND

IN THE MATTER OF
KATANGA MINING LIMITED (the Applicant)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Applicant for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that:

(a) the formal take-over bid requirements contained in the Legislation, including the provisions relating to delivery of an offer and take-over bid circular and any notices of change or variation thereto, delivery of a directors' circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to a take-over bid, disclosure, financing, restrictions upon the purchases of securities, identical consideration, and collateral benefits, not apply to the Offer (defined below) (the **Formal Take-Over Exemption**);

(b) the prospectus and registration requirements not apply to the distribution of Katanga Shares (defined below) pursuant to the Offer (the **Prospectus and Registration Exemption**); and

(c) the obligation to include, in a proxy solicitation and management information circular to be sent to its security holders in connection with the Offer, Nikanor's balance sheet, income statement, retained earnings and cash flow for its financial year ended December 31, 2004 and audited balance sheet and statement of income, retained earnings and cash flow for its financial year ended December 31, 2005 not apply to the Management Information Circular (defined below) (the **Financial Statement Exemption**).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by the Applicant:

1. The Applicant is a company existing under the Companies Act, 1981 (Bermuda) and its registered office is located in Bermuda. The Applicant operates a major copper/cobalt mine complex in the Democratic Republic of the Congo (the **DRC**) on behalf of the Kamoto Copper Company joint venture in which it holds a 75% interest.

2. The Applicant is a reporting issuer in each of the Provinces of British Columbia, Alberta and Ontario, and is not in default of any requirement of the Legislation in those jurisdictions.

3. The Applicant's capital consists of 1,000 Common Shares with a par value of $12.00 each and 300,000,000 common shares with a par value of $0.10 each (the **Katanga Shares**). As at November 16, 2007, there were 78,887,743 Katanga Shares outstanding.

4. The Katanga Shares are listed on the Toronto Stock Exchange (the **TSX**).

5. The Applicant has entered into an Implementation Agreement with Nikanor plc (Nikanor) dated November 6, 2007 pursuant to which the Applicant has agreed to make an offer (the **Offer**) to acquire all of the issued and outstanding shares of Nikanor.

6. Nikanor was incorporated under the Isle of Man *Companies Act*, 1931-2004 on June 26, 2006. The ordinary shares in the capital of Nikanor (the **Nikanor Shares**) are admitted to trading on the AIM Market of the London Stock Exchange plc (**AIM**). Nikanor is not a reporting issuer or the equivalent in any Jurisdiction and its securities are not listed for trading on any Canadian stock exchange. Nikanor indirectly holds 75% of a joint venture at Kolwezi in the DRC. The combination of Nikanor and Katanga will bring their adjacent properties in the DRC under common ownership.

7. Pursuant to the Offer, the Applicant will offer 0.613 of a Katanga Share and US$2.16 in cash (which is currently proposed to be paid by way of a distribution by Nikanor to the holders of Nikanor Shares including, if relevant, Katanga, which shall then pay the distribution to the previous shareholders of Nikanor by way of a cash return) for each issued and outstanding Nikanor Share. The Applicant will make the Offer to all of the shareholders of Nikanor, other than those shareholders resident in any jurisdiction where it is unlawful to do so.

8. As of November 14, 2007, none of the registered holders of Nikanor Shares (based on the registered shareholder list of Nikanor provided to Katanga by Nikanor) was a resident of Canada. However, a significant number of Nikanor Shares are registered in the name of CREST, the United Kingdom depository that is the equivalent of CDS in Canada. Nikanor has indicated to Katanga that, to the best of Nikanor's knowledge, after reasonable inquiry, as at November 12, 2007 there was one beneficial shareholder of Nikanor resident in Ontario. This shareholders holds a total of 47,624 shares of Nikanor, representing approximately 0.023% of the total 206,550,000 Nikanor Shares which are issued and outstanding.

9. The Offer will be subject to conditions usual to offers of this nature, including the condition that shareholders holding at least 90% of the issued and outstanding shares of Nikanor have accepted the Offer, in which case the Applicant intends to apply the provisions of Section 160 of the Isle of Man *Companies Act*, 2006 for compulsory acquisition of all of the remaining issued and outstanding shares of Nikanor.

10. The *City Code on Take-over and Mergers* (the **Code**) will not apply to the Offer as Nikanor is not managed in the United Kingdom. However, the Applicant has determined that the Offer will be made in a manner which generally complies with the Code, including substantial compliance with the requirements regarding contents of the offering circular, except where otherwise agreed with Nikanor.

11. As the number of Canadian resident shareholders of Nikanor is extremely small and Nikanor Shares are not traded on the TSX, it is conceivable that, at the time the Offer is made, there will be no shareholders of Nikanor resident in any Jurisdiction and the Offer may not constitute a "take-over bid" within the meaning of the Legislation because it is not an offer to acquire made to a resident in any of the Jurisdictions. If the Offer is not a take-over bid, then the distribution of Katanga Shares will not be exempt from the prospectus and registration requirements under National Instrument 45-106 *Prospectus and Registration Exemptions*.

12. As a condition to the listing of the Katanga Shares to be issued in connection with the Offer on the TSX, the Applicant is required to seek the approval of the holders of its outstanding shares to the completion of the Offer at a meeting of its shareholders. In connection with that meeting Katanga will be preparing a management information circular (the **Management Information Circular**) in accordance with the requirements of applicable securities laws and distributed to its shareholders.

13. The Offer constitutes a "significant probable acquisition" for the Applicant (within the meaning of Legislation applicable to prospectuses, other than short form prospectuses), and that at least one of the three significance tests in the Legislation would be satisfied if the 20 percent threshold was changed to 50 percent. Therefore, Item 14.2 of Form 51-102F5 requires that 3 years of historical financial statements of the business of Nikanor must be included in Management Information Circular.

14. The acquisition of Nikanor pursuant to the Offer will not constitute a "reverse take-over" as defined in National Instrument 51-102 *Continuous Disclosure Obligations*.

15. The Management Information Circular contains the following:

(a) Nikanor's unaudited balance sheet and statements of income, retained earnings and cash flow for its financial year ended December 31, 2005;

(b) Nikanor's balance sheet and statements of income, retained earnings and cash flow for its financial year ended December 31, 2006, together with an auditor's report prepared in accordance with International Auditing Standards accompanied by a statement of the auditor that:

(i) describes any material differences in the form or content of the auditor's report as compared to an auditor's report prepared in accordance with Canadian GAAS; and

(ii) indicates that an auditor's report prepared in accordance with Canadian GAAS would not contain a reservation;

(c) Nikanor's unaudited balance sheets and statements of income, retained earnings and cash flow for the interim periods ended June 30, 2006 and June 30, 2007;

(d) a *pro forma* balance sheet as at June 30, 2007 and a *pro forma* statement of income, retained earnings and cash flow of Katanga for the year ended December 31, 2006 and the interim period ended June 30, 2007, giving effect to the completion of the Offer as of the first day of such periods; and

(e) *pro forma* earnings per share based upon the *pro forma* financial statements.

16. The Management Information Circular will contain prospectus level disclosure regarding the Offer and the acquisition of Nikanor.

Order

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make this decision has been met.

The decision of the Decision Makers under the Legislation is that the Take-Over Exemption is granted, provided that:

(a) Nikanor Shareholders (if any) in the local jurisdiction are entitled to participate in the Offer on terms at least as favourable as the terms that apply to the general body of Nikanor Shareholders; and

(b) at the same time as material relating to the Offer (the **Offering Material**) is sent by or on behalf of the Applicant to Nikanor Shareholders, the Offering Material is filed and sent to those Nikanor Shareholders resident in the Jurisdictions (if addresses are known).

The further decision of the Decision Makers under the Legislation is that Prospectus and Registration Exemption is granted, provided that the first trade of such Katanga Shares is deemed to be distribution unless:

(a) the Offering Material has been filed by the Applicant on SEDAR;

(b) the trade is not a control distribution within the meaning of the Legislation; and;

(c) the Applicant is a reporting issuer in British Columbia, Alberta or Ontario at the time of the trade.

"Robert L. Sherriff"
Commissioner
Ontario Securities Commission

"David L. Knight"
Commissioner
Ontario Securities Commission

The further decision of the Decision Makers under the Legislation is that the Financial Statement Exemption is granted, provided that the Management Information Circular contains the information described in representations 15 and 16.

"Naizam Kanji"

2.1.8 Magnus Energy Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – application for an order that the issuer is not a reporting issuer.

Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10).

January 8, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN
AND ONTARIO
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
MAGNUS ENERGY INC.
(the Filer)

MRRS DECISION DOCUMENT

Background

1. The local securities regulatory authority or regulator (the **Decision Maker**) in British Columbia, Alberta, Saskatchewan and Ontario has received an application from Magnus Energy Inc. under the securities legislation of the Jurisdictions (the **Legislation**) for a decision to be deemed to have ceased to be a reporting issuer in the Jurisdictions in accordance with the Legislation (the **Requested Relief**).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications:

   (a) the Alberta Securities Commission (the **Commission**) is the principal regulator for this application.

   (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

3. Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined differently in this decision.

Representations

4. This decision is based on the following facts represented by the Filer:

   (a) The Filer is a corporation existing under the *Business Corporations Act* (Alberta) (the **ABCA**) in the Province of Alberta with its head office located in Calgary, Alberta.

   (b) On November 1, 2007, Questerre Energy Corp. (**Questerre**) acquired all of the issued and outstanding common shares of the Filer pursuant to a plan of arrangement under the ABCA (the **Arrangement**).

   (c) The Filer is a reporting issuer or the equivalent in the provinces of Alberta, British Columbia, Saskatchewan and Ontario.

   (d) Other than the Magnus A Shares held by Questerre, the Filer has no securities, including debt securities, outstanding.

   (e) The Filer has no current intention to seek public financing by way of an offering of securities.

   (f) The Filer's shares were delisted from the Toronto Stock Exchange (the **TSX**) on December 21, 2007 and no securities of the Filer are listed or traded on a marketplace as defined in National Instrument 21-101 *Market Place Operation*.

   (g) The Filer is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer.

   (h) The Filer is not in default of any of its obligations under the Legislation as a reporting issuer other than the requirements to file: (i) interim financial statements and related management's discussion and analysis for the interim period ended September 30, 2007; and (ii) interim certificates under Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* in respect of its interim filings for the interim period ended September 30, 2007.

   (i) Upon the granting of the relief requested herein, the Filer will not be a reporting issuer or the equivalent in any jurisdiction of Canada.

Decision

5. 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 Requested Relief is granted.

"Blaine Young"
Associate Director, Corporate Finance
Alberta Securities Commission

2.1.9 Credit Suisse - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief – Issuer wishes to file a shelf prospectus to qualify the distribution of medium term notes - Issuer not eligible to file short form prospectus – Issuer is an SEC foreign issuer under National Instrument 71-102 – Exemption granted from the reporting issuer eligibility requirement and the current AIF eligibility requirement – Confidentiality of application and decision document granted for a limited period of time.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions, ss. 2.3(b), 2.3(d)(ii), 8.1.

September 26, 2007

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

AND

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

AND

IN THE MATTER OF
CREDIT SUISSE (THE FILER)

MRRS DECISION DOCUMENT

Background

The securities regulatory authority or regulator (the **Decision Maker**) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, the Yukon Territory, the Northwest Territories and Nunavut (collectively, the **Jurisdictions**) has received an application from the Filer for a decision pursuant to the securities legislation in each of the Jurisdictions (collectively, the **Legislation**) that, in connection with the proposed filing by the Filer of a base shelf prospectus (the **Canadian Prospectus**) qualifying the issuance in Canada from time to time of non-convertible, medium term notes (collectively, the **Notes**) with an Approved Rating (as such term is defined in National Instrument 44-101 – *Short Form Prospectus Distributions* (**NI 44-101**):

(a) the Filer be exempted from the requirements set out in paragraphs 2.3(1)(b) and 2.3(1)(d)(ii) of NI 44-101 (the **44-101 Relief**); and

(b) the application for this decision and this decision be kept confidential until the earlier of (i) the date the Filer obtains a receipt for a preliminary Canadian Prospectus and (ii) December 31, 2007 (the **Confidential Treatment**).

Under National Policy 12-201 – *Mutual Reliance Review System for Exemptive Relief Applications* (the **MRRS**):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) this MRRS decision evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* have the same meaning in this decision unless defined in this decision.

Representations

This decision is based on the following facts represented by the Filer:

Filer

1. The Filer is a corporation incorporated under the laws of the Canton of Zurich, Switzerland. The registered principal office of the Filer is located at Paradeplatz 8, CH-8070, Zurich, Switzerland. The Filer is licensed as a bank in Switzerland and has additional principal branches in London, New York, Hong Kong, Singapore and Tokyo.

2. The Filer is the product of a merger of the former Credit Suisse and Credit Suisse First Boston banks in May 2005. Following the decision of Credit Suisse Group ("CSG") to divest its insurance operations in December 2006, the Filer is now CSG's principal operating subsidiary.

3. The Filer became a registrant in the United States in March 2007 through the filing by CSG of a post-effective amendment dated March 29, 2007 (the **Post-Effective Amendment**) to CSG's automatic shelf registration statement on Form F-3 which became effective on April 3, 2006 (the **Registration Statement**). The Post-Effective Amendment (i) added the Filer as a registrant pursuant to General Instruction IV.B to Form F-3 and (ii) registered the non-convertible, investment-grade securities of the Filer pursuant to General Instructions I.A.5(ii) and I.C.1(c)(iv) to Form F-3.

4. The Filer has securities registered under section 12(b) of the United States *Securities Exchange Act of 1934*, as amended (the "**1934 Act**"), and has classes of securities listed on the New York Stock Exchange (the **NYSE**) and the American Stock Exchange.

5. The Filer is a well-known seasoned issuer as defined in Rule 405 under the United States *Securities Act of 1933*, as amended (the **1933 Act**) by virtue of paragraph 1(ii)(c) of such definition and a "foreign private issuer" within the meaning of the 1934 Act. The Filer is subject to continuing reporting requirements with the SEC under sections 13 and 15(d) of the 1934 Act. The financial statements of the Filer are prepared in accordance with U.S. generally accepted accounting principles (**U.S. GAAP**).

6. The annual report on Form 20-F of CSG for the fiscal year ended December 31, 2006 (the **Annual Report**), together with the current report on Form 6-K of CSG dated March 28, 2007 disclosing selected financial and other information about the Filer (the **Current Report**) filed by CSG with the SEC, contains all relevant information that would be required in an annual report on Form 20-F of the Filer for its fiscal year ended December 31, 2006, had the Filer been required under U.S. securities laws to file such an annual report.

7. The Filer is not registered or required to be registered as an investment company under the *Investment Company Act of 1940*, as amended (the **1940 Act**).

8. As of June 30, 2007, the Filer had approximately CHF 158,329 million of long term debt outstanding, all of which is investment grade rated.

CSG

9. CSG is a corporation incorporated under the laws of the Canton of Zurich, Switzerland. The principal office of CSG is located at Paradeplatz 8, CH 8070, Zurich, Switzerland.

10. CSG is a global financial services company providing a comprehensive range of banking, investment banking and asset management products and services.

11. CSG has securities registered under section 12(b) of the 1934 Act and has a class of securities listed on the NYSE.

12. CSG is not a reporting issuer in any of the Jurisdictions.

13. CSG is a well-known seasoned issuer in the United States and a "foreign private issuer" within the meaning of the 1934 Act. CSG is required to file reports under sections 13(a) and 15(d) of the 1934 Act, including annual reports on Form 20-F and current reports on Form 6-K, has filed with the

SEC all 1934 Act filings for a period of 12 calendar months immediately before the date hereof and expects to continue to file all 1934 Act filings required to be filed with the SEC subsequent to the date hereof.

14. Although permitted under U.S. securities laws to prepare its annual financial statements in accordance with generally accepted accounting principles (**GAAP**) in its home jurisdiction, with a reconciliation to U.S. GAAP, CSG prepares full U.S. GAAP financial statements, including segment information about its various businesses.

15. As a "foreign private issuer", CSG is exempt from the requirement under section 14 of the 1934 Act to prepare and file definitive proxy or information statements.

16. CSG is not registered or required to be registered as an investment company under the 1940 Act.

17. As of June 30, 2007, CSG had approximately CHF 160,222 of long term debt outstanding, all of which is investment grade rated.

U.S. Offerings

18. In May 2007, the Filer commenced a medium term note program (the **U.S. Program**) permitting it to offer in the United States, from time to time on a public basis, medium term notes directly or through any one of its branches. The following are the principal documents relating to the U.S. Program:

    (a) the Post-Effective Amendment to the Registration Statement and related prospectus supplement dated May 7, 2007 and shelf prospectus dated March 29, 2007 (the **U.S. Prospectus**) filed with the SEC pursuant to the 1933 Act, under which the Filer offers medium term notes; and

    (b) the Trust Indenture dated March 29, 2007 (the **Trust Indenture**) between the Filer and The Bank of New York, as trustee.

    A related prospectus supplement or pricing supplement under the U.S. Prospectus is prepared with respect to each offering of notes in the United States.

19. Since becoming a registrant in the United Stated in March 2007, the Filer has offered approximately U.S. $2,058,731,000 of fixed and floating rate medium term notes and indexed notes to the retail and institutional market in the United States under the U.S. Prospectus, all of which is investment grade rated.

Proposed Canadian Offering

20. The Filer proposes to distribute the Notes in Canada through fully registered Canadian dealers pursuant to the terms of one or more agreements to be entered between each dealer and the Filer from time to time.

21. All of the Notes will have an "approved rating" (as such term is defined in NI 44-101) at the time they are distributed in Canada.

22. In connection with the offering of the Notes in Canada, the Filer will prepare and file with the Decision Makers the Canadian Prospectus and related documents pursuant to the qualification criteria set forth in section 2.3 of NI 44-101 and the shelf procedures set forth in National Instrument 44-102 – *Shelf Distributions* (**NI 44-102**).

23. The Notes are unsecured contractual obligations of the Filer and will rank equally with its other unsecured contractual obligations and with its unsecured and unsubordinated debt.

24. It is not currently anticipated that the Notes issued in Canada will be listed on any stock exchange in Canada, but listing may occur in the future.

25. The Filer is not a reporting issuer in any of the Jurisdictions. Upon obtaining a receipt for its final Canadian Prospectus and subject to the relief requested herein, the Filer will be a "foreign reporting issuer" and an "SEC foreign issuer" under National Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**). The Filer contemplates satisfying its ongoing continuous disclosure obligations in Canada by filing the documents that it prepares and files in the United States with the SEC, including annual reports on Form 20-F and current reports on Form 6-K, pursuant to Part 4 of NI 71-102.

26. Absent the 44-101 Relief, the Filer would have to (a) become a reporting issuer in at least one Jurisdiction and (b) prepare and file a "current AIF" (as defined in NI 44-101), before it could file its preliminary Canadian Prospectus (the **Preliminary Prospectus**) under NI 44-101 and NI 44-102. The Annual Report does not constitute a "current AIF" of the Filer for purposes of NI 44-101 as the Annual Report is an annual report on Form 20-F of CSG, not the Filer.

27. The Filer has applied for the Confidential Treatment given the sensitive nature of the information in the application and this decision and competitive concerns.

28. The Filer anticipates filing the Preliminary Prospectus prior to December 31, 2007.

29. The details of the proposed offering have not been publicly disclosed and the Filer does not anticipate disclosing such information prior to the filing of the Preliminary Prospectus.

Decisions

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.

Exemption from Qualification Criteria

The decision of the Decision Makers pursuant to the Legislation is that the 44-101 Relief is granted provided that:

(a) the Filer creates a filer profile on SEDAR (as defined in National Instrument 13-101 – *System for Electronic Document Analysis and Retrieval* (**NI 13-101**)), and takes any other steps required to become an electronic filer under NI 13-101;

(b) on or before the date of filing its Preliminary Prospectus, the Filer files with the securities regulatory authorities in each of the Jurisdictions the following documents, which will be incorporated by reference in the Preliminary Prospectus:

(i) the Annual Report;

(ii) the Current Report and the current reports on Form 6-K dated May 3, 2007 and August 3, 2007 disclosing selected financial and other information about the Filer (collectively, the **Current Reports**), filed by CSG with the SEC; and

(iii) any subsequent reports on Form 6-K relating to the Filer furnished by CSG and/or the Filer to the SEC and designated as incorporated by reference into the U.S. Prospectus;

and for so long as,

(c) the final Canadian Prospectus (the **Final Prospectus**) incorporates by reference each shelf prospectus supplement to the Final Prospectus for purposes of the distribution to which the shelf prospectus supplement pertains, the Annual Report, the Current Reports and following documents filed with or furnished to the SEC from and after the date of the Preliminary Prospectus and required to be filed with the securities regulatory authorities in each of the Jurisdictions through SEDAR:

(i) the most recent annual report on Form 20-F of the Filer;

(ii) extracts from results announcements, if any, furnished on Form 6-K to the SEC in respect of annual or interim financial results of the Filer;

(iii) the most recent interim financial statements and interim management's discussion and analysis of the Filer furnished to the SEC in respect of an interim period in the financial year following the year that is the subject of the Filer's most recently filed annual report on Form 20-F;

(iv) reports on Form 6-K of the Filer furnished to the SEC disclosing material information of the Filer and designated as incorporated by reference into the U.S. Prospectus; and

(v) all other documents relating to the Filer incorporated by reference into the U.S. Prospectus and filed with or furnished to the SEC, except for prospectus supplements and pricing supplements not related to Notes distributed under the Final Prospectus; and

(d) the Preliminary Prospectus and the Final Prospectus are prepared in accordance with the Legislation, including the short form prospectus requirements of NI 44-101 (including the requirements set out in Form 44-101F1) and the shelf prospectus requirements of NI 44-102, except as otherwise permitted by the securities regulatory authorities in each of the Jurisdictions.

Confidential Treatment

The further decision of the Decision Makers pursuant to the Legislation is that the request by the Filer for Confidential Treatment is granted.

"Erez Blumberger"
Manager, Corporate Finance
Ontario Securities Commission

2.1.10 Pet Valu Canada Inc. and Pet Valu, Inc. - MRRS Decision

Headnote

MRRS – issuer does not satisfy conditions of exemption in sections 13.3 and 13.4 of NI 51-102 – issuer has both designated exchangeable securities and designated credit support securities outstanding – issuer has debentures that are neither designated exchangeable securities nor designated credit support securities outstanding – issuer exempt from certain continuous disclosure and certification under the Legislation, subject to conditions – previous order granting exemptive relief revoked.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as amended, s. 144.
National Instrument 51-102 Continuous Disclosure Obligations, ss. 13.1, 13.3, 13.4.
Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, ss. 4.3, 4.4, 4.5.

December 3, 2007

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, BRITISH COLUMBIA, MANITOBA
AND ONTARIO

AND

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

AND

IN THE MATTER OF
PET VALU CANADA INC.
AND
PET VALU, INC.

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Provinces of Alberta, British Columbia, Manitoba and Ontario (the **Jurisdictions**) have received an application from Pet Valu Canada Inc. (**Pet Valu Canada**) and Pet Valu, Inc. (**PVUS** and, together with Pet Valu Canada, the **Filers**) for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that:

1. Pet Valu Canada is exempt from the requirements set out in National Instrument 51-102 – *Continuous Disclosure Obligations* (**NI 51-102**) and is exempt from any comparable continuous disclosure requirements under the Legislation that have not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102 (together with NI 51-102, the **Continuous Disclosure Requirements**), subject to certain conditions;

2. Pet Valu Canada is exempt from the requirements (the **Certification Requirements**) set out in Multilateral Instrument 52-109 – *Certification of Disclosure in Issuer's Annual and Interim Filings* (**MI 52-109**), subject to certain conditions;

3. The Orders (as defined below) be revoked;

Under the Mutual Reliance Review System for Exemptive Relief Applications:

(a) the Ontario Securities Commission (the **OSC**) is the principal regulator for this Application; and

(b) this MRRS Decision Document evidences the decisions of each Decision Maker.

Interpretation

Unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 – *Definitions*.

Representations

The decisions are based on the following facts presented by the Filers:

Pet Valu Canada

1. Pet Valu Canada is a specialty retailer of food and supplies for dogs, cats, birds, fish, and small animals and a franchisor of pet food and pet-related supply outlets. Pet Valu Canada and its subsidiaries represent approximately 84% of the consolidated assets and approximately 76% of the consolidated revenues of the consolidated Pet Valu corporate entity, comprised of PVUS, Pet Valu Canada and their subsidiaries (the **Pet Valu Group**).

2. Pet Valu Canada was continued in its current form under the laws of the Province of Ontario by certificate and articles of arrangement dated April 23, 1996, is a reporting issuer in each of the Jurisdictions and, to the best of its knowledge, information and belief, is not in default of any requirement of the Legislation of the Jurisdictions. Pet Valu Canada's head office is located in Markham, Ontario.

3. Pursuant to a corporate reorganization of Pet Valu Canada and its subsidiaries by way of a plan of arrangement under section 182 of the *Business Corporations Act* (Ontario) effective on April 23, 1996, each holder of Pet Valu Canada's common shares received, in exchange for such common shares, an equal number of exchangeable non-

voting shares of Pet Valu Canada (the **Exchangeable Shares**). The Exchangeable Shares are exchangeable on a one-for-one basis into shares of common stock of PVUS. The Exchangeable Shares are "designated exchangeable securities" (as defined in subsection 13.3(1) of NI 51-102).

PVUS

4. Pet Valu Canada's parent corporation is PVUS, a Delaware corporation. PVUS is a reporting issuer in each of the Jurisdictions. PVUS became a reporting issuer in each of the Jurisdictions as a result of the Decision Makers issuing a final receipt for a non-offering prospectus of PVUS on April 27, 2007. PVUS is not currently a registrant with the United States Securities and Exchange Commission under the *United States Securities Exchange Act of 1934*, as amended. To the best of its knowledge, information and belief, PVUS is not in default of any requirements under the Legislation.

Share Capital of Pet Valu Canada

5. The authorized share capital of Pet Valu Canada consists of an unlimited number of common shares, an unlimited number of Exchangeable Shares, 7,000,000 Class A convertible preferred shares (**Class A Shares**), 176,845 Class B convertible preferred shares (**Class B Shares**) and one Class C preferred share (**Class C Share**). None of the Class A Shares, Class B Shares or the Class C Share is currently outstanding. There are currently one common share (held by PVUS) and 8,977,416 Exchangeable Shares issued and outstanding as at September 30, 2007.

6. Holders of the Exchangeable Shares have voting rights in PVUS, pursuant to a voting and exchange trust agreement among Pet Valu Canada, PVUS and CIBC Mellon Trust Company (the **Trustee**). Under the terms of this agreement, PVUS has issued to the Trustee and the Trustee currently holds 9,626,274 Special Voting Shares (as defined below) for the benefit of the holders of the Exchangeable Shares (other than PVUS or any entity controlled by PVUS). The Special Voting Shares carry, in the aggregate, that number of votes, exercisable at any meeting of stockholders of PVUS at which holders of PVUS common stock are or would be entitled to vote, equal to the number of Exchangeable Shares outstanding at such time (excluding those owned by PVUS and any entity controlled by PVUS). Each holder of an Exchangeable Share is entitled to instruct the Trustee as to the manner in which the votes attached to the Special Voting Shares and corresponding to the Exchangeable Shares held by such holder are to be voted. The voting rights attached to the Special Voting Shares are exercisable by the Trustee only upon receipt of instructions from the relevant holders of the Exchangeable Shares (other than PVUS or any entity controlled by PVUS).

7. Holders of Exchangeable Shares are entitled to receive dividends equivalent to the dividends paid from time to time on shares of the common stock of PVUS. The declaration date, record date and payment date for dividends on the Exchangeable Shares will be the same as that for the corresponding dividends on the common stock of PVUS.

8. In the event of the liquidation, dissolution or winding up of Pet Valu Canada, or any other distribution of the assets of Pet Valu Canada for the purpose of winding up its affairs, a holder of Exchangeable Shares is entitled to receive, subject to the prior rights of the holders of any shares ranking senior to the Exchangeable Shares with respect to priority in the distribution of assets upon dissolution, liquidation or winding up and subject to compliance with applicable securities laws, for each Exchangeable Share an amount to be satisfied by the issuance of one share of common stock of PVUS, together with a cash amount equivalent to the full amount of any dividends declared and unpaid on each such Exchangeable Share.

9. The Exchangeable Shares are listed and posted for trading on The Toronto Stock Exchange (the **TSX**) under the symbol "PVC". The warrants issued by Pet Valu Canada in connection with the rights offering in 1996 (described below) were listed on the TSX, under the symbol "PVC.WT", but were de-listed in July 2006 upon their expiry in accordance with their terms. Other than the Exchangeable Shares, no other securities of Pet Valu Canada or PVUS are traded on a "marketplace", as that term is defined under National Instrument 21-101 – **Marketplace Operation**.

Debentures and Warrants of Pet Valu Canada

10. In 1999, Pet Valu Canada issued 8.5% convertible unsecured debentures (the **1999 Debentures**) in the amount of C$6,327,934, C$2,627,934 of which was due in 2004 and C$3,700,000 of which is due in 2009. The 1999 Debentures are convertible, at any time, into Exchangeable Shares at a conversion price of C$5.50 per share and are repayable by Pet Valu Canada on the terms specified in the applicable debenture holder agreement. 1999 Debentures totalling C$2,627,934, along with accrued interest thereon, were repaid in 2005. C$3,700,000 of 1999 Debentures remain outstanding and are held by one registered holder. Interest on the 1999 Debentures is paid quarterly.

11. In 2004, Pet Valu Canada issued to Penfund Mezzanine Limited Partnership II (**Penfund**) a C$15,000,000 secured subordinated debenture (the **2004 Debentures**), as well as share purchase warrants entitling Penfund to purchase up to 924,200 Exchangeable Shares. The share purchase warrants (**Warrants**) were issued in three tranches, as follows: (1) 810,411 warrants exercisable at C$2.00 at the option of the holder (**Tranche A Warrants**); (2) 66,533 warrants exercisable at C$5.50 at the option of the holder (**Tranche B Warrants**); and (3) 47,256 warrants exercisable at C$5.50 (**Tranche C Warrants**). Each Warrant entitles the holder to purchase one Exchangeable Share. All Warrants expire on September 30, 2009. The Tranche C Warrants were cancelled on March 31, 2005 in accordance with their terms. Penfund exercised 25,000 of the Tranche A Warrants on or about June 27, 2006. The 2004 Debentures were prepaid in their entirety, in accordance with their terms, on October 31, 2006 using cash flow from current operations and availability under Pet Valu Canada's current bank operating line. 785,411 Tranche A Warrants and 66,533 Tranche B warrants remain outstanding. In December 2006, the Tranche A Warrants and Tranche B Warrants were sold to various funds managed by Goodwood Inc.

12. On July 24, 2006, Pet Valu Canada closed a private placement in which it issued 10% non-convertible unsecured subordinated debentures. The debentures are fully and unconditionally guaranteed by PVUS. Subscriptions of C$8,820,000 were received under the private placement.

Stock Options of Pet Valu Canada

13. Pet Valu Canada has an Executive Stock Option Plan and a Board Stock Option Plan (collectively, the **Plans**) that provide for the granting of options (**Options**) to purchase Exchangeable Shares to certain full-time employees of Pet Valu Canada, any subsidiary thereof, and Pet Valu International Inc., and to members of the board of directors of Pet Valu Canada. 877,610 Exchangeable Shares have been reserved for issuance pursuant to the Plans. As of September 30, 2007, there were 479,950 Options outstanding.

14. Other than the securities described in representations 5 through 13, Pet Valu Canada has no securities, including debt securities, outstanding.

Share Capital of PVUS

15. The authorized share capital of PVUS consists of 20,000,000 shares of common stock having a par value of US$0.0001 per share, one share of special non-participating voting stock having a par value of US$1.00, 9,626,274 shares of additional special non-participating voting stock having a par value of US$0.0001 per share (the **Special Voting Shares**) and 100,000,000 shares of preferred stock having a par value of US$0.0624 per share (**Preferred Stock**), of which 100 shares of PVUS common stock (held indirectly by a director of PVUS and Pet Valu Canada), 9,626,274 Special Voting Shares (held by CIBC Mellon Trust Company, as trustee), and 100,000,000 shares of Preferred Stock (held by PVUS Holdings Inc., a subsidiary of Pet Valu Canada) are issued and outstanding as of September 30, 2007.

16. Each holder of record of PVUS common stock has one vote in respect of each share held by him or her. Each holder is entitled to dividends when, as and if declared by the Board of Directors of PVUS out of the assets of PVUS which are by law available therefor. Each holder is further entitled, in the event of any liquidation, dissolution or winding up of PVUS, to the remaining assets of PVUS legally available for distribution, subject to prior rights of holders of Preferred Stock.

17. As indicated above, each Special Voting Share has the number of votes as is equal to the number obtained by dividing the number of Exchangeable Shares outstanding from time to time which are not owned by PVUS or any of its subsidiaries by 9,626,274. No dividend rights or rights upon dissolution or winding up of PVUS are attached to the Special Voting Shares.

18. The holders of Preferred Stock are not entitled to vote, except in the following limited circumstances: (i) when the provisions of the certificate of incorporation affecting the Preferred Stock are proposed to be changed or deleted; (ii) when dividends payable under the Preferred Stock have not been paid; (iii) when the meeting is for the purpose of authorizing the dissolution of PVUS or the sale of all or a substantial part of its assets; and (iv) where otherwise required by law. Each holder of Preferred Stock is entitled to cumulative dividends at the rate of 8% per annum, payable annually on May 26 of each year. Upon the dissolution or winding up of PVUS, holders of Preferred Stock are entitled to be paid out of the assets of PVUS in an amount equal to US$0.0624 per share before any distribution or payment to any holder of any other class of stock ranking junior to the Preferred Stock. The Preferred Stock is redeemable, in accordance with certain specified terms, at the option of both PVUS and the holder. As indicated above, all of the Preferred Stock is owned by a subsidiary of Pet Valu Canada.

The Filers' Current Continuous Disclosure Regime

19. Pursuant to an order of the OSC dated February 18, 1998 (the **Order**), Pet Valu Canada is exempt from the requirements of sections 77, 78 and 79 of the *Securities Act* (Ontario), which relate to certain continuous disclosure obligations, provided that: (1) PVUS prepares, files and sends consolidated financial statements of PVUS; (2) PVUS complies with the requirements in respect of material changes in the affairs of PVUS; and (3) PVUS remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of Pet Valu Canada other than the Exchangeable Shares.

20. Pursuant to the Order, Pet Valu Canada has also obtained a ruling from the OSC exempting it from the requirements of subsection 81(2) of the *Securities Act* (Ontario), relating to the provision of an information circular, provided that either (1) PVUS files consolidated reports in compliance with subsection 81(2) of the *Securities Act* (Ontario), or (2) PVUS files a form of information circular prepared and filed in accordance with Part XIX of the *Securities Act* (Ontario).

21. Similar orders were granted by the British Columbia Securities Commission and the Alberta Securities Commission (together with the Order, the **Orders**).

22. The requirement to file an annual information form (**AIF**) is not covered by the Orders. In the past, Pet Valu Canada has filed its own AIF, which includes information about both Pet Valu Canada and PVUS. The AIFs for the fiscal years ended December 31, 2005 and December 30, 2006 were filed in the name of both Pet Valu Canada and PVUS and, as before, contained information about both Pet Valu Canada and PVUS.

23. PVUS currently files, and intends to continue to file following the grant of the requested relief, annual and interim financial statements prepared in U.S. dollars using Canadian GAAP and, with respect to its annual financial statements, audited in accordance with Canadian generally accepted auditing standards, as well as annual and interim financial statements prepared in U.S. dollars using U.S. GAAP and, with respect to its annual financial statements, audited in accordance with Canadian generally accepted auditing standards.

The Requested Relief

24. The requested relief will simplify PVUS and Pet Valu Canada's continuous disclosure obligations. Preparing and, where applicable, printing and distributing continuous disclosure materials of both PVUS and Pet Valu Canada is costly and time consuming.

25. The requested relief from the Continuous Disclosure Requirements is substantially similar to the exemptions available to "exchangeable security issuers" and "credit support issuers" under sections 13.3 and 13.4 of NI 51-102. However, the exemption in section 13.3 of NI 51-102 is not available because Pet Valu Canada has securities issued and outstanding other than those specified in paragraph 13.3(2)(c). The exemption in section 13.4 of NI 51-102 is not available because Pet Valu Canada has securities issued and outstanding other than those specified in paragraph 13.4(2)(c).

26. The requested relief from the Certification Requirements is substantially similar to the exemptions available under sections 4.3 and 4.4 of MI 52-109. However, the exemption in section 4.3 of MI 52-109 is not available because Pet Valu Canada is not qualified for the relief contemplated by, and is not in compliance with the requirements and conditions set out in, section 13.3 of NI 51-102. The exemption in section 4.4 of MI 52-109 is not available because Pet Valu Canada is not qualified for the relief contemplated by, and is not in compliance with the requirements and conditions set out in, section 13.4 of NI 51-102.

Decision

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 decisions has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is:

27. Pet Valu Canada is exempt from the Continuous Disclosure Requirements, provided that:

    (a) PVUS continues to be the direct or indirect beneficial owner of all the issued and outstanding voting securities of Pet Valu Canada (currently being the common share of Pet Valu Canada);

    (b) PVUS remains a reporting issuer in each of the Jurisdictions that has filed all of the documents it is required to file under NI 51-102 as if PVUS is a non-venture issuer;

    (c) From the date of this Decision, Pet Valu Canada does not issue any securities, other than:

        (i) "designated exchangeable securities" (as defined in subsection 13.3(1) of NI 51-102) for which PVUS is the parent issuer (as defined in subsection 13.3(1) of NI 51-102);

(ii) "designated credit support securities" (as defined in subsection 13.4(1) of NI 51-102) for which PVUS is the credit supporter (as defined in subsection 13.4(1) of NI 51-102);

(iii) warrants and board and employee stock options under new or existing plans that are solely convertible into, or solely exchangeable for, Exchangeable Shares, which for greater certainty includes Options and Warrants;

(iv) convertible debt and convertible preferred shares that are solely convertible into Exchangeable Shares, provided that PVUS has provided alternative credit support or a full and unconditional guarantee in respect of such debt or preferred shares, as further described under the definition of "designated credit support securities" in Section 13.4 of NI 51-102;

(v) securities issued to and held by PVUS or an affiliate (as defined in NI 51-102) of PVUS;

(vi) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; and

(vii) securities issued under exemptions from the registration requirement and prospectus requirement in section 2.35 of National Instrument 45-106 *Prospectus and Registration Exemptions*;

(d) Pet Valu Canada does not have any securities outstanding other than securities that fall within the categories described in clauses 27(c)(i) through (vii), above, and the 1999 Debentures.

(e) Pet Valu Canada files in electronic format a notice indicating that it is relying on the continuous disclosure documents filed by PVUS and indicating that such documents can be found for viewing in electronic format on the SEDAR profile for PVUS;

(f) all holders of Pet Valu Canada's Exchangeable Shares are sent all disclosure materials that would be required to be sent to holders of the common shares of PVUS in the manner and at the time required by the Legislation;

(g) all holders of Pet Valu Canada's designated credit support securities that include debt are concurrently sent all disclosure materials that are sent to holders of similar debt of PVUS, if any, in the manner and at the time required by the Legislation;

(h) all holders of Pet Valu Canada's designated credit support securities that include preferred shares are concurrently sent all disclosure materials that are sent to holders of similar preferred shares of PVUS in the manner and at the time required by the Legislation;

(i) PVUS complies with the Legislation in respect of making public disclosure of material information on a timely basis and immediately issues in Canada and files any news release that discloses a material change in its affairs;

(j) Pet Valu Canada issues in Canada a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of Pet Valu Canada that are not also material changes in the affairs of PVUS;

(k) PVUS includes in all mailings of proxy solicitation materials to holders of Pet Valu Canada's designated exchangeable securities a clear and concise statement that:

(i) explains the reason the mailed material relates to PVUS;

(ii) indicates that the designated exchangeable securities are, as nearly as practicable, the economic equivalent to the underlying securities; and

(iii) describes the voting rights associated with the designated exchangeable securities;

(l) PVUS files, as a separate document, with each copy of its interim and annual financial statements, consolidating summary financial information for PVUS presented with a separate column for each of the following: (i) PVUS; (ii) Pet Valu Canada; (iii) any other subsidiary of PVUS on a combined basis; (iv) consolidating adjustments; and (v) the total consolidated amounts, and prepared on the basis set out in section 13.4(2)(g)(ii) of NI 51-102;

(m) such exemption from the Continuous Disclosure Requirements will cease to apply on November 15, 2012.

THE FURTHER DECISION of the Decision Makers pursuant to the Legislation is:

28. Pet Valu Canada is exempt from the Certification Requirements, provided that

(a) Pet Valu Canada qualifies for the relief contemplated by, and PVUS and Pet Valu Canada are in compliance with the requirements and conditions set out in, the exemptive relief from the Continuous Disclosure Requirements set out in paragraph 27 above;

(b) PVUS satisfies and continues to satisfy the requirements set out in MI 52-109; and

(c) such exemption from the Certification Requirements will cease to apply on November 15, 2012.

DATED December 3, 2007

"Jo-Anne Matear"
Assistant Manager, Corporate Finance
Ontario Securities Commission

THE FURTHER DECISION of the Decision Makers, other than the Decision Maker in Manitoba, pursuant to the Legislation is:

29. The Orders are hereby revoked.

"Robert L. Shirriff"

"Suresh Thakrar"

2.1.11 Husky Injection Molding Systems Ltd. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – issuer is not a reporting issuer.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(b).

January 14, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, BRITISH COLUMBIA, ALBERTA,
SASKATCHEWAN, MANITOBA, QUEBEC,
NEW BRUNSWICK, NOVA SCOTIA AND
NEWFOUNDLAND AND LABRADOR
(the "Jurisdictions")

AND

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

AND

IN THE MATTER OF
HUSKY INJECTION MOLDING SYSTEMS LTD.
(the "Applicant")

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "**Decision Maker**") in each of the Jurisdictions has received an application from the Applicant for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that the Applicant is not a reporting issuer (the "**Requested Relief**").

Under the Mutual Reliance Review System for Exemptive Relief Applications

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by the Applicant:

1. the Applicant was formed under the *Business Corporations Act* (Ontario);

2. the head office of the Applicant is located at 500 Queen Street South, Bolton, Ontario L7E 5S5;

3. the Applicant became a reporting issuer under the Legislation on October 29, 1998;

4. pursuant to articles of arrangement filed on December 13, 2007, 2149692 Ontario Inc. (the "**Purchaser**"), which is indirectly owned by Onex Corporation, became the sole beneficial holder of all of the common shares of the Applicant. The Applicant's outstanding securities consist solely of common shares;

5. the common shares of the Applicant were de-listed from the Toronto Stock Exchange effective as at the close of business on December 14, 2007;

6. the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer, other than its obligation to file by December 15, 2007 interim financial statements, related management's discussion and analysis and certificates in respect of the interim period ended October 31, 2007;

7. as the Purchaser became the sole beneficial holder of all of the common shares of the Applicant prior to the date upon which the Applicant was required to file its interim financial statements, related management's discussion and analysis and certificates, the Applicant has not prepared or filed such interim financial statements, related management's discussion and analysis or certificates;

8. the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;

9. no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;

10. the Applicant has no current intention to seek public financing by way of an offering of securities; and

11. the Applicant is applying for relief to not be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer.

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 the Requested Relief is granted.

"Robert L. Shirriff"
Commissioner

"Lawrence E. Ritchie"
Vice-Chair

2.1.12 ACE Aviation Holdings Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – exemption from issuer bid and valuation requirements – filer making a modified Dutch auction issuer bid – filer cannot disclose that it will take up and pay for securities proportionately or the number of securities it will acquire under the bid – filer will disclose the maximum amount it will spend under the issuer bid and the minimum and maximum price that it will pay for securities.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 95.7.
General Regulation, R.R.O. 1990, Reg. 1015, as am., s. 189 and Form 33.

Citation: ACE Aviation Holdings Inc., 2007 ABASC 906

December 19, 2007

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN,
MANITOBA, ONTARIO, QUÉBEC, NEW BRUNSWICK,
NOVA SCOTIA AND NEWFOUNDLAND
AND LABRADOR
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
ACE AVIATION HOLDINGS INC.
(the Filer)

MRRS DECISION DOCUMENT

Background

1. The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that, in connection with the purchase by the Filer of a portion of its outstanding Class A Variable Voting Shares (the **Variable Voting Shares**) and Class B Voting Shares (the **Voting Shares** and, collectively, with the **Variable Voting Shares**, the **Shares**), by way of an issuer bid (the **Issuer Bid**), the Filer be exempt from the following requirements in the Legislation:

   (a) to take up and pay for Shares on a pro rata basis according to the number of securities deposited by each shareholder (the **Proportionate Take-Up and Payment Requirement**);

   (b) to provide disclosure in the issuer bid circular (the **Circular**) of the proportionate take-up and payment (the **Associated Disclosure Requirement**);

   (c) to state the number of securities sought under the Issuer Bid (the **Number of Securities Requirement**); and

   (d) except in Ontario and Québec, to obtain a valuation of the Variable Voting Shares and Voting Shares and provide disclosure in the Circular of such valuations, or a summary thereof (the **Valuation Requirement**)

   (collectively, the **Requested Relief**).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications:

   (a) the Alberta Securities Commission is the principal regulator for this application; and

   (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

3. Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

4. This decision is based on the following facts presented by the Filer:

   (a) The Filer is a corporation incorporated under the *Canada Business Corporations Act*. Its head office is located in Montreal, Québec.

   (b) The Filer is a reporting issuer or the equivalent in each of the Jurisdictions.

   (c) The Filer is not in default of any requirement of the Legislation and is not on the list of defaulting reporting issuers maintained pursuant to such Legislation, where applicable.

   (d) The authorized share capital of the Filer consists of an unlimited number of Variable Voting Shares, an unlimited number of Voting Shares and 12,500,000 preferred shares (the **Preferred Shares**). In addition, the Filer has issued debt securities in the form of 4.25% convertible senior notes (the **Notes**). As of the close of business on November 30, 2007, there were 83,380,961 Variable Voting Shares, 21,350,564 Voting Shares and 12,500,000 Preferred Shares issued and outstanding, as well as approximately $330,000,000 principal amount of Notes outstanding.

   (e) The Variable Voting Shares and the Voting Shares have been listed on the Toronto Stock Exchange (**TSX**) since September 2004 under the symbols "ACE.A" and "ACE.B". On November 30, 2007, the closing prices of the Variable Voting Shares and the Voting Shares on the TSX were $27.39 per share and $27.59 per share, respectively. Based upon such closing prices, the Variable Voting Shares and the Voting Shares had an aggregate market value of approximately $2.87 billion on such date. The Notes have been listed on the TSX since April 2005 under the symbol "ACE.NT.A". The Preferred Shares are not listed for trading on the TSX or any other securities exchange.

   (f) Pursuant to the Issuer Bid, the Filer proposes to acquire Shares in accordance with the following modified Dutch auction procedure (the **Procedure**):

      (i) the maximum aggregate amount that the Filer will expend pursuant to the Issuer Bid is $1.5 billion (the **Specified Amount**);

      (ii) the range of prices (the Range), being a range of prices of not more than $30.00 (the **Maximum Price**) per Share and not less than $27.70 (the **Minimum Price**) per Share, within which the Filer is prepared to purchase Shares under the Issuer Bid;

      (iii) in respect of the Preferred Shares of the Filer, the Circular will specify the following:

         A. that in accordance with the terms of the Preferred Shares of the Filer, the holders of Preferred Shares will be permitted to participate in the Issuer Bid by depositing their Preferred Shares on an as-converted basis;

         B. alternatively, holders of Preferred Shares can also participate in the Issuer Bid by converting, to the extent permitted by the terms of the Preferred Shares, all or part of their Preferred Shares sufficiently in advance of the Expiration Date (as defined below) and subsequently depositing the underlying Variable Voting Shares or Voting Shares under the Issuer Bid;

         C. in the event that Preferred Shares are deposited on an as-converted basis, the holder of such Preferred Shares will be deemed to have requested that a sufficient number of such holder's Preferred Shares be converted, to the extent permitted by the terms of the

Preferred Shares, as of the Expiration Date for the number of underlying Variable Voting Shares and Voting Shares to be purchased under the Issuer Bid, unless a notice of withdrawal in writing is received by the depositary at the place of deposit of the relevant Shares by the dates specified in the Circular;

D. in the event that Preferred Shares are deposited on an as-converted basis, the consideration payable to the holders of such Preferred Shares will be determined on the basis of the number of underlying Variable Voting Shares or Voting Shares that are issued upon the conversion of the Preferred Shares (in accordance with the terms of the Preferred Shares) as of the Expiration Date of the Issuer Bid;

E. references to Shares in the Circular will include the number of Variable Voting Shares or Voting Shares that are issued upon the conversion (in accordance with the terms of the Preferred Shares) as of the Expiration Date of the Issuer Bid of all the Preferred Shares deposited on an as-converted basis under the Issuer Bid, as well as all other Shares issued upon the conversion of Preferred Shares prior to the Expiration Date and subsequently deposited under the Issuer Bid; and

F. references to Shareholders (as defined below) in the Circular will include holders of Preferred Shares that deposit Preferred Shares on an as-converted basis under the Issuer Bid to the extent of the number of underlying Variable Voting Shares or Voting Shares that are issued upon the conversion of such Preferred Shares as of the Expiration Date of the Issuer Bid, as well as the holders of Shares issued upon the conversion of Preferred Shares prior to the Expiration Date and subsequently deposited under the Issuer Bid.

(iv) any of the Filer's shareholders (**Shareholders**) that want to deposit Shares under the Issuer Bid will have the right to either: (i) specify the lowest price within the Range (in increments of a predetermined amount per Share) at which they are willing to sell the deposited Shares (an **Auction Tender**); or (ii) elect to be deemed to have deposited the Shares at the Purchase Price determined in accordance with paragraph 4(f)(vi) below (a **Purchase Price Tender**);

(v) all Shares deposited and not withdrawn by Shareholders who fail to specify a tender price for such deposited Shares will be considered to have been deposited pursuant to a Purchase Price Tender;

(vi) the purchase price (the **Purchase Price**) of the Shares deposited under the Issuer Bid and not withdrawn will be the lowest price that will enable the Filer to purchase the maximum number of Shares that may be purchased for an aggregate purchase price not exceeding the Specified Amount, and it will be determined based upon the number of Shares deposited and not withdrawn pursuant to an Auction Tender at each price within the Range and deposited and not withdrawn pursuant to a Purchase Price Tender, with each Purchase Price Tender being considered a tender at the Minimum Price for the purpose of calculating the Purchase Price;

(vii) the aggregate number of Shares that the Filer will purchase pursuant to the Issuer Bid will remain variable until the Purchase Price is determined and the proration is calculated in accordance with the procedure outlined in paragraph 4(f)(x) below;

(viii) all Shares deposited pursuant to an Auction Tender at prices within the Range but above the Purchase Price will not be purchased by the Filer and will be returned to the appropriate depositing Shareholders;

(ix) if the aggregate Purchase Price for Shares validly deposited under the Issuer Bid and not withdrawn is less than or equal to the Specified Amount, the Filer will purchase all Shares so deposited;

(x) if the aggregate Purchase Price for Shares validly deposited under the Issuer Bid and not withdrawn exceeds the Specified Amount, the Filer will take up and pay for deposited Shares on a pro rata basis according to the number of Shares deposited by each Shareholder, calculated by combining the two classes of Shares (i.e., the proration will be determined on a combined basis by combining the number of Variable Voting Shares and Voting Shares deposited, including the Variable Voting Shares or Voting Shares underlying any Preferred Shares deposited on an as-converted basis, and then applying the same resulting proration factor to such Shares). Odd lot deposits (Odd Lots) will not be subject to proration. For the purposes of the foregoing, an Odd Lot deposit is a deposit by a Shareholder who (i) owns in aggregate less than 100 Shares as of the close of business on the expiration date of the Issuer Bid (the **Expiration Date**), (ii) deposits all such Shares pursuant to an

Auction Tender at or below the Purchase Price or pursuant to a Purchase Price Tender prior to the Expiration Date and (iii) checks the Odd Lots box in either the letter of transmittal or the notice of guaranteed delivery accompanying the Circular. Odd Lot deposits will be accepted for purchase before any proration. Any Shares deposited but not taken up and paid for by the Filer in accordance with this procedure will be returned to the appropriate depositing Shareholders. In respect of Preferred Shares that are deposited under the Issuer Bid on an as-converted basis, the Filer will return all Preferred Shares in respect of which underlying Shares (that would have been issued upon the conversion, in accordance with the terms of the Preferred Shares, as of the Expiration Date of the Issuer Bid) are not purchased under the Issuer Bid, including Shares deposited pursuant to Auction Tenders at prices greater than the Purchase Price and Shares not purchased because of proration;

(xi) in the event that the Issuer Bid is under-subscribed by the Expiration Date but all of the terms and conditions thereof have been complied with, with the exception of those waived by the Filer, the Filer may extend the Issuer Bid for at least 10 days, in which case the Filer must first take up and pay for all Shares deposited under the Issuer Bid and not withdrawn in accordance with the Legislation;

(xii) all Shares deposited and not withdrawn by Shareholders who specify a deposit price for such deposited Shares that falls outside the Range will be considered to have been improperly deposited, will be excluded from the determination of the Purchase Price, will not be purchased by the Filer and will be returned to the depositing Shareholders; and

(xiii) depositing Shareholders who make either an Auction Tender or a Purchase Price Tender but fail to specify the number of Shares that they intend to deposit to the Issuer Bid will be considered to have deposited all Shares held by such Shareholder.

(g) The Circular:

(i) will disclose the Specified Amount that the Filer intends to expend pursuant to the Issuer Bid for the purchase of Shares;

(ii) will disclose the mechanics for the take-up and payment for, or return of, Shares as described in paragraph 4(f)(x) above;

(iii) will explain that, by depositing the Shares at the Minimum Price in the Range or pursuant to a Purchase Price Tender, a Shareholder can reasonably expect that Shares so deposited will be purchased at the Purchase Price, subject to proration as described in paragraph 4(f)(x) above;

(iv) will disclose the facts supporting the Filer's reliance on the Presumption of Liquid Market Exemptions (as defined below) as updated to the date of the announcement of the Issuer Bid;

(v) except to the extent exemptive relief is granted by this decision, will contain the disclosure prescribed by the Legislation for issuer bids; and

(vi) will contain a reference to the effect that the Filer has applied for an MRRS decision document from the Decision Makers of certain Jurisdictions granting the Requested Relief.

(h) Prior to the Expiration Date of the Issuer Bid, all information regarding the number of Shares deposited and the prices at which such Shares are deposited will be kept confidential, and the selected depositary under the Issuer Bid will be directed by the Filer to maintain such confidentiality until the Purchase Price is determined.

(i) Since the Issuer Bid would be for less than all of the Shares, if the number of Shares deposited under the Issuer Bid exceeds the Specified Amount worth of Shares, the Legislation would require the Filer to:

(i) take up and pay for deposited Shares proportionately, according to the number of Shares deposited by each Shareholder; and

(ii) disclose in the Circular that the Filer would, if Shares deposited under the Issuer Bid exceeded the Specified Amount worth of Shares, take up the Shares proportionately according to the number of Shares deposited by each Shareholder.

(j) During the 12-month period before December 3, 2007 (determined on a per class basis):

(i) the number of issued and outstanding Variable Voting Shares and Voting Shares was at all times at least 5,000,000, excluding Variable Voting Shares and Voting Shares beneficially owned, directly or indirectly, or over which control or direction was exercised, by related parties of the Filer and Variable Voting Shares and Voting Shares that were not freely tradeable;

(ii) the aggregate trading volume of the Variable Voting Shares and Voting Shares on the TSX was at least 1,000,000 Variable Voting Shares and Voting Shares;

(iii) there were at least 1,000 trades in Variable Voting Shares and Voting Shares on the TSX;

(iv) the aggregate trading value based on the price of the trades referred to in clause (iii) was at least $15,000,000 of Variable Voting Shares and Voting Shares; and

(v) the market value of the Variable Voting Shares and Voting Shares on the TSX was at least $75,000,000 for the month of November 2007.

(k) It is reasonable to conclude that following completion of the Issuer Bid, there will be a market for the beneficial owners of Variable Voting Shares and Voting Shares who do not deposit under the Issuer Bid that is not materially less liquid than the market that exists at the time the Issuer Bid is made and the Filer intends to rely on the exemptions from the Valuation Requirement in section 3.4(3) of Ontario Securities Commission Rule 61-501 and Québec Policy Statement Q-27 (the Presumption of Liquid Market Exemptions). The Filer intends to seek a formal liquidity opinion from an investment firm.

(l) The Filer cannot comply with the Number of Securities Requirement because it cannot specify the number of Shares it will acquire pursuant to the Procedure described in paragraph 4(f) above.

(m) The Circular will disclose the review and approval process adopted by the board of directors of the Filer and that the board of directors of the Filer has determined that the purchase of Shares pursuant to the Issuer Bid represents an effective use of the Filer's available capital and is in the best interests of its Shareholders.

Decision

5. 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 Requested Relief is granted provided that:

(a) Shares deposited under the Issuer Bid and not withdrawn are taken up and paid for, or returned to Shareholders, in the manner described in paragraph 4(f) above; and

(b) for the Valuation Requirement, the Filer can rely on the Presumption of Liquid Market Exemptions.

"Glenda A. Campbell"
Alberta Securities Commission

"Stephen R. Murison"
Alberta Securities Commission

2.1.13 Enerplus Resources Fund and Focus Energy Trust - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – s. 14.2 of Form 51-102F5 of National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102) - exemption from the requirement to include in an information circular to be sent to security holders of reporting issuers engaged in a business combination disclosure (including financial statements) with respect to such reporting issuers as prescribed by the form of prospectus, other than a short form prospectus under National Instrument 44-101 Short Form Prospectus Distributions (NI 44-101) - both reporting issuers eligible to file short form prospectuses - relief given to permit issuers to provide information required by NI 44-101F1 other than certain information circulars filed in 2006 that are superseded by information circulars filed in 2007.

Applicable Ontario Statutory Provisions

NI 51-102 - Continuous Disclosure Obligations.
NI 44-101 - Short Form Prospectus.

Citation: Enerplus Resources Fund and Focus Energy Trust, 2007 ABASC 929

December 21, 2007

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA AND ONTARIO
(THE JURISDICTIONS)

AND

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

AND

IN THE MATTER OF
ENERPLUS RESOURCES FUND (ENERPLUS)

AND

FOCUS ENERGY TRUST (FOCUS)

MRRS DECISION DOCUMENT

Background

1. The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from Focus and Enerplus for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that:

   (a) Focus and Enerplus be exempt from the requirement under Item 14.2 of Form 51-102F5 to National Instrument 51-102 — Continuous Disclosure Obligations (**NI 51-102**) to include in an information circular (the **Information Circular)** to be sent to securityholders of Focus, disclosure (including financial statements) with respect to Focus and Enerplus as prescribed by the form of prospectus, other than a short form prospectus under National Instrument 44-101 - Short Form Prospectus Distributions (**NI 44 101** or the **Short Form Prospectus Rule**), that Focus and Enerplus would be eligible to use for a distribution of securities provided that the Information Circular includes information about Enerplus and Focus as required by the Short Form Prospectus Rule; and

   (b) in connection with the foregoing, to exempt Focus and Enerplus from the requirement under Item 11.1(1)(7) of Form 44-101F1 — Short Form Prospectus (**Form 44-101**) to incorporate by reference into the Information Circular the following documents (collectively the **2006 Circulars**):

(i) the information circular and proxy statement of Focus dated March 15, 2006 (the **2006 Focus Circular**) relating to the annual and general meeting of holders (the **Focus Unitholders**) of trust units of Focus (**Focus Units**) held on May 17, 2006;

(ii) the joint information circular and proxy statement of Focus and Profico Energy Management Ltd. (**Profico**) dated May 25, 2006 (the **Profico Circular**) relating to special meeting of Focus Unitholders and securityholders of Profico held on June 26, 2006; and

(iii) the management information circular and proxy statement of Enerplus dated February 28, 2006 (the 2006 **Enerplus Circular**) relating to the annual general meeting of holders (the **Enerplus Unitholders**) of trust units of Enerplus (**Enerplus Units**) held on April 12, 2006,

(collectively, the **Requested Relief**).

Application of Principal Regulator System

2. Under Multilateral Instrument 11-101 - Principal Regulator System (**MI 11-101**) and the Mutual Reliance Review System for Exemption Relief Applications:

(a) the Alberta Securities Commission is the principal regulator for Focus and Enerplus;

(b) Focus and Enerplus are relying on the exemption in Part 3 of MI 11-101 in each of British Columbia, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut as applicable; and

(c) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

3. Defined terms contained in National Instrument 14-101 - *Definitions* have the same meaning in this decision unless they are otherwise defined-in this decision.

Representations

4. This decision is based on the following facts represented by Focus and Enerplus:

(a) Each of Focus and Enerplus was formed under the laws of the Province of Alberta and has its head office located in Calgary, Alberta.

(b) The trust units of Focus are listed and posted for trading on the Toronto Stock Exchange under the trading symbol "FET.UN" and on the New York Stock Exchange under the trading symbol "ERF".

(c) The trust units of Enerplus are listed and posted for trading on the Toronto Stock Exchange under the trading symbol "ERF.UN".

(d) Focus is a reporting issuer in each of the provinces of Canada and has been a reporting issuer in at least one of these jurisdictions since August 2002.

(e) Enerplus is a reporting issuer in each of the provinces and territories of Canada and has been a reporting issuer in at least one of these jurisdictions since July 1986.

(f) To its knowledge, Focus is not in default of any of its obligations as a reporting issuer pursuant to the applicable securities legislation in any of the provinces in which it is a reporting issuer or its equivalent.

(g) To its knowledge, Enerplus is not in default of any of its obligations as a reporting issuer pursuant to the applicable securities legislation in any of the provinces or territories in which it is a reporting issuer or its equivalent.

(h) Enerplus and Focus satisfy the basic qualification criteria as set out in section 2.2 of the Short Form Prospectus Rule.

(i) Enerplus has a current AIF and current annual financial statements as defined in section 1.1 of the Short Form. Prospectus Rule. Focus has a current AIF and current annual financial statements as defined in section 1.1 of the Short Form Prospectus Rule.

(j) Enerplus and Focus have each filed (or have been deemed to have filed) the notice required by section 2.8 of the Short Form Prospectus Rule and each such notice has not been withdrawn.

(k) On December 2, 2007, Focus and Enerplus entered into an agreement with respect to a proposed transaction (the **Transaction Agreement**) pursuant to which Enerplus and Focus will combine their businesses (the **Transaction**). Pursuant to the Transaction, Focus Unitholders will receive, for each Focus Unit held, 0.425 of a trust unit of an Enerplus Unit. Holders (**Focus Exchangeable LP Unitholders**) of Class B limited partnership units (**Focus Exchangeable LP Units**) of Focus Limited Partnership will not exchange their Focus Exchangeable LP Units for Enerplus Units pursuant to the Transaction, but the exchange ratio for their Focus Exchangeable LP Units will be adjusted such that each Focus Exchangeable LP Unit will, following completion of the Transaction, be exchangeable for 0.425 of an Enerplus Unit, based on the exchange ratio contemplated in the Transaction.

(l) The Information Circular detailing the Transaction is anticipated to be mailed to Focus securityholders in early January 2008 for a meeting (the **Focus Meeting**) expected to take place in mid-February 2008. Closing of the Transaction is expected to take place as soon as is practicable after the Focus Meeting.

(m) Effective June 27, 2007 Focus completed a plan of arrangement pursuant to which Focus acquired all the issued and outstanding common shares of Profico Energy Management Ltd. (the **Profico Merger**).

(n) At the time of the Profico Merger, Focus was not required to complete a business acquisition report in respect of the Profico Merger as section 8.1(2) of NI 51-102 provided that a business acquisition report was not required so long as the information and financial statements required by section 14.2 of Form 51-102F5 concerning the Profico Merger was contained within the information circular prepared in respect of the Profico Merger. Such information was contained in or incorporated by reference into such information circular (the **Profico Financial Statements**).

(o) Form 51-102F5 requires that the Information Circular contain, among other things, a detailed description of the Transaction and disclosure (including financial statements) for Enerplus and Focus prescribed by the form of prospectus, other than a short form prospectus under the Short Form Prospectus Rule, that Enerplus and Focus would be eligible to use for a distribution of securities in the Jurisdictions.

(p) The form of prospectus other than a short form prospectus under the Short Form Prospectus Rule that Enerplus and Focus would be eligible to use for a distribution of securities in the Jurisdictions is the form of prospectus prescribed by Ontario Securities Commission Form 41-501F1 - Information Required in a Prospectus.

(q) The Information Circular will include, among other things, a detailed description of the Transaction, the disclosure (including financial statements) for Enerplus and Focus prescribed by Form 44-101F1 (subject to the Requested Relief being granted) and will comply with the applicable requirements of NI 51-102.

(r) The Information Circular will incorporate by reference all documents of the type described in item 11.1 of Form 44-101F1, and specifically, those filed by Enerplus and Focus after the date of the Information Circular and before the date of the Focus Meeting.

(s) The Information Circular will incorporate by reference the information circulars relating to Focus' and Enerplus' annual meetings held on May 17, 2007 and May 4, 2007, respectively.

(t) The Information Circular will incorporate by reference the following:

(i) in respect of Focus:

A. the 2006 Annual Information Form of Focus dated March 21, 2007;

B. the audited consolidated balance sheets of Focus as at December 31, 2006 and 2005 and the consolidated statements of income and accumulated income and cash flows for the years then ended, together with the notes thereto, the auditors' report thereon and the management's discussion and analysis in respect thereof;

C. the unaudited consolidated balance sheets of Focus as at September 30, 2007 and December 31, 2006 and the consolidated statements of income and accumulated income and cash flows for the nine months ended September 30, 2007 and 2006, together with the notes thereto and the management's discussion and analysis in respect thereof;

D. the information circular – proxy statement of Focus in respect of the annual and special meeting of Focus Unitholders held on May 17, 2007;

E. the Profico Financial Statements which comply with the requirements of Part 8 of NI 51-102 other than the requirement to file a business acquisition report; and

F. the material change report dated December 11, 2007 in respect of the Arrangement and the Letter Agreement.

(ii) in respect of Enerplus:

A. the 2006 Annual information Form of Enerplus dated March 12, 2007;

B. the audited consolidated financial statements as at and for the fiscal years ended December 31, 2006 and 2005, together with a report of Enerplus' independent registered chartered accountants thereon and the management's discussion and analysis of Enerplus in respect thereof;

C. the unaudited consolidated balance sheets of Enerplus as at September 30, 2007 and December 31, 2006 and the consolidated financial statements of income and accumulated income and cash flows for the nine months ended September 30, 2007 and 2006, together with the notes thereto and the management's discussion and analysis in respect thereof;

D. the information circular and proxy statement of Enerplus dated March 12, 2007 relating to the annual general meeting of the Enerplus Unitholders held on May 4, 2007;

E. the material change report dated June 15, 2007 in respect of the impact of certain amendments to the Income Tax Act (Canada) to Enerplus' oil and natural gas reserves; and

F. the material change report dated December 10, 2007 in respect of the Transaction and the Transaction Agreement.

(u) The Information Circular will contain sufficient information for unitholders of Focus to make a reasoned decision about whether to approve the Transaction.

Decision

5. The Decision Makers being satisfied that they each have jurisdiction to make this decision and that the relevant test contained under the Legislation has been met, the Requested Relief is granted, provided that:

(a) at the time of filing of the Information Circular, Enerplus and Focus satisfy the basic qualification criteria as set out in section 2.2 of the Short Form Prospectus Rule; and

(b) the Information Circular (and the documents incorporated by reference in the Information Circular) includes information about Enerplus and Focus required by the Short Form Prospectus Rule to be included or incorporated by reference in a short form prospectus, other than the 2006 Circulars.

"Agnes Lau", CA
Associate Director, Corporate Finance
Alberta Securities Commission

2.1.14 Y.I.S. Financial Inc. - NI 81-102 Mutual Funds, ss. 11.1(1)(b), 11.2(1)(b)

Headnote

Relief granted from the requirements of paragraphs 11.1(1)(b) and 11.2(1)(b) of NI 81-102 to permit a participating dealer and potential principal distributor to commingle cash received for the purchase or redemption of mutual fund securities with cash received for the purchase and sale of other securities or instruments it is permitted to sell.

Rules Cited

National Instrument 81-102 Mutual Funds, ss. 11.1(1)(b), 11.2(1)(b), 19.1.

January 15, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO

AND

IN THE MATTER OF
Y.I.S. FINANCIAL INC.
(the "Filer")

DECISION DOCUMENT

Background

The Ontario Securities Commission (the "**Commission**") has received an application from the Filer for a decision under the securities legislation of Ontario (the "**Legislation**") granting relief from the prohibitions in paragraphs 11.1(1)(b) and section 11.2(1)(b) of National Instrument 81-102 *Mutual Funds* ("**NI 81-102**") (the "**Commingling Prohibitions**") which prohibit a principal distributor, a participating dealer, or certain service providers, from commingling cash received for the purchase or redemption of mutual fund securities ("**Mutual Fund Cash**") with cash received for the purchase or sale of guaranteed investment certificates and other securities or instruments the participating dealer or principal distributor is permitted to sell ("**Other Cash**") (the "**Requested Relief**").

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act* and is registered as a dealer in the categories of mutual fund dealer and limited market dealer in Ontario. The Filer's head office is located in Ontario. The Filer is not a reporting issuer. The Filer's principal business is acting as a mutual fund dealer.

2. The Filer is a member of the Mutual Fund Dealers Association of Canada ("**MFDA**").

3. The Filer is a participating dealer (as defined in NI 81-102) in respect of various third party mutual funds. The Filer may, in the future, act as a principal distributor (as defined in NI 81-102) of certain mutual funds.

4. In addition to mutual fund securities, the Filer distributes guaranteed investment certificates issued by Canadian trust companies and banks (GICs), and other securities and instruments that the Filer is permitted to trade or sell.

5. As a member of the MFDA, the Filer is subject to the rules and requirements of the MFDA ("**MFDA Rules**") on an ongoing basis, including those which set out requirements with respect to the handling and segregation of client cash. As a member of the MFDA, the Filer is expected to comply with all MFDA Rules.

6. The Filer proposes to pool Other Cash with Mutual Fund Cash in a trust settlement account established under section 11.3 of NI 81-102 (the "**Trust Account**"). The commingling of Other Cash with Mutual Fund Cash would facilitate significant administrative and systems economies that will enable the Filer to enhance its level of service to its client accounts at less cost to the Filer. The Trust Account is designated as a 'trust account' by the financial institution at which it is held, and is held in the name of the Filer.

7. The Commingling Prohibitions prevent the Filer from commingling Mutual Fund Cash with Other Cash.

8. Prior to June 23, 2006, section 3.3.2(e) of the Rules of the MFDA (the "**MFDA Commingling Prohibition**") also prohibited the commingling of Other Cash with Mutual Fund Cash. On June 23, 2006, the MFDA granted relief from the MFDA Commingling Prohibition to the Filer subject to the Filer obtaining similar relief from the Commingling Prohibitions from the Commission. Should the Requested Relief be granted by the Commission, the Filer will provide the MFDA with notice that the Requested Relief has been granted.

9. Mutual Fund Cash or Other Cash related to a transaction initiated by one of the Filer's clients will not be used to settle a transaction initiated by any other client of the Filer. The Filer settles through FundSERVE, on a net basis at the end of each trading day, Mutual Fund Cash payable from the

Trust Account to a mutual fund with Mutual Fund Cash payable by the mutual fund to the Trust Account.

10. The Filer currently has systems in place to be able to account for all of the monies it receives into and all of the monies that are to be paid out of the Trust Account in order to meet the policy objectives of sections 11.1 and 11.2 of NI 81-102.

11. The Filer will maintain proper records with respect to client cash in a commingled account, and will ensure that the Trust Account is reconciled in accordance with MFDA Rules, and that Mutual Fund Cash and Other Cash are properly accounted for daily.

12. Except for the Commingling Prohibitions, the Filer will comply with all other requirements prescribed in Part 11 of NI 81-102 with respect to the handling and segregation of client cash.

13. The Filer does not believe that the interests of its clients will be prejudiced in any way by the commingling of Other Cash with Mutual Fund Cash in the Trust Account.

14. Effective July 1, 2005, the MFDA Investor Protection Corporation ("**MFDA IPC**") commenced offering coverage, within defined limits, to customers of MFDA members against losses suffered due to the insolvency of MFDA members. The Filer does not believe that the Requested Relief will affect coverage provided by the MFDA IPC.

15. In the absence of the Requested Relief, the commingling of Mutual Fund Cash with Other Cash in the Trust Account would contravene the Commingling Prohibitions.

Decision

The Commission is satisfied that the test contained in the Legislation that provides the Commission with the jurisdiction to make the decision has been met.

The decision of the Commission under the Legislation is that the Requested Relief is granted provided that this decision will terminate upon the coming into force of any change in the MFDA IPC rules which would reduce the coverage provided by the MFDA IPC relating to Mutual Fund Cash and Other Cash.

"Vera Nunes"
Assistant Manager, Investment Funds Branch
Ontario Securities Commission

2.1.15 VenGrowth Cash Management Fund - s. 1(10)

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – issuer deemed to have ceased to be a reporting issuer.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10).

January 9, 2008

Heenan Blakie LLP
1055 West Hastings Streeet, Suite 2200
Vancouver, BC V6E 2E9

Attention: Catherine E. Wade

Dear Ms. Wade:

Re: VenGrowth Cash Management Fund (the "Applicant") – Application for an order not to be a reporting issuer under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia and Newfoundland & Labrador (the "Jurisdictions") dated December 7, 2007

The Applicant has applied to the local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions for a decision under the securities legislation (the Legislation") of the Jurisdictions not to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that,

- the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;
- no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 Marketplace Operation;
- the Applicant is applying for relief not to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

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 and orders that the Applicant is not a reporting issuer.

"Vera Nunes"
Assistant Manager, Investment Funds

2.2 Orders

2.2.1 CMC Markets Asia Pacific Pty Ltd. - s. 211 of the Regulation

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.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(1).

Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 100(3), 208(2), 211.

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
CMC MARKETS ASIA PACIFIC PTY LTD.

ORDER
(Section 211 of the Regulation)

UPON the application (the **Application**) of CMC Markets Asia Pacific Pty 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, 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 the staff of the Commission;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is formed under the laws of the state of New South Wales, Australia, with its principal place of business located in Sydney, New South Wales, Australia.

2. The Applicant is registered in Australia as a dealer with the Australian Securities and Investment Commission.

3. The Applicant does not currently carry on business as an underwriter in Australia or in any other jurisdiction.

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

5. 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 the Applicant does not carry on the business of an underwriter in a country other than Canada.

6. The Applicant does not currently act as an underwriter in Ontario and the Applicant will not act as an underwriter in Ontario if it is registered under the Act as an international dealer.

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 the Applicant will carry on the business of a dealer in a country other than Canada.

January 8, 2008

"Wendell S. Wigle"
Commissioner
Ontario Securities Commission

"Carol S. Perry"
Commissioner
Ontario Securities Commission

2.2.2 CMC Markets UK plc - s. 211 of the Regulation

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.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(1).

Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., ss. 100(3), 208(2), 211.

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
CMC MARKETS UK PLC

ORDER
(Section 211 of the Regulation)

UPON the application (the **Application**) of CMC Markets UK plc (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, 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 the staff of the Commission;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is formed under the laws of England, with its principal place of business located in London, England.

2. The Applicant is registered in England as a dealer with the UK Financial Services Authority.

3. The Applicant does not currently carry on business as an underwriter in England or in any other jurisdiction.

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

5. 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 the Applicant does not carry on the business of an underwriter in a country other than Canada.

6. The Applicant does not currently act as an underwriter in Ontario and the Applicant will not act as an underwriter in Ontario if it is registered under the Act as an international dealer.

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 the Applicant will carry on the business of a dealer in a country other than Canada.

January 8, 2008

“Wendell S. Wigle”
Commissioner
Ontario Securities Commission

"Carol S. Perry”
Commissioner
Ontario Securities Commission

2.2.3 Bank of Montreal and BMO Subordinated Notes Trust - OSC Rule 13-502 Fees

Headnote

Application by bank (the Bank) and capital trust subsidiary (the Trust) for an order granting the Trust relief from the requirement in OSC Rule 13-502 Fees (the Fees Rule) to pay participation fees - Bank has paid, and will continue to pay, participation fees applicable to it under s. 2.2 of the Fees Rule, and Bank includes capitalization of Trust in its fee calculation - relief analogous to relief for "subsidiary entities" contained in s. 2.9(2) of the Fees Rule - Trust may not, from a technical accounting perspective, be considered to be a "subsidiary entity" of the Bank for Canadian GAAP purposes and may not be entitled to rely on the exemption in s. 2.9(2) of the Fees Rule - Trust and Bank satisfy conditions of exemption in s. 2.9(2) of the Fees Rule but for the definition of "subsidiary entity" - Trust exempt from requirement to pay participation fees, subject to conditions.

Rules Cited

Ontario Securities Commission Rule 13-502 Fees.

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION
RULE 13-502 FEES

AND

IN THE MATTER OF
BANK OF MONTREAL AND
BMO SUBORDINATED NOTES TRUST

ORDER

WHEREAS the Director has received an application from Bank of Montreal (the "Bank") and BMO Subordinated Notes Trust (the "Trust") for an order, pursuant to Section 6.1 of OSC Rule 13-502 - Fees (the "Fees Rule"), that the requirement to pay a participation fee under Section 2.2 of the Fees Rule shall not apply to the Trust, subject to certain terms and conditions.

AND WHEREAS the Bank and the Trust have represented to the Ontario Securities Commission (the "OSC") that:

1. The Trust is a closed-end trust established under the laws of the Province of Ontario by Computershare Trust Company of Canada as trustee (the "Trustee"), pursuant to a declaration of trust dated August 28, 2007.

2. The Trust has a financial year-end of December 31.

3. The Trust is a reporting issuer in Ontario and, to its knowledge, is not in default of any requirement under the securities legislation of the Province of Ontario.

4. The Bank is the administrative agent of the Trust pursuant to an administration agreement pursuant to which the Trustee has delegated to the Bank certain of its obligations in relation to the administration of the Trust, including the day-to-day operations of the Trust and such other matters as may be requested from time to time by the Trustee.

5. The outstanding securities of the Trust consist of (i) $800,000,000 principal amount of 5.75% subordinated notes due September 26, 2022 representing subordinated indebtedness of the Trust (the "BMO TSNs – Series A") and (ii) 1,000 voting securities of the Trust ("Voting Trust Units"). The BMO TSNs – Series A are fully and unconditionally guaranteed on a subordinated basis by the Bank. All outstanding Voting Trust Units are held by the Bank and the Bank has agreed that it will hold all of the outstanding Voting Trust Units for as long as any BMO TSNs – Series A are outstanding. The Trust distributed the BMO TSNs – Series A in a public offering pursuant to a prospectus dated September 19, 2007 (the "Prospectus"). Subject to certain conditions, the Trust may redeem the outstanding BMO TSNs – Series A. Upon the occurrence of a Loss Absorption Event or a Non-Deductibility Event (in each case as defined in the Prospectus), the BMO TSNs – Series A will be exchanged, without the consent of the holders, into subordinated debt of the Bank.

6. No securities of the Trust are currently listed on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.

7. The Trust's only business is to invest its assets and its objective is to acquire and hold Trust Assets (as defined in the Prospectus) that will generate income for payment of principal, interest and other amount in respect of its securities, including the BMO TSNs – Series A. The Trust does not carry on any independent business activities other than to acquire and hold assets to generate income as described above.

8. The Trust has received an exemption from the requirements (the "Continuous Disclosure Exemption") contained in the securities legislation of the Province of Ontario and in other applicable jurisdictions (collectively, the "Legislation") to:

   (a) (i) file interim financial statements and audited annual financial statements and deliver same to the security holders of the Trust, pursuant to Sections 4.1, 4.3 and 4.6 of National Instrument 51-102 - Continuous Disclosure Obligations ("NI 51-102");

(ii) file interim and annual management's discussion and analysis ("MD&A") of the financial conditions and results of operations and deliver same to the security holders of the Trust pursuant to Section 5.1 and 5.6 of NI 51-102; and

(iii) file an annual information form pursuant to Section 6.1 of NI 51-102;

(the obligations set out in paragraph (a) are collectively defined as the "Continuous Disclosure Obligations"); and

(b) file interim and annual certificates contained in Sections 2.1 and 3.1 of Multilateral Instrument 52-109 - Certification of Disclosure in Issuer's Annual and Interim Filings ("MI 52-109") (the "Certification Obligations").

9. The Trust was established by the Bank in order to comply with the regulatory requirements of the Office of the Superintendent of Financial Institutions ("OSFI") relating to the issuance of Tier 2B innovative capital instruments (as contained in OSFI's Principles Governing Inclusion of Innovative Instruments in Tier 1 Capital (the "OSFI Guidelines")).

10. OSFI maintains strict guidelines and standards with respect to the capital adequacy requirements of federally regulated financial institutions, including the Bank, and, in particular, specifies minimum required amounts of regulatory capital to be maintained by such institutions. Tier 1 capital primarily consists of common shareholders' equity, qualifying non-cumulative perpetual preferred shares, qualifying innovative instruments and qualifying non-controlling interests while Tier 2 capital primarily consists of subordinated debt, qualifying innovative instruments, and the allowable portion of the Bank's general allowance. Innovative instruments, such as the BMO TSNs – Series A, must satisfy the detailed requirements of the OSFI Guidelines to be included in the Bank's regulatory capital. Accordingly, BMO TSNs – Series A were issued by a special purpose vehicle (the Trust), whose primary purpose is to raise innovative Tier 2B capital. Utilizing the Trust generated cost-effective capital for the Bank. OSFI approved the inclusion of the BMO TSNs – Series A as Tier 2B capital of the Bank.

11. As a result of the Trust having received an exemption from the Continuous Disclosure Obligations and the Certification Obligations, no continuous disclosure documents concerning only the Trust will be filed with the OSC.

12. The Trust is a "Class 2 reporting issuer" under the Fees Rule and would be required (but for this Order) to pay participation fees under such rule.

13. The Bank, as a legal and factual matter, controls the Trust though its ownership of the Voting Trust Units issued by the Trust and its role as administrative agent of the Trust. The Bank has paid, and will continue to pay, participation fees applicable to it under section 2.2 of the Fees Rule.

14. The Fees Rule includes an exemption for "subsidiary entities" in subsection 2.9(2) of the Fees Rule. The Bank and the Trust meet all of the substantive requirements to rely on the exemption in subsection 2.9(2) of the Fees Rule, but for the definition of "subsidiary entity". The Fees Rule defines "subsidiary entity" by reference to the accounting definition under Canadian generally accepted accounting principles ("Canadian GAAP"), rather than by reference to a legal definition based on control.

15. On November 1, 2004, the Canadian Institute of Chartered Accountants adopted Guideline 15, Consolidation of Variable Interest Entities. Accordingly, the Trust may not, from a technical accounting perspective, be considered to be a "subsidiary entity" of the Bank for Canadian GAAP purposes and may not be entitled to rely on the exemption in subsection 2.9(2) of the Fees Rule.

THE ORDER of the OSC under the Fees Rule is that the requirement to pay a participation fee under Section 2.2 of the Fees Rule shall not apply to the Trust, for so long as:

(i) the Bank and the Trust continue to satisfy all of the conditions contained in the Continuous Disclosure Exemption; and

(ii) the capitalization of the Trust represented by the BMO TSNs – Series A and any additional securities of the Trust that may be issued, from time to time, by the Trust is included in the participation fee calculation applicable to the Bank and the Bank has paid the participation fee calculated on this basis.

DATED at Toronto this 10th day of January, 2008

"Michael Brown"
Assistant Manager, Corporate Finance Branch
Ontario Securities Commission

2.2.4 Borealis International Inc. et al. - s. 127(7)

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

AND

IN THE MATTER OF
BOREALIS INTERNATIONAL INC.,
SYNERGY GROUP (2000) INC.,
INTEGRATED BUSINESS CONCEPTS INC.,
CANAVISTA CORPORATE SERVICES INC.,
CANAVISTA FINANCIAL CENTER INC.,
SHANE SMITH, ANDREW LLOYD, PAUL LLOYD,
VINCE VILLANTI, LARRY HALIDAY, JEAN BREAU,
JOY STATHAM, DAVID PRENTICE, LEN ZIELKE,
JOHN STEPHAN, RAY MURPHY,
ALEXANDER POOLE, DEREK GRIGOR AND
EARL SWITENKY

ORDER
(Section 127(7))

WHEREAS on November 15, 2007, the Ontario Securities Commission (the "Commission") made an order pursuant to sections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5., as amended, in respect of Borealis International Inc. ("Borealis"), Synergy Group (2000) Inc. ("Synergy"), Integrated Business Concepts Inc. ("IBC"), Canavista Corporate Services Inc. ("Canavista Corporate"), Canavista Financial Center Inc. ("Canavista Financial"), Shane Smith ("Smith"), Andrew Lloyd, Paul Lloyd, Vince Villanti ("Villanti"), Larry Haliday ("Haliday"), Jean Breau ("Breau"), Joy Statham ("Statham"), David Prentice ("Prentice"), Len Zielke ("Zielke"), John Stephan ("Stephan"), Ray Murphy ("Murphy"), Derek Grigor ("Grigor"), Earl Switenky ("Switenky") and Alexander Poole ("Poole") (the "Respondents") that all trading in securities by and of the Respondents, with the exception of Poole, cease, and that any exemptions contained in Ontario securities law do not apply to the Respondents, with the exception of Poole (the "Temporary Order");

AND WHEREAS the Temporary Order also provided that pursuant to clause 1 of section 127(1), the following terms and conditions are imposed on Poole's registration: Poole shall be subject to monthly supervision by his sponsoring firm which, commencing November 30, 2007, will submit monthly supervision reports to the Commission (attention: Manager, Registrant Regulation) in a form specified by the Manager, Registrant Regulation, reporting details of Poole's sales activities and dealings with clients;

AND WHEREAS on November 15, 2007, the Commission issued a Notice of Hearing and Statement of Allegations in this matter;

AND WHEREAS on November 28, 2007, the Commission ordered that the Temporary Order be continued in respect of the Respondents, except Borealis, Synergy, IBC, Canavista Financial, Smith, Villanti, Haliday, Breau, Paul Lloyd, Zielke, Grigor and Switenky, until May 27, 2008;

AND WHEREAS on November 28, 2007, the Commission ordered that in respect of Borealis, Synergy, IBC, Canavista Financial, Smith, Villanti, Haliday, Breau, Paul Lloyd, Zielke, Grigor and Switenky, the Temporary Order be continued until January 11, 2008;

AND UPON HEARING submissions from Paul Lloyd on behalf of Canavista Financial and his on own behalf and from counsel for Staff of the Commission and from counsel for Borealis, Synergy, IBC, Smith, Villanti, Haliday and Breau, no one appearing for Zielke, Grigor and Switenky;

AND UPON REVIEWING a letter dated January 9, 2008 from Switenky and a letter dated January 10, 2008 from Zielke;

AND WHEREAS Paul Lloyd, Canavista Financial, Borealis, Synergy, IBC, Smith, Villanti, Haliday, and Breau consent to a continuation of the Temporary Order until May 27, 2008;

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

IT IS ORDERED THAT:

1. in respect of the Respondents, the Temporary Order is continued until May 27, 2008 or until further order of the Commission;

2. this matter shall return before the Commission on May 27, 2008 at 2:30 p.m.; and

3. any websites operated by the Respondents, including:

   - http://www.borealisfinancial.com
   - http://www.borealisglobal.com
   - http://www.borealisglobal.com/synergy.htm
   - http://www.synergygroup2000.com/Borealis.htm
   - http://www.synergygroup2000.com
   - http://www.synergywestcoast.com
   - http://www.synergygroupbc.com
   - http://synergyadvisorforums.com
   - http://www.canavista.ca
   - http://www.ibc101.com

shall forthwith display the Temporary Order, the Order dated November 28, 2007 and this Order prominently and continuously on the home page until further order of the Commission.

DATED at Toronto this 11th day of January, 2008.

"Wendell S. Wigle"

"David L. Knight"

2.2.5 TVI Pacific Inc. - s. 144

Headnote

Application by an issuer for a revocation of a cease trade order issued by the Commission -- cease trade order issued because the issuer had failed to file certain continuous disclosure materials in the form and with the content required by Ontario securities law -- defaults subsequently remedied -- cease trade order revoked.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am.

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

AND

IN THE MATTER OF
TVI PACIFIC INC.

ORDER
(Section 144)

WHEREAS a Director of the Ontario Securities Commission (the "Commission") issued a temporary cease trade order dated October 24, 2007 pursuant to paragraph 2 and paragraph 2.1 of subsection 127(1) and subsection 127(5) of the Act, as extended by an order dated November 5, 2007 (together, the "Cease Trade Order") pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act which provided that all trading in and all acquisitions of the securities of TVI Pacific Inc. (the "Applicant"), whether direct or indirect, shall cease until further order by the Director;

AND WHEREAS the Applicant has applied to the Commission pursuant to section 144 of the Act for a revocation of the Cease Trade Order;

AND WHEREAS the Applicant has represented to the Commission that:

1. The Applicant was incorporated under the *Business Corporations Act* (Alberta) on January 12, 1987 and is a valid and subsisting corporation under the laws of the Province of Alberta.

2. The Applicant is a reporting issuer under securities legislation in force in the provinces of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Quebec.

3. The Applicant is authorized to issue an unlimited number of common shares of which 406,240,640 common shares are issued and outstanding.

4. The Cease Trade Order was issued as a result of the Applicant's failure to file unaudited interim

financial statements and management discussion and analysis (MD&A) for the second quarter of 2007 as required by Ontario securities law (the "Continuous Disclosure Documents").

5. The Continuous Disclosure Documents were not filed as a result of the Applicant learning of accounting errors, which necessitated filing of restated audited financial statements for the years 2005 and 2006, and restated unaudited statements for the first quarter of 2007 and updated MD&A for each relevant period.

6. The Applicant has also been subject to similar cease trade orders issued by the British Columbia Securities Commission, Alberta Securities Commission and Autorité des marchés financiers (Quebec) for failure to file the Continuous Disclosure Documents. A cease trade order previously issued by the British Columbia Securities Commission was revoked on December 19, 2007. On January 4, 2008, the Alberta Securities Commission revoked the cease trade order previously issued by it on October 16, 2007. On January 9, 2008, the Autorité des marchés financiers (Quebec) revoked the cease trade order previously issued by it on November 2, 2007.

7. The restated audited financial statements of the Applicant as at and for the years ended 2005 and 2006, the restated unaudited interim financial statements of the Applicant as at and for the three month period ended March 31, 2007, the unaudited interim financial statements of the Applicant as at and for the three and six month periods ended June 30, 2007 and the unaudited interim financial statements of the Applicant as at and for the three and nine month periods ended September 30, 2007, and the accompanying MD&A, have all been filed with the Commission through SEDAR.

8. The Applicant is up-to-date with its other continuous disclosure obligations, has paid all outstanding participation fees associated therewith, and is no longer in default of the requirements of the Act or any of the regulations made pursuant thereto.

9. The Applicant's common shares are listed and posted for trading on the TSX; however, the common shares are currently not trading.

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

AND WHEREAS the Director is satisfied that it would not be prejudicial to the public interest to revoke the Cease Trade Order;

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

DATED at Toronto this 10th day of January, 2008.

"Michael Brown"
Assistant Manager, Corporate Finance
Ontario Securities Commission

2.2.6 Barclays Global Investors, N.A. - ss. 3.1(1), 80 of the CFA

Headnote

Section 80 of the Commodity Futures Act (Ontario) – Relief from the adviser registration requirements of subsection 22(1)(b) of the CFA in respect of acting as an adviser to certain non-redeemable investment funds and similar investment vehicles primarily offered outside of Canada in respect of trades in commodity futures contracts and commodity futures options primarily traded on commodity futures exchanges outside Canada and primarily cleared through clearing corporations outside Canada, subject to certain terms and conditions.

Subsection 3.1(1) of the Commodity Futures Act (Ontario) – Assignment by the Commission to the Director of the powers and duties vested in the Commission under subsection 78(1) of the CFA to allow the Director to vary the present order by specifically naming an affiliate as an applicant to the order.

Statutes Cited:

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 3.1(1), 22(1)(b), 78, 80.
Securities Act, R.S.O. 1990, c. S.5, as am. – Rule 35-502 – Non Resident Advisers.

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

AND

IN THE MATTER OF
BARCLAYS GLOBAL INVESTORS, N.A.

ORDER
(Section 80 and Subsection 3.1(1) of the CFA)

UPON the application (the **Application**) of Barclays Global Investors, N.A. (the **Named Applicant**) and on behalf of certain affiliates of the Named Applicant that provide notice to the Director as referred to below (each, an **Affiliate**, and together with the Named Applicant, the **Applicants**) to the Ontario Securities Commission (the **Commission** or **OSC**) for:

(a) an order, pursuant to section 80 of the CFA, that each of the Applicants (including their respective directors, partners, officers, and employees), be exempt, for a period of five years, from the requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser to certain mutual funds, non-redeemable investment funds and similar investment vehicles (the **Funds**, as defined below) primarily offered outside of Canada in respect of trades in commodity futures contracts and commodity futures options primarily traded on commodity futures exchanges outside Canada and primarily cleared through clearing corporations outside Canada; and

(b) an assignment by the Commission to each Director, acting individually, pursuant to subsection 3.1(1) of the CFA, of the powers and duties vested in the Commission under subsection 78(1) of the CFA, to vary this Order by specifically naming any Affiliate of the Named Applicant as an Applicant to this Order in the circumstances described below;

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

AND UPON the Applicants having represented to the Commission that:

1. Each of the Applicants is organized under the laws of a jurisdiction other than Canada or the provinces or territories thereof.

2. Any Affiliate, whose name does not specifically appear in this Order, who wishes to rely on the exemption granted under this Order must execute and file with the Commission (Attention: Manager, Registrant Regulation) two copies of a notice (the **Notice**, in the form of Part A to the attached Schedule A), applying to the Director to vary this Order to specifically name the Affiliate as an Applicant to this Order. The Notice must be filed with the Commission at least ten (10) days prior to the date that such Affiliate wishes to begin relying on this Order.

3. If, in the Director's opinion, it would not be prejudicial to the public interest, within ten (10) days after receiving the Notice, the Director will provide the Affiliate with a written acknowledgment and consent (the **Director's Consent**, in the form of Part B to the attached Schedule A). The Director's Consent will allow the Affiliate to rely on the exemption

granted in this Order by varying the Order to specifically name the Affiliate as an Applicant to this Order. The Affiliate may not rely on this Order until it has received the Director's Consent.

4. If, after reviewing the Notice, the Director provides a written notice of objection (the **Objection Notice**) to the Affiliate, the Affiliate will not be permitted to rely on the exemption granted under this Order. However, the Affiliate may, by notice in writing sent by registered mail to the Secretary of the Commission within 30 days after receiving the Objection Notice, request and be entitled to a hearing and review of such decision by the Commission.

5. Subsection 78(1) of the CFA provides that the Commission may, on the application of a person or company affected by the decision, make an order revoking or varying a decision of the Commission if, in the Commission's opinion, the order would not be prejudicial to the public interest. Further, subsection 3.1(1) of the CFA provides that a quorum of the Commission may assign any of its powers and duties under the CFA (except powers and duties under section 4 and Part IV) to the Director.

6. None of the Applicants are or will be registered in any capacity under the CFA. The Named Applicant is registered under the *Securities Act* (Ontario) (the **OSA**) as an international adviser in the categories of investment counsel and portfolio manager.

7. The Named Applicant is the investment adviser to the BGI Fixed Income GlobalAlpha Fund Ltd. (the **Existing Fund**) including having discretionary investment authority over the assets of the Existing Fund. The Existing Fund is organized under the laws of the Cayman Islands. The Applicants may in the future establish or advise certain other mutual funds, non-redeemable investment funds or similar investment vehicles (together with the Existing Fund, the **Funds**).

8. The Funds may, as a part of their investment program, invest in commodity futures contracts and commodity futures options primarily traded on commodity futures exchanges outside of Canada and primarily cleared through clearing corporations outside of Canada.

9. The Funds advised by the Applicants are and will be established outside of Canada. Securities of the Funds are and will be primarily offered outside of Canada to institutional investors and may also be offered to high net worth individuals primarily outside of Canada. Securities of the Funds will be offered to a small number of Ontario residents who will be, at the time of their investment, institutional investors or high net worth individuals that qualify as an "accredited investor" under National Instrument 45-106 – *Prospectus and Registration Exemptions* and will be distributed in Ontario in reliance upon an exemption from the prospectus requirements of the OSA.

10. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a partner or an officer of a registered adviser and is acting on behalf of a registered adviser. Under the CFA, "adviser" means a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to trading in "contracts", and "contracts" means commodity futures contracts and commodity futures options.

11. By advising the Funds on investing in commodity futures contracts and commodity futures options primarily traded on commodity futures exchanges outside Canada and primarily cleared through clearing corporations outside Canada, the Applicants will be providing advice to Ontario investors with respect to commodity futures contracts and commodity futures options and, in the absence of being granted the requested relief, would be required to register as advisers under the CFA.

12. There is presently no rule under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA for a person or company acting as an adviser in respect of commodity futures options and commodity futures contracts that is similar to the exemption from the adviser registration requirement in section 25(1)(c) of the OSA for acting as an adviser (as defined in the OSA) in respect of securities that is provided under section 7.10 (Privately Placed Funds Offered Primarily Abroad) of OSC Rule 35-502 – *Non Resident Advisers* (**Rule 35-502**).

13. As would be required under section 7.10 of Rule 35-502, securities of the Funds are, or will be:

    (a) primarily offered outside of Canada;

    (b) only distributed in Ontario through one or more registrants under the OSA; and

    (c) distributed in Ontario in reliance upon an exemption from the prospectus requirements of the OSA.

14. In advising the Funds, the Applicants will either hold the required registrations under the OSA or will rely on an appropriate exemption from the adviser registration requirements under the OSA.

15. Each of the Applicants, where required, is or will be appropriately registered or licensed or is, or will be, entitled to rely on appropriate exemptions from such registrations or licences to provide advice to the Funds pursuant to the applicable legislation of its principal jurisdiction. In particular, the Named Applicant is:

    (i) a national banking association organized under the laws of the United States and operates as a limited purpose trust company. It is primarily regulated in the United States by the Office of the Comptroller of the Currency, the agency of the U.S. Treasury Department that regulates U.S. national banks. The Named Applicant is also subject to the jurisdiction of the U.S. Department of Labor to the extent that its fiduciary clients are subject to the U.S. Employee Retirement Income Security Act of 1974, as amended; and

    (ii) registered in the United States with the Commodity Futures Trading Commission (the "**CFTC**") as a Commodity Trading Adviser and is exempt from registration with the CFTC as a Commodity Pool Operator pursuant to CFTC Rule 4.13(a)(4) with respect to the Existing Fund.

16. All of the Funds issue securities which are offered primarily abroad. None of the Funds has any intention of becoming a reporting issuer in Ontario or in any other Canadian jurisdiction.

17. Prior to purchasing any securities in one or more of the Funds, all investors in the Funds who are Ontario residents will receive disclosure that includes:

    (a) statement that there may be difficulty in enforcing any legal rights against the relevant Fund or any of the Applicants (or the individual representatives of the Applicants) advising the relevant Fund, because such entities are resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and

    (b) a statement that the relevant Applicant advising the relevant Fund is not, or will not be, registered with the Commission under the CFA and accordingly, the protections available to clients of a registered adviser under the CFA will not be available to purchasers of securities of the relevant Fund.

AND UPON being satisfied that it would not be prejudicial to the public interest for the Commission to grant the exemption requested on the basis of the terms and conditions proposed;

IT IS ORDERED pursuant to section 80 of the CFA that each of the Applicants are exempted from the requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser in connection with any one or more of the Funds, for a period of five years, provided that at the relevant time that such activities are engaged in:

(a) each Applicant, where required, is registered or licensed, or is entitled to rely on appropriate exemptions from such registrations or licences, to provide advice to the relevant Fund pursuant to the applicable legislation of its principal jurisdiction;

(b) the Funds invest in commodity futures contracts and commodity futures options primarily traded on commodity futures exchanges outside Canada and primarily cleared through clearing corporations outside Canada;

(c) securities of the Funds are:

    (i) primarily offered outside of Canada;

    (ii) only distributed in Ontario through one or more registrants under the OSA; and

    (iii) distributed in Ontario, in reliance on an exemption from the prospectus requirements of the OSA;

(d) the Applicants will either hold the required registrations under the OSA or will rely on an appropriate exemption from the adviser registration requirements under the OSA;

(e) prior to purchasing any securities in one or more of the Funds, all investors in the Funds who are Ontario residents received disclosure that includes:

    (i) a statement that there may be difficulty in enforcing any legal rights against the relevant Fund or any of the Applicants (or the individual representatives of the Applicants) advising the relevant Fund,

because such entities are resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and

(ii) a statement that the relevant Applicant advising the relevant Fund is not, or will not be, registered with or licensed under the CFA, and accordingly, the protections available to clients of a registered adviser under the CFA will not be available to purchasers of securities of the relevant Fund; and

(f) each Applicant either:

(i) is specifically named in this Order; or

(ii) has filed with the Commission the Notice and received the Director's Consent.

AND IT IS FURTHER ORDERED pursuant to subsection 3.1(1) of the CFA that the Commission assigns to each Director, acting individually, the powers and duties vested in the Commission under subsection 78(1) of the CFA, to vary this Order by specifically naming any Affiliate of the Named Applicant as an Applicant to this Order (as described in paragraphs 2, 3 and 4 above) by providing such Affiliate with the Director's Consent, provided that, the Affiliate may, by notice in writing sent by registered mail to the Secretary of the Commission within 30 days after receiving the Objection Notice, request and be entitled to a hearing and review of such decision by the Commission.

January 14, 2008

"James E. A. Turner"
Commissioner
Ontario Securities Commission

"Margot Howard"
Commissioner
Ontario Securities Commission

Schedule A

To: Manager, Registrant Regulation
Ontario Securities Commission

From: _____ (the **Affiliate**)

Re: In the Matter of *Barclays Global Investors, N.A.* (the **Named Applicant**)

OSC File No.: 2008/0005

Part A: Notice to the Ontario Securities Commission (the Commission)

The undersigned, being an authorized representative of the Affiliate, hereby represents to the Commission that:

(a) on January ___, 2008, the Commission issued the attached order (the **Order**), pursuant to section 80 of the *Commodity Futures Act* (Ontario) (the **CFA**), that each of the Applicants (as defined in the Order) is exempt from the requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser in connection with any one or more of the Funds (as defined in the Order), for a period of five years;

(b) the Affiliate, is an affiliate of the Named Applicant;

(c) the Affiliate, whose name does not specifically appear in the Order, wishes to rely on the exemption granted under the Order and hereby applies to the Director, under section 78 of the CFA, to vary the Order to specifically name the Affiliate as an Applicant to the Order;

(d) the Affiliate has attached a copy of the Order to this Notice;

(e) the Affiliate confirms the truth and accuracy of all the information set out in the Order;

(f) this Notice has been executed and filed with the Commissioner at least ten (10) days prior to the date on which the Affiliate wishes to begin relying on the Order; and

(g) the Affiliate has not, and will not, rely on the Order until it has received a written acknowledgment and consent from the Director as provided in Part B herein.

Dated this ____ day of _____, 20___.

_____
By: Name:
Title:

Part B: Acknowledgment and Consent by Director

I acknowledge receipt of your Notice, dated _____, 20__, providing the Commission with notice, as described in the Order, that the Affiliate, whose name does not specifically appear in the Order, wishes to rely on the exemption granted under the Order and has applied to have the Order varied to specifically name the Affiliate as an Applicant to the Order.

Based on the representations contained in the Order and in your Notice, I do not consider it prejudicial to the public interest to vary the Order to specifically name the Affiliate as an Applicant to the Order and do hereby so vary the Order.

Dated this ____ day of _____, 20___.

_____
Name:
Title:
Ontario Securities Commission

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 David Watson et al. - s. 127

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

AND

IN THE MATTER OF
DAVID WATSON, NATHAN ROGERS, AMY GILES, JOHN SPARROW,
LEASESMART, INC., ADVANCED GROWING SYSTEMS, INC. (a Florida corporation),
PHARM CONTROL LTD., THE BIGHUB.COM, INC, UNIVERSAL SEISMIC ASSOCIATES INC.,
POCKETOP CORPORATION, ASIA TELECOM LTD., INTERNATIONAL ENERGY LTD.,
CAMBRIDGE RESOURCES CORPORATION, NUTRIONE CORPORATION
AND SELECT AMERICAN TRANSFER CO.

AND

IN THE MATTER OF
STANTON DE FREITAS

REASONS AND DECISION
(Section 127 of the Securities Act)

Hearing:	December 5, 2007		
Decision:	January 9, 2008		
Panel:	James E.A. Turner	-	Vice-Chair (Chair of the Panel)
	Suresh Thakrar	-	Commissioner
Counsel:	Pamela Foy Dustin Down	-	for Staff of the Ontario SecuritiesCommission
	Kevin Richard Kellie Seaman	-	for Stanton De Freitas

DECISION AND REASONS

I. OVERVIEW

(a) Stanton De Freitas

[1] This was a hearing before the Ontario Securities Commission (the "Commission") pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") to consider whether it is in the public interest to extend the temporary cease trade order against Stanton De Freitas (the "De Freitas Temporary Order Hearing").

[2] On May 30, 2007, an *ex parte* temporary cease trade order was issued by the Commission pursuant to subsections 127(1) and 127(5) of the Act ordering that all trading in any securities by Stanton De Freitas ("De Freitas") shall cease and that any exemptions contained in Ontario securities law shall not apply to him (the "De Freitas Temporary Order").

[3] On June 13, 2007, the De Freitas Temporary Order was extended until June 25, 2007 or until further order of the Commission, except that the part of the order that ordered that any exemptions contained in Ontario securities law shall not apply to De Freitas was not extended (the "Amended De Freitas Temporary Order").

[4] The Amended De Freitas Temporary Order was further extended on June 25, 2007, September 28, 2007, November 29, 2007, December 3, 2007 and December 4, 2007, at which point the current hearing was scheduled. On December 5, 2007, the Amended De Freitas Temporary Order was further extended until the Commission releases its decision and reasons on the De Freitas Temporary Order Hearing or until further order of the Commission.

[5] Staff of the Commission ("Staff") seeks an extension of the Amended De Freitas Temporary Order under subsection 127(8) and clause 2 of subsection 127(1) of the Act until the completion of Staff's investigation.

[6] Counsel for De Freitas submits there is insufficient evidence to justify extending the Amended De Freitas Temporary Order. Alternatively, he submits the order, if extended, should be further amended to include a personal trading carve-out.

(b) Select American Transfer Co.

[7] This hearing relates to an ongoing proceeding involving Select American Transfer Co. ("Select American") and other respondents.

[8] The relevant provisions of the Act governing the conduct being investigated by Staff include section 25 (registration required for trading), section 53 (prospectus required for a distribution) and section 126.1 (fraud and market manipulation).

[9] On May 18, 2007, the Commission issued a temporary order pursuant to subsections 127(1) and 127(5) of the Act in *Re Jason Wong, David Watson, Nathan Rogers, Amy Giles, John Sparrow, Kervin Findlay, LeaseSmart, Inc., Advanced Growing Systems, Inc., Pharm Control Ltd., The Bighub.com Inc., Universal Seismic Associates Inc., Pocketop Corporation, Asia Telecom Ltd., International Energy Ltd., Cambridge Resources Corporation, NutriOne Corporation and Select American Transfer Co.* The terms of the temporary order were that the individual respondents shall cease trading in any securities, that trading in the securities of any of the company respondents shall cease, and that any exemptions contained in Ontario securities law shall not apply to the company respondents. No order was made with respect to Select American at that time, but a temporary order issued on May 22, 2007 cease-traded the securities of Select American and ordered that any exemptions contained in Ontario securities law shall not apply to Select American.

[10] On June 1, 2007, the temporary orders dated May 18, 2007 and May 22, 2007 were extended until June 25, 2007 or until further order of the Commission, except that the part of the temporary orders that ordered that any exemptions contained in Ontario securities law shall not apply to the respondents identified in such orders was not extended (the "Select American Temporary Order").

[11] On June 25, 2007, the Select American Temporary Order was further extended until September 28, 2007 or until further order of the Commission, except that the order was not extended against Jason Wong ("Wong") and Kervin Findlay ("Findlay"), and the style of cause was amended by removing the names of Wong and Findlay (the "Amended Select American Temporary Order").

[12] On September 28, 2007, the Amended Select American Temporary Order was further extended until November 29, 2007.

[13] On November 29, 2007, the Amended Select American Temporary Order was extended against all the respondents except Pharm Control Ltd. ("Pharm Control") until June 24, 2008 or until further order of the Commission, provided that any party may, on 14 days notice, seek to vary the order pursuant to section 144 of the Act. Also on November 29, 2007, the Amended Select American Temporary Order against Pharm Control was extended until December 4, 2007.

[14] On December 4, 2007, the Amended Select American Temporary Order was extended against Pharm Control until December 5, 2007.

[15] At the outset of the De Freitas Temporary Order Hearing on December 5, 2007, Staff advised that Pharm Control consented to an extension of the Amended Select American Temporary Order against Pharm Control until June 24, 2008. The Commission issued an order to that effect on December 5, 2007.

II. THE ISSUES

[16] The issues in dispute are: (i) whether the Amended De Freitas Temporary Order should be extended; and (ii) if the answer to (i) is "yes", whether the order should be amended to allow De Freitas a personal trading carve-out.

III. THE PARTIES' SUBMISSIONS

A. Staff

[17] Staff states that it is investigating potentially illegal distributions in Ontario and potentially manipulative and fraudulent trading activity by Select American, its principals and others, including De Freitas, in Ontario.

[18] In particular, Staff advises that its investigation concerns trading in securities of the following eight companies (the "eight companies"):

- the Bighub.Com, Inc. ("Bighub")/Advanced Growing Systems, Inc.;
- LeaseSmart, Inc.;
- Cambridge Resources Corporation;
- NutriOne Corporation;
- International Energy Ltd. ("International Energy");
- Universal Seismic Associates Inc./Pocketop Corporation;
- Asia Telecom Ltd. ("Asia Telecom"); and
- Pharm Control.

[19] Staff advises that no prospectus has been filed and therefore no receipt has been obtained by any of the eight companies, and neither Select American nor De Freitas is registered under the Act.

[20] Staff submits that from its investigation to date, there is evidence to demonstrate that:

(a) Select American is a Delaware corporation that was operating out of Toronto and was the transfer agent for the eight companies and others.

(b) Select American, its principals, former principals and others (the "Participants") appear to have engaged in a series of trading schemes with respect to the securities of the eight companies, as follows:

(i) The Participants would incorporate a company with the same name as a dormant or inactive publicly traded company in the U.S.;

(ii) Select American or the Participants would change the name of the newly incorporated company, obtain a new trading identification or "CUSIP" number for its securities, and effect a reverse stock split of the company's shares on a 1 for 1,000 basis;

(iii) Select American, through the Participants, would then file documents with NASDAQ to reflect these changes and activate trading on the Pink Sheets LLC as if the newly incorporated company was the legal successor to the dormant publicly traded company; and

(iv) Select American would then issue share certificates for shares of the newly incorporated company as if they were shares of the original publicly traded company. These shares were then traded and contributed to temporarily high trading volumes and prices of the shares. For instance, with respect to Bighub and International Energy, Select American appears to have issued in excess of 1 billion shares of each company.

(c) The Participants have taken steps to hide their identities and their involvement in these schemes by creating fictitious identities or by using nominees.

[21] In support of the extension of the Amended De Freitas Temporary Order, Staff relies on the affidavit of Stephen Carpenter ("Carpenter"), a Staff investigator, sworn on May 29, 2007; the affidavit of Craig Gallacher ("Gallacher"), another Staff investigator, sworn on May 30, 2007; Gallacher's supplementary affidavit, sworn on November 27, 2007; and seven volumes of exhibits introduced by way of the affidavits. Carpenter and Gallacher testified at the De Freitas Temporary Order Hearing.

[22] Staff submits that the evidence filed in support of an extension of the Amended De Freitas Temporary Order shows what "appears to be egregious and harmful conduct by De Freitas" contrary to sections 25, 53, and 126.1 of the Act. Staff submits that this conduct relates to the trading scheme described above, and includes the improper issuance of share certificates and manipulative trading in companies associated with Select American. Staff submits that there is evidence that De Freitas was involved in the creation and operation of Select American and the trading scheme described above. Staff submits that De Freitas has not provided Staff with sufficient information regarding his conduct so as to satisfy subsection 127(8) of the Act, and therefore, the Amended De Freitas Temporary Order should be extended.

B. The Respondent

[23] Counsel for De Freitas submits that Staff has not called sufficient evidence of conduct by De Freitas that is harmful to the public interest. In particular, he submits there is insufficient evidence linking him to the conduct under investigation. He submits that Staff's case is based on mere suspicion or speculation. Accordingly, he submits that the Amended De Freitas Temporary Order should not be extended. Alternatively, if it is extended, De Freitas seeks a personal trading carve-out.

IV. THE LAW

A. The Commission's Power to Issue a Temporary Order

[24] The Commission's mandate is found in section 1.1 of the Act, which provides as follows:

> The purposes of this Act are,
>
> (a) to provide protection to investors from unfair, improper or fraudulent practices; and
>
> (b) to foster fair and efficient capital markets and confidence in capital markets.

[25] The Supreme Court of Canada has recognized that the "primary goal of securities legislation is the protection of the investing public" and, to achieve this goal, the Commission is accorded "a very broad discretion to determine what is in the public interest" (*Pezim v. British Columbia (Superintendent of Brokers)* (1994), 114 D.L.R. (4th) 385 (S.C.C.) at pp. 406, 408).

[26] This broad discretion allows the Commission to intervene even where there is no specific breach of the Act: *Re Canadian Tire Corp.* (1987), 10 O.S.C.B. 857, 1987 LNONOSC 47, at p. 29 (QL), affirmed (1987), 10 O.S.C.B. 1771, 59 O.R. (2d) 79 (Div. Ct.), leave to appeal refused (1987), 35 B.L.R. xx (Ont.C.A.).

[27] Subsection 127(1) of the Act provides that the Commission may make one or more of the orders set out therein where "in its opinion it is in the public interest" to do so, provided that a hearing is held pursuant to subsection 127(4).

[28] Notwithstanding the hearing requirement in subsection 127(4), subsection 127(5) recognizes that the Commission may make a temporary cease trade order on an *ex parte* basis "if in the opinion of the Commission, the length of time required to conclude a hearing could be prejudicial to the public interest."

[29] A temporary cease trade order issued pursuant to subsection 127(5) "shall expire on the fifteenth day after its making unless extended by the Commission" and may be extended pursuant to subsection 127(7) "until the hearing is concluded if a hearing is commenced within the fifteen day period."

[30] Notwithstanding subsection 127(7), the Commission may, pursuant to subsection 127(8), extend a temporary cease trade order "for such period as it considers necessary if satisfactory information is not provided to the Commission within the fifteen-day period."

B. The Evidentiary Basis for Extending a Temporary Order

[31] The authority to issue and extend temporary cease trade orders is important in enabling the Commission to achieve its mandate of protecting investors and the capital markets. In *Re Mithras Management Inc* (1990), 13 O.S.C.B. 1600, at 1610, the Commission emphasized the nature of the Commission's public interest mandate:

> . . . the 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 [now 122] 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. And in so doing, we may well conclude that a person's past conduct has been so abusive of the capital markets as to warrant our apprehension and intervention, even if no particular breach of the Act has been made out.

[32] Further, as stated by the Commission in *Re Valentine*:

> . . . the Commission may be required to extend a Temporary Order before an investigation is completed. This authority enhances the Commission's capacity to protect the capital markets by allowing it to take preventative action; *Re C.T.C. Ltd.* (1987), 10 O.S.C.B. 857.
>
> *Re Valentine*, (2002), 25 O.S.C.B. 5329 at 5331. See also: *Rodney Gold Mines* (1972), 7 O.S.C.B. 159 (S.C.) at 160, *Intercontinental Technologies Corp.* (1983), 6 O.S.C.B. 634, and *Oakwood Petroleums Ltd.* (1984), 7 O.S.C.B. 1919.

[33] The parties agree that a temporary cease trade order may be extended where there is sufficient evidence of conduct harmful to the public interest. However, they disagree on the application of that test. Staff submits that once the "sufficient evidence" threshold is met based on Staff's evidence, the onus shifts to the respondent to provide a satisfactory explanation to rebut that evidence, and an adverse inference may be drawn if the respondent fails to put forward any evidence.

[34] Counsel for De Freitas disagrees that an adverse inference may be drawn. He submits that the Commission must consider the entirety of the evidence when considering whether to extend a temporary order, including weighing the reliability of Staff's evidence. He relies on *Re Fairtide Capital Corp.*, 2002 LNBCSC 877 (B.C.S.C.), for the proposition that affidavits suggesting "'little more than unsubstantiated suspicion' or 'guilt by association' fall far short of providing the kind of evidence necessary to support these kinds of orders." In that case, the British Columbia Securities Commission found that the investigator's affidavit was "conclusory without the evidentiary foundation upon which she based her observations and beliefs."

[35] We agree that a temporary order may be extended based on sufficient evidence of conduct that may be harmful to the public interest. We note that subsection 127(8) of the Act permits extension of a temporary order "if satisfactory information is not provided to the Commission." We find that in making that determination, we must consider the apparent strength of the evidence put forward by Staff as well as any evidence put forward by the Respondent. We adopt the following statement from *Re Valentine*:

> In exercising its regulatory authority, the Commission should consider all of the facts including, as part of its sufficiency consideration, the seriousness of the allegations and the evidence supporting them. The Commission should also consider any explanations or evidence that may contradict such evidence. This will allow it to weigh the threat to the public interest against the potential consequences of the order.
>
> *Re Valentine*, (2002), 25 O.S.C.B. 5329 at 5331.

V. REASONS AND CONCLUSIONS

A. Extension of the Amended De Freitas Temporary Order

[36] As this is an interlocutory hearing based on limited evidence, the only issue before us is whether the Amended De Freitas Temporary Order should be extended, based on sufficient evidence of conduct harmful to the public interest for which no satisfactory explanation has been provided by the Respondent.

[37] We note the following evidence, which was presented by Staff and not contradicted or satisfactorily explained by De Freitas:

i. De Freitas or a member of his family owned the properties from which Select American operated during certain periods.

ii. De Freitas approached Wong about setting up and operating Select American. Wong was the incorporating director of Select American, but resigned within four to five months of its incorporation. Upon Wong's resignation, all Wong's shares in Select American were transferred to De Freitas, and De Freitas was appointed the sole signing officer of Select American's bank accounts. De Freitas remained a signing officer of Select American throughout the period of its operation.

iii. While residing in Ontario, De Freitas established upwards of forty-two trading accounts as a "foreign affiliate" of Franklin Ross, a broker dealer in the U.S., purportedly on behalf of clients. Staff reviewed the trading in

eight of these accounts during the period between December 2006 and May 2007. The trading showed a consistent pattern of wholesale or systematic liquidation of shares. Within that period, the trading in these accounts generated over US$750,000, the majority of which is attributable to trading in securities of Pharm Control, International Energy, Asia Telecom and other issuers related to Select American.

iv. Virtually all of the proceeds from the eight accounts reviewed by Staff were transferred to correspondingly named bank accounts in Ontario which were either owned or controlled by De Freitas.

[38] Counsel for De Freitas referred to several apparent gaps and inconsistencies in the affidavits sworn by Carpenter and Gallacher. He also made a number of submissions with respect to Wong's role at Select American and with respect to the conduct under investigation. He pointed out that Wong was subject to a cease trade order at an earlier stage in this proceeding, but the order was not extended after June 25, 2007. Counsel for De Freitas also suggested that others may be involved in a similar pattern of trading as seen in the eight accounts reviewed by Staff.

[39] Counsel for De Freitas introduced an updated version of the De Freitas & Associates webpage, and submitted that the trades in issue in this proceeding were trades in the ordinary course of De Freitas' business as a "financial and strategy consultant."

[40] In general, counsel for De Freitas submits that on key points the affidavits of Carpenter and Gallacher rely on the statements made by people they interviewed, including Wong, which may or may not be reliable. Counsel for De Freitas submits this undermines Staff's affidavit evidence.

[41] While counsel for De Freitas has raised a number of questions about Staff's evidence against De Freitas, we are not persuaded that they undermine Staff's case for an extension of the Amended De Freitas Temporary Order. We find that while Staff's evidence may fall short of what would be required in a hearing on the merits, that evidence is more than mere suspicion or speculation. We also note that the investigation concerns a consistent pattern of improper trading that presents a serious risk to investors and to the integrity of the capital markets. No satisfactory information has been provided to Staff or the Commission by De Freitas. We find that Staff has presented sufficient evidence that De Freitas may be involved in conduct harmful to the public interest, and that this evidence has not been explained or rebutted by De Freitas.

[42] Accordingly, we find that it is in the public interest to extend the Amended De Freitas Temporary Order to protect investors while the investigation is being completed. Gallacher testified that he has had numerous interviews, including interviews with 15 people from eight jurisdictions other than Ontario, and has collected about 17 or 18 boxes of documents, including brokerage records, telephone records and records from transfer agents. He also testified that additional interviews are planned, and that significant bank records and other documents will be required. He estimated that the investigation would be completed in six to nine months. Given the scope and complexity of the investigation, we find it appropriate to allow Staff the time it requires to obtain and assess this information.

[43] The ultimate outcome of any proceeding will be determined based on a hearing on the merits. In the meantime, we are persuaded that the public interest will be served by extending the Amended De Freitas Temporary Order until June 24, 2008 or until further order of the Commission.

B. Personal Trading Carve-Out

[44] Counsel for De Freitas submitted that if the Amended De Freitas Temporary Order is extended, a carve-out should be provided to allow De Freitas to trade in his own personal account. He submitted this would minimize the intrusion that results from a very broad temporary cease trade order issued before an investigation is complete.

[45] Staff opposed De Freitas request for a carve-out on the basis that such a carve-out would allow further improper conduct that is harmful to Ontario's capital markets.

[46] We have considered the submissions of Staff and counsel for De Freitas, and we conclude that a personal trading carve-out should be granted, subject to restrictive terms and conditions. We find that it is appropriate to allow a restricted personal trading carve-out given that Staff has not completed its investigation, has not issued a Statement of Allegations against De Freitas and has not proven its case. In our opinion, permitting trading on the basis ordered would be of little risk or harm to the public. Further, in our view, the reporting conditions set out in subparagraphs (ii) and (v) of paragraph 1 of the order will enable Staff to take such action as it considers necessary or appropriate in the circumstances.

VI. THE ORDER

[47] Accordingly, pursuant to subsection 127(8) of the Act, **IT IS ORDERED** that:

1. Pursuant to clause 2 of subsection 127(1), all trading by De Freitas directly or indirectly in any securities shall cease, except that he is permitted to trade in securities solely for his own account or for the account of a registered retirement savings plan or registered retirement income fund (as defined in the Income Tax Act (Canada)) in which he has sole legal or beneficial ownership, provided that:

    (i) the securities consist only of securities that are listed and posted for trading on the Toronto Stock Exchange or the New York Stock Exchange (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;

    (ii) De Freitas submits to Staff, at least five business days prior to the first trade made under this Order, a detailed written statement showing his direct or indirect legal or beneficial ownership of or control or direction over all securities referred to in paragraph (i), as of the date of this Order;

    (iii) De Freitas does not have direct or indirect legal or beneficial ownership of or control or direction over more than one per cent of the outstanding securities of the class or series of the class in question;

    (iv) De Freitas must trade only through a registered dealer and through accounts opened in his name only and must immediately close any trading accounts that were not opened in his name only; and

    (v) De Freitas must submit standing instructions to each registrant with whom he has an account, or through or with whom he trades any securities, directing that copies of all trade confirmations and monthly account statements be forwarded directly to Staff at the same time such documents are sent to De Freitas, and De Freitas must ensure that such instructions are complied with.

2. This order is in effect until June 24, 2008 or until further order of the Commission.

DATED at Toronto this 9th day of January, 2008.

“James E.A. Turner”

“Suresh Thakrar”

3.1.2 AiT Advanced Information Technologies Corporation et al.

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

AND

IN THE MATTER OF
AiT ADVANCED INFORMATION TECHNOLOGIES CORPORATION,
BERNARD JUDE ASHE AND DEBORAH WEINSTEIN

REASONS AND DECISION

Hearing:	September 5, 6, 7, 10, 11, 17, 19, 20, 21, 26, 27, 2007 October 16, 2007		
Decision:	January 14, 2008		
Panel:	Wendell S. Wigle, Q.C.	-	Commissioner and Chair of the Panel
	Harold P. Hands	-	Commissioner
	Carol S. Perry	-	Commissioner
Counsel:	Jane Waechter Stephanie Collins Erez Blumberger Scott Pilkey	-	For the Ontario Securities Commission
	Alistair Crawley Matthew Scott	-	For Deborah Weinstein
	Wendy Berman	-	Independent Counsel for Deborah Weinstein in attendance on September 5, 2007
	John Fabello	-	For Bernard Jude Ashe, in attendance on September 5, 6, and 7, 2007

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REASONS AND DECISION

I. OVERVIEW

A. Introduction

[1] This was a hearing before the Ontario Securities Commission (the "Commission") to decide whether Deborah Weinstein ("Weinstein") authorized, permitted or acquiesced in a breach of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") and acted contrary to the public interest by authorizing, permitting or acquiescing in Advanced Information Technologies Corporation's ("AiT") failure to disclose forthwith the merger transaction between AiT and 3M Company ("3M") as a material change by April 25, 2002 and in any event not later than May 9, 2002 ("the Relevant Period"). The parties agreed that this proceeding should be bifurcated; first a hearing on the merits; and second, if necessary, a hearing to address sanctions.

[2] This proceeding was commenced by a Statement of Allegations (the "Allegations") and notice of hearing (the "Notice of Hearing"), dated February 8, 2007.

[3] It is alleged that AiT contravened section 75 of the Act and engaged in conduct contrary to the public interest by failing to disclose forthwith the merger transaction (the "Merger Transaction"), between AiT and 3M, as a material change; and that, Weinstein and Bernard Jude Ashe ("Ashe") committed an offence pursuant to section 122(3) of the Act and engaged in conduct contrary to the public interest by authorizing, permitting or acquiescing in AiT's failure to disclose forthwith the Merger Transaction as a material change. These are the issues which we must consider.

[4] It is important to note that this is not a case where bad faith is alleged. Staff of the Commission ("Staff") clarified in the opening statement that it is not alleged that Weinstein intended to violate securities law or actively mislead the market, nor is there any suggestion of impropriety or bad faith on the part of the AiT Board of Directors (the "AiT Board") in making its decision not to disclose the 3M negotiations during the Relevant Period.

[5] On September 5, 2007, the hearing on the merits commenced and evidence was heard on September 5, 6, 7, 10, 11, 17, 19, 20, and 21, 2007. Following the close of evidence, we heard submissions on the merits on September 26, and 27, and October 16, 2007.

B. Summary of our Decision

[6] Upon reviewing all the evidence and the applicable law, we have concluded that there is no clear and cogent evidence that a material change occurred during the Relevant Period. Specifically:

(1) We agree with the submissions of Staff that, in appropriate circumstances, a material change can occur in advance of the execution of a definitive binding agreement, and therefore, the determination of whether a material change has occurred is not a "bright-line" test. Instead, the assessment of whether a material change has occurred, particularly in the context of an arm's length negotiated transaction, will depend on the specific facts and circumstances of each case and will vary case to case;

(2) In considering whether a board resolution constitutes a "decision to implement such a [material] change" within the definition of material change in the Act, in the context of an arm's length negotiation of a merger transaction before a definitive agreement has been reached, there must be sufficient evidence by which the board could have concluded that there was a sufficient commitment from the parties to proceed and a substantial likelihood that the transaction would be completed;

(3) With specific reference to the AiT Board resolution of April 25, 2002, we conclude that there was insufficient evidence available at that time to determine that: (i) 3M was committed to proceed with a transaction; and (ii) there was a substantial likelihood that the transaction being discussed would be completed.

(4) In assessing the letter of intent ("LOI") entered into between AiT and 3M on April 26, 2002, we conclude from a detailed analysis of all the facts and circumstances in this case that entering into the LOI did not constitute a material change in the business, operations or capital of AiT;

(5) During the portion of the Relevant Period after the signing of the LOI, no developments occurred in the status of the negotiations which would have led AiT to conclude that 3M was then more committed to proceed or that there was at that time a substantial likelihood that the transaction would be completed;

(6) Having concluded that there was no material change in the business, operations or capital of AiT during the Relevant Period, AiT did not breach section 75 of the Act and was not required to make timely disclosure of its negotiations with 3M. Since the allegations against Weinstein were that she had breached sections 122(3)

and 127(1) of the Act which were premised upon a breach by AiT of section 75, those allegations against her must be dismissed.

II. BACKGROUND

A. The Respondent: Weinstein

[7] AiT was a federally incorporated company located in Ottawa. It was a reporting issuer in Ontario, and its shares traded on the Toronto Stock Exchange ("TSX").

[8] Weinstein is a partner in the law firm LaBarge Weinstein LLP in Ottawa, and practices in the areas of securities and corporate finance. Weinstein's clients include both public and private companies. Since the spring of 1993, AiT was one of Weinstein's clients.

[9] Weinstein became a director of AiT in 1996, and during the Relevant Period, was one of eight directors of AiT.

B. History of Proceedings

1. The Statement of Allegations

[10] The Allegations alleged that the Merger Transaction constituted a material change within the meaning of section 75 of the Act by April 25, 2002, and in any event, not later than May 9, 2002.

[11] The Allegations were issued in relation to three respondents: (1) AiT; (2) Ashe; and (3) Weinstein (collectively the "Respondents"). The allegations are as follows:

(1) AiT contravened section 75 of the Act and engaged in conduct contrary to the public interest by failing to disclose forthwith the Merger Transaction as a material change; and

(2) Weinstein and Ashe committed an offence pursuant to subsection 122(3) of the Act and engaged in conduct contrary to the public interest by authorizing, permitting or acquiescing in AiT's failure to disclose forthwith the Merger Transaction as a material change.

2. The Settlement Agreements

[12] On February 19, 2007, AiT entered into a Settlement Agreement, and on February 23, 2007, Ashe entered into a Settlement Agreement. Both Settlement Agreements were approved on February 26, 2007.

3. Preliminary Motions

[13] Before the hearing on the merits, a number of preliminary motions were dealt with. On May 9, 2007, a Panel heard Weinstein's motion to dismiss the proceeding (the "Motion to Dismiss"). It was ordered that "the Motion to Dismiss be adjourned until Staff has called its evidence at the hearing, subject to the discretion of [Weinstein] and subject to the discretion of the panel at the hearing" ((2007), 30 O.S.C.B. 4694).

[14] On June 13, 2007, Staff brought a motion to determine whether Alistair Crawley ("Crawley") and Crawley Meredith LLP should be removed as counsel of record for Weinstein due to a conflict of interest (the "Motion for Removal of Counsel"). In Staff's view, there was a conflict of interest because Staff might call witnesses at the hearing on the merits to testify against Weinstein who are Crawley's former clients, and Crawley would be put in the position of cross-examining them. The Panel determined that Crawley could continue to act for Weinstein, subject to conditions, which included having Weinstein retain independent counsel to cross-examine any witnesses that were former clients of Crawley.

[15] Staff also brought a motion returnable on August 24, 2007 to ask for directions regarding the order issued regarding the Motion for Removal of Counsel because one of Staff's witnesses, Paul Damp ("Damp"), gave his consent to be cross-examined by Crawley instead of Weinstein's independent counsel. Prior to the hearing of this motion, Staff and Weinstein's counsel resolved the motion by agreeing that Weinstein would irrevocably undertake to call Damp as a witness in defence, so that Crawley would be able to lead Damp's evidence by way of direct examination. This would eliminate the need for Crawley to cross-examine Damp, his former client. Weinstein acknowledged that the Motion to Dismiss may only be brought after Damp's testimony. During the hearing on the merits, counsel for Weinstein did not raise the issue of the Motion to Dismiss after Damp's testimony.

III. THE ISSUES

[16] Staff's allegations involve section 75 and subsection 122(3) of the Act, and the allegations raise two primary issues:

(1) did the status of the negotiations with 3M constitute a "material change" in the business, operations or capital of AiT during the Relevant Period as alleged by Staff, in which case AiT would have been required by section 75 of the Act to: issue a news release forthwith providing notice of the material change and file a material change report, or in the alternative, file a confidential material change report with the Commission; and

(2) if so, did Weinstein in her capacity as a director of AiT, authorize, acquiesce or permit a breach by AiT of section 75 in contravention of subsection 122(3) of the Act and contrary to the public interest under subsection 127(1) of the Act.

IV. THE EVIDENCE

A. Chronology of Events

[17] Staff and Counsel for Weinstein provided a joint hearing brief comprised of nine binders containing evidence relating to the chronology of events involving the Merger Transaction. Staff informed us at the outset of the hearing that the documents contained in the joint hearing brief were tendered on consent of the parties, unless otherwise specified at the hearing.

[18] The following is our summary of the chronology of events relating to the Merger Transaction based on the uncontested evidence adduced by the parties.

1. Description of AiT's Business

[19] In September of 2001, AiT had approximately 110 employees and annual revenue in the range of $16-17 million.

[20] At this time, Ashe was the President, Chief Executive Officer ("CEO") and a director of AiT.

[21] AiT's principal business was the sale of systems to issue and inspect secure travel documents, including passports (a.k.a. the ID business). AiT was a market leader in the ID business, with its largest customer being the Canadian government.

[22] AiT had also started a business unit called Affinitex, which was aimed at providing security identity solutions to the U.S. health care industry. At the time of the events surrounding the Merger Transaction, Affinitex was a new venture in development and had no customers.

2. AiT's Condition in 2001 to 2002

[23] For its fiscal year ending on September 30, 2001, AiT had a negative cash flow from operations of $2 million and had a net loss of over $3.6 million. The negative cash flow and net loss were primarily due to the investment in Affinitex.

[24] As at September 30, 2001 AiT had credit facilities totaling $4.5 million with CIBC, of which approximately $2.8 million was drawn. The total amount of $4.5 million comprised an operating facility of $3.5 million (that was secured by receivables, inventory and other assets), and a term facility in the amount of $1.0 million that was set up at the time that equity was raised for the investment in Affinitex. The term facility had a maturity date of March 31, 2002.

[25] On September 11, 2001, the AiT Board held a meeting, and the focus of this meeting was to agree on some spending cuts and employee terminations in both Affinitex and the core ID business. This was necessary at this time because AiT had not yet secured any customers for Affinitex.

[26] In response to the terrorist attacks of September 11, 2001, AiT decided to meet with customers and determine first hand what the priorities of customers (i.e. governments) would be post-September 11, 2001, and how AiT's business could respond. The outcome from meeting with customers revealed to AiT that AiT had to get bigger in order to be able to bid on some of the opportunities that would be coming up in the future. This meant that AiT would have to partner with or be acquired by a larger company.

[27] On October 26, 2001, AiT's Strategic Committee, which was a standing committee of the AiT Board composed of Ashe, Damp, Richard Lesher ("Lesher"), Graham Macmillan ("Macmillan") and Stephen Sandler ("Sandler") (the "Strategic Committee"), met to discuss opportunities for AiT and Affinitex. Ashe provided a memo to the Strategic Committee, which recommended that AiT focus on the traditional company business, the ID business, as a way to grow the company. This memo also alerted the Strategic Committee that AiT's cash position was very "tight" and that AiT needed to strengthen its financial

position. At this time, the bank's position was that they wanted AiT to stop investing ID business profits into Affinitex product development.

3. The Proposed Equity Financing Transaction

[28] At the Strategic Committee meeting of October 26, 2001, Ashe recommended that AiT should raise equity and engage the investment dealer Raymond James as its agent for this purpose. Raymond James was an investment banker specializing in biometrics and security-related investments and deals. The recommendation was to raise between $3 million and $5 million by way of a private placement and on a best-efforts basis.

[29] AiT's shares were thinly traded, and AiT's directors and senior officers held approximately 30% of the outstanding shares. As well, no equity research analysts were covering AiT.

[30] The purpose of raising equity was to allow AiT to look at alternatives including further product development and possible partnering with larger companies. Ashe also recommended selling AiT. According to Ashe, raising equity would buy AiT time to consider its alternatives.

[31] On the recommendation of the Strategic Committee, the AiT Board approved the equity financing plan and the engagement of Raymond James at the AiT Board meeting on November 12, 2001.

[32] However, the efforts to raise equity financing were unsuccessful. Institutional investors had concerns about investing in AiT relating to AiT's history and relatively small market capitalization. AiT received only moderate interest and approximately $2 million of confirmed investment orders, and in December 2001 the equity financing was withdrawn.

4. The Proposal to Engage an M&A Advisor

[33] After the proposed equity financing failed, Ashe's opinion was that AiT was at a point where it needed to move to sell the company. In late January, he discussed with the Executive Committee the idea of finding an acquirer for AiT. There was general agreement that this was the right thing to do.

[34] Ashe also felt that AiT needed to engage an M&A advisor to assist with the process to sell AiT, to give advice on potential acquirors and how to position AiT for the best possible outcome. On January 25, 2002, Ashe discussed the idea of hiring an M&A advisor with the Strategic Committee and it agreed that the issue of hiring an M&A advisor should be brought for approval by the AiT Board at its meeting in February 2002.

[35] On February 19, 2002, the AiT Board unanimously agreed to engage an advisor to investigate strategic opportunities for AiT and delegated the responsibility for selecting the advisor to the Strategic Committee.

5. The Unsolicited Approach of 3M

i. Harrold's Telephone Call in February 2002

[36] Steve Harrold ("Harrold") was the manager of the Security Market Center at 3M headquarters in St. Paul, Minnesota.

[37] Prior to Harrold contacting Ashe, AiT had previously had some interaction with 3M. In late October 2001, a technical team from 3M came to visit AiT to get an update on AiT's products and technology. This meeting was organized after Ashe was contacted by email on October 15, 2002, by Andy Dubner of 3M to discuss exploring a new business opportunity. After this meeting, there was a continuing discussion between the technical people at 3M and AiT to keep each other informed on technical developments and other matters.

[38] By letter dated December 11, 2001, Harrold contacted Ashe to follow up on the discussions that took place in October 2001. A non-disclosure agreement was enclosed with this letter. In addition, Harrold followed up with an email to Ashe dated December 27, 2001 to set up a meeting to discuss business and technical issues and strategic partnership opportunities between 3M and AiT.

[39] Subsequent to this correspondence, Ashe signed the non-disclosure agreement on January 15, 2002. Ashe's meeting with Harrold in late January was cancelled.

[40] The next contact Ashe had with Harrold was by telephone around February 17 and 18, 2002, which was the same time when Ashe was meeting with M&A advisor candidates. In this telephone call, Harrold disclosed that 3M was looking for acquisitions, ways to grow its business, and was interested in looking at AiT.

[41] After this phone call from Harrold, Ashe focused on this opportunity with 3M and gave it priority.

ii. The February 28, 2002 Meeting with Harrold

[42] Ashe met with Harrold on February 28, 2002 in Ottawa to discuss opportunities for AiT and 3M. Harrold informed Ashe that 3M was looking for companies to acquire that fit their strategy, and that 3M was interested in AiT because 3M did not have any software and systems development capabilities and 3M wanted to have a stronger position in the document reader market.

[43] Harrold also informed Ashe that he was a manager for the Security Markets Centre for 3M, and that he reported to Pete Swain, the Vice-President of the Safety and Security Systems Division ("Swain"), who reported to Ron Weber the Executive Vice President, Transportation, Graphics & Safety Markets ("Weber"). Weber reported to the CEO, Jim McNerney ("McNerney").

[44] At this meeting, Harrold also informed Ashe that 3M used a process called Six Sigma ("Six Sigma") to make business decisions. It was understood that Six Sigma was a highly structured process that improved important decision-making by attempting to remove intuition and judgment and relying on extensive measurements of data and facts. For example, adhering to this process was believed to reduce costs, improve revenue and improve process throughputs. Ashe testified that Six Sigma required very deliberate steps to be taken, and included a blue book process (the "Blue Book Process") that was to be followed in the second phase of due diligence.

[45] At the end of the meeting, Harrold informed Ashe that he would get back to Ashe regarding the issue of timelines.

[46] After the discussion with Harrold, AiT deferred its process to hire an M&A advisor.

iii. The March 4, 2002 Phone Call

[47] On March 4, 2002, Harrold called Ashe to confirm the timetable that 3M would use to conduct their due diligence and to follow the process that they had to follow in order to make a decision on the proposed purchase of AiT.

[48] The timetable included two phases of due diligence: first an overall high level version of due diligence, and second, the Blue Book Process that 3M adhered to. The latter was a much more detailed level of due diligence and required certain approvals by the 3M board and executive. It was an extensive process that involved looking at all the different dimensions of an investment decision, including cash and financing considerations, and issues relating to human resources, research and development, technology, intellectual property and taxation.

[49] According to the timetable, the first due diligence visit of AiT would be conducted by 3M on March 26, 27 and 28, 2002 and discussion regarding pricing and valuation of AiT would occur on April 10 to 12, 2002. Ashe agreed to this timetable and found that it was reasonable.

[50] Following the timetable discussions on March 4, 2002, AiT and 3M entered into a non-disclosure agreement specifically relating to such a potential transaction on March 12, 2002. The non-disclosure agreement included customary provisions prohibiting 3M from acquiring, or offering to acquire, shares of AiT without the consent of the AiT Board.

6. The First Due Diligence Visit: March 26, 27 and 28, 2002

[51] On March 14, 2002, Ashe received a copy of 3M's due diligence checklist by email, and AiT prepared the appropriate documentation and presentations for the scheduled due diligence review.

[52] On March 26, 27 and 28, 2002, the first due diligence visit took place at the offices of AiT and LaBarge Weinstein. Management presentations and product demonstrations took place at AiT's offices, while documentation, contract and financial reviews took place at the offices of LaBarge Weinstein.

[53] Swain, Harrold, and, approximately 8-10 other managers and directors in the business development, technical and financial areas of 3M's various divisions attended the due diligence review.

[54] AiT perceived their product demonstrations to have gone well. Overall, AiT felt that the due diligence was successful and received positive feedback from 3M about the visit. Based on the feedback received, Ashe believed 3M to be very serious about pursuing a transaction with AiT. AiT was also very serious and perceived the discussions to be progressing very well.

7. The Creation of the Valuation Committee: April 8, 2002

[55] After the due diligence visit, AiT felt confident that the discussions would proceed to pricing, which was going to be an important step in the process. Ashe was concerned about 3M's valuation of AiT, and created a Valuation Committee with Weinstein and Damp to prepare for upcoming pricing discussions with 3M.

[56] The Valuation Committee conducted research on how 3M approached valuation on previous deals and how they could present their own valuation of AiT. They prepared valuations of AiT based on various scenarios and assumptions, and prepared materials outlining its strengths and weaknesses for the pricing negotiations. The Valuation Committee also ensured they were on the same page regarding their understanding of the business issues facing AiT at that time.

8. The Meeting in St. Paul: April 11 and 12, 2002

[57] On April 11 and 12, 2002, a meeting regarding AiT's valuation was held at 3M's offices in St. Paul, Minnesota. Ashe, Damp and Weinstein attended the meeting on behalf of AiT. On 3M's side, the meeting was attended by Harrold, Walt Scheela who directly reported to Weber ("Scheela"), and Kevin Curran who was a marketing manager directly reporting to Harrold.

[58] On April 11, 2002, both AiT and 3M refused to put the first number on the table. AiT used this opportunity to gauge 3M's perceptions of AiT and the strengths and weaknesses in its business. At the end of the meeting, it was agreed that AiT would return with a number the next morning.

[59] Damp used the information they extracted from the meeting regarding 3M's valuation criteria to prepare a forecast and develop a proposed valuation for AiT in the amount of $75 million. On April 12, 2002, AiT revealed their number to 3M. 3M objected to AiT's valuation of $75 million. This led to a discussion over a few hours regarding numbers, statistics and objections.

[60] By the end of the discussion, AiT and 3M agreed to disagree, and AiT left with the understanding that 3M valued AiT between $35 and $45 million. There was also some discussion that the proposed transaction would be structured as an asset purchase because 3M did not see value in Affinitex or AiT's tax loss carry-forwards.

[61] At this point Ashe consulted with Weinstein whether disclosure had to be made of the events that were unfolding with 3M, and Weinstein informed Ashe that there was no obligation to disclose at this stage of the negotiations because "nothing had happened".

9. Harrold's Telephone Calls Regarding the Value of AiT

i. The Telephone Call of April 23, 2002

[62] On April 23, 2002, Harrold, Scheela and Sarah Grauze telephoned Ashe and held a conference call to discuss 3M's view of AiT's value. During this conference call, it was revealed that 3M felt AiT's value should be pegged at $40 million. Ashe made it clear that he had no authority to agree or disagree with this number and that he would have to take it to the AiT Board. During this phone call, Ashe was not successful in making any progress to improve 3M's number of $40 million.

ii. The Telephone Call of April 24, 2002

[63] On April 24, 2002, there was another telephone conference call regarding AiT's value. Harrold, Scheela and Ashe participated in this call. During this call, Ashe asked for approximately $3 million dollars to be added to 3M's number of $40 million. After further discussions, 3M added $1 million on their original price, for a total of $41 million. It was also established during this call that the $41 million was for the whole company, including Affinitex. The proposed transaction was to be structured as a share purchase with $41 million representing a price of $2.88 per share of AiT.

[64] Through further discussions, AiT also resolved the issue of the treatment of "in-the-money" stock options, and 3M agreed to pay a total of $42.6 million for the company, which included stock options.

[65] According to Ashe this was the end of the pricing discussions with 3M, and the next step was to inform the AiT Board.

10. The AiT Board Meeting: April 25, 2002

i. The AiT Board's Approval

[66] The AiT Board meeting on April 25, 2002, was held by telephone conference call. The minutes state that all of the directors of AiT (Ashe, Allan Churgin, Damp, Lesher, Edward C. Lumley ("Lumley"), Macmillan, Sandler and Weinstein) were present.

[67] During the meeting, Ashe updated the AiT Board regarding the phone calls and meeting with 3M since the beginning of April, including the meeting in St. Paul on April 11 and 12, 2002, and the phone calls on April 23 and 24, 2002. The purpose of this meeting was to obtain the AiT Board's support for the proposed valuation of AiT, in order to enable 3M to proceed with the next step in the negotiations, the preparation of a non-binding LOI.

[68] During the AiT Board meeting of April 25, 2002, the issue of disclosure of the 3M proposal was discussed. This issue was raised by Lumley, and the discussion on disclosure lasted approximately 20 minutes. Further evidence regarding the discussion on disclosure is addressed in the section of our Reasons dealing with the testimony of the witnesses and the affidavits.

[69] The Minutes of the AiT Board meeting on April 25, 2002, summarize Ashe's update to the AiT Board:

> As a result of further discussions 3M came back with a verbal offer of $2.88 per share payable in cash on closing by 3M for all the outstanding shares and options of the company. After taking into account the exercise price of outstanding options this resulted in an aggregate purchase price of approximately Cdn $41 million. Subject to Board approval by AiT, 3M would draft for execution by both parties a non-binding letter of intent to acquire all the shares as discussed. The parties have agreed to work diligently towards a definitive agreement and announcement.

[70] Following Ashe's update, the minutes of the AiT Board meeting record that the AiT Board unanimously "approved the recommendation to shareholders of the acquisition by 3M of all of the outstanding shares and options in [AiT] at a cash purchase price of $2.88 per share […]."

[71] In addition, the Minutes of April 25, 2002 state that this approval was subject to:

> […] confirmation of the fairness of this price by AiT's financial advisor, CIBC Investment Banking, and satisfaction of the Board with the final terms of the transaction, including the tax consequences to the Company's shareholders.

[72] The AiT Board also authorized Ashe to execute any documents in furtherance of the transaction with 3M, including the non-binding LOI.

ii. The Email to the Bank

[73] The term loan with CIBC was still outstanding and it was important to keep the bank onside while 3M was exploring a potential transaction. Accordingly, Ashe sent out an email on April 25, 2002, immediately after the AiT Board meeting to Mauro Spagnolo, a vice-president of CIBC, to update the bank on the status of the discussions with 3M. This email states that:

> The discussions have been on a fast track. Since our first meeting on February 28, they have visited and completed the first phase of due diligence, we have visited them and completed the first phase of a pricing discussion. There have been numerous telephone conversations and exchange of information. They received the approval of their group VP last Tuesday April 16th and received the approval of the CEO on Monday April 22. We have been in a second phase of a pricing discussion since Monday and today our Board agreed to a price of $2.88 per share or CDN $42.6M for the company.

[74] Subsequent testimony revealed that some of the content of this email was inconsistent with the events that took place. With respect to the statement that 3M received approval from the Group VP on April 16, and approval of the CEO on Monday April 22, there is no corroborating evidence, documentary or otherwise, that demonstrates that approvals were given on this date. Further, when Ashe was questioned about these approvals, he testified that he could not recall who had informed him of the approvals. Because the purpose of the email appears to be an attempt to convey a level of comfort to the bank that it would be paid out, we give little weight to this email when considering the evidence as a whole (see paragraph 112 infra).

11. The LOI: April 26, 2002

[75] On April 26, 2002, Ashe signed the LOI on behalf of AiT, after a few changes were made to the text at the suggestion of Weinstein and her associates at LaBarge Weinstein.

[76] In view of the importance of the LOI to this hearing and the relevance of its content, the entire text of the LOI is set out below:

> Dear Mr. Ashe:
>
> This letter confirms our mutual understanding with respect to a proposal by 3M Company ("3M") for the purchase of the outstanding capital stock of AiT Advanced Information Technologies Corporation ("AiT"). The purchasing entity shall be 3M Company and/or one or more of its affiliates.

1. Based upon the data furnished by you regarding AiT, 3M is prepared to offer CAD $2.88 for each fully diluted share of common stock of AiT. We have assumed in formulating this level of value that the stock is sold to 3M under similar Balance Sheet conditions and levels as shown in AiT's most recent quarterly filing with the Canadian Securities Administrators.

2. 3M currently has adequate resources to fund the purchase price as well as the ongoing working capital needs. As such, there is no financing contingency associated with this transaction.

3. Any agreement for the purchase of the stock of AiT is subject to a favorable due diligence review by 3M that is to be completed prior to 5:00 pm Eastern Time on May 13, 2002. This review will include, but is not limited to, a review of AiT's business operations, research and development, manufacturing, financial, legal, environmental and regulatory matters. A definitive purchase agreement will also contain representations, warranties and covenants which are usual and normal in a transaction of this type and size.

4. (a) In consideration of 3M's continued evaluation of a potential transaction with AiT, and as an inducement for 3M to continue to expend time and incur expenses in connection therewith, AiT agrees that it shall immediately cease and cause to be terminated all existing discussions, negotiations and communications with any persons with respect to any Acquisition Proposal (as defined below). From the date of this letter until May 24, 2002, the Company shall not, and shall not permit any of its Representatives (as defined below) to, (i) solicit, initiate, consider, encourage or accept any Acquisition Proposal or (ii) except as provided in paragraph 4(b), participate in any discussions, negotiations, or other communication regarding, or furnish to any other person any information with respect to, or otherwise cooperate in any way, assist or participate in, facilitate or encourage any effort or attempt by any other person to make, any Acquisition Proposal. It is understood that any violation of the foregoing restrictions by any of the AiT's Representatives, whether or not such Representative is so authorized and whether or not such Representative is purporting to act on behalf of AiT or otherwise, shall be deemed to be a breach of this obligation by A1T.

   (b) Notwithstanding anything to the contrary in paragraph 4(a) above, nothing herein shall prohibit AiT from furnishing information regarding AiT to, or entering into discussions or negotiations with, any person in response to an unsolicited "Superior Offer" (defined to be an offer to purchase each fully diluted share of common stock of AiT, payable in cash or freely marketable securities of a third party, at a price of not less than $3.20 per share) that is submitted to AiT by such person (and not withdrawn) if (a) neither AiT nor any of its Representatives shall have breached or taken any action inconsistent with any of the provisions set forth in paragraph 4(a) above, (b) the board of directors of AiT concludes in good faith, after considering the written advice of its outside legal counsel, that such action is required in order for the board of directors of AiT to comply with its fiduciary obligations to AiT's shareholders under applicable law, (c) AiT complies with its obligations to 3M under paragraph 4(c) below, and (d) AiT receives from such Person an executed confidentiality agreement in substantially similar form and content to the Confidential Disclosure Agreement dated March 12, 2002 between the parties hereto.

   (c) AiT shall promptly advise 3M of AiT's receipt of any Acquisition Proposal and any request for information that may reasonably be expected to lead to or is otherwise related to any Acquisition Proposal, the identity of the person making such Acquisition Proposal or request for information and the terms and conditions of such Acquisition Proposal. AiT agrees to give 3M the right to respond to any Superior

Offer before concluding negotiations with any person making the Superior Offer.

(d) "Acquisition Proposal" means any proposal or offer from any person (other than 3M or one or more of its affiliates) (i) relating to any direct or indirect acquisition of five percent or more of any class of capital stock (or securities exercisable for or convertible or exchangeable into five percent or more of any class of capital stock) of AiT or any of its direct or indirect subsidiaries, or five percent or more of any class or series of debt securities of AiT or any of its direct or indirect subsidiaries, or all or a substantial portion of the assets of AiT or any of its direct or indirect subsidiaries, (ii) to enter into any merger, consolidation or other business combination with AiT or any of its direct or indirect subsidiaries or (iii) to enter into any other extraordinary business transaction (including, without limitation, any reorganization, recapitalization, liquidation, dissolution or similar transaction) involving or otherwise relating to AiT or any of its direct or indirect subsidiaries.

(e) "Representative" means, as to any person, such person's affiliates and its and their directors, [officers], employees, agents, advisors (including, without limitation, financial advisors, counsel and accountants) and controlling persons.

(f) As used in this letter agreement, the terms "person" shall be interpreted broadly to include, without limitation, any corporation, company, partnership, limited liability company, other entity or individual, as well as any group [or] syndicate that would be deemed to be a person under the law.

5. Both parties undertake to retain in confidence the existence of this letter and no written or oral announcement of the transaction will be made. This letter agreement is to remain confidential pursuant to the terms of the Confidential Disclosure Agreement dated March 12, 2002 between the parties hereto.

6. 3M's obligation to close the transaction shall be conditioned upon the AiT shareholders, listed in Schedule I, entering into Voting and Stock Option Agreements in favor of the approval and adoption of the transaction, subject to customary limitations and conditions. This indication of value and letter is understood as non-binding and subject to the approval of the appropriate management committees and the board of directors of 3M, as well as any applicable government agencies and the termination or waiver of any AiT Shareholder Rights Plans. Notwithstanding the foregoing sentence, 3M and AiT hereby agree that paragraphs 4 and 5 hereof and this paragraph 6 are binding. Accordingly, you should not make any business decisions in reliance upon this letter or the successful consummation of the proposed transaction. If, for any reason, 3M and AiT are unable to consummate the transaction or to pursue further negotiations, neither 3M nor AiT shall have any liability or obligations to each other and each party shall pay its own costs and expenses.

If the foregoing meets with the approval of AiT, we are prepared to proceed with our due diligence review and other actions necessary to complete a transaction, with a target signing date not later than May 24, 2002. We look forward to receiving your response within five (5) days from the date of this letter, otherwise consider this letter withdrawn.

Very truly yours,

3M COMPANY

By: "*Ronald A. Weber*"
Ronald A. Weber
Executive Vice President, Transportation, Graphics & Safety Markets

Acknowledged this 26th day of April, 2002

Advanced Information Technologies, Inc.

By: "*Bernard J. Ashe*"
Bernard J. Ashe
President & CEO

12. The Insider Trading Warning Letter: April 26, 2002

[77] After the AiT Board meeting on April 25, 2002, Ashe and Weinstein discussed that it would be prudent to inform anyone working on the due diligence from this stage forward that they would need to maintain their knowledge and information as confidential and not engage in any trading or tipping or communication regarding the 3M discussions.

[78] Michael Dunleavy ("Dunleavy"), a lawyer at LaBarge Weinstein was charged with the task of preparing this document (the "Warning Letter"). The purpose of the Warning Letter was to ensure that the people involved in the due diligence, and the people who had any knowledge or involvement in AiT's discussions with 3M understood their obligations of confidentiality and their obligations not to trade or communicate anything that they knew. The Warning Letter addressed the Act's prohibitions on trading contained in section 76 of the Act.

[79] On April 26, 2002, the Warning Letter was circulated to the insiders of AiT and the members of the due diligence team. Ashe personally addressed the Warning Letter to all the recipients. In addition, Ashe met one on one with each of the individuals to explain the Warning Letter and its implications.

13. The Second Due Diligence Visit: May 7, 8 and 9, 2002

[80] AiT received 3M's second due diligence checklist on May 1, 2002, which outlined the issues to be discussed and addressed during the second due diligence visit. The checklist requested information regarding: financial information, tax filings and related tax information, sales and marketing, manufacturing, service, research and development, employees (organization, benefits, compensation), intellectual property, general legal agreements and commitments, real estate, environmental issues, health and safety, and AiT's information technology operating environment.

[81] AiT had previously prepared due diligence binders for the first due diligence visit on March 26, 27 and 28, 2002; however, the volume of information required by the May 1, 2002 checklist was much greater. During the second due diligence visit, AiT needed to compile information regarding their policies and procedures for managing their employees. Other concentrated areas at the due diligence session included product demonstrations and looking at a more detailed level of source code; customer issues regarding agreements and relationships; financial statements; and, some integration planning with respect to the compatibility of their businesses on the issues of managing employees, business culture and values.

[82] On May 7, 8 and 9, 2002, the second due diligence visit took place in the offices of LaBarge Weinstein and AiT. Close to 20 people attended this session on behalf of 3M, including a new group from 3M Canada.

14. The Rumours Circulating at AiT and the Telephone Call from RS

[83] During the second due diligence visit, the presence of 3M personnel on site at AiT led to internal rumours of an impending acquisition. Ashe was made aware by Roseann Vaughan ("Vaughan"), an administrative assistant at AiT, that rumours were being circulated by AiT employees that 3M was buying AiT. The affidavit of Vaughan, sworn September 9, 2007, confirmed that she drafted an email to alert Ashe to this fact on May 9, 2002.

[84] On May 9, 2002, AiT received a phone call from Bert De Souza ("De Souza") from Market Regulation Services Inc. ("RS") regarding an unusual increase in the trading volume and price of AiT shares. Wendy Smith ("Smith"), took the call at AiT and was informed by De Souza that AiT's stock was at a 52 week high and volume had also increased. Smith informed De Souza that AiT did not have any news and was not planning on sending any news out.

[85] Smith called Dunleavy to report the RS discussion. Dunleavy then called RS and left a voice message for De Souza explaining that AiT was in discussions to be "potentially acquired". Dunleavy informed RS of some aspects of the transaction, for example, that there was a non-binding LOI and that they were in the process of due diligence. Dunleavy also stated that they were at a formative stage and would have nothing to announce until later in a couple of weeks.

[86] Dunleavy also spoke to another employee at RS, and it was suggested that based on the trading activity in AiT's shares, it would be best to issue a press release. A draft press release was prepared by Dunleavy, which was circulated by email to in-house legal counsel at 3M, 3M's Canadian counsel and Ashe for comments. The final version of the press release was sent to De Souza, who approved it.

[87] At the end of the day on May 9, 2002, after trading had closed, AiT issued a press release entitled "AiT Comments on Recent Stock Activity." It stated that AiT was "exploring strategic alternatives that would ultimately enhance value for our shareholders." It further stated that AiT had "no further announcements to make at this time and do not intend to provide updates in respect of this process as we consider the various alternatives available to AiT." No material change report was filed with respect to the press release.

15. The Negotiation of the Merger Agreement

[88] After the signing of the LOI, Ashe requested Dunleavy to prepare a first draft of a pre-acquisition agreement as a way to move the potential transaction forward.

[89] On April 29, 2002, Dunleavy emailed Ashe a draft of the agreement. On April 30, 2002, Dunleavy emailed the draft of the agreement to Kim Price ("Price") and Roger Larson ("Larson") at 3M. In this draft agreement, the proposed transaction was structured as a take-over bid for AiT with 3M offering to purchase all of the issued and outstanding AiT shares, consistent with the LOI.

[90] In the period between April 30, 2002 and May 14, 2002, AiT waited for a response from 3M. On May 2, 2002, there was a preliminary phone discussion relating to the proposed agreement. On May 7, 2002, Price informed Dunleavy that having an agreement by May 14, 2002 was too aggressive, and on May 8, 2002, Dunleavy was informed that the proposed deal would be structured as an amalgamation, and that AiT should receive 3M's draft of the proposed agreement by May 14, 2002.

[91] On May 14, 2002, 3M provided AiT with their own draft merger agreement ("Merger Agreement"). This was a new document and it was a different document from the one that Dunleavy had initially provided to 3M.

[92] Many changes were made during the negotiation of the definitive version of the Merger Agreement. Some of the major changes on the draft agreement included the treatment of employees and the break-up fee. 3M was agreeable to making the changes that AiT suggested on these issues. Approximately 10 drafts went back and forth during the negotiation process to reach the final Merger Agreement. The structure of the transaction ultimately took the form of an amalgamation for tax reasons, so that the merged company could utilize AiT's tax losses.

16. The Support Agreements

[93] The delivery of signed support agreements by major shareholders of AiT was also a condition for the execution of the Merger Agreement. There was some concern that the requirement of putting appropriate support agreements to third parties would potentially delay the process, and on May 15, 2002, Dunleavy requested a copy of the support agreement to move the process along.

[94] On May 17, 2002, Dunleavy received a draft of the support agreement. At this time, there were two problems with the agreement, in particular the inclusion of an atypical non-competition clause and the omission of the negotiated term in the Merger Agreement that provided an out if there was a superior offer above an agreed price.

[95] Through negotiation, 3M accepted AiT's position on these two issues, and the support agreements were revised and signed contemporaneously with the Merger Agreement. The support agreements represented 38.8 % of the outstanding common shares, including 29.7 % controlled by the directors and senior officers of AiT.

17. The 3M Approval Process

[96] On May 14, 2002, the board of directors of 3M approved the acquisition of AiT subject to the approval of the CEO of the due diligence report and the integration plan. It is evident from Price's affidavit that a number of assessments (as part of the Blue Book Process) took place between May 14 to 20, 2002, including: sales and marketing assessment, manufacturing assessment, finance assessment, R&D assessment, IT assessment, real estate assessment, service assessment, insurance assessment, human resources assessment, environmental health and safety assessment, and office of intellectual property assessment.

[97] On May 21, 2002, the due diligence report and integration plan was completed. On that date, the 3M CEO also gave final approval of the transaction following the meeting of the Corporate Operations Committee held to consider the matter and the approval of the report and plan.

18. AiT Board Approval of the Merger Agreement

[98] On May 22, 2002, the AiT Board approved the definitive Merger Agreement and related documents and received a fairness opinion from CIBC Investment Banking, which concluded that the consideration offered to the shareholders of AiT in

connection with the Merger Transaction was fair, from a financial point of view, to shareholders. At this time, AiT's shareholder rights plan was also waived. These events are reflected in the minutes of the May 22, 2002 AiT Board meeting:

> NOW THEREFORE BE IT RESOLVED THAT:
>
> 1. The entry by the Corporation into the Agreement, the Transition Agreement and the performance by the Corporation of its obligations under those agreements (and the amalgamation agreement contemplated in the Agreement) are in the best interests of the Corporation and its shareholders and the consideration to be received by the shareholders of the Corporation from 3M, as contemplated by the Agreement is fair; and
>
> 2. The entry by the Corporation into the Transition Agreement and the Agreement as placed before the Board of Directors, including the form of amalgamation agreement contemplated in the Agreement, is approved and the President and Chief Executive Officer of the Corporation is authorized for and on behalf of the Corporation to sign the Agreement with such changes from the version approved by the Board as he determines to be necessary or desirable; and
>
> […]
>
> 4. Conditional on the prior execution of the Agreement, the Shareholder Rights Plan Agreement (the "Rights Agreement") between the Corporation and CIBC Mellon Trust Company, as Rights agent thereunder, dated February 20, 1998, and all of the Rights (as defined in the Rights Agreement) granted thereunder shall be deemed not to apply to the Amalgamation and shall terminate for no consideration without any act or formality on the part of a holder thereof on the effective date of the Amalgamation (and, without limiting the generality of the foregoing, no Flip-In Event or Separation Time (as those terms are defined in the Rights Agreement) shall be considered to have arisen as a result of the Amalgamation); and
>
> […]

[99] On May 23, 2002, AiT and 3M executed the definitive Merger Agreement. On the same day, AiT issued a press release and subsequently filed a material change report announcing that it had entered into the definitive Merger Agreement.

19. AiT Shareholder Approval of the Merger Transaction

[100] The process called for by the Merger Agreement required AiT to hold a shareholders meeting to approve the amalgamation of AiT with 3M. A special meeting of shareholders was held on July 15, 2002 for this purpose. The shareholders approved the transaction.

[101] The Merger Transaction closed on July 19, 2002, and a press release was issued and a material change report was filed by AiT.

B. Evidence Relating to Disclosure, Commitment and the Likelihood of Implementing the Proposed Transaction

[102] During the hearing, we heard and considered evidence from six witnesses, including Ashe, Michael Prior, Dunleavy, Damp, Philip Anisman ("Anisman") and Peter Dey ("Dey") (the latter two were expert witnesses). In addition, Weinstein also testified on her own behalf.

[103] We also received in evidence affidavits from Lumley, Macmillan, Price and Vaughan.

1. The Witnesses

i. Ashe

[104] Ashe was the president and CEO of AiT during the time period when AiT was involved in negotiating the Merger Transaction with 3M. In addition, Ashe was a member of the Valuation Committee and the Strategic Committee. During the hearing, he gave testimony regarding the detailed chronology of the events surrounding the Merger Transaction, and he also provided testimony regarding the issue of disclosure and commitment of AiT and 3M.

[105] With respect to the issue of disclosure, Ashe testified that on April 25, 2002, disclosure issues were discussed at the AiT Board meeting. He recalled that Weinstein mentioned that there was no obligation to disclose because the proposed deal was non-binding and numerous conditions existed that were beyond AiT's control. At this time there was still the issue of 3M

approvals and AiT did not have any documents at this point. Ashe testified that he thought that AiT's disclosure obligations would arise when there was commitment from 3M.

[106] Ashe also gave testimony relating to his understanding of the situation at the time the LOI was signed. He testified that there did exist some uncertainties as to whether the proposed deal would work out. These uncertainties included: concluding the second due diligence phase; concluding definitive purchase and sale agreements; getting approval from 3M's executive committee and board; and 3M's concluding of its Blue Book Process.

[107] As for the drafting of the proposed Merger Agreement, Ashe testified that at the time the document was being drafted, issues arose regarding severance and AiT's obligations to its employees and the break fee. However, 3M was ultimately amenable to AiT's suggestions on these issues.

[108] During cross-examination, Ashe explained that on May 14, 2002, when he received the draft Merger Agreement from 3M for the first time, he did not know at that time whether the negotiations would go smoothly. As well, Ashe conceded that the issue of the break fee was an important issue to be resolved. Counsel for Weinstein referred Ashe to Dunleavy's email dated May 15, 2002, which stated that "the timing of the break fee is a crucial point" and "AiT is simply not in a position to fund this commitment if the second transaction does not close for some reason". Ashe admitted that it would be a difficult issue for AiT to secure the amount of the break fee.

[109] In addition, Ashe admitted that he could not imagine completing the deal by not paying severance to terminated employees and by having employees agree to sign up to conditions where they waived their termination rights under existing change of control provisions. In hindsight, Ashe agreed that issues like severance and the break fee could have been deal breakers if they were not resolved during the negotiation process.

[110] With respect to the drafting of the agreement, Ashe testified that 3M did not work with the draft agreement that AiT sent them, and that 3M had their own way of doing things.

[111] During cross-examination, Ashe also revealed that the minutes of the April 25, 2002 AiT Board meeting were not prepared until the period between June 27 and July 4, 2002.

[112] He also admitted that during the negotiations with 3M he never spoke with the CEO of 3M and never received any indication from the CEO of 3M that the deal was approved. Similarly, Ashe testified that he never spoke directly to Weber, the 3M Executive Vice-President.

[113] Further, during cross-examination, Ashe testified that the support agreements were negotiated starting on May 17, 2002 and the negotiation lasted over a few days. Ashe also admitted that the exclusion of the non-compete and the addition of an opt-out provision were provisions that had a material influence on whether key shareholders would sign the support agreements.

ii. Damp

[114] Damp was a director of AiT. He testified that after the execution of the LOI on April 26, 2002, his personal view was that AiT had reached the first major gate in the process, had a reasonably good chance of a deal, but believed there were still a number of factors that could cause the transaction not to happen at all, or that 3M would not be prepared to proceed at the price agreed to on April 25, 2002.

[115] According to Damp, 3M was trying to get AiT to a price that the significant shareholders would be willing to accept on April 25, 2002. He also testified on cross-examination that there was a good-faith expectation that both AiT and 3M were working towards negotiating and completing a transaction.

[116] In his testimony, Damp discussed what he felt were the remaining gates to be reached in getting the LOI to a definitive agreement. These included:

- Harrold was a mid-level manager who would have to obtain a series of corporate approvals to get the transaction completed, including the CEO of 3M and the board of directors. He felt it was unpredictable how each level of management would view the transaction, simply because 3M was a large corporation that made many acquisitions and AiT was a small company that was likely inconsequential to 3M. It was Damp's belief that 3M was looking at other acquisitions other than AiT;

- Damp found the human resources aspect unpredictable in all mergers and acquisitions, especially in high-tech companies where acquirers often wanted assurance that employees would stay with the company after the transaction. Damp testified that AiT was especially vulnerable because Alan Boate, the head of research and development and the "brain power" of AiT, was unhappy with the discussions. Boate was "acting in an

emotional and erratic way" and Damp was concerned Boate would "denigrate the management team, denigrate the activities of [AiT]" during the due diligence process;

- AiT had presented aggressive financial forecasts for 3M to use during the first due diligence process, and Damp expected that there would be a full review of the forecasts by 3M's finance team who would challenge the assumptions. He was concerned that there would be a credibility issue with the attainability of the forecasts and a resulting price reduction; and

- There was a due diligence process that had to be done regarding tax losses.

[117] Damp also testified that AiT had negotiated a very good price with a significant premium, and although 3M seemed willing to proceed towards that price, he felt it was vulnerable to a review by 3M because of the typical reluctance of big companies to pay premiums that were viewed as too high.

[118] On the issue of disclosure, Damp recalled that there was a general discussion amongst the directors at the AiT Board meeting on April 25, 2002, where Weinstein had advised that disclosure wasn't required based on the fact that the LOI was non-binding. Damp also testified that he relied on and agreed with Weinstein's legal advice regarding disclosure, and that she did not mention the possibility of confidential disclosure to the Commission.

[119] In Damp's view, the AiT Board approved the proposed transaction on May 22, 2002. On this date, a number of significant issues for the AiT Board were resolved at this time, for example, the due diligence was complete, 3M was ready to proceed, the negotiation of significant terms was completed and the AiT Board reviewed the Merger Agreement after a presentation and discussion on it.

[120] In his testimony, Damp also commented on the situation that would probably have occurred if the potential transaction with 3M was not completed. He was of the view that AiT's business plan would have involved continuing in its core ID business, which was still viable and profitable for AiT, and shutting down Affinitex to save money. In addition, Damp testified that the formal M&A process that AiT had postponed to pursue the transaction with 3M would have been re-commenced, to survey whether there were any other organizations that were interested in acquiring AiT. Damp believed the main issue that AiT had with their bank loan was the cash flow that was going into Affinitex, and he was of the opinion that AiT's business would have been able to move forward once they were able to cut those losses.

iii. Dunleavy

[121] Dunleavy was not involved in the AiT-3M negotiations until the execution of the non-binding LOI. His testimony focused on his perspective of the transaction between that date, April 26, 2002 and its closing. When asked what his knowledge of the status of negotiations with 3M on April 26, 2002 was, Dunleavy testified:

> "Well, obviously, we had received a letter of intent. And it, in typical fashion, created an obligation on AiT not to proceed with any other acquisitions for a period of time of 30 days while the parties continued their discussions.
>
> It did have a price of [$]2.88 per share that was the proposed price. It did have other provisions that would have permitted – that were negotiated into the document that would have permitted AiT to back out of the restriction on considering alternative transactions if an alternative transaction of a superior nature came in.
>
> So at that point, I knew that we had reached a juncture of the transaction that the parties felt that they want to begin a legal process. It didn't necessarily mean that we would conclude a transaction in the end.
>
> But the parties were willing to take the next step, which was to engage in the more complete due diligence, and to see if they could negotiate a transaction to close at the end of the day." (*Hearing Transcript in the Matter of AiT Information Technologies Corporation, Bernard Jude Ashe and Deborah Weinstein*, dated September 17, 2007 (the "*Sept. 17 Transcript*") at 20:15 to 21:10)

[122] Dunleavy felt that the primary purpose of an LOI was only for the buyer to obtain a lock-up of the target company to make its assessment of whether to make the acquisition. Dunleavy also testified that it was his view that the approval at the AiT Board meeting on April 25, 2002 was merely to proceed with discussions with 3M by moving to an LOI, and approving a target ceiling price of $2.88 per share. Dunleavy explained that in his experience, he treated a price listed in an LOI as a ceiling price because it usually meant that the parties were willing to move forward at the given price, notwithstanding that it could potentially be driven down after due diligence and other factors. In his experience, terms of an LOI were often modified substantially once

parties entered the due diligence process. However, Dunleavy also testified that during the negotiations with 3M, the parties did not revisit the issue of price.

[123] According to Dunleavy, the first 10 days after the execution of the LOI were slow; AiT was taking steps to try to move the deal forward, but received few responses from 3M. This included sending a draft of an acquisition agreement to Price at 3M on April 30, 2002. Dunleavy testified that it was not typical for acquirees to produce the first draft of such agreements, and further that it was often the case that acquirers would present an acquisition agreement draft very soon after the LOI had been signed. Dunleavy testified that by the first few days of May, he felt that either 3M was not as interested as he thought, or that 3M was going to take its time in doing the transaction despite that they only had an exclusivity period for 30 days. On May 7, 2002, Price communicated to Dunleavy that having an agreement by May 14, 2002 was too aggressive.

[124] Dunleavy testified that after a preliminary call on May 2, 2002, discussions about the structure of the transaction did not take place until a conference call on May 8, 2002, where he was first informed that the deal would be in the form of an amalgamation. Dunleavy was also informed by 3M at that time that he would be receiving a draft acquisition agreement by May 14, 2002. It was in this draft of the Merger Agreement from 3M that the structure of the transaction was confirmed as an amalgamation. In his view, the structure of the transaction could potentially have had a material impact on the tax treatment and economic value of the transaction to AiT shareholders which may in turn have impacted AiT's willingness to proceed.

[125] On May 9, 2002, Dunleavy felt he was accurate about the status of negotiations with 3M when he spoke to RS and characterized the negotiations as at a nascent stage. At this time, he believed that due diligence was still ongoing; the deal structure was not confirmed; a draft agreement had not been received; and, 3M board approval had not been obtained.

[126] Dunleavy also testified that he was not part of the discussions regarding the 3M approval process. He had no idea what the process was, other than that it was highly complicated and bureaucratic, and he was not informed about the status of the approvals.

[127] With respect to the issue of disclosure, Dunleavy testified that he agreed with Weinstein that usually circumstances do not require disclosure of a non-binding LOI in the context of a merger and acquisition transaction. Although he didn't believe disclosure only occurred when there was a final binding agreement, he felt it was very typical for disclosure to occur at that time. From his experience, it was often only when such an agreement was signed that there were sufficient indicators of commitment to trigger the obligation.

iv. Weinstein

[128] Weinstein testified that she became aware of the discussions between AiT and 3M regarding a potential acquisition around March 1, 2002. Ashe informed her that he had been speaking with someone at 3M and that there could be a potential interest in the company.

[129] Subsequently, Weinstein became involved in the discussions with 3M and became involved with the process to review the confidentiality agreement. According to Weinstein, "[it] took seven days to negotiate what I would have considered to be fairly standard provisions." Weinstein's testimony also demonstrated that through negotiating the confidentiality agreement 3M's bureaucracy and way of conducting business became apparent.

[130] Weinstein also testified that she was aware that the CEO of 3M followed the Six Sigma process. With respect to this, Weinstein explained that:

> "And so as -- I found it very surprising that they had these levels, but I wasn't surprised by the bureaucracy, and I -- it sort of gave me a sign of, I think, what I expected to come and, in fact, what did come." (*Hearing Transcript in the Matter of AiT Information Technologies Corporation, Bernard Jude Ashe and Deborah Weinstein*, dated September 19, 2007 (the "*Sept. 19 Transcript*") at 101:24 to 102:3)

[131] After the confidentiality agreement, Weinstein testified that she and LaBarge Weinstein were involved with the preparation for the due diligence process. She also testified that she advised AiT regarding disclosure obligations. In particular:

> "So I wanted to ensure that [Ashe] understood the importance of confidentiality. We would not want premature disclosure at a preliminary stage. And so I would have provided him, as [Dunleavy] would have, with advice around the stages of a transaction, in a very general way at this point, because we had no idea what to expect from them. And as a lawyer, always reminding him of the various obligations of a public company." (*Sept. 19 Transcript*, *supra* at 103:23 to 104:5)

[132] From the period of March 26 to April 8, 2002, Weinstein was away on vacation. Upon return from her vacation, she attended the meeting in St. Paul with 3M on April 11 and 12, 2002. According to Weinstein, her role at this meeting was to assist Damp and Ashe and she explained that:

> "And it was my understanding that going down there was to continue to sell them on our technology, our people, our assets, and try to get them interested in moving towards a price." (*Sept. 19 Transcript*, *supra* at 107:6-9)

[133] At the time of the meeting in St. Paul on April 11 and 12, 2002, Weinstein recalled that she was unsure whether 3M was serious about acquiring AiT:

> "So reading the annual report, I was – I was very pessimistic that they were actually interested in buying us. I thought they were interested in learning about our technology.
>
> They had – they had a big organization, and they had a lot of smart people, and it's been my experience with high-technology companies that a lot of people do a lot of shopping of the kinds of technologies and the kinds of vision and strategy small – smaller, agile companies have. But there's this philosophy of 'not in my backyard', which is a lot of technology companies have engineers who say, no, we don't have to acquire it. We can do it ourselves.
>
> So I was a skeptic." (*Sept. 19 Transcript*, *supra* at 108:10-23)

[134] In addition, Weinstein testified that it was unclear if AiT was negotiating with someone at 3M who had authority:

> "I never really knew who I was talking to. I mean, Steve Harrold was there […]
>
> But all of the purse strings and all of the authority for making the business decision on whether to acquire is made by corporate development people.
>
> And I also recall in that annual report, there were over a hundred officers mentioned at the back of the annual report. Steve Harrold wasn't one of them.
>
> And so I was concerned that we – I didn't know who we were negotiating with." (*Sept. 19 Transcript*, *supra* at 109:5-18)

[135] Weinstein also testified that 3M made it very clear to AiT that any negotiation regarding a price range would be subject to a non-binding letter of intent and board approval.

[136] Following the meeting in St. Paul, Weinstein was of the view that a number of uncertainties existed as to whether the negotiations with 3M would be successful. These uncertainties dealt with the issue of 3M not being interested in Affinitex, tax issues and the structure of the deal itself. According to Weinstein:

> "[3M] kept suggesting they were going to buy assets, and that was just going to be a horrendous after-tax result for our shareholders, and I believe would not be of – supportive of our principal shareholders." (*Sept. 19 Transcript*, *supra* at 111:25 to 112:3)

[137] With respect to the phone call between Ashe and representatives from 3M on April 23, 2002, Weinstein's view (although she was not a participant in the call) was that this call was a step in the direction of working towards the proposed transaction. It is her recollection of being advised that there was a price 3M had in mind, and if the AiT Board was supportive of that price range, then 3M would move to the next stage. She saw this step as a precursor to the next stage of preparing a non-binding LOI, with which the proposed transaction would begin what she considered to be a standard process.

[138] Weinstein was not involved with the call that took place on April 24, 2002; however, she was updated by Ashe with respect to the pricing discussions.

[139] Weinstein also gave testimony regarding the AiT Board meeting on April 25, 2002. In her view, the purpose of this meeting was the following:

> "[…] that in order for [3M] to proceed to begin to expend resources and go through their in-depth process, they would have to know that our board would be open to receiving an offer at $2.88.
>
> And I took that to mean that it wasn't a definitive offer of [$]2.88 that day. It was that should they go through their process and come out the other side, that, as Mr. Dunleavy said, if [$]2.88 was, again,

> offered to them after all the negotiations, after all the due diligence, after all the definitive agreements, that our board would look positively on that.
>
> And so I looked at it as a precursor. And they wanted to know back from Mr. Ashe if our board was inclined to allow them to continue the process." (*Sept. 19 Transcript*, *supra* at 119:4-17)

[140] According to Weinstein this meeting was held because the AiT Board needed to give its approval to allow Ashe to continue with the negotiations with 3M. Specifically, Weinstein stated:

> "[…] an officer should not commit the company to a process that might result in an offer, a friendly negotiated offer, without the board allowing him to continue the process.
>
> And so in my mind, whether it was a verbal of [$]2.88 or whether it was – and there are many different ways one can do it, an expression of interest, a memorandum of understanding, a non-binding LOI. You can call it whatever you want.
>
> When you start to move into the disruptive process that we were about to enter into, it would – it is always appropriate that the board sanction that move." (*Sept. 19 Transcript*, *supra* at 119:25 to 120:11)

[141] In her testimony, Weinstein also described her recollection of what was discussed during the AiT Board meeting of April 25, 2002:

- "[Ashe] would have discussed the – the prior two days and how we came to the $41-million, and he would have discussed that we were expecting a non-binding LOI after the board meeting and after he was able to advise 3M that the process could continue." (*Sept. 19 Transcript*, *supra* at 120:21-25)
- "There would have been – or there was discussion, as Mr. Damp alluded to, about the price. Obviously, we were all there trying to maximize shareholder value. And wanted to be sure, when you undertake a non-competitive process – this wasn't an auction; there was a one-on-one negotiation – that the board – every board member had to feel confident and sure that there wasn't another amount of money that was available for the shareholders." (*Sept. 19 Transcript*, *supra* at 121:1-9)
- "After that discussion and [Ashe's] overview of what he had been advised were the next steps, I would have, in my role as legal counsel, provided an overview of the various legal ramifications of what we were about to enter into. I would have talked about communications, i.e. don't communicate, and the confidential nature." (*Sept. 19 Transcript*, *supra* at 121:10-15)
- "I was asked about what kind of public disclosure was required, if any. And it was my opinion then and still is my opinion today that we did not have a change, and I would have advised the board or I did advise the board that no public disclosure was necessary." (*Sept. 19 Transcript*, *supra* at 121:16-20)
- "So we were – albeit all coming from a different perspective, we were united on what the facts were. And based on those facts, my analysis of the law was that there was no material change." (*Sept. 19 Transcript*, *supra* at 121:25 to 122:3)
- "We would have talked about the timing of the evolution, the various approvals and commitments that we still needed to obtain, but that we had a lot of work to do around due diligence, negotiation of every agreement and every term. And the participation of myself and [Ashe] in that – myself as legal counsel and [Ashe] and the rest of the management team." (*Sept. 19 Transcript*, *supra* at 122:12-18)
- "We would have talked in general terms that they were going – that we had not resolved how they were going to buy the company, if, in fact, they ended up buying the company or making an offer to buy the company, and we would have talked about the due diligence that was required and the fact that we didn't have any paper at that point. We didn't even have a non-binding LOI draft. We didn't have anything." (*Sept. 19 Transcript*, *supra* at 122:22 to 123:4)

[142] With respect to the prospect of whether the proposed transaction with 3M would be successful, on April 25, 2002, Weinstein recalled that there was some skepticism. She testified that:

> "I think it's safe to say that we were all hopeful that we could convince 3M and manoeuvre our way through due diligence and their process and their bureaucracy to an end point.

> There was a lot of skepticism, but there was hopeful optimism, even though Mr. Sandler thought we were worth $100-million, or wanted, at least, to have the company be worth that value, I think inherently, we all knew that if we could achieve an outcome at $41-million, that that would be a very good outcome for shareholders. But there was healthy skepticism.
>
> […]
>
> I recall being told at that time that their board would be looking to approve it on May 14. Again, I didn't have a letter of intent, so I thought, my goodness. There's so much work to be done. I reflected back on sort of the month or so in between." (*Sept. 19 Transcript*, *supra* at 123:8 to 124:2)

[143] Weinstein also explained that she did not believe 3M was committed to the transaction at that date, and if she thought 3M was committed at this time, then she would have advised the AiT Board to waive the shareholder rights plan. Weinstein explained that when a company is ready to commit and has committed to do a transaction, the board has to approve entering into the agreement. At this point, then the board waives the shareholder rights plan with respect to that agreement only. Next, the shareholders need to approve the transaction and waiving of the shareholders rights plan at the shareholders meeting to consummate the transaction. Weinstein testified that the AiT Board did not waive the shareholders rights plan at the April 25, 2002 meeting. Specifically, Weinstein stated:

> "[…] we had put in a shareholder rights plan, which is the legal equivalent to a poison pill, which permitted the board to have up to 45 days – that was about the proper range of time – to seek a superior offer, should a hostile bid come in.
>
> If our board had not waived that plan, we would have been offside and caused havoc in our shareholdings, because it's a mechanism that if the board doesn't waive it, your shareholders get thousands more shares for every share they hold.
>
> Had I thought we were entering into an agreement on April 25th, I would have had the board waive the pill on April 25th. Had I thought we were making a commitment on April 25th, I would have had the board do that." (*Sept. 19 Transcript*, *supra* at 143:3-17)

[144] Therefore, according to Weinstein, at this time, there was uncertainty regarding whether 3M was committed, and Weinstein explained that AiT did not have the "ability to implement or force 3M to purchase the company or commit to purchasing the company".

[145] Weinstein also gave testimony relating to the support agreements. According to Weinstein:

> "The individuals on the board had to confirm that as shareholders, they would sign the support agreement. Because the board meeting we held in April did not bind any of the board members to vote in favour of the transaction as a shareholder." (*Sept. 19 Transcript*, *supra* at 142:14-18)

[146] With respect to the minutes of the April 25, 2002 AiT Board meeting, Weinstein explained that the wording of the minutes is identical to the wording in the proxy circular and that they were both prepared in late June 2002. According to Weinstein, the minutes are accurate, but the characterization of what was approved is "less legal". She pointed out that the key words from the minutes are: "Subject to board approval by AiT, 3M would draft for execution by both parties a non-binding letter of intent to acquire all the shares as discussed." She explained that during the April 25, 2002 AiT Board meeting, Ashe advised the AiT Board that he received a verbal commitment from 3M to enter into a non-binding letter of intent, and this is what the AiT Board was approving.

[147] In Weinstein's view there was no approval of the AiT Board to enter into a transaction at this time; it was only approval to continue the negotiation process with 3M, and if AiT had not given this approval on April 25, 2002, then the parties would have not been able to move to the next steps of negotiation. In particular, Weinstein took the view that there was no approval for the Merger Transaction with 3M prior to the AiT Board meeting on May 22, 2002.

[148] On the subject of the LOI, Weinstein recalled that AiT received the draft LOI from 3M on April 26, 2002. In her view, the LOI was "very short, very non-binding", and it confirmed that negotiations should proceed based on a price of $2.88 per share. In her view, AiT did not have an agreement with 3M at this time and the effect of the LOI was as follows:

> "The letter of intent merely had [3M] re-confirm their obligation not to use [AiT's] confidential information in accordance with the earlier confidentiality agreement. 3M had no other commitments at that time." (*Sept. 19 Transcript*, *supra* at 126:8-11)

[149] She also testified that in her view, the issue of the negotiation of price could be reopened by 3M and 3M could walk away at any time.

[150] With respect to 3M's corporate approval process, Weinstein testified that the LOI mentioned that there were committee approvals, but at that time she did not know which committee approvals were required and she was not sure of the timing of that process.

[151] On the issue of disclosure at this time, Weinstein was of the opinion that there was no obligation to disclose, and if there was, she would have spoken up and advised AiT accordingly. Weinstein also acknowledged that with respect to the confidentiality provisions "no contract entered into ever trumps statutory law."

[152] Following the execution of the LOI on April 26, 2002, Weinstein testified that the next step in the negotiations with 3M was the preparation of the "pre-acquisition agreement", and her involvement during this process was to review the work of the lawyers at LaBarge Weinstein.

[153] On April 26, 2002, Weinstein recalled that she spoke with Price and another individual from 3M regarding AiT's corporate structure. According to Weinstein, the purpose of this conversation was as follows:

> "And I believe they needed to gather up a bunch of information, even preliminary to the due diligence, to try to figure out how they would entertain an acquisition, should they proceed with it.
>
> […]
>
> And so from April 26 until the phone call with Kim Price and Jonathan Lampe, I think on the 8th, we would just provide them with whatever information they needed, I believe because they were trying to figure out how to potentially do the transaction within their own corporate makeup." (Sept. 19 Transcript, supra at 130:12 to 131:1)

[154] According to Weinstein, at this time AiT did not know what the structure of the transaction would be. She also testified that it is not up to the target (in this case AiT) to determine the structure of the transaction.

[155] On cross-examination, Weinstein admitted that on April 26, 2002 there was material information that AiT was beginning a process with 3M, and that is why the Warning Letter was prepared to warn insiders of AiT that they could be held liable under section 76 of the Act.

[156] When asked about confidential disclosure, Weinstein explained that she did not turn her mind to confidential disclosure, because on April 25 and 26, 2002, there was no [material] change, and there were no terms that were definitive to put in a confidential material change report.

[157] Also, during the second due diligence on May 7, 8, and 9, 2002, Weinstein recalled that at this time there were a number of existing concerns, including intellectual property, employee related issues and financial issues that could affect 3M's perception of AiT's value. Specifically, Weinstein was concerned that AiT's technology and source code would be outdated and not be compatible with other technologies used at 3M; that AiT's liability from previously issued warranties (as a result of doing their own manufacturing) was not sufficiently covered in their financial statements; that 3M would restructure or relocate AiT, resulting in significant layoffs of its employees; that 3M would view AiT's revenue projections to be too aggressive; and, the general concern that by buying all of AiT's shares, 3M would be picking up all of AiT's potential liabilities, including any patent infringement claims.

[158] Weinstein recalled that on May 9, 2002 when she left to go on vacation the structure of the transaction was not settled; however, an initial structure had been discussed. Also, when she left on vacation on May 9, 2002, AiT had still not yet heard back from 3M regarding the draft acquisition agreement prepared by Dunleavy.

2. The Affidavits

i. Lumley

[159] Staff read into evidence an affidavit sworn August 29, 2007, by Lumley, who was a director of AiT during the Relevant Period. In his affidavit, Lumley outlined his current and prior work experience outside AiT; his role as a director of AiT, his working relationship with Weinstein before he recommended her appointment to the AiT Board, and Weinstein's role in providing expertise and judgment with respect to legal issues in a public company context.

[160] Lumley recollected the material events that occurred between April and June of 2002 surrounding the Merger Transaction. With respect to the discussion about disclosure at the AiT Board meeting on April 25, 2002, Lumley recollected that:

> "I believe that I raised the issue of disclosure of the proposed 3M transaction as a normal question, a standard thing that I would ask at a Board meeting in such circumstances. I obtained information about the proposed transaction through Bernard Ashe or Deborah Weinstein at Board meetings. I accepted Deborah Weinstein's advice on the issue of disclosure. I don't recall any debate on the issue. While the AiT persons negotiating the deal were optimistic and it appeared to me that there was a strong possibility that the deal would be completed, I strongly worried whether the deal would fall away." (*Affidavit of Edward C. Lumley*, sworn August 29, 2007, ("*Lumley's Affidavit*") at para. 10)

[161] Lumley also stated that the disclosure discussion involved most of the AiT Board members and in particular "it was a serious discussion regarding the substantial chance that the transaction would not be completed and that premature disclosure could result in the failure of the deal" (*Lumley's Affidavit*, *supra* at para. 14).

[162] He also relied heavily on the correspondence from his counsel in response to Staff inquiries made in July 2004 and February and July of 2005 to more accurately recollect the events. Specifically, this correspondence states:

> "The Outside Directors recall that discussion took place during the Board meeting on April 25, 2002 as to whether the proposed transaction with 3M should be announced as a material change. It was the conclusion of the Board of AiT that it would be premature to announce a possible transaction with 3M at that time. As outlined above, the main reason for the Board arriving at that conclusion was the degree of uncertainty as to whether 3M would proceed with the transaction as proposed.
>
> It is the recollection of each of the Outside Directors that Deborah Weinstein, whose law firm LaBarge Weinstein was counsel to AiT and who was intimately familiar with the details of the negotiations with 3M, expressed her opinion that based on the non-binding nature of the letter of intent, it would be premature at that time to announce a possible transaction with 3M. […]
>
> […] The Outside Directors relied on Deborah Weinstein's advice in this instance that it would be premature to announce a possible transaction. Based on their understanding of the status of the discussions with 3M, they agreed with her advice.
>
> Due to the significant uncertainty as to whether the proposed transaction would proceed, the AiT Board, was mindful that the announcement of a possible transaction with 3M at that time could be misleading and cause turmoil in the market for AiT's shares, particularly in the event that the proposed transaction did not proceed. Such an occurrence would have damaged AiT and its shareholders. Furthermore, there was a realistic possibility that an announcement by AiT at that time would have terminated 3M's interest in reviewing a transaction, to the loss of AiT and all its-stakeholders." (*Lumley's Affidavit*, *supra* at para. 8)

[163] In addition, Lumley confirmed that the approval process at 3M was not automatic, instead there were a number of approvals that had to be given by higher authorities within 3M. For instance, there was still the issue of getting 3M approvals as a part of 3M's Six Sigma process. Lumley recollected that:

> "[…] there existed a real concern that the transaction would not be approved by higher authorities at 3M. In other words, approval at 3M was not a rubber stamp process. I did question at Board meetings whether the potential transaction was real or not." (*Lumley's Affidavit*, *supra* at para. 12)

[164] Lumley also referred to AiT's deteriorating financial condition. In his view, "[at] this time, AiT was not in good shape [and] sales were falling" (*Lumley's Affidavit*, *supra* at para. 11).

[165] Lastly, Lumley explained that he did not play an integral part in the transaction. He also referred to his experience in other take-over situations and his practice of relying on legal advice with respect to the issue of disclosure.

ii. Macmillan

[166] Staff also submitted an affidavit from Macmillan, another former director of AiT during the Relevant Period, sworn September 10, 2007. In his affidavit, Macmillan outlined his current and prior work experience (in his work experience, he was not involved in disclosure decisions around securities transactions), his working relationship with Weinstein, how he became involved with AiT, and his recollection of the events surrounding the 3M transaction. Macmillan confirmed the financial difficulty

that AiT was experiencing at the end of 2001, the failure of diversification strategies pursued by AiT, and the plan to retain an advisor to assist in exploring strategic opportunities before it was put on hold to pursue discussions with 3M.

[167] Macmillan revealed his lack of involvement in the 3M negotiations beyond the occasional updates from Ashe and Weinstein and the AiT Board meeting on April 25, 2002. (*Affidavit of Graham Macmillan*, sworn September 10, 2007 ("*Macmillan's Affidavit*") at para. 6).

[168] He did recall discussing at the April 25, 2002 AiT Board meeting the potential transaction with 3M and the AiT Board being satisfied that the price of $2.88 per share proposed by 3M was fair in the circumstances; however, he also recalled concern among the directors that 3M would change its mind about proceeding with the transaction because of AiT's poor financial performance. In particular, he states:

> "Although the general mood was that this represented an excellent opportunity for AiT to maximize shareholder value, I recall that there was concern amongst the directors that 3M could change its mind at any time about proceeding with a transaction. We were cognizant of the fact that 3M was a multi billion dollar company and that AiT would not have been important to 3M. I was also of the view that with these kinds of transactions, the "devil is in the detail"." (*Macmillan's Affidavit*, *supra* at para. 18)

[169] Macmillan also emphasized that there was a great deal of uncertainty surrounding the proposed transaction:

a) Whether 3M would require the agreement of the key technical personnel at AiT to continue to work for merged AiT/3M entity (in fact, Alan Boate, the Chief Technology Officer, did not agree to work for 3M);

b) There was discussion about whether the AiT research and development facility would be relocated by 3M from Ottawa to St. Paul, Minnesota. A decision to make such a move would undoubtedly have affected the willingness of key personnel to work for the merged entity;

c) There was a question as to whether 3M would want to discontinue the affinitex healthcare division and it was unclear how that would effect the proposed transaction; and

d) AiT's sales results for the first quarter of 2002 were poor, raising a question as to whether 3M would perceive that AiT would be unable to meet the revenue targets in the forecasts that formed the basis of the valuation discussions. (Macmillan's Affidavit, supra at para. 25)

[170] In addition, Macmillan refers to correspondence to Staff dated July 25, 2004:

> "At that time, [I] believed that there was a great deal of uncertainty as to whether a transaction could be concluded with 3M at the price discussed at the board meeting. [I] was extremely concerned that AiT's poor financial performance through that time period would derail the proposed transaction or lead to a renegotiation of the price, which may or may not have attracted the support of the major AiT shareholders." (*Macmillan's Affidavit*, *supra* at para. 19)

[171] With respect to the discussion about disclosure, Macmillan states that:

> "I recall that there was discussion at the April 25 Board meeting respecting disclosure which lasted approximately 20 minutes. There was no dissent amongst the directors about the approach to disclosure.
>
> From my perspective, disclosure of the non-binding letter of intent would be premature from a business point of view. I looked to Ms. Weinstein for the legal point of view. At the time, I was generally familiar with the material change provision in the Ontario Securities Act but not with the provision which provides for a confidential disclosure to be made upon a material change.
>
> The main factors which indicated to me that disclosure would be premature included the fact that the letter of intent was non-binding, due diligence had to be performed by 3M, and I was not sure how AiT's recent quarterly financial results would affect 3M's opinion of the proposed transaction." (*Macmillan's Affidavit*, *supra* at paras. 20 to 22)

[172] Further, Macmillan also relied on his correspondence with Staff in July 2004 to confirm that the AiT Board relied on Weinstein's legal advice that disclosure would be premature based on the fact that the letter was non-binding, and that it would potentially terminate 3M's interest in the transaction, causing turmoil in the market and damage to AiT and its shareholders. This correspondence states:

> "The AiT Board, including the Outside Directors, were made aware of the significant caveats contained in the letter of intent provided by 3M and they took those caveats very seriously. 3M is a massive corporation with annual revenues of US $16 billion. The AiT Board was aware that 3M reviewed numerous acquisitions and had its own procedures to assess and approve such transactions. It was apparent from the outset that it was going to be the "3M way or the highway". In terms of the discussions that AiT had with 3M regarding a possible transaction, AiT was aware that the primary 3M representative, Steven Harrold, was at a middle management level at 3M and did not have the authority to commit 3M to the acquisition of AiT or to otherwise cause 3M to commit to the proposed transaction. AiT was therefore aware that senior management at 3M could choose not to accept Mr. Harrold's assessment of the benefits to 3M of acquiring AiT." (*Macmillan's Affidavit*, *supra* at para. 24)

[173] Based on this information, Macmillan takes the position that "the advice that Deborah Weinstein gave to the AiT Board that disclosure would be premature at that time, appeared to [him] to be reasonable" (*Macmillan's Affidavit*, *supra* a at para. 26).

iii. Price

[174] Counsel for Weinstein adduced into evidence an affidavit, sworn September 21, 2007, from Price, the Assistant General Counsel at 3M Company currently and at the material time. In her affidavit, Price outlined her involvement in the negotiations as the 3M representative primarily responsible for reviewing all legal matters in relation to the proposed transaction.

[175] Price outlined the perspective of 3M on the status of the proposed transaction between April 26, 2002, the date the letter of intent was executed, and May 21, 2002, the date 3M corporate approvals were obtained. She relied on her correspondence to counsel of the merged 3M-AiT in July 2004, which was intended to be forwarded to Staff in response to inquiries regarding the transaction. In view of the relevance of this correspondence to the issue of commitment to the potential transaction by 3M, we have set out the relevant text:

> A letter of intent is, from the perspective of 3M, a reflection of our interest in pursing a commercial transaction if a number of substantive hurdles are cleared, including (among other things) completion of:
>
> - substantive due diligence,
> - integration and business planning,
> - internal review by the board and other members of management,
> - definitive documentation (which may include substantive agreements with persons other than the company with which 3M has entered into the letter of intent), and
> - various regulatory and commercial third party approvals.
>
> It is for this reason that virtually all letters of intent entered into by 3M (including the letter that was sent to AiT) expressly provide that:
>
> - the letter is non-binding (other than in respect of certain provisions that dictate the process through which the parties will continue to endeavour to move towards definitive documentation),
> - the party to whom 3M has addressed the letter should not make business decisions in reliance upon the letter or the successful completion of the transaction contemplated by the letter, and
> - if negotiations cease or the transaction otherwise does not proceed, neither 3M nor the party to whom the letter is addressed will have liabilities or obligations to the other (except in respect of such things as maintaining the confidentiality of certain information and not soliciting customers or employees).
>
> In this context, 3M generally would not contemplate public disclosure of the delivery of a letter of intent, and in fact, our letters of intent generally contemplate that the existence of the letter will be maintained in confidence and generally no announcement of the transaction contemplated by the letter will be made.

> On April 26, 2002, a 3M business team and representatives of AiT had identified a price on which those individuals believed a transaction could be pursued if a number of substantive hurdles could be cleared. However, before definitive documentation could be executed by 3M and before legal obligations in respect of the transaction would be assumed by 3M:
>
> - 3M would have to complete substantive due diligence, including a review of AiT's business operations, research and development, manufacturing, financial, legal, environmental and regulatory matters,
> - definitive documentation would have to be drafted and negotiated between 3M and AiT containing substantive representations, warranties and covenants,
> - voting and stock options agreements would have to be drafted and negotiated with nine individuals and an unidentified shareholder, and
> - the appropriate management committees and the board of directors of 3M would have to approve the acquisition and the plan for the integration of the acquired business.
>
> At the time that the letter of intent was signed, 3M had not yet even retained Canadian counsel.
>
> In the week following our engagement of Canadian counsel, progress was made on the completion of due diligence and, on May 14, 2002, the 3M board approved the acquisition of AiT:
>
> > "subject to the approval of the Chairman of the Board and Chief Executive Officer of the due diligence report and the integration plan".
>
> The completion of that report and the development of those plans, which are substantive and fundamental elements of our acquisition process were not completed until May 21, 2002, when the Chairman and CEO of 3M gave his approval following the meeting of the Corporate Operations Committee held on that date to consider the matter. Similarly, the negotiation of the substantive elements of the transaction documents (including the merger agreement between 3M and AiT, the voting and stock option agreements and employment agreements with key employees) was ongoing, drafts of those documents continued to be circulated and negotiated until virtually the time of their execution.
>
> Put simply, until these steps were completed, there was no deal.
>
> (*Affidavit of Kim Price*, sworn September 21, 2007 at para. 5)

[176] Price attached as exhibits materials supporting the process used by 3M to assess and approve the transaction with AiT. These included presentation materials to the 3M board; the resolution passed by the Board on May 14, 2002; meeting minutes of the legal team on May 20, 2002, and a report prepared for the Operations Management Committee on May 21, 2002.

C. The Expert Evidence

1. Anisman

[177] Anisman was called by Staff as an expert witness and was asked to provide an opinion about the analytical process to be followed in making an assessment of when disclosure should be made under section 75 of the Act.

[178] Anisman's Expert Report, dated August 31, 2007, stated that his evidence was three-fold:

i. to provide a description of the policy underlying section 75 of the Act;

ii. to provide an opinion on the analytical process to be followed in making an assessment as to when disclosure should (or presumably should not) be made under section 75 of the Act; and

iii. to illustrate the analytical process that ought to have been used on the basis of the factual materials provided to him by Staff in this case.

[179] Counsel for Weinstein objected to Anisman's evidence on the basis that the report resembled closing argument instead of an expert report. In particular, counsel for Weinstein submitted that it appeared that Anisman's evidence interpreted the facts

and applied the law, which is the jurisdiction of the Panel. Counsel for Weinstein and Staff made submissions on this issue and referred us to the relevant case-law.

[180] The role of an expert witness is to provide the court or tribunal with special knowledge or expertise beyond the knowledge or expertise of the court or tribunal. It is not the role of an expert to express an opinion on domestic law or the ultimate issues before the Court or tribunal. With respect to Anisman's expert evidence we concluded that points (i) and (iii) set out above, related to the description and interpretation of domestic law, and were thus inappropriate topics to be dealt with in expert evidence. As a result, we restricted Anisman's expert evidence to point (ii) to provide an opinion on the analytical process to be followed in making an assessment as to when disclosure should (or should not) be made under section 75 of the Act. We note that Weinstein also led expert evidence in response.

[181] With respect to the analytical process to be followed in making an assessment when disclosure should be made under section 75 of the Act, Anisman testified that the overall approach was to be fact-based, contextual and purposive, and three basic questions were to be asked. The first two questions address whether there is a "material change": first, whether the information or event in question is "material"; second, whether a "change" has occurred. If it is concluded that there is a material change, the third question is whether disclosure should be made publicly, or whether there is sufficient reason to disclose to the Commission confidentially.

[182] Anisman suggested that the acquisition of a small issuer by a large issuer would have a sufficiently significant impact on the smaller issuer to cross the materiality threshold, and most of his testimony focused on approaching the second question of when it becomes a "change".

[183] Anisman emphasized that the timely disclosure obligation in the Act is inconsistent with a bright-line test. Instead, the determination is factual and must be made in the circumstances of each transaction.

[184] The core of Anisman's testimony was the concept of commitment by the parties. The relevant test is to determine when in the course of a negotiation can it be said that there is sufficient commitment by the relevant parties to go forward with the transaction that "constitutes an alteration of the issuer's business or affairs in the circumstances." In his view, it is at this point that a material change occurs and the disclosure obligation is triggered.

[185] In the course of negotiating a single transaction, Anisman testified that there may be more than one material change. For example, it is possible that there is a change where there is agreement to the material terms of a transaction, even if negotiations continue with respect to other significant issues.

[186] Anisman testified that matters such as board resolutions, agreements in principle, and letters of intent may represent a sufficient degree of commitment to constitute a material change. Accordingly, one or more material changes may occur well before the signing of a definitive agreement that contains all the terms of the transaction. This determination must be made in the specific context of the transaction, with an objective view of all the information available at the time. In his expert report, Anisman stated:

> The factors that are relevant to determining whether an agreement in principle, for example, is a material change will depend on the nature of the decision it represents, the conditions to which it is subject, how central they are to achieving a transaction and the likelihood that they will, or will not, be satisfied. These factors may be assessed in light of the nature of the negotiations relating to them prior and subsequent to reaching an agreement in principle. In other words, it might be reasonable to ask whether any "deal-breakers" remain outstanding. Of particular significance are resolutions adopted by a board of directors, the terms of any such resolutions, and the desire of the parties to achieve the transaction in question. (Philip Anisman, *Expert Report prepared for Re AiT Advanced Information Technologies Corporation, et al.*, dated August 31, 2007, p. 15)

[187] Upon cross-examination, Anisman agreed that with respect to a letter of intent, the terms of the letter of intent would be part of the analysis, and the more binding the terms that start to flesh out an agreement between the parties, the more likely the issuer may have a change.

[188] Where the outstanding conditions are in the control of a third party, Anisman testified that the issuer would still have to make an assessment of the likelihood of the conditions being fulfilled, even if the issuer itself doesn't have the ability to fulfill them. This assessment would similarly flow from the entire negotiation and relevant circumstances up to that point. For example, the issuer's understanding that the acquirer was willing to complete the transaction, or was committed to it, would be an important consideration.

[189] Anisman testified that once the issuer determines that there is a material change, it must consider whether public disclosure would cause undue harm to the issuer, in which case confidential disclosure might be appropriate. In making this

assessment, Anisman stated that it is again a factual determination, taking into account the nature of the detriment, the degree of harm and impact it would have on the issuer, and whether it warrants filing a confidential report with the Commission.

[190] According to Anisman, the purpose of confidential disclosure is to alert the Commission that there has been a change so that the market could be monitored for leakage and potential insider trading. He testified that the permissibility of confidential filing serves as a compromise between protecting investors and causing prejudice to issuers.

2. Dey

[191] Peter Dey ("Dey") was the expert witness called by the Respondent. He was asked to comment on the types of issues and approach that a board of directors would be expected to take with respect to disclosure of a material change in the context of a merger and acquisition negotiation.

[192] The core of Dey's testimony was the concept that in a negotiated transaction, the board of an issuer must determine if there is a reasonable prospect that the transaction could be completed. In his opinion, a material change occurs when the understanding between the parties is such that there is a reasonable prospect that the transaction could be completed. Otherwise disclosure could be premature, such as where an issuer has no reasonable assurances that the transaction will be completed. This judgment has to be made in the context of the transaction, which is defined by the surrounding facts and circumstances.

[193] Dey also explained that a board cannot wait until the completion of the transaction is guaranteed before making disclosure. Often, there will be outstanding conditions at the time disclosure is made. With respect to the outstanding conditions, the test to be applied by the board is whether there is a reasonable prospect that the outstanding conditions will be satisfied. Even when the outstanding conditions are not within the issuer's control, the same analysis must be undertaken.

[194] As an example, Dey considered a condition where a transaction could not be completed without approval of the board of the acquirer. In assessing this condition, the board of the acquiree must consider the indications of the other party, such as communications from the acquirer that they were recommending the transaction to the board, who they believed would approve the transaction. In such a situation, this would probably be a condition that had a reasonable prospect of being fulfilled, therefore triggering disclosure. On the other hand, if management of the acquiree indicated that they had no sense whether the acquirer's corporate approvals would be forthcoming, the acquiree would probably resist disclosure.

[195] With respect to confidential disclosure, Dey's opinion was that it is very rare and that it is something that is best to avoid. He testified that there would have to be compelling reasons for the company not to make public disclosure at the time that a material change occurred.

IV. THE STATUTORY REGIME

[196] It is important to note that the Statement of Allegations deals with breaches of the Act that took place in 2002; thus the provisions in the 2002 version of the Act apply in this decision. These provisions are set out in "Schedule A" of our Reasons and Decision. In addition, *National Policy 40 –Timely Disclosure* is set out in "Schedule B" for reference, although it does not form the basis of the allegations against Weinstein in this case.

V. ANALYSIS OF THE LEGAL ISSUES AND EVIDENCE

A. The Standard of Proof

[197] The standard of proof applicable in Commission proceedings is the civil standard of the balance of probabilities and we find that it remains the applicable standard in this case. We do however acknowledge that the allegations in this case are serious and relate to Weinstein's professional career and livelihood. As a result, we are of the view that this burden can only be discharged by clear and cogent evidence. As stated in *Re Lett* (2004), 24 O.S.C.B. 3215 at paragraph 31:

> Requiring proof that is "clear and convincing and based upon cogent evidence" has been accepted as necessary in order to make findings involving discipline *or affecting one's ability to earn a livelihood.* [emphasis added]

[198] Further, we note Staff's submission that although section 122 of the Act is a quasi-criminal offence section, it can be referenced in a section 127 proceeding as long as it does not seek a punitive power beyond the scope of section 127. As stated in *Wilder v. Ontario Securities Commission*, [2001] O.J. 1017, at para. 24:

> The Act provides for various remedial routes which themselves entail varying procedural consequences. The reduction in procedural rights under s. 127 from those available in a prosecution under s. 122 results from the simple fact that there is no criminal sanction attached to a

> s. 127 order. The essence of the statutory scheme is remedial flexibility, not remedial exclusivity, and differing procedural consequences are an inevitable result of such a scheme.

B. The Importance of Timely Disclosure

[199] Section 1.1 of the Act sets out two important purposes: (1) to provide protection to investors from unfair, improper or fraudulent practices; and (2) to foster fair and efficient capital markets and confidence in capital markets. One of the primary means of fulfilling these statutory purposes is by enforcing requirements for timely, accurate and efficient disclosure of information. This is because, through timely disclosure, fairness can be achieved for all investors participating in the capital markets. Disclosure serves to level the playing field such that all investors have access to the same information upon which to make investment decisions. As stated by the Commission in *Re Philip Services Corp.* (2006), 29 O.S.C.B. 3971:

> Disclosure is the cornerstone principle of securities regulation. All persons investing in securities should have equal access to information that may affect their investment decisions. (*Re Philip Services Corp.*, supra at para. 7)

[200] Further, disclosure benefits the capital markets because:

> Disclosure in securities markets encourages investing and therefore growth. Disclosure protects investors, aids in ensuring that securities markets operate in a free and open manner and ensures that a security will nearly correspond to its actual value. (*Re YBM Magnex et. al.* (2003), 26 O.S.C.B. 5285 at para. 89)

[201] National Policy 40, which was in force during the Relevant Period, contemplated a broader disclosure regime than the continuous disclosure provisions of the Act. Although it did not have the force of law, it recommended a continuous disclosure system for market participants based upon "material information". Material information refers to "any information relating to the business and affairs of an issuer that results in or would reasonably be expected to result in a significant change in the market price or value of any of the issuer's securities." As such, the Policy differs from the Act by requiring timely disclosure of both material facts and material changes.

[202] The Policy also contained a caution to issuers concerning premature and misleading disclosure announcements. As set out in the Policy:

> While all material information must be released immediately, the timing of an announcement of material information must be handled carefully, since either premature or late disclosure may damage the reputation of the securities market. Misleading disclosure activity designed to influence the price of a security is improper. Misleading news releases send signals to the investment community which are not justified by an objective examination of the facts, and may detract from the issuer's credibility. Announcements of an intention to proceed with a transaction or activity should not be made unless the issuer has the ability to carry out the intent (although proceeding may be subject to contingencies) and a decision has been made to proceed with the transaction or activity by the issuer's board of directors, or by senior management with the expectation of concurrence from the board of directors.

[203] Staff also addressed confidential disclosure in their submissions and argued that the option of confidential disclosure was available to AiT. Subsection 75(3) of the Act provides for confidential disclosure of material changes where in the opinion of the reporting issuer, public disclosure would be unduly detrimental to the reporting issuer. In Anisman's expert testimony, he stated that confidential filing acknowledges the harm that premature public disclosure could cause to the issuer. He testified that the purpose of confidential disclosure is to alert the Commission to the fact that there has been a change and provides the Commission the opportunity to monitor the market for leakage and potential insider trading. In his view therefore, it serves as a compromise function in the statutory scheme that is designed to both accomplish some protection of investors and not prejudice issuers. We note however, that the issue of confidential disclosure arises in this case only if we determine that a material change has occurred.

C. The Concept of Materiality

[204] In any interpretation of material fact or material change, it is first necessary to review and understand the concept of "materiality" in our disclosure regime:

> The test for materiality in the Act is objective and is one of market impact. An investor wants to know facts that would reasonably be expected to significantly affect the market price or value of securities. (*Re YBM Magnex et al.*, *supra* at para. 91)

[205] The British Columbia Securities Commission has addressed the issue of materiality in the context of negotiations leading up to a transaction (although in the context of a broader "material information" regime). The following principles were articulated in *Re Siddiqi*, 2005 LNBCSC 375 at paragraph 87:

> Whether information is material depends on the facts of each case. The test is the expected impact the information would have on the market price or value of the issuer's securities. Where transactions are involved, it is not enough to consider only the materiality of the transaction itself, but also the materiality of the information that negotiations are underway that could lead to a possible transaction. In some cases, the existence of negotiations would or could reasonably be expected to affect the stock price, and is therefore material. (Of course, the existence of negotiations about a proposed transaction can be material only if the underlying transaction itself, if completed, would be material.)

[206] Staff also referred us to the applicable test used in the United States, the probability/magnitude test. Staff referred us to the cases: *SEC v. Texas Gulf Sulphur*, 401 F. 2d 833 (2nd Cir., 1968) aff'd F. 2d 1301 (U.S.C.A. 2nd Cir., 1971); *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976); and *Basic v. Levinson* (1988), 485 U.S. 224 (U.S.S.C.) (WL). In particular, Staff points out that the probability/magnitude test has been applied in the context of merger and acquisition transactions in the United States.

[207] However, we note that the law in the United States does not include the concept of a "material change" as defined in our Act. The probability/magnitude test was formulated as an appropriate test for determining the materiality of speculative or contingent information. Although the American probability/magnitude test may be useful with respect to materiality, it is not particularly useful in determining whether a change has occurred, which is crucial in this case. As a result, we are wary of quoting and adhering to the American case law, especially when the American law does not incorporate the concept of a "material change" as the Ontario statute does.

[208] In the present case, the negotiations between AiT and 3M were material in relation to AiT as a reporting issuer: negotiations of a potential acquisition transaction by 3M could reasonably be expected to affect the market price or value of AiT's shares and were therefore material. AiT was also a small company relative to 3M, and materiality often occurs at a much earlier stage for smaller issuers than larger issuers.

D. The Distinction Between a Material Fact and a Material Change

[209] Having determined that the negotiations between AiT and 3M were material to AiT, it is necessary to determine whether those negotiations represented a "material fact" or a "material change". The definition of a material fact is much broader than that of a material change. As set out in subsection 1(1):

> "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 [emphasis added].

On the other hand, a material change is defined as:

> "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 for the issuer or by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable [emphasis added].

[210] Not all material facts will be significant enough to constitute a change in the business, operations or capital of the issuer, and therefore be a material change. The Act makes an important distinction between the definitions of a material fact and a material change in subsection 1(1). This distinction is fundamental to the various requirements under the Act since certain disclosure requirements are triggered by the occurrence of a material change (but not a material fact). For example, only in the event of a material change does section 75 of the Act require an issuer to issue a news release and also file with the Commission a material change report on a timely basis, or alternatively file a confidential material change report with the Commission. In contrast, section 76 of the Act does not require disclosure of either material changes or material facts, but prohibits anyone from purchasing or selling securities with knowledge of a material fact or material change that has not been generally disclosed to the public.

[211] As Anisman explains in his expert report, the distinction between "material facts" and "material changes" in the legislation recognizes the need of issuers to keep certain developing transactions confidential in the course of negotiations. For example, in a negotiation for a merger transaction, such negotiations may be material at a very early stage and for the purpose

of insider trading laws, persons aware of such "material facts" should be prohibited from trading on this information. However, this may be well before the negotiations have reached a point of commitment to be characterized as a change in the issuer's business, operations or capital, and therefore, before public disclosure of the information would be appropriate.

[212] The legislature specifically chose to distinguish material changes from material facts and to create different disclosure requirements for them. This was emphasized in *Kerr v. Danier Leather Inc.*, [2005] O.J. No. 5388 (C.A.) ["*Danier CA*"]:

> […] the OSA has preserved the distinction. Thus we must assume that the Legislature intended the distinction to yield different disclosure obligations. In the Court of Appeal decision in *Pezim v. British Columbia (Superintendent of Brokers)* (1992), 96 D.L.R. (4th) 137 (B.C. C.A.), at 150, Lambert J.A. made this point in discussing the same distinction under the British Columbia statute:
>
> > There is a legislative reason for distinguishing between material facts and material changes and it is no accident that the legislature did not impose an obligation under s. 67 [of the B.C. Act] to disclose material information unless that information amounted to a change in the business, operations, assets or ownership of a reporting issuer. In enacting s. 67 in its present form the legislature must be taken to have rejected the more exacting standard that would have been imposed if "material facts" (or "material information" as it is described in national policy No. 40) were included in that section.
>
> Although the Supreme Court of Canada overturned the decision of the British Columbia Court of Appeal, it did not quarrel with Lambert J.A.'s conclusion on the legislative distinction between material facts and material changes: see *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 (S.C.C.). (*Danier CA*, *supra* at para. 105)

[213] The legislation clearly differentiates between material changes and material facts, setting up different disclosure obligations and restrictions for each. It clearly contemplated that issuers might be aware of a material fact and insiders must be prevented from trading with such knowledge (section 76 of the Act). However, the existence of a material fact alone does not give rise to the disclosure obligation under section 75 of the Act.

E. The Assessment of a Material Change is Not a Bright-Line Test

[214] Staff in its submissions placed great emphasis on the addition of the words "a decision to implement such a change made by the board of directors of the issuer" to support the proposition that a material change can occur in advance of the execution of a definitive binding agreement and therefore the determination of whether a material change has occurred is not a "bright-line" test.

[215] We agree that there is no "bright-line test". Instead, the assessment of whether a material change has taken place will depend on the circumstances and series of events that took place. This is because the determination of a material change is a question of mixed fact and law (*Re YBM Magnex et al.*, *supra* at para. 94). This determination requires ascertaining whether the existing facts fulfill the legal test. Each case will be unique, and the specific facts and circumstances will vary case by case. Since the fact scenarios will differ in all cases, it is impossible to articulate a bright-line test that will apply in all circumstances.

F. Interpretation of "Decision to Implement a Change" by a Board of Directors

[216] The definition of a "material change" in the 1978 legislation was the first time a reference to a material change included "a decision to *implement* such a change made by the board of directors of the issuer" [emphasis added]. The word "implement" is not defined in the Act, however, we note that the *Canadian Oxford Dictionary* defines the word "implement" as "to put into effect". (*The Canadian Oxford Dictionary*, 2001, s.v. "implement").

[217] Anisman noted in his expert report:

> As a "material change" must be reported when it occurs, the question of what may constitute a change is frequently characterized in terms of when a change occurs, particularly in the context of negotiated transactions involving mergers and acquisitions. Such negotiations may move from overtures, through tentative discussions, into exclusive or non-exclusive arrangements involving confidentiality agreements, to letters of intent and agreements in principle, preparation of a definitive agreement, submission to shareholders for approval, fulfillment of conditions, and ultimately to closing and implementation. Any or all of these steps may be material, as outlined above. *A change will occur when a decision has been made indicating a substantial likelihood that implementation will be forthcoming.* [emphasis added] (Philip Anisman, *Expert Report prepared for Re AiT Advanced Information Technologies Corporation, et al.*, dated August 31, 2007, p. 12)

[218] While the Act is silent regarding the definition of "implement" we note that the Commission has addressed this issue in *Re Burnett* (1983), 6 O.S.C.B. 2751. The Commission stated that:

> An intention by a person or company to do something, which once implemented would constitute a material change in the affairs of the reporting issuer, but which at the time the intention is formed, *for reasons beyond the control of the person or company is still not capable of achievement is not ordinarily a material change* in the affairs of the issuer. [emphasis added] (*Re Burnett*, *supra* at para. 7)

[219] A decision by a board of directors of an issuer to pursue a potential transaction that is not yet within its control to put into effect (and therefore is not then capable of achievement), would not ordinarily be a material change in the business, operations or capital of an issuer at that point in time unless the board has reason to believe that the other party is also committed to completing the transaction, as discussed below.

[220] Staff also referred us to *Re Bennett (Doman)*,1996 LNBCSC 38 (QL), rev'd in part [1998] B.C.J. No. 2378 (B.C.C.A.), leave to S.C.C. refused [1998] S.C.C.A. No. 601. Staff takes the position that this case stands for the proposition that a decision to sell a control block of shares is a material change even though there was no agreement and no purchaser had been identified. The British Columbia Securities Commission noted that since legal and financial advisors had been retained for a possible transaction and serious discussions had taken place, this constituted a material change.

[221] The present case can be distinguished from the British Columbia Securities Commission case *Re Bennett (Doman)*. First, *Re Bennett (Doman)* was an insider trading case. Second, Doman was a controlling majority shareholder of Doman Industries:

> Doman controlled Doman Industries. If he decided to sell Doman Industries, Doman Industries would be sold. It would be irrelevant what the directors had to say. The decision to sell Doman Industries was his alone to make. (*Re Bennett (Doman)*, *supra* at 99 and 100)

[222] In any event, we find that there is no bright-line test with respect to a material change, and the fact that legal and financial advisors are retained will not on its own be sufficient to demonstrate that a material change has occurred. Therefore, the fact that legal and financial advisors are retained is not determinative of the existence of a material change.

[223] However, in our view, in the context of a proposed merger and acquisition transaction, where the proposed transaction is speculative, contingent and surrounded by uncertainties, a commitment from one party to proceed will not be sufficient to constitute a material change. In the context of a merger and acquisition transaction, it is necessary to establish whether there is sufficient commitment from both parties of the transaction to determine whether a "decision to implement" the transaction has taken place. Therefore, in the case at bar, we need to establish whether a sufficient indication of commitment was made by AiT and 3M during the Relevant Period.

[224] We rely on Anisman's wording "when a decision has been made indicating a substantial likelihood that implementation will be forthcoming". In our view, for there to be a substantial likelihood that a proposed transaction will be completed, there needs to be sufficient signs of commitment on behalf of all the parties involved to proceed with the transaction.

[225] In the present case, the determination of whether a material change occurred requires ascertaining whether the series of events that took place during the Relevant Period constitute a material change. As a result, this requires an in depth analysis of the facts in this case.

G. Application of the Evidence and Law

1. Did the status of negotiations with 3M constitute a "material change" in the business, operations or capital of AiT by April 25, 2002 and during the subsequent period up to May 9, 2002, in which case triggering the requirements under s. 75 of the Act?

i. Summary of Staff's Allegations

[226] Staff allege that a material change in the business, operations or capital of AiT occurred during the Relevant Period as a result of: the AiT Board meeting of April 25, 2002, the negotiation and signing of the LOI on April 26, 2002, the ongoing discussions between 3M and AiT, and the completion of the on-site due diligence review undertaken by 3M on May 7 to May 9, 2002. Accordingly, Staff allege that AiT breached section 75 of the Act by failing to make timely disclosure of the material change within the Relevant Period.

[227] We have identified three key events during the Relevant Period which must be analyzed to determine whether those events alone, or in combination, represented a material change to AiT as alleged:

a) the events leading up to April 25, 2002, and the AiT Board meeting of April 25, 2002;

b) the LOI signed by AiT and 3M on April 26, 2002; and

c) the balance of the Relevant Period, including the second due diligence review undertaken by 3M from May 7 to May 9, 2002.

We have analyzed the evidence and the arguments of Staff surrounding each of these events below.

[228] In view of the Supreme Court's decision in *Kerr v. Danier*, 2007 SCC 44, we cannot defer to the business judgment of the AiT Board to determine when or if a material change occurred. Instead, we must objectively assess the facts that were available to the AiT Board during the Relevant Period, to determine in all the circumstances whether the three events constituted a material change in the business, operations or capital of AiT that triggered its disclosure obligation under section 75. It is important therefore, to recognize the dangers of hindsight in coming to this conclusion and to be careful not to look at the situation based on what subsequently happened. Staff referred us to the following passage from *The Regulation of Corporation Disclosure*:

> First, negotiations can only be material if the resulting agreement is material. Second, the ultimate outcome of the negotiations has no direct bearing on the analysis. *The materiality of ongoing negotiations turns upon the facts known at the time the duty to disclose was triggered, with subsequent developments not affecting the outcome.* [Emphasis added] (Robert Brown, *The Regulation of Corporation Disclosure*, looseleaf ed. (Wolters Kluwer, 2007) at 6-13.)

[229] Therefore, we must assess the information as it existed during the Relevant Period to determine whether a material change occurred.

ii. The Events Leading up to, and the April 25, 2002 AiT Board Meeting

[230] The first discussions with Harrold in February 2002, through the signing of a non-disclosure agreement, the first due diligence session, the pricing discussions in St. Paul and the April 23 and 24, 2002 telephone calls from 3M to Ashe constituted the early stages of negotiation towards a potential share purchase transaction that collectively constituted a material fact in relation to AiT within the definition of that term in the Act. However, considering that the negotiation was still in its early stages, we do not find that any of these events individually, or all of them collectively, constituted a material change for AiT.

[231] On April 25, 2002, an AiT Board meeting was called by Ashe to report on the culmination of the early negotiations with 3M which had resulted in 3M advising Ashe that they were prepared to offer $2.88/share for the outstanding shares (and in-the-money options) of AiT. 3M had requested Ashe to obtain the support of the AiT Board to the proposed price because they were not interested in expending additional time and effort to conduct further due diligence and evaluate whether they wanted to enter into a transaction without this support. At this point in time, AiT had received nothing in writing from 3M relating to the proposed offer of $2.88/share.

[232] The minutes of the AiT Board meeting on April 25, 2002 confirm that Ashe provided the AiT Board with an update of the discussions with 3M and communicated the verbal offer of $2.88/share of AiT. It is also clear from the minutes that the AiT Board was informed that subject to their approval, 3M would draft a non-binding LOI to continue the process, which included the due diligence, the negotiations of the definitive agreement and the requisite approvals required to culminate the potential transaction.

[233] As of the date of the April 25, 2002 meeting, there had been no actual change in the business, operations or capital of AiT, but Staff rely on the reference in the material change definition to "a decision of the board to implement such a change" as being a material change in itself, without the need for there to be an actual change in the issuer's business, operations or capital.

[234] Staff draw support for their position from the wording of the minutes of the AiT Board meeting on April 25, 2002: "the board approved the recommendation to shareholders of the acquisition by 3M of all of the outstanding shares and options in the Company at a cash purchase price of Cdn $2.88, subject to confirmation of the fairness of this price by the Company's financial adviser, CIBC Investment Banking, and satisfaction of the Board with the final terms of the transaction, including the tax consequences to the Company's shareholders". In the view of Staff, the AiT Board was clearly signing off on the transaction and providing their unqualified support, subject to conditions favourable to AiT, which constituted a "decision to implement such a change" within the material change definition language.

[235] We disagree with Staff's interpretation of the AiT Board resolution based on the evidence presented during the hearing as to the purpose of the meeting, the discussions held by the AiT Board at that meeting on the status of the transaction, and the timing and preparation of the actual minutes of the meeting:

- The purpose of the meeting, as requested by 3M in their timetable for the negotiation and settlement of the transaction, was to obtain the support of the AiT Board for the level of value 3M was proposing to offer for the shares of AiT. The evidence indicates that the board discussions that took place that day are not accurately reflected in the wording of the minutes or in the resolution itself. For example, Damp recollected that the discussion on April 25, 2002 regarded 3M's request for agreement from significant shareholders that they would be open to accepting a transaction at the proposed price. Weinstein further confirmed this and testified that she understood the AiT Board's support on April 25, 2002 to be a precursor to 3M proceeding with their in-depth process and the expending of resources to continue the negotiation process.

- As the report from Ashe indicated, the negotiations were at a preliminary stage which was inconsistent with an experienced board of directors signing off on a negotiated transaction in order to "implement" a proposed material change. Due diligence to confirm a $2.88 per share price and other matters had not yet been carried out. Nothing had been received in writing on the proposed transaction and key items important to the transaction (such as the Voting and Stock Option support agreements from key shareholders and the break fee) still had to be negotiated.

- According to Weinstein, if the AiT Board was in fact attempting to implement the transaction at this stage, it would have been necessary for the AiT Board to waive AiT's shareholder rights plan, as the accepted offer would have constituted a triggering event. As evidenced by Weinstein's testimony, she would have recommended to the AiT Board to waive the shareholders' rights plan had she thought that a decision to implement the proposed transaction had been made.

- Although the wording of the AiT Board resolution passed on April 25, 2002 indicated that it was subject to confirmation of the fairness of the price by AiT's financial advisor, CIBC Investment Banking, it appears from the fairness opinion that CIBC Investment Banking was not formally retained as AiT's financial advisor until May 2, 2002.

- Dunleavy's testimony is that the minutes were not prepared until late June and amended in July, just before the closing of the transaction, as a clean-up item. He testified that he used wording for the resolution from the proxy circular mailed to AiT's shareholders for consistency. Dunleavy was not present at the AiT Board meeting on April 25, 2002.

[236] We find that the AiT Board minutes of the April 25, 2002 meeting are problematic, and we do not believe that the AiT Board resolution conveys the substance of the decision made by the AiT Board. The evidence shows that these minutes were initially drafted in late June 2002 and then amended in early July 2002 to conform with disclosure that had been included in the proxy circular. Based on the stage of negotiations with 3M at April 25, 2002 and the evidence presented to us, we believe the better depiction of the AiT Board's decision is described in CIBC Investment Banking's Summary Chronology of Events included in its May 22, 2002 presentation of its fairness opinion:

- Following various negotiation discussions (including matters such as financial forecast, tax losses carry forward and tax credits pool), Tenor [3M] agrees to raise the valuation of Amigo [AiT] common shares to $2.88 per share (approximately $42.6 million).

- Bernie Ashe meets Amigo's [AiT's] Board of Directors to discuss the Tenor [3M] opportunity and how it is the best alternative for Amigo [AiT] in light of similar transactions in the industry.

- Amigo's [AiT's] Board of Directors communicates to Bernie Ashe that a Tenor [3M] offer at the proposed level would likely be approved.

We conclude after reviewing the evidence that the minutes of the April 25, 2002 meeting do not accurately reflect the AiT Board's discussions, and that the resolution was not intended by the AiT Board to be a "decision to implement such a change" within the meaning of the definition of material change, as alleged by Staff.

[237] By contrast, the resolution of the AiT Board on May 22, 2002, after reviewing the Merger Agreement, the Fairness Opinion and other relevant information, did represent a "decision to implement such a change" and the resolution specified that the transaction was fair and in the best interests of AiT and its shareholders. In addition, at this time on May 22, 2002, the AiT Board waived the shareholder rights plan with respect to the Merger Transaction.

[238] In arriving at the conclusion that there was no material change on April 25, 2002, we were mindful of the more than 5 year timeframe which had elapsed between the events giving rise to the allegations, and the completion of the hearing. That timeframe posed difficulties in obtaining accurate recollections of the events from witnesses, reconstructing the factual information available to the AiT Board and Weinstein at that time and determining whether there was clear and cogent evidence necessary to support Staff's allegations.

[239] Our decision process was not helped by concerns we identified in the recording of the minutes of the April 25, 2002 AiT Board meeting. Dey testified that if a board's governance process, in the view of the Commission, is effective, then it is difficult for anyone to interfere with the judgments that are the product of that process. We agree with that proposition, while being mindful of the recent Supreme Court decision in *Danier*, which opined that the disclosure requirements under the Act are not to be subordinated to the exercise of business judgment.

[240] In determining whether the governance system within which a board functions is effective, Dey suggested one would look for a board with an appropriate set of competencies, a board that is motivated to do the right thing for the corporation and a board that receives effective advice from management and external legal advisors.

[241] In the case of the AiT Board, we believe that it was very experienced and properly motivated. There was no evidence presented to suggest a lack of independence or any conflicts of interest existed with respect to the 3M transaction. We do note that Weinstein acted as both a director of AiT and as legal counsel to the AiT Board and AiT, which would not be an appropriate corporate governance practice today. However, there is no evidence that she was biased by her role and engagement as a service provider to AiT. The difficulty in judging the AiT Board's governance process is the quality of the written record as to the advice sought by and received by the AiT Board and as to the decision made by the AiT Board at its April 25, 2002 teleconference meeting.

[242] We have a concern that the AiT Board may have been unduly influenced in its assessment of the requirement to disclose its decision by concerns relating to the potential negative implications of public disclosure. We must rely on the uncontested affidavits of Lumley and Macmillan and the testimony of Damp, Ashe and Weinstein to assess what the AiT Board's view of the potential transaction with 3M was at the April 25, 2002 meeting. It is clear that the AiT Board believed there were many risks and uncertainties to getting a deal done with 3M at the indicated valuation of $2.88 per share. Most of these concerns related to business matters that could emerge through the detailed due diligence process, as well as the possibility that 3M could ultimately decide not to proceed with an offer for its own reasons not related to AiT.

[243] The AiT Board also had concerns that the disclosure of the negotiations with 3M could result in 3M not proceeding further with the transaction and/or cause negative reactions from AiT competitors. What is not clear, more than 5 years after that meeting on April 25, 2002, is the degree to which these concerns influenced the AiT Board's collective judgment that there was no material change resulting from their decision at that meeting.

[244] There is no written record of the legal advice the AiT Board requested and received from Weinstein at that meeting regarding AiT's disclosure obligations. The evidence does show that the requirement to disclose the negotiations with 3M was raised by an AiT Board member (Lumley) and discussed by the AiT Board. However, there is no written record of this discussion to assist us in understanding how the AiT Board addressed this issue. We are left with an impression that the AiT Board generally was not advised that a confidential filing with securities regulators, rather than a public press release, was an option available to AiT if the AiT Board had determined that there had been a material change resulting from their decision at the April 25, 2002 meeting, and that public disclosure of the material change would be unduly detrimental to AiT at that time.

[245] Although we have some concerns about the quality of the AiT Board's minutes of its April 25, 2002 meeting, it was not alleged that there was bad faith involved in the preparation of the minutes. We believe AiT benefitted from the AiT Board's collective experience, motivations and level of engagement through its special committee process that were all brought to bear in its decision making and, by extension, to the judgments that flowed from the AiT Board's governance process.

iii. The April 26th Non-Binding LOI

[246] Our review of the importance of the LOI in the material change analysis is undertaken in the context of an arm's length negotiated third party transaction, and specifically this factual situation in which a small public issuer acquiree with substantial motivation to sell its business is in protracted negotiations with a large, multi-national acquirer which has disclosed to the issuer a detailed review and authorization process (Six Sigma) which it must follow in order to complete such an acquisition.

[247] Staff's position, Anisman's expert testimony and Weinstein's testimony support the view that a signed, definitive agreement is not a prerequisite to finding a material change in a merger transaction. As noted above, there is no "bright line" test by which to determine whether a material change has occurred in such a negotiated transaction; rather the determination must be made on the specific facts surrounding each negotiation, including the nature of the parties to the negotiations, their specific circumstances, the progress of the negotiations toward agreement on all major terms, outstanding conditions or contingencies, and all other relevant factors.

[248] We agree that, in appropriate circumstances, a material change can occur with respect to an issuer in advance of the execution of a definitive agreement, requiring that issuer to comply with the timely disclosure obligations imposed by section 75 of the Act. That determination will depend entirely on the facts of each case and the progress and uncertainties facing the parties during the negotiation process.

[249] In assessing whether a LOI or an agreement in principle constitutes a material change, Anisman suggests looking at the nature of the commitment that they represent, the substance of what has been agreed to in principle, and whether it specifies all of the key terms, even if it leaves out some matters still to be concluded. Also, he states that the more binding the terms that start to flesh out an agreement between the parties, the more likely the issuer may have a change.

[250] The nature of any conditions to the transaction is an important factor as well – Anisman suggests looking at the conditions that remain outstanding, how central they are to the transaction in question, the likelihood of their being satisfied (both objectively and in the belief of the parties at the time), and all of those would be factors in weighing whether there was a sufficient commitment from the parties to conclude that there has been a material change to the issuer.

[251] Dey testified that a board can't wait until completion of the agreement is guaranteed (for example, when any remaining conditions to closing specified in a definitive agreement have been satisfied). There will be outstanding conditions at the time disclosure is usually made. The board must assess whether there is a reasonable prospect that those conditions will be satisfied so that the transaction can be completed. Disclosure before there is a reasonable prospect of the conditions being satisfied would be premature.

[252] Where corporate approval by the acquirer's board and senior management is a condition, both Anisman and Dey suggest it will come down to what the acquiree understands about the acquirer's approval process and its status, and whether the acquiree has an understanding of the likelihood of those approvals being forthcoming, in determining whether disclosure would be premature.

[253] The LOI was submitted to AiT on April 26, 2002 and was not acceptable to AiT's legal counsel without further negotiation. For example, AiT negotiated the reduction of the exclusivity period from 120 days to 30 days, the addition of a provision allowing AiT to back out if a superior proposal came along at an agreed to amount, and modified the requirement regarding support agreements.

[254] The LOI confirmed the parties "mutual understanding" of the negotiations to that point in time for a proposal by 3M to purchase all of the outstanding shares of AiT:

- [Para. 1] 3M was prepared to offer $2.88/share "based on the data furnished by AiT" and not previously validated by 3M, and AiT was required to maintain similar balance sheet conditions and levels shown in AiT's most recent quarterly regulatory filing, up to the time of closing;

- [Para. 3] The proposal to purchase the shares and the price to be paid, was subject to a favourable due diligence review by 3M covering AiT's business operations, research and development, manufacturing, financial, legal, environmental and regulatory matters, as well as negotiation of a definitive purchase agreement containing usual representations, warranties and covenants;

- [Para. 4] The LOI refers to "3M's continued evaluation of a potential transaction with AiT, and as an inducement for 3M to continue to expend time and incur expenses" 3M required a "no shop" restriction from AiT. At that time, 3M had not made a commitment to proceed and there was more work to be accomplished on 3M's side with respect to the evaluation of a potential transaction with AiT;

- [Para. 6] 3M's obligation to complete the transaction was also conditional on certain key shareholders entering into voting and stock option agreements and the "indication of value" and LOI was expressly stated to be non-binding and subject to the approval of the appropriate management committees and board of directors of 3M and termination or waiver of any AiT shareholders' rights plan. The letter added "Accordingly, you should not make any business decisions in reliance upon this letter or the successful consummation of the proposed transaction"; and

- The LOI concludes "If the foregoing meets with the approval of AiT, we are prepared to proceed with our due diligence review and other transactions necessary to complete a transaction...", signalling the preliminary nature of the LOI.

[255] Staff referred us to *Re Anthian Resources Inc.* 1999 LBBCSC 132, as an authority which supports the position that an LOI triggers disclosure obligations. In our view, disclosure obligations do not automatically arise upon the signing of an LOI under our material change timely disclosure system. We note that in some cases the signing of an LOI may trigger disclosure, and this will depend on the content of the provisions of the LOI and the degree of commitment reached by the parties. In the present case it is clear from the terms of the LOI itself that:

- the LOI was non-binding with respect to the offer to purchase the shares of AiT, and 3M did not intend to assume any legal obligations or infer any commitment in regard to completing a purchase of the shares by signing the LOI;

- the proposed price of $2.88/share was not a firm commitment, and was subject to renegotiation downwards if the due diligence review identified substantive problems or if AiT's financial condition worsened;

- 3M was prepared to continue its evaluation of a potential transaction with AiT in return for a 30 day "no shop" and exclusivity period; and

- most of the conditions of the LOI necessary to be satisfied before 3M would commit to the transaction were beyond the ability of AiT to resolve.

[256] In light of these facts, we conclude that entering into the LOI in the present case did not trigger disclosure obligations by AiT. The principal term contained in the LOI (the proposed purchase price of $2.88/share) was based on information supplied by AiT and was not firm, as it was subject to a detailed due diligence review yet to be completed; several key terms contemplated by the LOI (such as the break fee and the Voting and Stock Option Agreements from specified key shareholders) had not yet been negotiated; and, 3M was clearly not committed to complete the potential transaction. As such, entering into the LOI was not a material change in the business, operations or capital of AiT.

iv. The Degree of Commitment by the Parties

[257] Both Anisman and Dey testified that even in the absence of a legally binding agreement, there could be a material change if both parties to the negotiations were clearly committed to completing a transaction.

[258] From the testimony of Ashe, Damp, Lumley and Macmillan it is clear that senior management and the AiT Board believed that the proposal from 3M was a fair price and that they would support the completion of a transaction at that value. We have no difficulty concluding that AiT was committed to pursuing the transaction from a very early stage in the negotiations, and that the AiT Board supported the efforts of Ashe to conclude the transaction on the most favourable terms possible, including the proposed price, and in the shortest timeframe possible. We believe the AiT Board meeting of April 25, 2002 authorized Ashe to execute the LOI and to pursue completion of a definitive agreement with 3M as quickly as possible in view of the financial condition of AiT at that time.

[259] We are unable to conclude from the evidence that 3M was also committed to the transaction at the LOI stage, or that Ashe or the AiT Board could reasonably conclude at that time that there was a substantial likelihood that the LOI conditions would be satisfied and that the transaction would be completed:

- Ashe, Damp, Lumley and Macmillan were all hopeful that the process identified by 3M would go well and supported completion of the 3M proposal, but all had serious reservations that the due diligence and other stages of the internal approval process of 3M would be favourably determined so that 3M could complete the transaction;

- Determining the prospects of a successful completion of the transaction requires supporting factual evidence of the commitment necessary from 3M and the likelihood that any outstanding conditions would be satisfied, not mere emotional optimism or "hope";

- Ashe and the AiT Board were well aware of how structured the 3M approval process was (the Six Sigma process) and that the primary contact during the negotiations was Harrold, a middle management level manager who did not have the authority to bind 3M to proceed or to waive compliance with the remaining elements of the Six Sigma approval process. In particular, Damp and Weinstein testified that Harrold would have to obtain a series of corporate approvals to get the transaction completed, including approvals from the CEO of 3M and the board of directors. At the time, Damp and Weinstein felt that it was unpredictable how each level of 3M's management would view the transaction;

- With an organization as large and as complex as 3M it is important to distinguish between the business team's enthusiasm for doing a transaction which will enhance their operating unit's size and contribution to the 3M organization's success, and the corporate level approvals which had to be in place before 3M was committed to proceed with the acquisition of the AiT shares. The importance of corporate level approval within 3M is clearly evidenced by the affidavit of Price, which is set out above in paragraph 175 of our Reasons and Decision. In the specific context of the potential transaction with AiT, Price stated that there were a number of substantive hurdles that were required to be cleared as of April 26, 2002. These included the completion of substantive due diligence, the drafting and negotiation of definitive documentation, drafting of voting and stock option agreements, and the approval of management committees and the board of directors of the acquisition and the plan for the integration of the acquired business;

- Price stated that the approval of the 3M board did not occur until the completion of the due diligence, and even then, when the board approved the acquisition on May 14, 2002, it was still subject to the approval of the

CEO of the due diligence report and integration plan. Price further stated that the completion of this report and plan was considered a substantive and fundamental element of 3M's acquisition process, and did not actually occur until May, 21, 2002; and

- AiT had an experienced board who were knowledgeable about corporate level approvals and were aware that the 3M negotiation was conducted by a "middle management" team three levels below the CEO. This is not a transaction that was negotiated by the senior management whose approval would be required, and there is no clear and cogent evidence adduced by Staff that Ashe or the AiT Board members had any factual basis by April 26, 2002 to conclude that the essential 3M corporate level approvals were reasonably likely to be obtained, or that there was a substantial likelihood that 3M would complete the transaction. As stated above, all were hopeful of a favourable outcome but all were aware that the conditions were largely beyond the control of AiT. AiT was later informed that the first of these corporate approvals was not made until the 3M board meeting of May 14, 2002, five days after the end of the Relevant Period.

[260] Staff also put significant weight in argument on several allegations by which AiT's management and the AiT Board could have concluded that 3M was committed to proceeding by the April 26, 2002 LOI date:

- the proposed acquisition fit within the post-9/11 corporate strategy of 3M as articulated by its CEO;
- Harrold's boss, Swain, and Swain's boss Weber, and the CEO were all aware of the negotiations with AiT;
- the LOI was signed by Weber, an Executive Vice-President of 3M who reported directly to the CEO;
- Harrold had set out a process timetable which was aggressive and 3M seemed to be adhering to it;
- Ashe reported to his banker that the 3M CEO had signed off on the price on April 22, 2002;
- the total value of the AiT transaction in USD was barely over the $25 million threshold level requiring 3M board approval;
- 3M had acted in good faith throughout the negotiations up to the LOI date;
- The fact that AiT was in dire financial circumstances; and
- AiT would not have given exclusivity to 3M on April 26, 2002, if there was not a reasonable prospect of completing a transaction with 3M.

[261] With respect, we do not find Staff's arguments compelling:

- although some senior members of 3M's management team were "aware" of the negotiations, it was clearly in the context of a detailed fact-driven and disciplined acquisition process (Six Sigma) designed to ensure that corporate decisions were made prudently based on fundamental data, and not emotional factors;
- the Six Sigma process had many stages that had to be satisfied sequentially in order to obtain the corporate level approvals necessary to result in a binding commitment and the closing of the negotiated transaction;
- a board's governance process is not likely to be more casual or less substantive merely because the transaction value is close to the $25 million threshold limit, and 3M still followed their Six Sigma process notwithstanding the relatively modest purchase price (for 3M); and
- the fact that an Executive Vice-President is signing a clearly non-binding LOI should not be construed as an indication of commitment on the part of 3M to complete a subsequent transaction, particularly when the LOI refers to expending time and money with a view to evaluating a potential transaction, and in the context of the 3M Six Sigma process.

[262] As a result, we conclude that the facts available to AiT's management and the AiT Board during the discussion of the 3M proposal and the negotiation and execution of the LOI were not sufficient to override the clear non-binding nature of the proposal and the LOI and would not have led to a conclusion that, at that point in the negotiations, 3M was committed to completing a potential transaction.

[263] We agree that in appropriate circumstances (for example, a smaller, less process-driven acquirer; negotiations being led by the acquirer's CEO and within his level of corporate commitment authority; a previous board resolution setting out pre-authorized criteria for acquisition transactions) it might well be appropriate to conclude that a material change has occurred at an

agreement in principle or letter of intent stage, and that an issuer acquiree should make timely disclosure of that material change based on a determined level of commitment of the parties to complete the transaction, although no definitive agreement has been negotiated or entered into. In our view, in the context of whether a board decision constitutes a material change, an issuer's disclosure obligations arise not when a potential transaction is identified and discussed with the board, but instead, when the decision by the board to implement the potential transaction is based on its understanding of a sufficient commitment from the parties to proceed and the substantial likelihood that the transaction will be completed.

v. The Balance of the Relevant Period

[264] Our review of the evidence and Staff's argument does not suggest that there were significant developments after the signing of the LOI on April 26, 2002 and the completion of the on-site due diligence review that would have suggested to AiT's management or the AiT Board that 3M was then more committed to completing the proposed transaction than they were at the LOI stage:

- 3M did not respond to Ashe's efforts to move the transaction along by having Dunleavy prepare a pre-acquisition agreement setting out proposed terms for review by 3M;
- Although 3M appointed Canadian legal counsel on May 6, 2002 and discussions between that counsel and Dunleavy resulted in a better understanding of a proposed structure for the transaction on May 8, 2002 (changing from a share purchase transaction to a merger transaction with a Canadian affiliate of 3M), it remained subject to completion of the due diligence review and the other 3M corporate approvals identified in the LOI;
- Although Ashe testified that he was not aware of any "deal breakers" which were outstanding as 3M began its in-depth second stage due diligence review from May 7 to May 9, 2002, he was aware that the process was far more extensive and detailed than he had estimated and recounted to his banker on April 25, 2002 after the AiT Board meeting. The due diligence process did not alleviate all of Ashe's concerns that issues may emerge that could dissuade 3M from proceeding. For example, two issues remaining after the conclusion of the due diligence of May 7, 8 and 9, 2002 which had to be resolved included tax treatment for the option holders and employment issues regarding severance. Ashe was also focussed on "business related" deal breakers and did not address the obvious potential deal breakers such as the failure of Harrold and his team to obtain the required 3M corporate level approvals;
- The May 7 to May 9, 2002 due diligence process was not only extensive, its purpose was to assemble documents and information to be taken back to 3M headquarters for more detailed review and follow-up analysis post-May 9, 2002. Ashe received no indication of 3M's satisfaction with the due diligence review before 3M's due diligence team departed on May 9, 2002 and the first indication that 3M was prepared to proceed to the next stage of their acquisition process was the receipt of the draft Merger Agreement by AiT on or about May 14, 2002. 3M board approval was given on May 14, 2002 subject to further internal 3M committee and CEO approvals to be obtained before the signing of a definitive agreement, but the evidence is unclear as to when Ashe was notified of the 3M board's approval.

[265] We conclude that during the balance of the Relevant Period from April 27 to May 9, 2002, no information came to the attention of Ashe or the AiT Board that would reasonably have caused them to believe that 3M was at that time committed to proceeding to complete the transaction.

vi. Conclusion

[266] For the reasons set out above, we conclude that with respect to the ongoing negotiations between AiT and 3M up to the April 25, 2002 AiT Board meeting and to the end of the Relevant Period, there is no clear and cogent evidence that any events during that period, either alone or collectively, constituted a material change in the business, operations or capital of AiT. As a result of that determination, AiT was not in breach of section 75 of the Act and was not required to make timely disclosure of its negotiations with 3M for the purchase by 3M of all of the shares of AiT during that time.

[267] Having reached the conclusion that AiT did not breach section 75 of the Act, the allegations against Weinstein must be dismissed.

2. If there is a material change, did Weinstein in her capacity as a director of AiT, authorize, acquiesce or permit a breach by AiT of section 75 in contravention of section 122(3) of the Act and contrary to the public interest under section 127(1) of the Act?

[268] Having determined that a material change did not occur during the Relevant Period, it is unnecessary for us to address this issue.

DATED at Toronto on this 14th day of January 2008.

“Wendell S. Wigle”

“Harold P. Hands”

“Carol S. Perry”

Schedule A – Excerpts From the 2002 version of the Securities Act

R.S.O. 1990, c. S.5, as am. S.O. 1992, c. 18, s. 56; 1993, c. 27, Sched,; 1994, c. 11, ss. 349-381; 1994, c. 33; 1997, c. 10, ss. 36-41; 1997, c. 19, s. 23; 1997, c. 31, s. 179; 1997, c. 43, Sched F, s. 13; 1999, c. 6, s. 60; 1999, c. 9, ss. 193-222 [s. 202 not in force at date of publication]; 2001, c. 23, ss. 209-218.

1. (1) Definitions – In this Act,

[…]

"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 for the issuer or by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable;

"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;

[…]

1.1 Purposes – The purposes of this Act are,

(a) to provide protection to investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in capital markets.

75. (1) Publication of material change – Subject to subsection (3), where a material change occurs in the affairs of a reporting issuer, it shall forthwith issue and file a news release authorized by a senior officer disclosing the nature and substance of the change.

(2) Report of material change – Subject to subsection (3), the reporting issuer shall file a report of such material change in accordance with the regulations as soon as practicable and in any event within ten days of the date on which the change occurs.

(3) Idem – Where,

(a) in the opinion of the reporting issuer, the disclosure required by subsections (1) and (2) would be unduly detrimental to the interests of the reporting issuer; or

(b) the material change consists of a decision to implement a change made by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable and senior management of the issuer has no reason to believe that persons with knowledge of the material change have made use of that knowledge in purchasing or selling securities of the issuer,

the reporting issuer may, in lieu of compliance with subsection (1), forthwith file with the Commission the report required under subsection (2) marked so as to indicate that it is confidential, together with written reasons for non-disclosure.

(4) Idem – Where a report has been filed with the Commission under subsection (3), the reporting issuer shall advise the Commission in writing where it believe the report should continue to remain confidential within ten days of the date of filing of the initial report and every ten days thereafter until the material change is generally disclosed in the manner referred to in subsection (1) or, if the material change consists of a decision of the type referred to in clause (3)(b), until that decision has been rejected by the board of directors of the issuer.

76. (1) Trading where undisclosed change – 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) Tipping – No reporting issuer and no person or company in a special relationship with a reporting issuer shall inform, other than in the necessary course of business, another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed.

(3) Idem – No person or company that proposes,

(a) to make a take-over bid, as defined in Part XX, for the securities of a reporting issuer;

(b) to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer; or

(c) to acquire a substantial portion of the property of a reporting issuer,

shall inform another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed except where the information is given in the necessary course of business to effect the take-over bid, business combination or acquisition.

(4) Defence - No person or company shall be found to have contravened subsection (1), (2) or (3) if the person or company proves that the person or company reasonably believed that the material fact or material change had been generally disclosed.

(5) Definition - For the purposes of this section, "person or company in a special relationship with a reporting issuer" means,

(a) a person or company that is an insider, affiliate or associate of,

(i) the reporting issuer,

(ii) a person or company that is proposing to make a take-over bid, as defined in Part XX, for the securities of the reporting issuer, or

(iii) a person or company that is proposing to become a party to a reorganization, amalgamation, merger or arrangement or similar business combination with the reporting issuer or to acquire a substantial portion of its property,

(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 or with or on behalf of a person or company described in subclause (a) (ii) or (iii),

(c) a person who is a director, officer or employee of the reporting issuer or of a person or company described in subclause (a) (ii) or (iii) or 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 clause (a), (b) or (c),

(e) a person or company that learns of a material fact or material change with respect to the issuer from any other person or company described in this subsection, including a person or company described in this clause, and knows or ought reasonably to have known that the other person or company is a person or company in such a relationship.

(6) Idem - For the purpose of subsection (1), a security of the reporting issuer shall be deemed to include,

(a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer; or

(b) a security, the market price of which varies materially with the market price of the securities of the issuer.

122. (1) Offences, general – Every person or company that,

[…]

(c) contravenes Ontario securities law,

is guilty of an offence on conviction is liable to a fine of not more than $1,000,000 or to imprisonment for a term of not more than two years, or both.

[…]

(3) Directors and Officers – Every director or officer of a company or of a person other than an individual who authorizes, permits or acquiesces in the commission of an offence under subsection (1) by the company or person, whether or not a charge

has been laid or a finding of guilt has been made against the company or person in respect of the offence under subsection (1), is guilty of an offence and is liable on conviction to a fine of not more than $1,000,000 or to imprisonment for a term of not more than two years, or to both.

127. (1) Orders in the public interest – The Commission may make one or more of the following orders if in its opinion it is in the public interest to make the order or orders;

1. An order that the registration or recognition granted to a person or company under Ontario securities law be suspended or restricted for such period as is specified in the order or be terminated, or that terms and conditions be imposed on the registration or recognition.

2. An order that trading in any securities by or of a person or company cease permanently or for such period as is specified in the order.

3. An order that any exemptions contained in Ontario securities law do not apply to a person or company permanently or for such period as is specified in the order.

4. An order that a market participant submit to a review of his, her or its practices and procedures and institute such changes as may be ordered by the Commission.

5. If the Commission is satisfied that Ontario securities law has not been complied with, an order that a release, report, preliminary prospectus, prospectus, return financial statement, information circular, take-over bid circular, issuer bid circular, offering memorandum, proxy solicitation or any other document described in the order,

   i. be provided by a market participant to a person or company,

   ii. not be provided by a market participant to a person or company, or

   iii. be amended by a market participant to the extent that amendment is practicable.

6. An order that a person or company be reprimanded.

7. An order that a person resign one or more positions that the person holds as a director or officer of an issuer.

8. An order that a person is prohibited from becoming or acting as director or officer of any issuer.

[…]

Schedule B –National Policy 40

National Policy Statement 40
Timely Disclosure

A. INTRODUCTION

This policy statement applies to all issuers whose securities are publicly traded in Canada, including reporting issuers or the equivalent in any Canadian jurisdiction. It replaces Uniform Act Policy 2-12, and is effective as of December 1, 1987.

Where the requirements of the Policy go beyond the technical requirements of existing legislation, the securities administrators and stock exchanges request that issuers, their counsel, and market professionals regard such requirements as guidelines to follow in order to assist in the operation in Canada of an open and fair marketplace which merits the trust and confidence of the investing public.

Issuers are reminded that this policy statement does not replace the disclosure requirements set out in the provincial securities statutes and compliance with this Policy must be supplementary to compliance with the relevant provincial statutes. Moreover, if securities of an issuer are listed on one or more stock exchanges in Canada, the issuer must also comply with the rules of the relevant exchange(s) concerning timely disclosure.

Further, nothing in this Policy Statement abrogates from the discretion of a securities administrator to request information from an issuer or to issue cease trading orders or apply other sanctions within its jurisdiction where, in the view of the administrator, there is inadequate public disclosure as to the affairs of an issuer whose securities are publicly traded.

B. BASIC PRINCIPLE - DISCLOSURE OF MATERIAL INFORMATION

It is a cornerstone principle of securities regulation that all persons investing in securities have equal access to information that may affect their investment decisions. Public confidence in the integrity of the securities markets requires that all investors be on an equal footing through timely disclosure of material information concerning the business and affairs of reporting issuers and of companies whose securities trade in secondary markets. Therefore, immediate disclosure of all material information through the news media is required.

C. DETERMINING THE RELEVANT REGULATORY AUTHORITY FOR CONSULTATION, DISCLOSURE AND FILING OF MATERIAL INFORMATION

The following sections discuss the meaning of “material information” and how such information is to be disclosed. This section discusses the general rules for determining which securities administrator and/or stock exchange is to be consulted for requirements relating to, and the disclosure and filing of, material information. Any references to “the relevant securities regulator” in the following commentary should refer to this part of the policy statement.

It is intended that the number of regulatory authorities that must be consulted in a particular matter be kept to a minimum. There are six general principles in determining the relevant securities regulator for consultation on, disclosure, and filing of material information. The particular rules that apply depend on the jurisdiction, whether the security is listed and, if so, the particular exchange on which the security is listed. These rules are as follows:

1. In the case of unlisted securities, the relevant securities regulator is the administrator in the jurisdiction having the principal market for the unlisted security.

2. In the case of securities listed on The Toronto Stock Exchange (“TSE”), the Montreal Exchange (“ME”), or the Vancouver Stock Exchange (“VSE”) the stock exchange is the relevant securities regulator, although the issuer may consult with the securities administrator of the particular jurisdiction.

3. In the case of securities listed on any other Canadian stock exchange, both the stock exchange and the securities administrator in the jurisdiction having the principal market for the listed security are considered to be the relevant securities regulators.

4. In the case of securities listed on two or more Canadian stock exchanges, each stock exchange is a relevant securities regulator, and must be dealt with. The issuer may also consult with the securities administrator in the jurisdiction having the principal market for the listed security.

5. Material change reports and media releases must be filed in accordance with the requirements of legislation in jurisdictions having such legislation. See Part D.

6. The rules of all stock exchanges upon which securities are listed must be observed.

These rules for determining the relevant securities regulator for consultation, disclosure, and filing of material information are fundamental to the commentary that follows. For example, where a news release is required these rules will determine the relevant securities regulator(s) for disclosure and the jurisdiction(s) in which the news release must be filed.

D. MATERIAL INFORMATION

The requirement to disclose material information supplements the provisions of the Securities Acts of Alberta, British Columbia, Ontario, Quebec and Nova Scotia which require disclosure of any "material change" by issuing a press release, and filing with the securities administrator the press release in the case of Quebec, and the press release and a material change report in the case of Alberta, British Columbia, Ontario and Nova Scotia.

Definition

Material information is any information relating to the business and affairs of an issuer that results in or would reasonably be expected to result in a significant change in the market price or value of any of the issuer's securities.

Material information consists of both material facts and material changes relating to the business and affairs of an issuer. The market price or value of an issuer's securities is sometimes affected by, in addition to material information, the existence of rumours and speculation. Where this is the case, the issuer may be required to make an announcement as to whether such rumours and speculation are factual or not.

It is the responsibility of each issuer to determine what information is material according to the above definition in the context of the issuer's own affairs. The materiality of information varies from one issuer to another according to the size of its profits, assets and capitalization, the nature of its operations and many other factors. An event that is "significant" or major" in the context of a smaller issuer's business and affairs is often not material to a larger issuer. The issuer itself is in the best position to apply the definition of material information to its own unique circumstances.

Consultation with Regulatory Authorities

Decisions on disclosure require careful subjective judgments and issuers are encouraged to consult on a confidential basis the relevant regulatory authority and, where applicable, the relevant exchange when in doubt as to whether disclosure should be made.

Immediate Disclosure

An issuer is required to disclose material information concerning its business and affairs forthwith upon the information becoming known to management, or in the case of information previously known, forthwith upon it becoming apparent that the information is material. Issuers are required to provide the relevant regulatory authority with a copy of any news release concurrently upon dissemination to the public.

Immediate release of information is necessary to ensure that it is promptly available to all investors and to reduce the risk that persons with access to that information will act upon undisclosed information. Unusual trading marked by significant changes in the price or trading volumes of any of an issuer's securities prior to the announcement of material information is embarrassing to management and damaging to the reputation of the securities market since the investing public may assume that certain persons benefited from access to material information which was not generally disclosed.

In restricted circumstances disclosure of material information may be delayed for reasons of corporate confidentiality. See Part G.

Developments to be Disclosed

Issuers are not generally required to interpret the impact of external political, economic and social developments on their affairs. However, if an external development will have or has had a direct effect on the business and affairs of an issuer that is both material (in a sense outlined above) and uncharacteristic of the effect generally experienced by other issuers engaged in the same business or industry, the issuer is urged to explain, where practical, the particular impact on them. For example, a change in government policy that affects most issuers in a particular industry does not require an announcement, but if it affects only one or a few issuers in a material way, such issuers should make an announcement.

The market price or value of an issuer's securities may be affected by factors relating directly to the securities themselves as well as by information concerning the issuer's business and affairs. For example, changes in an issuer's issued capital, stock splits, redemptions and dividend decisions may all impact upon the market price of a security.

Actual or proposed developments that are likely to give rise to material information and thus to require prompt disclosure include, but are not limited to, the following:

1. Changes in share ownership that may affect control of the issuer.
2. Changes in corporate structure, such as reorganizations, amalgamations etc.
3. Take-over bids or issuer bids.
4. Major corporate acquisitions or dispositions.
5. Changes in capital structure.
6. Borrowing of a significant amount of funds.
7. Public or private sale of additional securities.
8. Development of new products and developments affecting the issuer's resources, technology, products or market.
9. Significant discoveries by resource companies.
10. Entering into or loss of significant contracts.
11. Firm evidence of significant increases or decreases in near-term earnings prospects.
12. Changes in capital investment plans or corporate objectives.
13. Significant changes in management.
14. Significant litigation.
15. Major labour disputes or disputes with major contractors or suppliers.
16. Events of default under financing or other agreements.
17. Any other developments relating to the business and affairs of the issuer that would reasonably be expected to significantly affect the market price or value of any of the issuer's securities or that would reasonably be expected to have a significant influence on a reasonable investor's investment decision.

Disclosure is only required where a development is material according to the definition of material information. Announcements of an intention to proceed with a transaction or activity should be made when a decision has been made to proceed with it by the issuer's board of directors, or by senior management with the expectation of concurrence from the board of directors. However, a corporate development in respect of which no firm decision has yet been made but that is reflected in the market place may require prompt disclosure. See "Rumours" under Part E and Part G "Confidentiality".

Forecasts of earnings and other financial forecasts need not be disclosed, but where a significant increase or decrease in earnings is indicated in the near future, such as in the next fiscal quarter, this fact must be disclosed. Forecasts should not be provided on a selective basis to certain investors not involved in the management of the affairs of the issuer. If disclosed, they should be generally disclosed. Reference should be made to National Policy Statement No. 48, "Future-Oriented Financial Information".

E. DISCLOSURE

Decisions as to the dissemination of information and the temporary halting of trading are, in the case of listed securities, usually made by the relevant stock exchange, with or without consultation with the securities administrator of the jurisdiction. However, in certain circumstances, trading in a listed security may be halted as a result of a cease trading order issued by a securities administrator. Decisions relating to unlisted securities are made by securities administrators.

Timing of Announcements

The general principle is that significant announcements are required to be released immediately. This rule is subject to exception in certain situations for issuers whose securities are listed for trading on a stock exchange or other organized market

(at this time only CDN in Ontario). Subject to the approval of the relevant securities regulator, release of certain announcements may be delayed until the close of trading, provided the material information is not reflected in the price of the stock. Issuer officials are encouraged to seek assistance and direction from the relevant securities regulator as to when an announcement should be released and whether trading in the issuer's securities should be halted for dissemination of an announcement.

Pre-Notification

The policy of immediate disclosure frequently requires that media releases be issued during trading hours, especially when an important corporate development has occurred. Where this is so, it is essential that issuer officials notify the relevant securities regulator by telephone prior to issuance of a media release. The relevant securities regulator will then be able to determine whether trading in any of the issuer's securities should be temporarily halted.

Where a media release is to be issued during trading hours, securities administrators of provinces in which there is a market for the securities and stock exchanges or where securities are listed should be supplied with a copy forthwith upon its release.

Trading Halts

If an announcement is to be made during trading hours, trading in the stock may be halted until the announcement is made public and disseminated. The relevant securities regulator will determine the amount of time necessary for dissemination in any particular case, which determination will be dependent upon the significance and complexity of the announcement. Issuers should understand that a trading halt does not reflect upon the reputation of an issuer's management nor upon the quality of its securities, but is simply for the purpose of providing for adequate dissemination of the relevant information.

In order to determine whether a trading halt is justified, the relevant securities regulator will consider the impact which the announcement is expected to have on the market for the issuer's securities. Any trading halts that are imposed are normally for less than a two hour duration. Where an issuer's securities are listed or traded elsewhere, those exchanges or other markets will coordinate trading halts. There is a convention among exchanges, NASDAQ and CDN that trading in a security traded or listed in more than one market shall be halted and resumed at the same time in each market.

Rumours

Unusual market activity is often caused by the presence of rumours. If the issuer makes a public statement about a rumoured activity, the disclosure must be accurate and not misleading. It is impractical to expect management to be aware of, and comment on, all rumours, but when market activity indicates that trading is being unduly influenced by rumour the relevant securities administrator will request that the issuer make a clarifying statement. A trading halt may be imposed pending a "no corporate developments" statement from the issuer. If a rumour is correct in whole or in part, the issuer, in response to the request, must make immediate disclosure of the relevant material information and a trading halt may be imposed pending release and dissemination of that information.

F. DISSEMINATION

Transmission to Media

A media release should be transmitted to the media by the quickest possible method and in a manner which provides for wide dissemination. Media releases should be made to news services that disseminate financial news nationally, to the financial press and to daily newspapers that provide regular coverage of financial news.

Content of Announcements

Announcements of material information should be factual and balanced, neither overemphasizing favourable news nor under-emphasizing unfavourable news. Unfavourable news must be disclosed just as promptly and completely as favourable news. While it is clear that news releases may not be able to contain all the details that would be included in a prospectus or similar document, news releases should contain sufficient detail to enable media personnel and investors to appreciate the true substance and importance of the information so that investors may make informed investment decisions. The guiding principle should be to communicate clearly and accurately the nature of the information, without including unnecessary details, exaggerated reports or editorial commentary designed to colour perception of the announcement. The issuer should be prepared to supply further information when appropriate; the name and telephone number of the company official available for comment should be provided in the release.

Misleading Announcements

While all material information must be released immediately, the timing of an announcement of material information must be handled carefully, since either premature or late disclosure may damage the reputation of the securities market. Misleading

disclosure activity designed to influence the price of a security is improper. Misleading news releases send signals to the investment community which are not justified by an objective examination of the facts, and may detract from the issuer's credibility. Announcements of an intention to proceed with a transaction or activity should not be made unless the issuer has the ability to carry out the intent (although proceeding may be subject to contingencies) and a decision has been made to proceed with the transaction or activity by the issuer's board of directors, or by senior management with the expectation of concurrence from the board of directors.

G. CONFIDENTIALITY

When Information May be Kept Confidential

In certain circumstances disclosure of material information concerning an issuer's business and affairs may be delayed and kept confidential temporarily where immediate release of the information would be unduly detrimental to the issuer's interests. In such a situation, issuers are required under the law of certain provinces to disclose to the securities administrator on a confidential basis, information that is not being disclosed immediately to the public. Issuers are reminded of subsection 75(4) of the Securities Act (Ontario), subsection 67(3) of the Securities Act (British Columbia), subsection 118(3) of the Securities Act (Alberta), subsection 84(3) of the Securities Act, 1988 (Saskatchewan), subsection 81(4) of the Securities Act (Nova Scotia), and subsection 76(4) of the Securities Act (Newfoundland) which stipulate that a reporting issuer that wishes to keep information confidential must renew that request every 10 days. Subsection 118(4) of the Securities Act (Alberta) also provides, however, that a reporting issuer must file and issue a news release and file a material change report not later than 180 days from the day such changes became known to the issuer. Section 74 of the Securities Act (Quebec) provides that a reporting issuer need not prepare a press release where senior management has reasonable grounds to believe not only that disclosure would be seriously prejudicial to the issuer, but also that no transaction in the issuer's securities has been or will be carried out on the basis of the information not generally known. The issuer must issue and file a press release only once the circumstances justifying non-disclosure have ceased to exist.

Examples of instances in which disclosures might be unduly detrimental to an issuer's interests are where:

(1) Release of the information would prejudice the issuer's ability to pursue specific and limited objectives or to complete a transaction or series of transactions that are under way. For example, premature disclosure of the fact that an issuer intends to purchase a significant asset may increase the cost of the acquisition.

(2) Disclosure of the information would provide competitors with confidential corporate information that would significantly benefit them. Such information may be kept confidential if the issuer is of the opinion that the detriment to it resulting from disclosure would outweigh the detriment to the market in not having access to the information. A decision to release a new product, or details on the features of a new product, may be withheld for competitive reasons, but such information should not be withheld if it is available to competitors from other sources.

(3) Disclosure of information concerning the status of ongoing negotiations would prejudice the successful completion of those negotiations. It is unnecessary to make a series of announcements concerning the status of negotiations with another party concerning a particular transaction. If it seems that the situation is going to stabilize within a short period, public disclosure may be delayed until a definitive announcement can be made. Disclosure should be made once "concrete information" is available, such as a final decision to proceed with the transaction or, at a later point in time, finalization of the terms of the transaction.

Withholding of material information on the basis that disclosure would be unduly detrimental to the issuer's interests can only be justified where the potential harm to the issuer or to investors caused by immediate disclosure may reasonably be considered to outweigh the undesirable consequences of delaying disclosure. While recognizing that there must be a trade-off between an issuer's legitimate interest in maintaining secrecy and the investing public's right to disclosure of corporate information, securities administrators and stock exchanges discourage delaying disclosure for a lengthy period of time since it is unlikely that confidentiality can be maintained beyond the short term.

Maintaining Confidentiality

Where disclosure of material information is delayed, the issuer must maintain complete confidentiality. In the event that such confidential information, or rumours respecting the same, is divulged in any manner (other that in the necessary course of business), the issuer is required to make an immediate announcement on the matter. The relevant securities regulator must be notified of the announcement, in advance, in the usual manner. During the period before material information is disclosed, market activity in the issuer's securities should be closely monitored by the issuer. Any unusual market activity probably means that news of the matter is being disclosed and that certain persons are taking advantage of it. In such case, the relevant securities regulator should be advised immediately and a halt in trading will be imposed until the issuer has made disclosure on the matter.

At any time when material information is being withheld from the public, the issuer is under a duty to take precautions to keep such information completely confidential. Such information should not be disclosed to any of the issuer's officers, employees or advisers, except in the necessary course of business. The directors, officers and employees of an issuer should be reminded on a regular basis that confidential information obtained in the course of their duties must not be disclosed.

H. Insider Trading

Issuers should make insiders and others who have access to material information about the issuer before it is generally disclosed aware that trading in securities of the issuer while in possession of undisclosed material information or tipping such information is an offence under the securities laws of a number of jurisdictions, and may give rise to civil liability.

In any situation where material information is being kept confidential because disclosure would be unduly detrimental to the issuer's best interests, management is under a duty to take every possible precaution to ensure that no trading whatsoever takes place by any insiders or persons in a "special relationship" with the issuer in which use is made of such information before it is generally disclosed to the public.

In the event that a stock exchange or securities administrator is of the opinion that insider or improper trading may have occurred before material information has been disclosed and disseminated, that stock exchange or securities administrator may require that an immediate announcement be made disclosing such material information.

I. RECIPIENTS OF COMMUNICATIONS

Material change reports and media releases should be delivered to the Market Surveillance Branch or the equivalent in all jurisdictions where there is a legal requirement to file such reports and media releases.

Confidential communications should be made as follows:

British Columbia Securities Commission -
Deputy Superintendent, Registration & Statutory Filings or, if unavailable, Deputy Superintendent, Compliance & Enforcement, or Superintendent of Brokers

Alberta Securities Commission - Director, Market Standards

Saskatchewan Securities Commission - Registrar or, if unavailable, Chairman

Manitoba Securities Commission - Director or, if unavailable, Chairman or Senior Counsel

Ontario Securities Commission - Office of the General Counsel

Commission des valeurs mobilières du Québec - Directeur du contentieux, or, if unavailable Vice-President or President

Government of New Brunswick - Administrator of the Securities Act

Nova Scotia Securities Commission - Director, Securities

Government of Newfoundland and Labrador - Director of Securities

Government of Prince Edward Island – Registrar

Office of the Registrar of Securities for the Northwest Territories – Registrar

Office of the Registrar of Securities for Yukon Territory - Registrar of Securities or, if unavailable, Deputy Registrar of Securities

It is suggested that confidential written communications be made in sealed envelopes within outer envelopes.

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
TVI Pacific Inc.	24 Oct 07	05 Nov 07	05 Nov 07	10 Jan 08
Stone Mountain Holdings Inc.	10 Jan 08	22 Jan 08		

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Mint Technology Corp.	03 Jan 08	16 Jan 08	16 Jan 08		

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
AldeaVision Solutions Inc.	03 May 07	16 May 07	16 May 07		
Argus Corporation Limited	25 May 04	03 Jun 04	03 Jun 04		
Constellation Copper Corporation	15 Nov 07	28 Nov 07	28 Nov 07	16 Jan 08	
CoolBrands International Inc.	30 Nov 06	13 Dec 06	13 Dec 06		
Fareport Capital Inc.	13 Jul 07	26 Jul 07	26 Jul 07		
Hip Interactive Corp.	04 Jul 05	15 Jul 05	15 Jul 05		
HMZ Metals Inc.	03 Apr 06	14 Apr 06	17 Apr 06		
Peace Arch Entertainment Group Inc.	13 Dec 07	24 Dec 07	24 Dec 07		
TS Telecom Ltd.	06 Dec 07	19 Dec 07	19 Dec 07		
Mint Technology Corp.	03 Jan 08	16 Jan 08	16 Jan 08		

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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

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
06/10/2004	1	1591948 Ontario Inc. - Common Shares	123,200.00	104.60
01/02/2008	7	6860711 Canada Inc. - Common Shares	84,635.35	1,392,707.00
12/31/2007	1	ABC Fundamental - Value Fund - Units	150,000.00	7,524.95
12/28/2007	7	Abitex Resources Inc. - Units	430,878.00	1,231,076.00
12/28/2007	57	Abitex Resources Inc. - Units	896,000.00	280.00
12/28/2007	1	Abitex Resources Inc. - Units	150,000.00	600,000.00
01/01/2007 to 12/01/2007	12	Absolute Core Return Fund - Units	7,009,413.41	N/A
01/01/2007 to 08/01/2007	1	Absolute Return Trust - Trust Units	29,881,294.34	14,843.54
12/31/2007	9	Accord Minerals Corp. - Common Shares	497,000.00	1,420,000.00
11/26/2007	18	Advanced Explorations Inc. - Units	2,830,000.00	1,000,000.00
11/21/2007	28	Advanced Explorations Inc. - Units	6,729,000.00	2,400,000.00
12/24/2007	2	Advantex Dining Corporation - Debentures	2,000,000.00	N/A
12/24/2007	2	Advantex Dining Corporation and - Common Shares	0.00	N/A
07/28/2007	4	Altima Resources Ltd. - Flow-Through Shares	385,000.00	1,925,000.00
12/28/2007	39	American Creek Resources Ltd. - Common Shares	4,423,249.55	7,318,181.00
07/28/2007	8	Ammonite Energy Ltd. - Units	1,166,425.00	N/A
12/21/2007	116	Animas Resources Ltd. - Units	2,500,000.00	2,500,000.00
12/31/2007	2	Apex VC Opportunities Fund LP I - Units	200,000.00	200.00
12/24/2007 to 12/31/2007	8	Augen Gold Corp. - Flow-Through Shares	1,234,800.00	1,570,500.00
12/31/2007	1	Avcorp Industries Inc. - Common Shares	150,001.20	52,632.00
12/20/2007	9	Bell Resources Corporation - Flow-Through Shares	250,000.00	500,000.00
12/27/2007	6	Bonaventure Enterprises Inc. - Flow-Through Shares	1,984,049.10	4,408,998.00
01/03/2008	101	Bonaventure Enterprises Inc. - Flow-Through Shares	1,536,511.75	3,414,470.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
12/19/2007	1	BPUS New Finance LLC - Notes	19,800,000.00	1.00
12/17/2007	3	Brookfield CDN Real Estate Opportunity Fund II - CDN, L.P. - Limited Partnership Interest	137,496,450.00	N/A
12/19/2007	1	Brookfield Power New York Finance LP - Notes	11,880,000.00	1.00
12/31/2007	17	Cadillac Ventures Inc. - Flow-Through Shares	540,400.00	675,500.00
11/16/2007	58	Canadian Superior Energy Inc. - Common Shares	22,653,750.00	6,472,500.00
12/27/2007	1	Chalice Diamond Corp. - Common Shares	30,500.00	100,000.00
12/31/2007	8	Champion Minerals Inc. - Flow-Through Shares	750,000.00	1,250,000.00
01/11/2008	1	Chrysler Lease Trust - Notes	98,526,625.58	N/A
12/31/2007	4	Cline Mining Corporation - Common Shares	1,000,000.00	4,000,000.00
12/10/2007 to 12/14/2007	9	CMC Markets Canada Inc. - Contracts for Differences	74,000.00	9.00
12/17/2007 to 12/21/2007	6	CMC Markets Canada Inc. - Contracts for Differences	41,500.00	6.00
01/01/2008 to 01/11/2008	12	CMC Markets Canada Inc. - Contracts for Differences	43,300.00	12.00
12/28/2007 to 12/31/2007	24	CMC Metals Ltd. - Units	1,500,000.75	2,000,000.00
01/08/2008	6	Continental Nickel Limited - Common Shares	9,000,000.00	3,000,000.00
12/28/2007	15	Cuprus Mining Corporation - Common Shares	340,000.00	1,700,000.00
01/03/2008	1	Desert Gold Ventures Inc. - Common Shares	55,000.00	100,000.00
02/13/2007 to 04/12/2007	2	Di Tomasso Equilibrium Fund - Trust Units	1,070,000.00	52,391.00
12/21/2007 to 12/28/2007	18	EarthRenew Organics Ltd. - Preferred Shares	29,740,000.00	29,740,000.00
12/18/2007	33	egX Group Inc. - Units	273,897.84	10,959,591.00
12/31/2007	19	Eloro Resources Ltd. - Flow-Through Shares	434,709.45	659,833.00
12/12/2007	12	Erin Ventures Inc. - Units	321,865.97	28,533,271.00
11/26/2007	23	Family Memorials Inc. - Units	372,999.90	1,243,333.00
01/01/2007 to 12/31/2007	9	Farm Mutual Canadian Equity Pooled Fund - Units	2,550,000.00	N/A
01/01/2007 to 12/31/2007	15	Farm Mutual Canadian Fixed Income Pooled Fund - Units	9,500,000.00	N/A
10/01/2007	2	Flatiron Market Neutral LP - Limited Partnership Units	7,700,000.00	6,804.03
11/01/2007	1	Flatiron Market Neutral LP - Limited Partnership Units	500,000.00	441.09

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
12/01/2007	1	Flatiron Market Neutral LP - Units	5,265,000.00	4,642.94
12/18/2007	3	Fuel Transfer Technologies Inc. - Preferred Shares	25,350.00	7,800.00
12/28/2007	45	G4G Resources Ltd. - Units	500,000.00	4,000,000.00
12/31/2006 to 01/04/2008	21	General Motors Acceptance Corporation of Canada, Limited - Notes	6,254,561.17	6,254,561.17
03/01/2007 to 11/01/2007	1	Giraffe Capital Limited Partnership - Limited Partnership Units	1,198,597.00	N/A
12/31/2007	2	Giraffe Capital Limited Partnership - Limited Partnership Units	3,173,088.82	315.68
02/28/2007	1	Giraffe Capital Limited Partnership 1 - Limited Partnership Units	300,000.00	178.04
02/28/2007 to 09/01/2007	7	Giraffe Capital Limited Partnership III - Limited Partnership Units	1,348,597.00	13,202.98
12/25/2007 to 01/03/2008	5	Global Trader Europe Limited - Contracts for Differences	16,033.00	7,032.00
11/23/2007	10	GLR Resources Inc. - Flow-Through Shares	3,000,000.00	3,750,000.00
12/12/2007 to 01/08/2008	1	GMO International Intrinsic Value Fund-II - Units	139,686.62	4,013.42
01/02/2008	1	GMO World Opportunities Equity Allocation Fund - Units	9,924,028.80	426,997.00
12/27/2007	13	Gold Reach Resources Ltd. - Units	998,754.95	6,658,364.00
12/31/2007	2	Gold Summit Corporation - Units	300,000.00	2,400,000.00
12/28/2007	4	Goldeye Explorations Limited - Flow-Through Shares	308,000.00	2,200,000.00
12/31/2007	1	Goldman Sachs Global High Yield Portfolio - Units	13,492,193.30	N/A
12/18/2007	33	Great Quest Metals Ltd. - Units	1,169,475.00	N/A
12/13/2007	1	Groupworks Financial Corp. - Common Shares	51,396.00	100,776.00
11/02/2007	7	Gryphon Gold Corporation - Units	2,603,200.00	3,254,000.00
11/27/2007	7	Gryphon Gold Corporation - Units	840,000.00	1,050,000.00
12/14/2007 to 12/21/2007	108	Halo Resources Ltd. - Flow-Through Shares	3,498,977.25	N/A
12/31/2007	21	Harvest Gold Corporation - Flow-Through Shares	375,000.00	N/A
12/21/2007	4	Hawthorne Gold Corp. - Units	3,000,000.00	1,875,000.00
12/01/2006 to 11/30/2007	25	Hillsdale Canadian Long/Short Equity Fund - Units	9,813,346.06	68,909.30
12/01/2006 to 08/20/2007	7	Hillsdale Canadian Market Neutral Equity Fund - Units	340,804.83	N/A
12/06/2006 to 11/30/2007	63	Hillsdale Canadian Performance Equity Fund - Units	19,505,408.66	N/A

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
01/10/2007 to 11/30/2007	37	Hillsdale US Long/Short Equity Fund - Units	3,483,112.83	N/A
12/28/2007	31	Hy Lake Gold Inc. - Flow-Through Shares	1,766,740.00	2,523,915.00
12/17/2007	226	Iberdrola Renovables, S.A. Unipersonal - Common Shares	5,891,180,434.00	768,011,800.00
12/17/2007 to 12/21/2007	19	IGW Properties Real Estate Investment Trust - Trust Units	1,019,147.17	963,227.00
12/10/2007	26	ImmunoVaccine Technologies Inc. - Common Shares	637,641.00	637,641.00
12/21/2007	41	International Samuel Exploration Corp - Units	851,249.90	5,675,000.00
12/21/2007	1	Investindustrial IV L.P. - Limited Partnership Interest	110,400,000.00	N/A
12/27/2007	24	Ivory Energy Inc. - Common Shares	1,305,650.25	N/A
12/14/2007	1	Jovian Capital Corporation - Common Share Purchase Warrant	0.00	1,400,000.00
12/22/2007	4	Kalahari Resources Inc. - Flow-Through Shares	944,000.00	11,800,000.00
12/20/2007	1	Kensington International Private Equity Fund I, L.P. - Limited Partnership Units	13,000,000.00	13,000.00
12/20/2007	1	Kensington Private Equity Fund IV, L.P. - Limited Partnership Units	21,300,000.00	21,300.00
12/21/2007	8	Kilmer Brownfield Equity Fund L.P. - Limited Partnership Interest	17,050,000.00	17,050.00
12/31/2007	3	King's Bay Gold Corporation - Units	1,000,000.00	1,923,076.00
10/31/2007	2	Kyoto Planet Fund - Units	70,000.00	7,000.00
12/31/2007	34	Laramide Resources Ltd. - Common Shares	4,025,000.00	575,000.00
12/28/2007	15	LP RRSP Limited Partnership #1 - Limited Partnership Units	636,260.00	647,000.00
01/03/2008	32	Luiri Gold Limited - Units	3,000,000.00	6,000,000.00
12/27/2007	14	Lydian International Limited - Units	2,381,250.00	2,030,000.00
10/01/2007 to 10/31/2007	108	Magnastrata (2007 II) Flow-Through G.P. - Limited Partnership Units	2,042,050.00	N/A
12/28/2007	8	Mantis Mineral Corp. - Common Shares	379,999.60	633,330.00
12/28/2007	32	Marum Resources Inc. - Common Shares	600,000.00	4,560,000.00
12/31/2007	31	Max Pacific Power Inc. - Common Shares	858,500.00	80,000.00
12/28/2007	3	Medallion Resources Ltd. - Units	500,000.00	1,562,500.00
12/13/2007	1	Memsic, Inc. - Common Shares	50,000.00	5,000.00
12/14/2007 to 12/31/2007	8	Mengold Resources Inc. - Units	710,000.00	N/A

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
12/31/2007	23	Mogul Energy International Inc. - Flow-Through Shares	1,019,930.00	N/A
12/31/2007	4	Murgor Resources Inc. - Common Shares	1,449,998.20	2,071,426.00
12/28/2007	59	Mustang Minerals Corp. - Flow-Through Shares	2,283,878.00	3,315,687.00
11/19/2007	6	Nautilus Dongara Fund L.P. - Limited Partnership Units	5,410,350.00	2.00
12/20/2007 to 12/31/2007	9	Nebu Resources Inc. - Flow-Through Shares	125,000.00	625,000.00
12/27/2007	33	Newmac Resources Inc. - Units	997,998.60	N/A
12/31/2007 to 01/04/2008	5	Newport Canadian Equity Fund - Units	39,000.00	262.70
12/27/2007 to 01/04/2008	5	Newport Global Equity Fund - Units	51,000.00	634.82
12/27/2007 to 01/04/2008	37	Newport Yield Fund - Units	404,600.00	3,265.89
12/28/2007	39	North American Gem Inc. - Flow-Through Shares	1,007,000.00	8,310,000.00
12/20/2007	14	North American Uranium Corp. - Warrants	18.55	N/A
12/14/2007	13	Northern Continental Resources Inc. - Units	1,000,000.00	2,500,000.00
12/04/2007	34	Northern Freegold Resources Ltd. - Common Shares	7,147,960.50	9,530,614.00
12/31/2007	42	Northern Hunter Energy Inc. - Common Shares	1,810,000.00	1,810,000.00
12/21/2007	52	Oro Silver Resources Ltd. - Units	3,184,248.60	3,538,054.00
12/21/2007	103	Pacific Energy Resources Ltd. - Common Shares	0.00	530,069.00
12/31/2007	15	Pavilion Resource Fund Flow-Through Limited Partnership I - Limited Partnership Units	337,000.00	33,700.00
12/05/2007	15	Pemberton Energy Ltd. - Debt	283,659.60	945,532.00
12/21/2007	16	Perimeter Financial Corp. - Preferred Shares	5,561,671.23	4,278,209.00
12/21/2007	11	Petaquilla Copper Ltd - Units	34,794,200.00	9,941,200.00
12/21/2007	9	Petaquilla Minerals Ltd - Units	1,017,000.00	339,000.00
12/31/2007	1	PharmEng International Inc. - Common Share Purchase Warrant	0.00	2,700,000.00
01/02/2008	7	Potash One Inc. - Units	10,997,500.00	4,150,000.00
11/08/2007	57	Q-Gold Resources Ltd. - Units	769,040.00	4,806,500.00
12/28/2007	88	Quest Uranium Corporation - Common Shares	1,500,300.00	5,001,000.00
02/27/2007	1	Qwest Energy Canadian Specialty Energy Fund - Units	50,000.00	6,300.09

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
12/31/2007	5	Radisson Mining Resources Inc. - Flow-Through Shares	1,000,000.00	2,500,000.00
01/04/2008	1	Railpower Technologies Corp. - Debentures	35,000,000.00	N/A
11/27/2007 to 12/06/2007	51	Redcliffe Exploration Inc. - Units	5,457,219.30	12,127,154.00
12/28/2007	11	Renegade Oil & Gas Ltd. - Flow-Through Shares	337,556.25	192,889.00
12/31/2007	2	Renforth Resources Inc. - Flow-Through Shares	125,000.00	250,000.00
12/17/2007 to 12/27/2007	15	Reunion Gold Corporation - Warrants	0.00	N/A
11/02/2007	7	Richview Resources Inc. - Flow-Through Shares	3,330,000.00	15,000,000.00
12/31/2007	9	Richview Resources Inc. - Units	870,000.00	3,480,000.00
12/28/2007	34	Rochester Energy Corp. - Common Shares	3,959,700.00	9,899,250.00
12/31/2007 to 01/03/2008	34	Rockcliff Resources Inc. - Flow-Through Shares	1,915,500.00	1,020,000.00
01/02/2008	1	Rockwood-LaSalle Limited Partnership - Loans	25,000.00	N/A
12/28/2007 to 12/31/2007	16	Romios Gold Resources Inc. - Flow-Through Shares	5,158,900.00	9,917,800.00
11/06/2007	3	Roxmark Mines Limited - Common Shares	26,666.66	115,940.00
11/02/2007	4	Roxmark Mines Limited - Units	1,000,000.00	3,333,332.00
10/31/2007	1	Royal Laser Corp. - Common Shares	2,700,000.00	6,000,000.00
11/30/2007	171	San Gold Corporation - Units	40,074,999.60	28,625,000.00
12/13/2007 to 12/17/2007	8	Seafield Resources Ltd. - Common Shares	700,000.00	2,000,000.00
12/13/2007 to 12/17/2007	1	Seafield Resources Ltd. - Units	250,000.00	1,000,000.00
12/21/2007	1	Sextant Strategic Opportunities Hedge Fund LP - Units	200,000.00	6,907.20
07/21/2007	3	Shelldrake L.P. - Limited Partnership Units	796,076.00	680,000.00
12/31/2007	111	Signalta Resources Limited - Units	63,790,000.00	N/A
12/28/2007	31	Skygold Ventures Ltd. - Flow-Through Shares	3,053,102.00	2,348,540.00
12/27/2007	15	SNL Enterprises Ltd. - Units	2,100,334.15	N/A
12/17/2007	36	Southern Hemisphere Mining Limited - Units	3,681,274.80	9,203,187.00
01/14/2008	17	Sparton Resources Inc. - Units	1,025,000.00	4,100,000.00
12/19/2007	27	SpinFry Inc. - Preferred Shares	1,521,774.00	1,513,300.00
01/01/2008	1	Stacey Investment Limited Partnership - Limited Partnership Units	25,029.90	609.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
01/01/2008	2	Stacey RSP Fund - Trust Units	25,714.20	2,266.29
04/01/2007 to 10/01/2007	6	Stornoway Recovery Fund LP - Limited Partnership Units	2,090,000.00	2,090.00
01/03/2008	12	STRIPE 12 Canada L.P. - Limited Partnership Interest	10,053,575.00	N/A
02/28/2007 to 12/31/2007	5	Successful Investor American Fund - Trust Units	748,179.20	65,043.97
01/31/2007 to 12/31/2007	20	Successful Investor Canadian Fund - Trust Units	3,625,945.23	226,342.24
01/31/2007 to 12/31/2007	11	Successful Investor Growth & Income Fund - Trust Units	1,659,602.59	103,232.77
01/31/2007 to 11/30/2007	11	Successful Investor Stock Picker Fund - Trust Units	2,491,446.60	129,762.06
12/20/2007	2	Supreme Resources Ltd. - Flow-Through Shares	400,000.00	4,444,443.00
12/28/2007	2	Tajzha Ventures Ltd. - Units	450,450.00	1,287,000.00
12/27/2007	15	Takara Resources Inc. - Common Shares	966,995.00	3,867,980.00
12/28/2007	22	Talmora Diamond Inc. - Units	408,000.00	4,080,000.00
10/25/2004 to 12/31/2004	1	TD Balanced Income Fund - Units	4,897,958.89	484,830.25
01/04/2005 to 12/30/2005	1	TD Balanced Income Fund - Units	13,907,867.36	1,311,560.41
01/04/2006 to 12/29/2006	1	TD Balanced Income Fund - Units	27,065,513.12	2,341,587.93
01/19/2006 to 12/31/2006	1	TD Canadian Money Market Fund - Units	150,000.00	15,000,000.00
12/12/2006 to 12/31/2006	1	TD Global Dividend Fund - Units	2,321,496.46	2,298,069.73
09/14/2006 to 12/31/2006	6	TD U.S. Quantitative Equity Fund - Units	437,685,157.44	42,402,806.28
01/04/2008	3	Temex Resource Corp. - Common Shares	72,000.00	100,000.00
12/31/2007	444	Terra 2007 Energy & Mining Flow-Through Limited Partnership - Limited Partnership Units	17,596,700.00	175,967.00
12/31/2007	2	The Magpie Mines Inc. - Flow-Through Shares	375,000.00	1,500,000.00
05/10/2007 to 09/07/2007	2	The North Growth U.S. Equity Fund - Units	280,347.39	11,066.23
04/10/2007 to 07/30/2007	2	The North Growth U.S. Equity Fund - Units	460,260.00	17,993.29
12/17/2007	1	The Rosseau Resort Developments Inc. - Units	464,900.00	1.00
12/17/2007	1	The Rosseau Resort Developments Inc. - Units	464,900.00	N/A

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
12/27/2007	120	Thundermin Resources Inc. - Flow-Through Shares	749,975.00	2,343,672.00
12/21/2007	8	Tiberius Gold Corp. - Common Shares	50,000.00	N/A
04/01/2006 to 12/19/2006	18	Timbercreek Investments Inc. - Debentures	3,559,600.00	35,596.00
01/03/2008	248	Timbercreek Real Estate Investment Trust - Units	9,159,960.06	721,825.06
12/21/2007	13	Timbercreek Real Estate Investment Trust - Units	859,997.20	67,679,673.00
12/14/2007	6	TimberRock Energy Corp. - Common Shares	1,103,750.00	25,000.00
12/28/2007	7	Toba Industries Ltd. - Warrants	189,675.00	N/A
12/31/2007	3	Tricor Automotive Group Inc. - Common Shares	204,000.00	200.00
12/20/2007	28	Triex Minerals Corporation - Flow-Through Shares	3,461,999.00	1,018,235.00
12/20/2007	50	Triex Minerals Corporation - Flow-Through Shares	6,271,100.00	1,018,235.00
12/20/2007	22	Triex Minerals Corporation - Units	2,809,101.00	936,367.00
12/28/2007	15	Upper Canada Explorations Limited - Flow-Through Shares	300,000.00	N/A
12/12/2007	47	Uranium Energy Corp. - Units	6,750,000.00	6,750,000.00
12/21/2007	11	Uranium North Resources Corp. - Flow-Through Shares	1,165,800.00	2,136,000.00
12/31/2007	63	Vertex Fund - Trust Units	4,540,512.96	N/A
12/17/2007	2	ViOptix Canada Inc. - Common Shares	3,000,000.00	140,911,224.00
12/31/2007	22	Waddington Resources Ltd. - Units	1,370,000.00	137.00
12/27/2007 to 12/31/2007	15	WALLBRIDGE MINING COMPANY LIMITED - Units	1,065,720.00	2,664,300.00
01/31/2007 to 12/31/2007	3	Waterfall Neutral L.P. - Limited Partnership Units	3,500,000.00	N/A
01/31/2007 to 12/31/2007	1	Waterfall Tipping Point L.P. - Limited Partnership Units	50,000.00	N/A
01/31/2007 to 12/31/2007	5	Waterfall Vanilla L.P. - Limited Partnership Units	4,095,000.00	N/A
12/24/2007	34	Wavefront Energy and Environmental Services Inc. - Units	4,736,394.10	4,985,678.00
12/31/2007	10	WestCan Uranium Corp. - Units	140,050.00	1,290,000.00
11/08/2007	1	Williams Creek Explorations Limited - Units	150,000.00	1,000,000.00
01/07/2008	9	X-CAL Resources Ltd. - Common Shares	390,000.00	2,599,997.00
12/31/2007	1	Yellowhead Mining Inc. - Common Shares	30,000.00	10,000.00
11/16/2007	7	Yukon Gold Corporation Inc. - Flow-Through Units	557,320.40	1,071,770.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
11/16/2007	7	Yukon Gold Corporation Inc. - Units	1,097,499.60	2,438,888.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Canadian Imperial Bank of Commerce
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 15, 2008
Mutual Reliance Review System Receipt dated January 15, 2008
Offering Price and Description:
$1,250,147,250.00 - 18,645,000 Common Shares
Price: $67.05 per Common Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
UBS Securities Canada Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
National Bank Financial Inc.
Blackmont Capital Inc.
Brookfield Financial Corp.
Canaccord Capital Corporation
Cormark Securities Inc.
Desjardins Securities Inc.
Dundee Securities Corporation
Genuity Capital Markets
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Macquarie Capital Markets Canada Ltd.
Raymond James, Ltd.
Wellington West Capital Markets Inc.
Promoter(s):
-
Project #1206717

Issuer Name:
Claymore Equal Weight Banc & Lifeco Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated January 11, 2008
Mutual Reliance Review System Receipt dated January 14, 2008
Offering Price and Description:
Common Units and Advisor Class Units
Underwriter(s) or Distributor(s):
Claymore Investments, Inc.
Promoter(s):
-
Project #1205939

Issuer Name:
Jiminex Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated January 11, 2008
Mutual Reliance Review System Receipt dated January 14, 2008
Offering Price and Description:
OFFERING: $350,000.00 or 3,500,000 Common Shares
PRICE: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Leede Financial Markets Inc.
Promoter(s):
James R. B. Parres
Project #1206210

Issuer Name:
Manitoba Telecom Services Inc.
Principal Regulator - Manitoba
Type and Date:
Amended and Restated Preliminary Short Form Shelf Prospectus dated January 10th, 2008
Mutual Reliance Review System Receipt dated January 10, 2008
Offering Price and Description:
$350,000,000.00 Medium Term Notes
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #1079677

Issuer Name:
Mazorro Resources Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated January 11, 2008
Mutual Reliance Review System Receipt dated January 11, 2008
Offering Price and Description:
Minimum Offering: 5,000,000 Units
$1,500,000.00
Maximum Offering: 6,670,000 Units
$2,001,000.00
Price: $0.30 per Unit
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Andre Audet
Marc L Heureux
Todd Opalick
Marc Carbonneau
Project #1205901

Issuer Name:
Peak Gold Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated January 10, 2008
Mutual Reliance Review System Receipt dated January 10, 2008
Offering Price and Description:
$110,792,500.50 - 147,723,334 Common Shares and 73,861,667 Common Share Purchase Warrants
Issuable on Exercise of 147,723,334 Special Warrants
Price: $0.75 per Special Warrant
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Canaccord Capital Corporation
CIBC World Markets Inc.
Genuity Capital Markets
Macquarie Capital Markets Canada Ltd.
Brant Securities Limited
Paradigm Capital Inc.
PI Financial Corp.
Promoter(s):
Goldcorp Inc.
Project #1205705

Issuer Name:
Stone Agribusiness Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated January 8, 2008
Mutual Reliance Review System Receipt dated January 10, 2008
Offering Price and Description:
$ * - * Units
Price: $ * per Unit
Minimum Purchase: 200 Units
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Research Capital Corporation
Scotia Capital Inc.
TD Securities Inc.
Canaccord Capital Corporation
Wellington West Capital Inc.
Berkshire Securities Inc.
Blackmont Capital Inc.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Burgeonvest Securities Limited
IPC Securities Corporation
Richardson Partners Financial Limited
Promoter(s):
Stone & Co. Limited
Project #1205299

Issuer Name:
Troy Resources NL
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Prospectus dated January 10, 2008
Mutual Reliance Review System Receipt dated January 10, 2008
Offering Price and Description:
$ * - * Shares
Price: $ * per Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Macquarie Capital Markets Canada Ltd.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Promoter(s):
-
Project #1195850

Issuer Name:
Viacorp Technologies Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Prospectus dated January 11, 2008
Mutual Reliance Review System Receipt dated January 14, 2008
Offering Price and Description:
Maximum $ * - * Units
Minimum $5,000,000.00 - 6,250,000 Units
Price: $0.80 per Unit
Underwriter(s) or Distributor(s):
Northern Securities Inc.
Promoter(s):
Larry Olson
Project #1206409

Issuer Name:
AGF Canadian All Cap Equity Fund
AGF Global Balanced High Income Fund
AGF Global High Income Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated January 8, 2008
Mutual Reliance Review System Receipt dated January 9, 2008
Offering Price and Description:
Mutual Fund Series, Series F, Series O and Series T Securities
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
-
Project #1184255

Issuer Name:
AGF Global High Income Pool
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated January 8, 2008
Mutual Reliance Review System Receipt dated January 10, 2008
Offering Price and Description:
Series U Securities @ Net Asset Value
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
-
Project #1184257

Issuer Name:
AIM Trimark Dialogue Income Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated January 3, 2008 to Final Simplified Prospectus and Annual Information Form dated August 10, 2007
Mutual Reliance Review System Receipt dated January 9, 2008
Offering Price and Description:
Series A, Series F and Series I Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
AIM FUNDS MANAGEMENT INC.
Project #1123145

Issuer Name:
Cambridge Canadian Asset Allocation Corporate Class
Cambridge Canadian Equity Corporate Class
Cambridge Global Equity Corporate Class
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectuses and Annual Information Forms dated January 2, 2008
Mutual Reliance Review System Receipt dated January 9, 2008
Offering Price and Description:
Mutual fund securities at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Investments Inc.
Project #1184462

Issuer Name:
Corbal Capital Corp.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated January 10, 2008
Mutual Reliance Review System Receipt dated January 11, 2008
Offering Price and Description:
Minimum Offering: $800,000.00 or 4,000,000 Common Shares;
Maximum Offering: $1,200,000.00 or 6,000,000 Common Shares
Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Research Capital Corporation
Promoter(s):
John Sickinger
Project #1178918

Issuer Name:
Counsel All Equity Portfolio
Counsel Balanced Portfolio
Counsel Conservative Portfolio
Counsel Fixed Income
Counsel Growth Portfolio
Counsel Income Managed Portfolio
Counsel Managed Portfolio
Counsel Money Market
Counsel Regular Pay Portfolio
Counsel Select America
Counsel Select Canada
Counsel Select International
Counsel Select Small Cap
Counsel World Managed Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated January 9, 2008
Mutual Reliance Review System Receipt dated January 15, 2008
Offering Price and Description:
Mutual fund trust units at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Counsel Group of Funds Inc.
Project #1193550

Issuer Name:
Covington Venture Fund Inc.
Type and Date:
Amendment #2 dated January 7, 2008 to Final Prospectus dated January 30, 2007
Receipted on January 10, 2008
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
CFPA Sponsor Inc.
Covington Group of Funds Inc.
Project #1030744

Issuer Name:
Horizons BetaPro DJ-AIGSM Agricultural Grains Bear Plus ETF
Horizons BetaPro DJ-AIGSM Agricultural Grains Bull Plus ETF
Horizons BetaPro COMEX® Gold Bullion Bear Plus ETF
Horizons BetaPro COMEX® Gold Bullion Bull Plus ETF
Horizons BetaPro NYMEX® Crude Oil Bear Plus ETF
Horizons BetaPro NYMEX® Crude Oil Bull Plus ETF
Horizons BetaPro NYMEX® Natural Gas Bear Plus ETF
Horizons BetaPro NYMEX® Natural Gas Bull Plus ETF
Horizons BetaPro S&P/TSX 60® Bear Plus ETF
Horizons BetaPro S&P/TSX 60® Bull Plus ETF
Horizons BetaPro S&P/TSX® Global Mining Bear Plus ETF
Horizons BetaPro S&P/TSX® Global Mining Bull Plus ETF
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated January 11, 2008
Mutual Reliance Review System Receipt dated January 14, 2008
Offering Price and Description:
Mutual fund trust units at net asset value
Underwriter(s) or Distributor(s):
BETAPRO Management Inc.
Promoter(s):
-
Project #1189489

Issuer Name:
InterRent Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated January 7, 2008
Mutual Reliance Review System Receipt dated January 9, 2008
Offering Price and Description:
$25,000,000.00 - 7.0% Series A Convertible Redeemable Unsecured Subordinated Debentures, due January 31, 2013
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
National Bank Financial Inc.
Blackmont Capital Inc.
Dundee Securities Corporation
Desjardins Securities Inc.
Promoter(s):
InterRent International Properties Inc.
Project #1201180

Issuer Name:
MedX Health Corp.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated January 10, 2008
Mutual Reliance Review System Receipt dated January 10, 2008
Offering Price and Description:
$7,000,000.00 - Minimum of 5,000,000 Units; Maximum of 8,750,000 Units $0.80 per Unit
Underwriter(s) or Distributor(s):
Research Capital Corporation
Promoter(s):
Philip W. Passy
Project #1176231

Issuer Name:
Putnam Canadian Balanced Fund
Putnam Canadian Bond Fund
Putnam Canadian Equity Fund
Putnam Canadian Equity Growth Fund
Putnam Canadian Money Market Fund
Putnam Global Equity Fund
Putnam International Equity Fund
Putnam U.S. Value Fund
Putnam U.S. Voyager Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated January 1, 2008 to Final Simplified Prospectuses and Annual Information Forms dated March 30, 2007
Mutual Reliance Review System Receipt dated January 9, 2008
Offering Price and Description:
Class A Units, Class D Units and Class F Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Not applicable
Not Applicable
Promoter(s):
Putnam Investments Inc.
Project #1058484

Issuer Name:
Rain Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Final CPC Prospectus dated January 9, 2008
Mutual Reliance Review System Receipt dated January 9, 2008
Offering Price and Description:
$1,600,000.00 - 8,000,000 Common Shares
Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Global Securities Corporation
Promoter(s):
Ryan Spong
Project #1128568

Issuer Name:
RBC O'Shaughnessy U.S. Growth Fund II
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated January 10, 2008
Mutual Reliance Review System Receipt dated January 10, 2008
Offering Price and Description:
Series A, Advisor Series, Series D and Series F Units
Underwriter(s) or Distributor(s):
Royal Mutual Funds Inc.
RBC Direct Investing Inc.
Royal Mutual Funds Inc./RBC Direct Investing Inc.
Promoter(s):
RBC Asset Management Inc.
Project #1195277

Issuer Name:
RBC Jantzi Balanced Fund
RBC Jantzi Canadian Equity Fund
RBC Jantzi Global Equity Fund
RBC O'Shaughnessy Global Equity Fund
RBC Select Aggressive Growth Portfolio
RBC Select Balanced Portfolio
RBC Select Conservative Portfolio
RBC Select Growth Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated January 10, 2008 to Final Simplified Prospectuses and Annual Information Forms dated July 3, 2007
Mutual Reliance Review System Receipt dated January 15, 2008
Offering Price and Description:
Advisor Series, Series F and Series I Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Royal Mutual Funds Inc.
RBC Direct Investing Inc.
Royal Mutual Funds Inc.
RBC Asset Management Inc.
RBC Dominion Securities Inc.
Royal Mutual Funds Inc./RBD Direct Investing Inc.
Promoter(s):
RBC Asset Management Inc.
Project #1108387

Issuer Name:
Renaissance Global Asset Allocation Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated January 4, 2008 to Final Simplified Prospectus and Annual Information Form dated August 20, 2007
Mutual Reliance Review System Receipt dated January 10, 2008
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
CIBC Asset Management Inc.
Promoter(s):
CIBC Asset Management Inc.
Project #1121201

Issuer Name:
Sagittarius Capital Corporation
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated January 8, 2008
Mutual Reliance Review System Receipt dated January 11, 2008
Offering Price and Description:
Minimum Offering: $500,000.00 or 2,500,000 Common Shares;
Maximum Offering: $800,000.00 or 4,000,000 Common Shares
Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Research Capital Corp.
Promoter(s):
-
Project #1185395

Issuer Name:
Ultrasonix Medical Corporation
Principal Jurisdiction - British Columbia
Type and Date:
Preliminary Prospectus dated October 31st, 2007
Withdrawn on January 10th, 2008
Offering Price and Description:
$•_ • Common Shares Price: $• per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Canaccord Capital Corporation
RBC Dominion Securities Inc.
Promoter(s):
-
Project #1175355

Issuer Name:
BIOX Corporation
Principal Jurisdiction - Ontario
Type and Date:
Preliminary Prospectus dated July 9th, 2007
Closed on January 15th, 2008
Offering Price and Description:
$* - * Common Shares
Price: $ * per Common Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
GMP Securities L.P.
Cormark Securities Inc.
Genuity Capital Markets G.P.
Dundee Securitites Corporation
Promoter(s):
-
Project #1126692

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: Marquest Investment Counsel Inc. To: Marquest Asset Management Inc.	Limited Market Dealer & Investment Counsel & Portfolio Manager	December 14, 2007
Name Change	From: Home Trust Asset Management Inc. To: Donville Kent Asset Management Inc.	Limited Market Dealer & Investment Counsel & Portfolio Manager	January 2, 2008
Name Change	From: Westwind Partners Inc./Partenaires Westwind Inc. To: Thomas Weisel Partners Canada Inc./Partenaires Thomas Weisel Canada Inc.	Broker & Investment Dealer	January 2, 2008
Change of Category	Nexgen Financial Limited Partnership	From: Mutual Fund Dealer, Limited Market Dealer, Investment Counsel & Portfolio Manager To: Mutual Fund Dealer, Limited Market Dealer, Investment Counsel & Portfolio Manager Commodity Trading Manager	January 10, 2008
New Registration	Beechwood Asset Management Inc.	Limited Market Dealer And Investment Counsel & Portfolio Manager	January 11, 2008
New Registration	All Group Financial Services Inc.	Investment Dealer	January 11, 2008
New Registration	Fuller & Thaler Asset Management, Inc.	International Adviser (Investment Counsel & Portfolio Manager).	January 11, 2008

Type	Company	Category of Registration	Effective Date
New Registration	HMW Capital Inc.	Limited Market Dealer	January 14, 2008
New Registration	Canadian Managed Futures Inc.	Commodity Trading Manager Limited Market Dealer	January 14, 2008
New Registration	Financial Services Genesis Inc.	Limited Market Dealer	January 14, 2008
New Registration	Brookdale Capital Inc.	Investment Counsel	January 15, 2008

Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 CDS Rule Amendment Notice – Technical Amendments to CDS Procedures Relating to Deposit and Withdrawal Messaging Procedures

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

DEPOSIT AND WITHDRAWAL MESSAGING PROCEDURES

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE RULE AMENDMENT

Background

The proposed amendments to CDS Participant Procedures are made pursuant to a request from the CDS Strategic Development Review Committee. This request was for CDS to generate six new InterLink messages which will allow participants to submit security deposits and withdrawals without the need to enter the transactions directly into CDSX. This automation will reduce both the duplication of data entry done by Participants and the potential for keying errors.

Participants will ***not*** be required to use this functionality unless they wish to subscribe for these new messages and no changes to current procedures are contemplated as part of the proposed amendments.

The Procedures marked for the amendments may be accessed at the CDS website at:

http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-UserDocumentation?Open

[en français: http://www.cds.ca/cdsclearinghome.nsf/Pages/-FR-Documentation?Open]

Description of Proposed Amendments

The proposed amendments to Chapters 6 and 7 of the *CDSX Procedures and User Guide* consist of the addition of details related to the additional method for the submission of deposits and withdrawals to CDSX. As noted above, Participants may continue to submit such requests using current procedures – the proposed amendments are intended only to increase functionality to the benefit of Participants.

B. REASONS FOR TECHNICAL CLASSIFICATION

The amendments proposed pursuant to this Notice are considered technical amendments; they are matters of a technical nature in routine operating procedures and administrative practices relating to the settlement services.

C. EFFECTIVE DATE OF THE RULE

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the OSC Recognition and Designation Order, as amended 1 November, 2006, and *Annexe A* (*"Protocole d'examen et d'approbation des Règles de Services de Dépôt et de Compensation CDS Inc. par l'Autorité des marchés financiers"*) of AMF Decision 2006-PDG-0180, made effective on 1 November, 2006, CDS has determined that these amendments will be effective on **February 4, 2008**.

D. QUESTIONS

Questions regarding this notice may be directed to:

Tony Hoffmann
Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West,

Toronto, Ontario, M5H 2C9

Telephone: 416-365-3768; Fax: 416-365-1984
e-mail: attention@cds.ca

JAMIE ANDERSON
Managing Director, Legal

Chapter 25

Other Information

25.1 Approvals

25.1.1 United Financial Corporation - s. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with no prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be established and managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

December 21, 2007

Fasken Martineau DuMoulin LLP
66 Wellington Street West
Suite 4200, Toronto Dominion Bank Tower
Toronto, ON M5K 1N6

Attention: Catherine K. Fraser

Dear Sirs/Medames:

Re: United Financial Corporation (the "Applicant")
Application pursuant to clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario) for approval to act as trustee
Application No. 2007/0992

Further to your application dated November 19, 2007 (the "Application") filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that the assets of the Funds, as defined and listed on Schedule "A", and such other funds as the Applicant may establish from time to time will be held in the custody of a trust company incorporated, and licensed or registered, under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II or III of the Bank Act (Canada) or an affiliate of such bank or trust company, the Ontario Securities Commission (the "Commission") makes the following order.

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of the Funds and such other funds which may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to a prospectus exemption.

Yours truly,

"Wendell W. Wigle"

"Paul K. Bates"

SCHEDULE "A"

LIST OF FUNDS

KBSH Private Balanced Fund
KBSH Private Balanced Registered Fund
KBSH Private Canadian Equity Fund
KBSH Private Emerging Markets Fund
KBSH Private European Fund
KBSH Private Fixed Income Fund
KBSH Private Global Equity Fund
KBSH Private International Fund
KBSH Private Money Market Fund
KBSH Private Pacific Basin Fund
KBSH Private North American Special Equity Fund
KBSH Private U.S. Equity Fund
KBSH Private Canadian Equity Value Fund
KBSH Private Global Value Fund
KBSH Enhanced Income Fund
KBSH American Equity Fund
KBSH Balanced Fund
KBSH (Endowment/Foundation) Balanced Fund
KBSH Canadian Bond Fund
KBSH Canadian Equity Small Capitalization Fund
KBSH Canadian Corporate Bond Fund
KBSH Canadian Growth Equity Fund
KBSH Canadian Long Term Bond Fund
KBSH Canadian Short Term Bond Fund
KBSH EAFE Equity Fund
KBSH EAFE Equity Small Capitalization Fund
KBSH Emerging Markets Equity Fund
KBSH European Equity Fund
KBSH Global Equity Fund
KBSH Money Market Fund
KBSH Pacific Basin Equity Fund
KBSH Special Equity Fund
KBSH U.S. Equity Fund
KBSH U.S. Growth Equity Fund
KBSH U.S. Equity Small Capitalization Fund
KBSH Equity Income Fund

25.1.2 Integra Capital Limited - s. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with no prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be established and managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

December 21, 2007

Torys LLP
Suite 1900, 20 Queen Street West
Toronto, ON M5H 3S8

Attention: Dawn Scott

Dear Sirs/Medames:

Re: Integra Capital Limited (the "Applicant")
Application pursuant to clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario) for approval to act as trustee
Application No. 2007/1037

Further to your application dated December 3, 2007 (the "Application") filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that the assets of Integra Equity Fund and Integra NWQ U.S. Large Cap Value Fund (the "Funds") and such other funds as the Applicant may establish from time to time will be held in the custody of a trust company incorporated, and licensed or registered, under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II or III of the Bank Act (Canada) or an affiliate of such bank or trust company, the Ontario Securities Commission (the "Commission") makes the following order.

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of the Funds and such other funds which may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to a prospectus exemption.

Yours truly,

Wendell S. Wigle"

"Paul K. Bates"

25.2 Consents

25.2.1 McBroom Resources Inc. - s. 4(b) of the Regulation

IN THE MATTER OF
ONTARIO REGULATION 289/00, AS AMENDED
(THE "REGULATION")
MADE UNDER THE
BUSINESS CORPORATIONS ACT (ONTARIO)
R.S.O. 1990, c. B. 16, AS AMENDED (THE "OBCA")

AND

IN THE MATTER OF
McBROOM RESOURCES INC.

CONSENT
(Subsection 4(b) of the Regulation)

UPON the application (the "**Application**") of McBroom Resources Inc. (the "**Applicant**") to the Ontario Securities Commission (the "**Commission**") requesting a consent from the Commission to continue in another jurisdiction as required by subsection 4(b) of the Regulation;

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

AND UPON the Applicant having represented to the Commission that:

1. the Applicant was incorporated under the OBCA on October 16, 1997;

2. the authorized share capital of the Applicant consists of an unlimited number of common shares of which 1,725,000 common shares are issued and outstanding;

3. the Applicant is proposing to submit to the Director under the OBCA an application for authorization to continue (the "**Continuance**") under the *Canada Business Corporations Act* (the "CBCA") pursuant to section 181 of the OBCA (the "**Application for Continuance**");

4. pursuant to subsection 4(b) of the Regulation, where the corporation is an offering corporation, the Application for Continuance must be accompanied by a consent from the Commission;

5. the Applicant is an offering corporation under the OBCA and a reporting issuer under the Securities Act, R.S.O. 1990, c.S.5, as amended (the "**Act**") and is not a reporting issuer or equivalent in any other jurisdiction;

6. the Applicant is not in default under any of the provisions of the Act or the regulations or rules made thereunder;

7. the Applicant is not a party to any proceeding or to the best of its knowledge, information and belief, any pending proceeding under the Act;

8. the shareholders of the Applicant were asked to consider and, if thought fit, pass a special resolution authorizing the Continuance, at an annual and special meeting of the shareholders of the Applicant held on January 10, 2008 (the "**Meeting**");

9. at the Meeting, shareholders were asked to consider a number of matters, including the Continuance, to be effected in conjunction with and conditional upon the amalgamation (the "**Amalgamation**") of the Applicant with Changfeng Energy Inc., a corporation incorporated under the CBCA. The special resolution authorizing the Continuance, among other things, was approved at the Meeting by 100% of the votes cast by holders of the Applicant's common shares. Upon completion of the amalgamation, the amalgamated company ("**Amalco**"), through its subsidiaries, will be engaged in the design and construction of natural gas distribution networks and the distribution of natural gas to residential and commercial customers in the People's Republic of China. In order to effect this amalgamation, both corporations must be governed by the same corporate legislation;

10. a joint information circular dated November 29, 2007 was mailed to shareholders of the Applicant and contains disclosure regarding the Continuance and Amalgamation, including a summary of shareholders' right to dissent under section 185 of the OBCA;

11. the TSX Venture Exchange (the "**Exchange**") has conditionally accepted the common shares of Amalco for listing;

12. the material rights, duties and obligations of a corporation governed by the CBCA are substantially similar to those of a corporation governed by the OBCA; and

13. Amalco intends to remain a reporting issuer in Ontario following the Amalgamation and would become a reporting issuer in Alberta and British Columbia upon the listing of its shares on the Exchange.

THE COMMISSION HEREBY CONSENTS to the continuance of the Applicant as a corporation under the CBCA.

DATED at Toronto this 12th day of January, 2008

"Lawrence E. Ritchie"
Vice-Chair
Ontario Securities Commission

"Margot C. Howard"
Commissioner
Ontario Securities Commission

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